

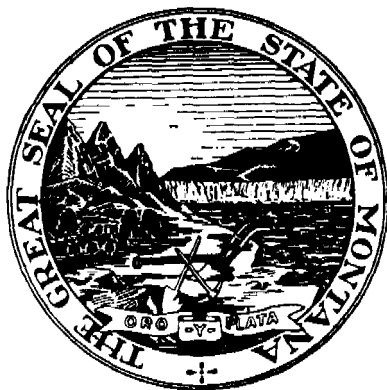
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MONTANA ADMINISTRATIVE REGISTER

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STATE OF MONTANA

1982 ISSUE NO. 21
NOVEMBER 10, 1982
PAGES 1986-2038



MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 21

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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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STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF DENTISTRY

In the matter of the proposed) NOTICE OF PUBLIC HEARING FOR
adoption of a new rule con-) THE PROPOSED ADOPTION OF A
cerning unprofessional conduct) NEW RULE ON UNPROFESSIONAL
rules.) CONDUCT

TO: All Interested Persons:

The notice of proposed adoption published in the Montana Administrative Register on August 26, 1982 at pages 1579 through 1581, is amended as follows because the Montana Dental Association requested a public hearing.

1. On Wednesday, December 1, 1982 at 10:00 a.m., a public hearing will be held in the auditorium of the new Highway Department building, 2701 Prospect Avenue, Helena, Montana to consider the proposed adoption of a new rule concerning unprofessional conduct.

2. The proposed adoption is as printed in the 1982 Montana Administrative Register on August 26, 1982 at pages 1579-1581, issue number 16.

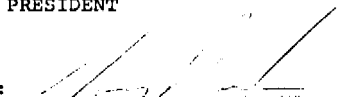
3. The rule is proposed for the reasons stated in that notice.

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 Dentistry, 1424 9th Avenue, Helena, Montana 59620-0407, no later than December 8, 1982.

5. Geoffrey Brazier, Helena, Montana has been designated to preside over and conduct the hearing.

6. The authority of the board to make the proposed adoption is based on section 37-4-321 (3), MCA and implements the same.

BOARD OF DENTISTRY
ROBERT W. FRITZ, D.D.S.
PRESIDENT

BY: 
GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, October 29, 1982.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF DENTISTRY

In the matter of the proposed) NOTICE OF PROPOSED ADOPTION
adoption of new rules for alter-) OF NEW RULES FOR ALTERNATIVE
native disciplinary actions.) DISCIPLINARY ACTIONS.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 10, 1982, the Board of Dentistry proposes to adopt new rules for alternative disciplinary actions.

2. The rules as proposed will read as follows:

"I. GROUND FOR DENIAL OF A LICENSE (1) Failure to meet any requirements or standard established by law or by rules adopted by the board; and/or

(2) Failure to pass the licensing examination; and/or

(3) False representation of facts and information on an application for licensure; and/or

(4) Having another person appear in his/her place for the licensing examination; and/or

(5) A course of conduct which would be grounds for discipline under section 37-4-321, MCA. (authority - section 37-1-136, MCA; implement - sections 37-1-136, 37-4-323, MCA)

II. LICENSE ON PROBATION (1) A licensee may be put on probation for:

(a) conviction of a misdemeanor relating to his professional practice; and/or

(b) physical or mental unfitness not yet to the degree of being legally decreed incompetent but serious enough to warrant monitoring; and/or

(c) violations of the professional code of conduct which did not cause serious harm to the patient/client or others but which are not acceptable practice; and/or

(d) assuming duties and responsibilities within the practice of dentistry or dental hygiene without adequate training or when competency has not been maintained. (authority - section 37-1-136, MCA; implement - sections 37-1-136, 37-4-321, 323, MCA)

III. REPRIMAND OR CENSURE OF A LICENSEE (1) The board may elect to reprimand or censure a licensee for:

(a) lesser infractions of the unprofessional conduct code; and/or

(b) committing an act which fails to conform to the acceptable standards of the dental profession which, if allowed to continue or increases in severity, could be detrimental to the patient/client or others. (authority - section 37-1-136, MCA; implement - sections 37-1-136, 37-4-321, 323, MCA.)

IV. DISCIPLINARY PROCEDURES IN ANOTHER STATE (1) When the board has knowledge that a person licensed in Montana or applying for a license has had a license to practice revoked, suspended or restricted in another state, the

board shall:

(a) obtain a copy of the findings of fact and conclusions from the board that took the disciplinary action;

(b) determine if the findings of fact warrant suspension or revocation of Montana license;

(c) determine if the findings of fact warrant a restricted license with specified limitations. (authority - section 37-1-136, MCA; implement - sections 37-1-136, 37-4-321, 323, MCA)

V. NOTIFICATION OF DENIAL OR DISCIPLINARY ACTION

(1) The board shall give any applicant or licensee whose application for licensure is denied, or against whom disciplinary action is proposed, written notice containing a statement:

(a) of the reason(s) for the proposed denial or disciplinary action; and

(b) directing the applicant's attention to his/her rights to a hearing under the provisions of the Montana Administrative Procedures Act. (authority - section 37-1-136, MCA; implement - sections 37-1-136, 37-4-323, MCA)

VI. REQUEST FOR HEARING The applicant or licensee is entitled to a hearing before the board which is requested by depositing in the mail 20 days after receipt of notice, a certified letter addressed to the department and containing such request. (authority - section 37-1-136, MCA; implement - sections 37-1-136, 37-4-323, MCA)

VII. CONSIDERATION OF REAPPLICATION FOR A LICENSE AFTER PREVIOUS DENIAL

(1) Reapplication for a license previously denied must include evidence of rehabilitation, or elimination or cure of the causes of denial.

(2) Evaluation of reapplication for a license denied under section 37-4-323, MCA, will be based upon, but not limited to:

(a) the severity of the act or omission which resulted in the denial of license; and/or

(b) the conduct of the applicant subsequent to the denial of license; and/or

(c) the lapse of time since denial of license; and/or

(d) compliance with any condition the board may have stipulated as a prerequisite for reapplication; and/or

(e) the degree of rehabilitation attained by the applicant as evidenced by statements sent directly to the board from qualified people who have professional knowledge of the applicant; and/or

(f) personal interview by the board, at their discretion. (authority - section 37-1-136, MCA; implement - sections 37-1-136, 37-4-323, MCA)

VIII. EMERGENCY ACTION (1) If the board finds that public health, safety and welfare imperatively requires emergency action and incorporates a finding to that effect

in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. Such proceedings shall be promptly instituted and determined. Findings justifying emergency action need not be based on statutes found in Chapter 4, Title 37, MCA, as long as the facts are outlined in the order of emergency action taken. (authority - section 37-1-136, MCA; implement - section 37-1-136, 37-4-323, MCA)

3. The board is proposing the new rules to set out specific actions to be taken by the board for specific problem areas in order to implement sections 37-1-136, 37-4-321 and 323, MCA.

4. Interested persons may submit their data, views or arguments concerning the proposed adoption in writing to the Board of Dentistry, 1424 9th Avenue, Helena, Montana 59620-0407, no later than December 8, 1982.

5. If a person who is directly affected by the proposed adoption wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Board of Dentistry, 1424 9th Avenue, Helena, Montana 59620-0407, no later than December 8, 1982.

6. If the board receives requests for a public hearing on the proposed adoptions from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoptions; from the Administrative Code Committee of the legislature; from a governmental agency or subdivision; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 115 persons based on the 1150 licensees in Montana.

7. The authority and implementing sections are cited after each proposed rule.

BOARD OF DENTISTRY
ROBERT W. FRITZ, D.D.S.
PRESIDENT

BY: 
GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, October 29, 1982.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF HEARING AID DISPENSERS

IN THE MATTER of the proposed) NOTICE OF PROPOSED AMENDMENTS
amendments of ARM 8.20.401 con-) OF ARM 8.20.401 TRAINEESHIP
cerning traineeship require-) REQUIREMENTS AND STANDARDS
ments and 8.20.402 subsection) and 8.20.402 FEES
(2) concerning fees.)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 10, 1982 the Board of Hearing Aid Dispensers is proposing to amend rules ARM 8.20.401 concerning traineeship requirements and 8.20.402 subsection (2) concerning fees.

2. The proposed amendment of 8.20.401 will add a new subsection (e) and will read as follows: (new matter underlined, deleted matter interlined)

"8.20.401 TRAINEESHIP REQUIREMENTS AND STANDARDS (1)...

(e) Supervision of trainee. The dispenser will:

(i) peruse every fitting made by the trainee. He/she shall approve the selection of the ear mold, aid and choice of ear to fit.

(ii) The dispenser shall periodically go with the trainee to see the fitting by a follow-up visit.

(iii) The dispenser shall have personal contact with the customer of the trainee who is difficult to satisfy in his/her fitting."

3. The board is proposing the amendment as there are no guidelines for the dispenser to use to maintain high standards for supervising a trainee so he will be an asset, not a deterrent in protecting the public when the trainee becomes licensed. The authority of the board to make the proposed amendment is based on section 37-16-202, MCA and implements section 37-16-405, MCA.

4. The proposed amendment of 8.20.402 subsection (2) will read as follows: (new matter underlined, deleted matter interlined)

"8.20.402 FEES (1) ...

(2) The ~~\$25.00~~ 35.00 fee paid by a trainee covers his period of traineeship and his first test. Failure of the test will require an additional \$45.00 to renew his trainee license.

(3) ..."

5. The board is proposing the amendment so that the trainee will pay the same amount as a regular licensee. At the present time, over a six month period, the trainee can apply for a trainee license, and renew it for only \$70 while a regular licensee must pay \$80.00. The board has determined that the administrative cost for the two programs are equal, therefore the fees should be equal. The authority of the board to make the proposed change is based on section 37-16-202, MCA and implements section 37-16-405, MCA.

6. Interested persons may submit their data, views or

arguments concerning the proposed amendments in writing to the Board of Hearing Aid Dispensers, 1424 9th Avenue, Helena, Montana 59620-0407 no later than December 8, 1982.

7. If a person who is directly affected by the proposed amendments wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Board of Hearing Aid Dispensers, 1424 9th Avenue, Helena, Montana 59620-0407 no later than December 8, 1982.

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

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

BOARD OF HEARING AID DISPENSERS
BARBARA GOING, CHAIRMAN

BY: 

GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, October 29, 1982.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF PHYSICAL THERAPY EXAMINERS

IN THE MATTER OF the proposed) NOTICE OF PUBLIC HEARING ON
amendment of 8.42.406 concern-) THE PROPOSED AMENDMENT OF ARM
ing reciprocity licenses) 8.42.406 RECIPROCITY LICENSES

TO: All Interested Persons:

1. On Monday, December 6, 1982 at 10:00 a.m. a public hearing will be held in the auditorium of the new Highway Department building, 2701 Prospect Avenue, Helena, Montana, to consider the proposed amendment of 8.42.406.

2. The rule as proposed to be amended provides as follows: (new matter underlined, deleted matter interlined)

"8.42.406 RECIPROCITY LICENSES (1) Each applicant applying for reciprocity licensure must have taken the Professional Examination Service examination or the National Registry Exam in another state to be considered for licensure by reciprocity. All Professional Examination Service scores must be reported directly to the board office through the Interstate Reporting Service. All National Registry Exam scores must be verified by the American Congress of Physical Medicine and submitted by the applicant to the board. If the overall score of the Professional Examination Service exam, is equal to or higher than 1.5 standard deviation below the national mean, the individual may be licensed by reciprocity. If the overall score of the National Registry exam is equal to or higher than a C-, which is approximately equivalent to a score that is equal to or higher than 1.5 standard deviation below the national mean, for the professional examination service exam, the individual may be licensed by reciprocity. (2)..."

3. The board received a petition for above stated rule change from Bruce Charles Campbell, Billings, Montana. The board is scheduling a hearing to obtain the views of its licensees with regard to the proposed change. The petitioner's reasons for the change are as follows:

The current rule may be in conflict with the statute, section 37-11-307, MCA, or the statute may be unconstitutional as administered. Section 37-11-307, MCA, provides in part that the department may license a physical therapist without examination who is a physical therapist licensed under the laws of another state if the requirements for a physical therapist in the state in which the applicant was licensed were at the date of his license substantially equal to the requirements in force in this state. Arguably, the National Registry exam is "substantially equal" to the Professional Examination Service exam, and the omission of reference to the National Registry Exam in the current rule, may therefore be in conflict with this "substantially equal" provision of the statute. If the board excludes consideration of the National Registry exam, under the discretion given it in section 37-11-307 or 37-11-303, MCA, such

statute may be unconstitutional because it is an overly broad delegation and exercise of authority by the board. In the event, the current statute, section 37-11-307 authorizes and enables the board to enact a rule which includes the National Registry exam as prerequisite to licensure by reciprocity.

The current rule may be unlawful. The application of the current rule may be an unlawful restraint of trade if it prohibits qualified physical therapists from doing business in the state of Montana. The current rule may also be unlawful on the basis that it discriminates on the basis of age of physical therapists, because older physical therapists may be excluded from practicing in Montana or other states because the National Registry exam existed when physical therapists, who are now older, took the exam.

The National Registry Exam is "substantially equal" to the Professional Examination Service Exam. In 1965, when the petitioner took the National Registry exam in the state of Ohio, a candidate for licensure could take either the Professional Examination Service exam or the National Registry exam. The two exams are similar.

The rule may exclude qualified physical therapists from practicing in Montana. The current rule may exclude otherwise qualified physical therapists, in addition to the petitioner, from practicing in Montana totally because of an arbitrary and capricious exclusion of reference to the National Registry exam in the current rule.

Other states may deny reciprocity to physical therapists licensed in Montana. Reciprocity is based on equal treatment between states, and if Montana arbitrarily denies licensure to physical therapists who have taken the National Registry exam, other states may deny licensure to physical therapists licensed in the state of Montana.

The current rule may have resulted from oversight, is unfair and unlawful to the petitioner, others similarly situated and the public. The current rule, and its failure to include reference to the National Registry exam, may have been an oversight. The current rule and its application to exclude otherwise qualified physical therapists, who have taken the National Registry exam and not the Professional Examination Service exam from the state of Montana, could adversely affect the medical profession in Montana and the general public.

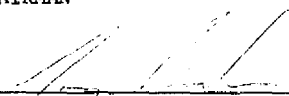
4. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Physical Therapy Examiners, 1424 9th Avenue, Helena, Montana 59620-0407, no later than December 8, 1982.

5. The authority of the board for the proposed amendment is based on section 37-11-201, MCA and implements section 37-11-307, MCA.

6. Geoffrey Brazier, Helena, Montana has been designated
21-11/10/82 MAR Notice No. 8-42-6

to preside over and conduct the hearing.

BOARD OF PHYSICAL THERAPY
EXAMINERS
JEROME B. CONNOLLY, R.P.T.,
CHAIRMAN

BY: 
GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, October 29, 1982.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF PHYSICAL THERAPY EXAMINERS

In the matter of the proposed amendments of ARM 8.42.402 concerning examinations, 8.42.403 concerning fees, 8.42.405 concerning temporary licenses, and proposed adoption of alternative disciplinary action rules.	) NOTICE OF PROPOSED AMENDMENT OF ARM 8.42.402 EXAMINATIONS, 8.42.403 FEES, 8.42.405 TEMPORARY LICENSES AND PROPOSED ADOPTION OF NEW RULES FOR ALTERNATIVE DISCIPLINARY ACTION
	) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 10, 1982, the Board of Physical Therapy Examiners proposes to amend rules 8.42.402 concerning examinations, 8.42.403 concerning fees, 8.42.405 concerning temporary licenses, and proposes to adopt new rules for alternative disciplinary actions.

2. The proposed amendment of 8.42.402 will read as follows: (new matter underlined, deleted matter interlined)

"8.42.402 EXAMINATIONS (1) The examination will be the Professional Examination Service or another equivalent examination and a jurisprudence examination covering Montana physical therapy statutes and rules, as the board may in its discretion approve and adopt.

(2) The examination and meeting dates will be the first Tuesday in April and the first Tuesday in October of each year. Applicants must have their applications in the board office at least 45 days prior to the examination date.

(3) The board may, after review of an application, request the applicant to meet with the board at a time designated by the board and prior to licensure, for the purpose of conducting an oral interview.

(4) Applicants for examination shall file with the board office an application which shall include the following:

(a) application for examination fee ~~of \$100.00~~;

(b) copy of their certificate of graduation from a board approved physical therapy school;

(c) three affidavits of good moral character;

(d) verification of physical therapy instruction and graduation; and

(e) recent photograph of the applicant.

(5) The applicant's passing score for the PES is to be equal to or higher than 1.5 standard deviation below the national mean. The passing score on the jurisprudence examination shall be 75%."

3. The board is proposing the change to impose the requirement that examination candidates pass a jurisprudence examination to guarantee to the public that the candidates are knowledgeable in Montana law and rules governing physical therapists. The authority of the board to make the proposed change is based on section 37-11-201, (1)(a), MCA and implements sections 37-11-303, 304, MCA.

21-11/10/82

MAR Notice No. 8-42-7

4. The proposed amendment of 8.42.403 will read as follows:
(new matter underlined, deleted matter interlined)

"8.42.403 FEES (1) The fees shall be as follows:

- | | |
|--|------------------------|
| (a) Application for examination (for each examination taken) | \$100-00 <u>120.00</u> |
| (b) Application for reciprocity licensure | \$100-00 <u>120.00</u> |
| (c) Renewal | \$25.00 |
| (d) Late renewal (if paid after April 1) | \$35-00 <u>45.00</u> |
| (e) Temporary license | \$10-00 <u>15.00</u> |
| (2) All fees are non-refundable." | |

5. The board is proposing the fee change to set fees commensurate with program costs as required by section 37-1-134, MCA. The authority of the board to make the proposed change is based on sections 37-1-134 and 37-11-201, MCA and implements sections 37-11-304, 307, 308, and 309, MCA.

6. The proposed amendment of 8.42.405 will amend subsection (4) of the rule and will read as follows: (new matter underlined, deleted matter interlined)

"8.42.405 TEMPORARY LICENSES (1) ...

(4) If the applicant fails the PES examination, he may sit for the next scheduled examinations with a limit of 3 examinations inclusive of the first. The jurisprudence examination may be repeated as often as monthly with no limit to the number of times taken, but must be taken under the proctor of a board member or the department. Temporary licenses will not be extended while the applicant is waiting to retake the examination or examinations."

7. The board is proposing the amendment to specify that a candidate may take the Professional Examination Service examination with a limit of 3 examinations inclusive of the first and to specify that the jurisprudence examination may be repeated with no limit on the number of times. The authority of the board to make the proposed change is based on section 37-11-201, MCA and implements section 37-11-309, MCA.

8. The proposed new rules for alternative disciplinary actions will read as follows:

"I. GROUND FOR DENIAL OF A LICENSE The following shall be grounds for denial of a license to practice physical therapy:

- (1) Failure to meet any requirement or standard established by law or by rules adopted by the board;
- (2) Failure to pass the licensing examination;
- (3) False representation of facts and information on an application for licensure;
- (4) Having another person appear in his/her place for the licensing examination; and/or
- (5) A course of conduct which would be grounds for discipline under section 37-11-321, MCA. {authority -

37-1-136, MCA, 37-11-201, MCA; implements - Sections 37-1-136, 37-11-201 (1) (d), 37-11-321, MCA)

II. LICENSE ON PROBATION (1) A licensee may be put on probation for:

(a) conviction of a misdemeanor relating to his professional practice;

(b) physical or mental unfitness not yet to the degree of being legally decreed incompetent but serious enough to warrant monitoring;

(c) violations of the professional code of conduct which did not cause serious harm to the patient/client or others but which are not acceptable practice; or

(d) assuming duties and responsibilities within the practice of physical therapy without adequate training or when competency has not been maintained. (authority - sections 37-1-136, MCA, 37-11-201, MCA; implement sections 37-1-136, 37-11-201 (1) (d), and 37-11-321, MCA)

III. REPRIMAND OR CENSURE OF A LICENSEE (1) The board may elect to reprimand or censure a licensee for:

(a) lesser infractions of the unprofessional conduct code; or

(b) committing an act which fails to conform to the acceptable standards of the physical therapy profession which, if allowed to continue or increases in severity, could be detrimental to the patient/client or others. (authority - sections 37-1-136, MCA, 37-11-201, MCA; implement sections 37-1-136, 37-11-201 (1) (d), and 37-11-321, MCA)

IV. DISCIPLINARY PROCEDURES IN ANOTHER STATE (1) When the board has knowledge that a person licensed in Montana or applying for a license has had a license to practice revoked, suspended or restricted in another state, the board shall:

(a) obtain a copy of the findings of fact and conclusions from the board that took the disciplinary action;

(b) determine if the findings of fact warrant suspension or revocation of Montana license; or

(c) determine if the findings of fact warrant a restricted license with specified limitations. (authority - Sections 37-1-136, MCA, 37-11-201, MCA; implement sections 37-1-136, 37-11-201 (1) (d), and 37-11-321, MCA)

V. NOTIFICATION OF DENIAL OR DISCIPLINARY ACTION (1)

The board shall give any applicant or licensee whose application for licensure is subject to refusal or against whom disciplinary action is proposed written notice containing a statement of:

(a) the reason(s) for the proposed refusal or disciplinary action;

(b) the legal authority for the refusal or disciplinary action;

(c) the particular sections of statutes and rules involved; and

(d) how the applicant may protect his/her right to a hearing under the provisions of Montana Administrative Procedures Act. (authority - sections 37-1-136, MCA, 37-11-201, MCA; implement sections 37-1-136, 37-11-201 (1) (d), and 37-11-321, MCA)

VI. REQUEST FOR HEARING (1) The applicant or licensee is entitled to a hearing before the board which shall be requested and conducted in accordance with the Montana Administrative Procedures Act. (authority - sections 37-1-136, MCA, 37-11-201, MCA; implement sections 37-1-136, 37-11-201 (1) (d), and 37-11-321, MCA)

VII. CONSIDERATION OF REAPPLICATION FOR A LICENSE AFTER PREVIOUS DENIAL (1) Reapplication for a license previously refused must include a description of rehabilitation or elimination or cure of the cause for refusal.

(2) Evaluation of reapplication for a license denied under section 37-11-321, MCA, will be based upon, but not limited to:

(a) the severity of the act or omission which resulted in the refusal of license;

(b) the conduct of the applicant subsequent to the refusal of license;

(c) the lapse of time since refusal of license;

(d) compliance with any condition the board may have stipulated as prerequisite for reapplication;

(e) the degree of rehabilitation attained by the applicant as evidenced by statements sent directly to the board from qualified people who have professional knowledge of the applicant; and

(f) personal interview by the board, at their discretion. (authority - sections 37-1-136, MCA, 37-11-201, MCA; implement sections 37-1-136, 37-11-201 (1) (d), and 37-11-321, MCA)

VIII. EMERGENCY ACTION (1) If the board finds that public health, safety and welfare imperatively requires emergency action and incorporates a finding to that effect in its order summary suspension of a license may be ordered pending proceedings for revocation or other action. Such proceedings shall be promptly instituted and determined. Finding of emergency action need not be based on statutes found in Chapter 11, Title 37, MCA as long as the facts are outlined in the order of emergency action taken. " (authority - sections 37-1-136, MCA, 37-11-201, MCA; implement sections 37-1-136, 37-11-201 (1) (d), and 37-11-321, MCA)

9. The board is proposing the rules to comply with sections 37-1-136, MCA and 37-11-201 (1) (d) and 37-11-321, MCA and to specifically set out what other disciplinary actions may be imposed by the board.

10. Interested persons may submit their data, views or arguments concerning the proposed amendments and adoptions in

writing to the Board of Physical Therapy Examiners, 1424 9th Avenue, Helena, Montana 59620-0407, no later than December 8, 1982.

11. If a person who is directly affected by the proposed amendments and adoptions wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Board of Physical Therapy Examiners, 1424 9th Avenue, Helena, Montana 59620-0407, no later than December 8, 1982.

12. If the board receives requests for a public hearing on the proposed amendments and adoptions from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendments and adoptions; from the Administrative Code Committee of the legislature; from a governmental agency or subdivision; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 20 based on the 200 licensees in Montana.

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

BOARD OF PHYSICAL THERAPY
EXAMINERS
JEROME B. CONNOLLY, R.P.T.
CHAIRMAN

BY: 

GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, October 29, 1982.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment)	NOTICE OF PROPOSED AMENDMENTS
of Rules 10.55.202, 10.55.205,)	OF RULES 10.55.202, 10.55.205,
10.55.207, 10.55.302, and)	10.55.207, 10.55.302, and
10.55.503 relating to the)	10.55.503 relating to the
accreditation standards)	accreditation standards
	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On December 10, 1982, the Board of Public Education proposes to amend rules 10.55.202, 10.55.205, 10.55.207, 10.55.302, and 10.55.503 which relates to the accreditation standards and amendments will specify special education standards.

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

10.55.202 BOARD OF TRUSTEES (1) Boards shall conduct regular monthly meetings and keep records in accordance with state law.

(2) Each school district shall formulate a written comprehensive philosophy of education which reflects the needs of students, and a statement of goals which describes the district's particular philosophy. The school district shall publicize the availability of such statements so that persons so wishing may secure a copy, and such statements shall be reviewed annually by each school district and revised as deemed necessary.

(3) Each school district shall have written policies which delineate the responsibilities of the board, the superintendent and personnel employed by the school district. Policies will be reviewed annually by the school district and will be available to employees and patrons of the school.

(4) Each school district will have a written policy regarding student and parent due process rights.

(5) Each school district shall have valid, written contracts with all regularly employed certified administrative, supervisory and teaching personnel.

(6) Each school district shall schedule a school term consisting of at least 180 days, Monday through Friday, in accordance with state law. A Saturday may not count as an instructional day unless it is used as a make-up day when an emergency has closed school during the regular school week. In such emergencies, approval for holding school on a Saturday must be obtained from the superintendent of public instruction except where an emergency is of one day's duration and is to be made up on Saturday of the same week, in which instance the district or county superintendent may approve the Saturday make-up day.

(7) The board of trustees shall transact official business with professional personnel and other employees through the district superintendent of schools except as provided in section 39-31-101 through 39-31-304 of state law.

(8) The board of trustees shall adopt specific policies and procedures for evaluation of certified staff. A comprehensive individual personnel file based on specific evaluation of every teacher, principal, supervisor and other certified staff employed in the district shall be maintained. The individual being evaluated shall be provided with a copy of the written evaluation and shall be granted access to his/her evaluation file.

AUTH: 20-7-101

IMP: 20-1-301, 20-1-303

10.55.205 SUPERVISORY AND ADMINISTRATIVE TIME (1) Supervision and administration shall include a continuous inservice program for the improvement of instruction. A minimum inservice program shall consist of monthly meetings of staff devoted to instructional improvement. Teachers, supervisors and administrators shall plan together the inservice programs for curriculum development and/or instructional planning.

(2) All specifically designated supervisors shall be certified in accordance with state statutes and with the policies of the Board of Public Education when:

(a) These positions are required by special programs.

(b) Positions are involved in hiring, evaluation, retention and dismissal.

AUTH: 20-7-101

IMP: 20-7-101

10.55.207 STUDENT RECORDS (1) Each school shall keep a permanent file of student records which shall include the name and address of the student, parent or guardian, birthday, academic work completed, level of achievement (grades, standardized achievement tests), immunization record as per 20-5-406 MCA, and attendance data of the student. Student records shall be kept in a fireproof file or vault in the school building or for rural schools, in the county superintendent's office. Each school district shall establish policies and procedures for the state and federal laws which assure that an individual's privacy is respected.

(2) All inactive permanent records from a school that closes shall be sent to the county superintendent or the appropriate county official.

(3) Special Education Records

(a) Each school shall maintain a separate special education records file for each student receiving special education and/or related services. As a minimum, each record will contain a current referral form, permission for evaluation, child study team report with accompanying evaluation data, individualized education program and permission for program placement.

(b) Records will be maintained in confidential manner to include secure storage.

(c) Each district shall establish written procedures for the destruction of confidential records. Records are to be kept for a minimum of five years after termination of special education services or after age 18 or legal age.

AUTH: 20-7-101

IMP: 20-7-101

10.55.302 CERTIFICATES (1) All teachers shall hold valid Montana teaching certificates. Also, administrative personnel who teach shall hold teaching certificates. All supervisory personnel shall hold appropriate certificates. The term "all teachers" shall be interpreted to include teachers involved in the classroom instructional activities of any federally financed program or project. School psychologists shall hold a valid Class 6 (Specialist) certificate. Those school psychologists who have been fully approved for funding by the special education unit of the office of public instruction by December 31, 1980, have had at least half-time employment during a school year between September 1, 1975, and May 31, 1981, and hold a six-year approval which expires prior to July 1, 1984, can continue to serve as a school psychologist until the expiration date of the approval when they must be certified with a Class 6 Specialist certificate. An emergency authorization of employment is not a valid certificate; it is granted to a district which, under emergency conditions, cannot secure the services of a certified teacher. Neither study hall supervisors nor teacher aides need to be certified; however, an instructional aide assigned to a classroom shall be under the direct supervision of that classroom's teacher.

(2) All personnel coaching intramural or interscholastic athletics shall have successfully completed a course in first aid.

(3) In accordance with state law, salary shall be withheld from teachers who have not registered their certificates in the office of the county superintendent within 60 calendar days after their term of service begins.

(4) All teachers shall file official transcripts of all college work in the office of their chief school administrator. If there is no district superintendent or principal, the county superintendent is the chief school administrator.

(5) All personnel whose qualifications are not outlined in the certification standards must have a license issued by the appropriate state or federal licensing agency if required in existing rules and regulations.

AUTH: 20-7-101

IMP: 20-4-101, 20-4-202

10.55.503 SCHOOL PLANT AND FACILITIES

(1) through (8) remain the same.

(9) Minimum essential facilities must be available and accessible to all students.

MAR Notice No. 10-3-63

21-11/10/82

(10) Special education classrooms are in a school building and are in a regularly utilized school building comparable to regular classrooms within a district. Handicapped children are not discriminated against because of the lack of appropriate facilities.

AUTH: 20-7-101

IMP: 20-3-324, 20-6-622, 20-6-624

3. The board of public education is proposing these amendments because the board and the office of public instruction believe that special education should be part of the accreditation standards.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to Allen D. Gunderson, Chairman, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620 no later than December 8, 1982.

5. If a person who is directly affected by the proposed amendments 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 Allen D. Gunderson, Chairman, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620 no later than December 8, 1982.

6. If the agency receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendments; from the Administrative Code Committee of the legislature; from a governmental 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 100 persons based on 1,000 school administrators in the state of Montana.

7. The authority of the agency to make the proposed amendments is based on section 20-7-101, MCA, and the rules implement sections 20-1-301, 20-1-303, 20-7-101, 20-7-101, 20-4-101, 20-4-202, 20-3-324, 20-6-622, and 20-6-624, MCA.

Allen D. Gunderson

ALLEN D. GUNDERSON, CHAIRMAN
BOARD OF PUBLIC EDUCATION

By

Walter Van Dusen

Certified to the Secretary of State October 29, 1982

21-11/10/82

MAR Notice No. 10-3-63

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment)	NOTICE OF PROPOSED AMENDMENT
of Rule 10.60.101 Board of)	OF RULE 10.60.101 BOARD OF
Public Education Policy)	PUBLIC EDUCATION POLICY
Statement)	STATEMENT
	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On December 10, 1982, the Board of Public Education proposes to amend rule 10.60.101, Board of Public Education Policy Statement that relates to special education.

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

10.60.101 BOARD OF PUBLIC EDUCATION POLICY STATEMENT

(1) It shall be the policy of the board of public education to foster the development and continuation of appropriate special education services for all identified handicapped children with the opportunity to become confident, dignified and self-sufficient members of society to the greatest extent possible. ~~To accomplish this goal, handicapped children-- are to be educated with non-handicapped children in the district in which they live-- A child may be removed from the regular education program only when documentation shows that the child cannot be educated in the regular program.~~

~~(2)--The regional services program is to provide special education services to handicapped children who cannot efficiently be served by a program operated by an individual school district or by several cooperating school districts-- Regardless of where a child receives educational services, the district where the child lives is responsible for the educational program of the child.~~

AUTH: 20-2-121 IMP: 20-7-402

3. The board of public education is proposing this amendment on the recommendation of the office of public instruction in order to simplify the policy.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Allen D. Gunderson, Chairman, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620 no later than December 8, 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 Allen D. Gunderson, Chairman, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620 no later than December 8, 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 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 100 persons based on 1,000 school administrators in the state of Montana.

7. The authority of the agency to make the proposed amendment is based on section 20-2-121, MCA, and the rule implements section 20-7-402, MCA.

Allen D. Gunderson

ALLEN D. GUNDERSON, CHAIRMAN
BOARD OF PUBLIC EDUCATION

By

Under Secretary

Certified to the Secretary of State October 29, 1982.

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

IN THE MATTER of Proposed Amend-) NOTICE OF PROPOSED AMENDMENT
ment of Rule 38.5.1405 Regarding) OF RULE 38.5.1405
Termination of Gas and Electric) NO PUBLIC HEARING
Service.) CONTEMPLATED

TO: All Interested Persons

1. On December 20, 1982, the Department of Public Service Regulation proposes to amend Rule 38.5.1405 "NOTICE PRIOR TO AND AT THE TIME OF TERMINATION", regarding termination of gas and electric service.

2. The rule as proposed to be amended provides as follows:
38.5.1405 NOTICE PRIOR TO AND AT THE TIME OF TERMINATION

(1) A utility may not terminate service to any residential, firm, commercial, industrial or other customer unless written notice is served.

(2) Termination notice shall be served as follows:

(a) If no response to the first notice is received within ten days of mailing, the utility must send a second notice by first class or certified mail (return receipt requested). The second notice must be sent by the utility or personally served on the customer at least ten days prior to the date of the proposed termination.

(b) A utility may terminate utility services upon serving written notice five business days prior to the proposed termination date when a customer:

(i) remits an insufficient funds check as payment to the utility after receiving the first notice of termination,
(ii) breaches a payment agreement made pursuant to ARM 38.5.1415.

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

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

(e) Prior to termination of service the utility must make a diligent attempt to contact the customer, either in person or by telephone, to apprise him of the proposed action. If tele-

phone or personal contact is not made, the utility employee shall leave notice in a place conspicuous to the customer that service will be terminated on the next business day unless the delinquent charges have been paid.

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

3. The Public Service Commission is proposing this amendment to Rule 38.5.1405 in order to clarify a utility's obligation to provide termination notice after a customer has once been notified and has entered into some type of payment arrangement. The amendment is intended to eliminate unnecessary consecutive notices and to encourage realistic payment arrangements wherever possible.

4. Interested parties may submit their data, views or arguments concerning the proposed adoption in writing to Robert A. Nelson, Public Service Commission, 1227 11th Avenue, Helena, Montana 59620, no later than December 10, 1982.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally, he must make written request for a public hearing and submit this request along with any written comments he has to Robert A. Nelson, Public Service Commission, 1227 11th Avenue, Helena, Montana 59620, no later than December 10, 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 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 25 persons based on all public utility customers in the State of Montana.

7. The Montana Consumer Counsel, 34 West Sixth Avenue, Helena, Montana 59620 (Telephone 449-2771) is available and may be contacted to represent consumer interests in this matter.

8. The authority for the Commission to amend this rule is based on Section 69-3-103, MCA, and the rule implements Section 69-3-102, MCA.


GORDON E. BOLLINGER, Chairman

CERTIFIED TO THE SECRETARY OF STATE OCTOBER 26, 1982
21-11/10/82 MAR Notice No. 38-2-64

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

In the matter of the amend-	)	NOTICE OF PUBLIC HEARING
ment of Rule 46.14.401 per-	)	ON THE PROPOSED AMENDMENT
taining to the weatheriza-	)	OF RULE 46.14.401 PERTAIN-
tion assistance program,	)	ING TO THE WEATHERIZATION
prioritization for service.	)	ASSISTANCE PROGRAM

TO: All Interested Persons

1. On December 2, 1982, at 9:30 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the amendment of Rule 46.14.401 pertaining to the weatherization assistance program, prioritization for service.

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

46.14.401 PRIORITIZATION FOR SERVICE (1) The department has established a priority formula in (2) below, for low income weatherization assistance.

(2) The applicable benefit award matrices amount from the low income energy assistance program found in ARM 46.13.401 is multiplied by;

(a) either 25 for eligible applicants 60 years or older who own their place of residence or 25 for eligible applicants who are disabled as defined by 20 CFR 416.901 who own their place of residence. The department hereby adopts and incorporates by reference the definition of a disabled person found in 20 CFR 416.901. A copy of these federal regulations may be obtained from the Department of Social and Rehabilitation Services, P.O. Box 4210, 111 Sanders, Helena, Montana 59604;

(b) either 7 for eligible applicants 60 years or older who rent their place of residence or for applicants who are disabled as defined by 20 CFR 416.901 who rent their place of residence;

(c) 3.5 for all other eligible applicants who own their place of residence;

(d) 1 for all other eligible applicants who rent their place of residence.

(3) If there exists a weatherization related imminent threat to the health or safety of an eligible household, their home may be designated a higher priority. To be so designated, it is the obligation of the household to provide proof of the imminent threat to health or safety to the local contractor who must request emergency designation from the department.

(4) Eligible homes will be prioritized quarterly.

(5) Weatherization will be scheduled to minimize travel and other non-productive costs.

(a) A scheduled home with non-productive costs exceeding one hundred dollars (\$100.00) will be advertised for bids within the locality of the work to be performed.

(b) If a local sub-contractor is unavailable or cost excessive, the scheduled home will be prioritized highest in the following contract period and so notified.

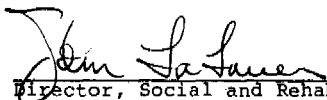
(6) Eligible homes, scheduled to receive partial weatherization from any other agency, may be prioritized higher to allow coordination and avoid duplication of weatherization services.

The authority of the department to amend the rule is based on Section 53-2-201, MCA, and the rule implements Sections 90-4-201 and 90-4-202, MCA.

3. It is necessary to amend the weatherization rule regarding priority for weatherization service in order to facilitate coordination and avoid duplication of other existing or proposed conservation programs.

4. Interested parties may submit their data, views, or arguments, either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P. O. Box 4210, Helena, Montana 59604, no later than December 10, 1982.

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


Director, Social and Rehabilitation Services

Certified to the Secretary of State October 29, 1982.

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

In the matter of the amendment	)	NOTICE OF PUBLIC HEARING
of Rule 46.12.502 pertaining to	)	ON THE PROPOSED AMENDMENT
medical services not provided by	)	OF RULE 46.12.502 PER-
the medicaid program; drug and	)	TAINING TO MEDICAL SEPV-
alcohol detoxification services	)	ICES
and drug and alcohol rehabilita-)	
tion services)	

TO: All Interested Persons

1. On December 1, 1982, at 9:30 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the amendment of Rule 46.12.502, pertaining to medical services not provided by the medicaid program; drug and alcohol detoxification services and drug and alcohol rehabilitation services.

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

46.12.502 SERVICES NOT PROVIDED BY THE MEDICAID PROGRAM

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

(2) The following medical and nonmedical services are explicitly excluded from the Montana medicaid program except for those services covered under the health care facility licensure rules of the Montana department of health and environmental sciences when provided as part of a prescribed regimen of care to the inpatient of a licensed health care facility:

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

(g) drug and alcohol detoxification services rendered in a non-hospital setting, and drug and alcohol rehabilitation services.

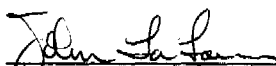
The authority of the department to amend the rules is based on Section 53-6-113, MCA, and the rule implements Section 53-6-141, MCA.

3. Alcohol and drug detoxification services in a facility other than an acute care hospital, and alcohol and drug rehabilitation services are not currently listed as medicaid covered services. Therefore, they are not medicaid benefits.

However, the department receives frequent inquiries concerning medicaid coverage of these services. Therefore, this rule is being proposed to make explicit the exclusion of these services from medicaid coverage.

4. Interested parties may submit their data, views, or arguments, either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than December 9, 1982.

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



Director, Social and Rehabilitation Services

Certified to the Secretary of State October 29, 1982.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the repeal of	)	NOTICE OF REPEAL OF
rules 2.21.401 through 2.21.409	)	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
		2.21.410-2.21.422

TO: All Interested Persons.

1. On September 16, 1982, the Department of Administration published notice of the proposed repeal of rules 2.21.401 through 2.21.409 pertaining to military leave and adoption of new rules at page 1632 of the 1982 Montana Administrative Register, issue number 17.

2. The rules have been repealed and adopted with the following changes:

2.21.413 (RULE IV) ELIGIBILITY (1)-(3) Same as proposed rules.

(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~~ leave without pay, to attend encampments, cruises, or other similar training.

2.21.418 (RULE IX) MEMBERS OF THE NATIONAL GUARD OF THE STATE OF MONTANA (1) Same as proposed rule.

(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. A state employee ordered to active federal or state service by competent authority is not an "affected employee" as defined in Rule 2.21.306, ARM, relating to Disaster and Emergency Leave.

(3) Same as proposed rule.

3. The Department of Administration received the following oral and written comments:

COMMENT: (Pat Schaeffer, Department of Administration) Rule IV (4) would be on a leave without pay status.

RESPONSE: The department has modified the rule to clarify the leave status.

COMMENT: (Greg Petesch, Legislative Council) Rule IX (2) make some reference to the Disaster and Emergency Rule. (3) Does this conflict with 2-18-611, M.C.A.?

RESPONSE: The department has modified Section 2 to clarify a state employee ordered to active duty during a disaster or emergency which affects the employee. Section 3 does not conflict with 2-18-611, M.C.A., because any member of the

National Guard who is ordered to state action duty is considered to be a state employee because he is paid from the general fund as provided in 10-1-501, M.C.A. Any state employee who has completed the qualifying period for leave accrual continues to earn leave while on Guard service, even though on leave without pay from his regular position.

In the matter of the repeal of	)	NOTICE OF REPEAL OF
rules 2.21.301 through 2.21.304	)	RULES 2.21.301 THROUGH
and the adoption of new rules	)	2.21.304 AND THE ADOPT-
relating to the administration	)	TION OF NEW RULES
of disaster and emergency leave	)	RELATING TO DISASTER
	)	AND EMERGENCY LEAVE
		2.21.305 - 2.21.312

TO: All Interested Persons.

1. On September 16, 1982, the Department of Administration published notice of the proposed repeal of rules 2.21.301 through 2.21.304 and adoption of new rules pertaining to disaster and emergency leave at page 1619 of the 1982 Montana Administrative Register, issue number 17.

2. The rules have been repealed and adopted with the following change:

2.21.307 (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. A state employee who is a member of the National Guard of the state of Montana and who is ordered to active federal or state service by competent authority is not an affected employee under this rule.

(2)-(5) Same as proposed rules.

3. The Department of Administration received the following oral and written comments:

COMMENT: (Joe Sicotte, Montana University System) Rule IV, Declared Disaster or Emergency. 4 & 5: Clarification would be helpful. Is the difference in #5 the employee is "requested" to work and in #4 the employee "elects" to work; or, in #4 is the declared disaster not requiring state offices be closed, therefore, the employee is not "affected" as stated in #1? RESPONSE: An employee in 4. may either (1) not be an affected employee or (2) may be an affected employee who elects to report to work. An employee in 5. is an affected employee who is requested by the agency to report to work.

21-11/10/82

Montana Administrative Register

In the matter of the adoption of	)	NOTICE OF ADOPTION OF
rules relating to leave of ab-	)	RULES RELATING TO LEAVE
sence without pay	)	OF ABSENCE WITHOUT PAY

TO: All Interested Persons. 2.21.701 - 2.21.711

1. On September 16, 1982, the Department of Administration published notice of the proposed adoption of new rules pertaining to leave of absence without pay at page 1622 of the 1982 Montana Administrative Register, issue number 17.

2. The rules have been adopted with the following changes:

2.21.702 (RULE II) POLICY AND OBJECTIVES (1) Same as proposed rules.

(2) (a)-(c) Same as proposed rules.

(d) comply with sections 2-18-604, 614, 10-2-211, ~~211-222 and 225-226~~ 10-2-221 and 222, ~~10-2-225~~ and 226, M.C.A., relating to extended military service.

2.21.703 (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, Title 2, Chapter 21, Sub-chapter 65, ARM.)

(2)-(3) Same as proposed rules.

2.21.706 (RULE VI) PAY AND BENEFITS (1) As provided in Montana Operations Manual, Volume III, Policy 3-0505, the pay plan rules, (copies available at the Personnel Division, Department of Administration), service with the state shall not be considered interrupted by authorized leave of absence.

(2) Same as proposed rule.

(3) As provided in ~~Holidays, and holiday pay policy~~ Title 2, Chapter 21, Sub-chapter 6, ARM, 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) Same as proposed rules.

3. The Department of Administration received the following oral and written comments:

COMMENT: (Joe Sicotte, Montana University System) Rule VI, Pay and Benefits (3) appears to be contradictory to 2-18-603, M.C.A.

RESPONSE: The department disagrees. Section 2-18-603, M.C.A., requires that an employee who is regularly scheduled for a day off on a day observed as a holiday receive an alternate leave day. An employee returning from leave of absence without pay would not resume a regular schedule until reporting back for work and would not meet the requirement of being scheduled for a regular day off on a holiday.

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

Certified to the Secretary of State October 29, 1982.

BEFORE THE TEACHERS' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF THE ADOPTION
adoption of a rule	)	OF RULE 2.44.407
specifying which employ-)	
ment in private schools)	
qualifies for creditable)	
service in the Teachers')	
Retirement System)	

TO: All Interested Persons:

(1) On August 26, 1982, the Teachers' Retirement Board published notice of a proposed adoption of a rule (No. 2.44.407) concerning creditable service for private school employment at page 1565 of the 1982 Montana Administrative Register, issue number 16.

(2) The agency has adopted the rule as proposed.

(3) No comments or testimony were received.

(4) The authority for the rule is sections 19-4-201 and 19-4-204, MCA, and the rule implements section 19-4-408, MCA.

TEACHERS' RETIREMENT BOARD
DR. HAROLD WENAAS, CHAIRMAN

By: _____

Harold Wenaas

Certified to the Secretary of State October 29, 1982.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF THE AMENDMENT
of Rule 10.55.108 Alternative) OF RULE 10.55.108
Standards) ALTERNATIVE STANDARDS

TO: All Interested Persons

1. On August 26, 1982 the Board of Public Education published notice of a proposed amendment of rule 10.55.108, which specifies alternative standards, at page 1567 of the Montana Administrative Register, issue number 16.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received.

In the matter of the amendment) NOTICE OF THE AMENDMENT
of Rule 10.55.204 Principal) OF RULE 10.55.204
) PRINCIPAL

TO: All Interested Persons

1. On August 26, 1982 the Board of Public Education published notice of a proposed amendment of rule 10.55.204, which specifies standards for administration and supervision, specifically principals, at page 1569 of the Montana Administrative Register, issue number 16.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received.

In the matter of the amendment) NOTICE OF THE AMENDMENT
of Rules 10.55.402, 10.55.403,) OF RULES 10.55.402,
and 10.55.404 relating to the) 10.55.403 and 10.55.404
Basic Instructional Program) BASIC INSTRUCTIONAL PROGRAM

TO: All Interested Persons

1. On August 26, 1982 the Board of Public Education published notice of a proposed amendment of rules 10.55.402, 10.55.403, and 10.55.404 relating to the basic instructional program and library media services, at page 1571 of the Montana Administrative Register, issue number 16.

2. The agency has amended the rules as proposed.

3. No comments or testimony were received.

21-11/10/82

Montana Administrative Register

In the matter of the amendment)	NOTICE OF THE AMENDMENT
of Rule 10.58.303 Professional)	OF RULE 10.58.303 PRO-
Education and Rule 10.58.508)	FESSIONAL EDUCATION and
Elementary)	RULE 10.58.508 ELEMENTARY

TO: All Interested Persons

1. On August 26, 1982 the Board of Public Education published notice of a proposed amendment of rule 10.58.303 and 10.58.508 which specify teacher education program standards relating to reading, at page 1577 of the Montana Administrative Register, issue number 16.

2. The agency has amended the rules as proposed.

3. No comments or testimony were received.

In the matter of the adoption)	NOTICE OF THE ADOPTION OF
of Rule 1 Basic Instructional)	RULE 10.55.410 BASIC
Program: Special Education)	INSTRUCTIONAL PROGRAM:
	SPECIAL EDUCATION

TO: All Interested Persons

1. On August 26, 1982 the Board of Public Education published notice of a proposed adoption of rule 10.55.410 which specifies special education regulations to be included in the regular school accreditation standards, at page 1575 of the Montana Administrative Register, issue number 16.

2. The agency has adopted the rule as proposed.

3. No comments or testimony were received.

Allen D. Gunderson

ALLEN D. GUNDERSON, CHAIRMAN
BOARD OF PUBLIC EDUCATION

By

Howard Van Dyke

Certified to the Secretary of State October 29, 1982.

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

In the matter of the amendment
of rules 12.6.501 through
12.6.513, relating to outfitters
and professional guides regulations
and the repeal of rule 12.6.510
and the promulgation of rule 12.6.514.

NOTICE OF AMENDMENT OF
RULES 12.6.501 THROUGH
12.6.513 REPEAL OF
RULE 12.6.510, and the
PROMULGATION OF RULE
12.6.514 - OUTFITTERS
AND PROFESSIONAL GUIDES
REGULATIONS

TO: All Interested Persons

1. On October 28, 1981, the Montana Department of Fish, Wildlife and Parks published notice of public hearing on proposed amendments of rules 12.6.501 through 12.6.513, with the proposed repeal of rule 12.6.510 and the promulgation of rule 12.6.514. Public hearing was held on February 19, 1982 and written comment was accepted subsequent to that hearing. The rule, however, was not adopted within the six month statutory time limit. Accordingly, the rule was republished on June 30, 1982 at page 1252 of MAR Issue No. 12.

2. The agency has amended the rule as proposed with the following changes. (new matter is underlined, deletions are interlined):

12.6.501 OUTFITTER LICENSES (1) No person, company, or corporation shall engage in the business of outfitting without first having obtained from the department an outfitter's license of one of the kinds or types hereinafter described as follows:

(a) A general license authorizing one to be engage in the business of outfitting for hunting and fishing parties, and or to providing provide saddle and pack animals, or guide service, and related-services for personal services on back country or wilderness pack trips of more than one day duration, and who may in addition provide other-equipment or vehicles for the purpose of assisting any person in catching fish or locating and pursuing game animals or both for hunting or fishing parties; or to also provide camping equipment, vehicles, or other conveyance, for any person to hunt, capture, take or kill any game animal, upland game bird, migratory game bird, or to catch fish or attempt to take or catch fish and to accompany such a party or person on an expedition for any of these purposes.

(b) A special license authorizing the outfitter to perform only the function of outfitting listed on the license in accordance with the following classifications:

(i) Class I - special outfitter license for taking hunting parties out from a permanent base of operations for day trips only;

(ii) Class II - special outfitter license for taking fishing parties or river float fishing parties out from a permanent base of operations for day trips only trips by watercraft;

(iii) Class III - special outfitter license providing for a temporary camp for a specialized purpose. AUTH: Sec. 87-4-106 MCA; IMP, Sec. 87-4-103, 87-4-163 MCA.

12.6.502 OUTFITTER STANDARDS (1) No outfitter shall may be issued a license unless and until such standards and requirements shall be met and maintained at all times as set forth in rules 12-6-503 through 12-6-510:

(a) The applicant has passed the written outfitter examination with a minimum score of 75% in the category of license requested;

(b) When deemed necessary by the department, a field examination to demonstrate the applicant's ability to use all equipment or stock listed on the application is required:

(c) The applicant has provided proof of ownership or control of the equipment listed in his application.

(d) The applicant has furnished proof of liability insurance for the outfitting services he provides. Minimum insurance will be \$10,000 for property damage, \$100,000 for personal injury to one person, and a total of \$300,000 for personal injury to more than one person. The verification of insurance certificate shall be submitted to the department by renewal application. (Effective January 1, 1983).

(2) The written outfitter examination shall be given at each region (Kalispell, Missoula, Bozeman, Great Falls, Billings, Glasgow, Miles City) twice a year as announced in January and July. The examination will be offered once a month at the Helena office on the second Tuesday of each month. The written test shall be administered by enforcement personnel designated by the director. Applicants will be advised by mail of success or failure. The field examination, when required, shall be given at times and places as designated by the director. AUTH: Sec. 87-4-106 MCA IMP: Sec. 87-4-103, 87-4-163 MCA.

12.6.503 OUTFITTER EQUIPMENT AND SUPPLIES (1) Equipment necessary: An outfitter shall own or control the following equipment:

(a) First-aid kit -- up-to-date and suitable for size and type operation-. A first-aid kit sufficient to provide basic first-aid to an injured person and to stabilize injuries; at base camps, a 24-unit kit (equivalent to MSA Type D - 24-unit kit); at spike camps, in vehicles and water craft a 10-unit kit - (equivalent to MSA Type D - 10-unit kit).

(b) Transportation, equipment, shelter equipment, and food suitable sufficient for the number of guests served and for the type kind of outfitting operation conducted.

(c) All outfitters operating on public or private lands during the fire season shall be equipped with an axe and shovel in serviceable good condition, each of which shall be not less than 30 inches in length overall, and a bucket and/or a waterbag of not less than 2-gallon capacity. Fires discovered shall be quenched whenever possible or reported to the proper authorities at the first opportunity. All campfires shall be completely extinguished before leaving them unattended. Campfires shall never be left unattended and shall be completely extinguished before leaving them.

(d) Every vessel embarking on a river float trip shall have a minimum of one extra oar or paddle aboard. used in an outfitting business shall comply with all the requirements of Title 23, Chapter 2, Part 5, MCA, and its implementing rules. All such vessels will have at least one extra paddle or oar and a Coast Guard approved Type I, Type II, or Type III personal flotation device for each person aboard.

(2) All new applicants, resident and nonresident, must have their outfitting equipment available for inspection by Montana Department of Fish, Wildlife, and Parks law enforcement personnel at time and place designated by the department prior to issuance of license. Inspection shall be mandatory. AUTH: Sec. 87-4-106 MCA IMP, Sec. 87-4-103, 87-4-163 MCA

12.6.504 SANITATION REQUIREMENTS AND LIVESTOCK (1) At all camps, the outfitter shall construct necessary facilities for handling stock and maintaining a sanitary camp where such facilities are allowed by special use permits of the particular forest or agency. Pit toilets shall be lined treated chemically as needed when in use and covered with earth when a camp is not occupied in use for several months. Under all circumstances these toilets shall be located not less than 100 feet from any surface water and they shall not be constructed in a manner that is likely to contaminate ground waters. Pit bottom must be at least 4 feet above ground water. These toilets shall not be within 100 feet from any surface water and they shall not be constructed in a manner that would contaminate ground waters. The toilets shall be constructed to environmental requirements of the appropriate agency.

(2) All livestock corrals must be at least 100 feet from any surface water or meet the local, state, or federal standards.

(3) When natural feed is not available, or when it is inadequate for the number of livestock in the camp, the outfitter shall have and supply supplemental feed adequate to maintain all livestock for the time spent at that campsite.

(4) No outfitter or his employee may subject any animal to abuse or to cruel and inhumane treatment.

(3) (5) The outfitter shall not leave any litter and shall ~~carry or~~ pack out all unburnable refuse from his campsite. When permitted by state or federal law or regulations garbage shall be burned daily. AUTH. Sec. 87-4-106 MCA IMP: Sec. 87-4-103, 87-4-163 MCA.

12.6.505 RATE SCHEDULES (1) Upon request by of a client, the outfitter shall furnish a schedule of rates charged for the services offered. AUTH. Sec. 87-4-106 MCA IMP: Sec. 87-4-103, 87-4-163 MCA.

12.6.506 CAMP RESTRICTIONS (1) Camps shall not ~~block trails or~~ interfere with ~~public~~ use of public roads, trails, and facilities. AUTH. Sec. 87-4-106 MCA IMP: Sec. 84-4-103, 87-4-163 MCA.

12.6.507 PROTECTION OF PRIVATE PROPERTY (1) Outfitters shall exercise diligence in protecting from damage all private lands and property of others upon which the outfitter or client thereof may enter upon, or in proximity to- such lands or property covered by and used in connection with the outfitters' operation while engaged in outfitter activity. AUTH: Sec. 87-4-106 MCA IMP: Sec. 87-4-103, 87-4-163 MCA.

12.6.508 RECORDS (1) True, complete, and accurate outfitter records, as defined herein, will be filed with the department regional supervisor for the region in which the outfitter is licensed. Such records must be filed relating to the license year immediately preceding the expiration date of the outfitter's license. No outfitter's license ~~will~~ may be renewed unless ~~and until~~ such records are filed as provided herein. those which contain:

- (a) complete name and address of outfitter;
 - (b) outfitter's license number and year issued;
 - (c) dates of service to each client;
 - (d) complete name and address of each client as the same appears on the client's fishing or hunting license;
 - (e) number, sex, age, and species of big game and game birds taken;
 - (f) client's license number(s), by species;
 - (g) whether or not the client fished;
 - (h) statement identifying each identification of every hunting district in which hunted by each client hunted or fished, by drainage- and of every stream or lake fished by each client.
- (2) Prior to the filing of records, as herein required, and at all reasonable times, each outfitter shall make available for inspection and inquiry by enforcement personnel of the department, all or any portion of his records or information required to be in such records as hereinabove provided. The said records shall at all times be maintained as confidential information and no part of same shall be

released to persons or organizations outside the department unless such release is first approved by the director, or except as may be otherwise required by law. AUTH: Sec. 87-4-106 MCA IMP: Sec. 87-4-103, 87-4-163 MCA.

12.6.509 EXPERIENCE STANDARDS (1) A general outfitter is required to meet the following experience standards;

(a) a minimum of 5 years' hunting and related activities and a minimum of 2 years' work as a professional guide with a licensed general outfitter or 2 years as a licensed special-outfitter fishing, packing and camping, handling livestock and equipment experience or previous experience as a professional guide with a general outfitter or previous experience as a licensed Special Class I and II outfitter; and the director, when deemed necessary, may require a practical field examination to determine the applicant's ability to use all equipment required to provide service.

(2) A special outfitter is required to meet the following experience standards:

(a) a minimum of 5 years' hunting and related activities fishing, floating and boating or previous experience as a professional guide with a general outfitter or as a professional guide for a special outfitter in category of license requested. AUTH: Sec. 87-4-106 MCA IMP: Sec. 87-4-103, 87-4-163 MCA.

12.6.510 RESIDENCY AND AGE REQUIREMENTS Repeal.

12.6.511 HUNTING AND FISHING LICENSES (1) ~~Current-hunting-or-fishing-licenses-must-be-obtained-by,-and-must-at-all-times-be-in-the-possession-of,-every-outfitter-and-guide-----during-the-times-that-he-is-engaging-in-outfitting-or-guiding, as-hereinafter-provided,--~~

~~-(a)--While-a-resident-outfitter-or-guide-is-outfitting-or-guiding-for-deer-or-antelope-hunting-parties-in-these-areas-or-districts-of-the-eastern-portion-of-the-state-of-Montana-where-there-are-only-deer-and-antelope-seasons-available-a-class---A-37-deer-A-tag--~~

~~-(b)--While-a-resident-outfitter-or-guide-is-outfitting-or-guiding-for-deer,-elk,-or-other-big-game-hunting-parties-in--these-areas-other-than-those-specified-in-(a)-above-a-class----A-37-deer-A-tag,-and-a-class-A-5-elk-tag,---~~

~~-(c)--Any-nonresident-person-who-is-an-outfitter-or-guide--and-is-outfitting-or-guiding-for-deer-or-antelope-hunting----parties-in-these-areas-or-districts-of-the-eastern-portion-of-the-state-of-Montana-where-there-are-only-deer-and-antelope-seasons-available---a-class-B-7-(nonresident)-deer-license,---and/or -a--(nonresident)-antelope--license--or-a-----or-a-B-10--(nonresident)-big-game-combination-license-~~

~~(2)--An-outfitter-shall-sign-the-license-of-any-client-from-whom-he-receives-any-form-of-compensation,--~~

(1) Every outfitter and professional guide shall hold a wildlife conservation license valid for the license year in which he is outfitting or guiding and shall keep on his person such conservation license at all times that he is engaged in outfitting or guiding.

(2) Outfitters and their employees may not shoot, kill or take game animals for or in direct competition with those employing them. AUTH: Sec. 87-4-106 MCA IMP: Sec. 87-4-103, 87-4-163 MCA.

12.6.512 GUIDE'S ENDORSEMENT (1) ~~---A---professional guide's endorsement by an outfitter on his guide's license must also show the date of endorsement---~~ The employing outfitter shall endorse and date the guide's license. AUTH: Sec. 87-4-106 MCA IMP: Sec. 87-4-103, 87-4-163 MCA.

12.6.513 LICENSE REVOCATION (1) ~~--The---wildlife--conservation license of a resident guide may be suspended, revoked, or denied if the previous year's records are not submitted--~~ (2) (1) Any outfitter or professional guide's license is subject to revocation under breach for violation of any of these regulations or upon breach of any of the laws of Montana relating to outfitting or guiding or upon the filing of a false application, report, or record shall be a breach of these regulations. For violation of any section of Title 87, Chapter, Part I MCA. Upon revocation or denial of any outfitter's license, said revocation shall include the privilege of holding a guide's license.

(2) The filing of a materially false application, report or record shall be a violation of these regulations. AUTH: Sec. 87-4-106 MCA IMP: Sec. 87-4-103, 87-4-163 MCA.

12.6.414 LICENSE RENEWAL (1) If an outfitter allows his license to lapse for more than one license year, he shall then be treated as a new applicant. AUTH: Sec. 87-4-106 MCA IMP: Sec. 87-4-103, 87-4-163 MCA.

3. A copy of the minutes of this public hearing and the tapes upon which the meeting is recorded have been retained in the file of the department's Helena office. These files are available for inspection during normal working hours of the department.

4. The comments and the department's response is as follows:

COMMENT: Float fishing outfitters requested a special license classification that addresses float fishing.

RESPONSE: The department has amended its Class II license classifications to include river float fishing parties.

COMMENT: Several outfitters recommended that outfitter's standards be more stringent to upgrade and professionalize the

industry. Among the proposals was the recommendation to increase the minimum score on the written test from 75% to 80% and to add to Sec. 12.6.502 (1) (a) the language "in the category of license requested."

RESPONSE: The standard for the written test, as proposed, meets the concern raised by the outfitters. In addition, the department has included the language "in the category of license requested".

COMMENT: Concern was expressed that the department would not have sufficient field personnel to handle the field test described in 12.6.502 (1)(b). It was urged that the department incorporate the term "when deemed necessary" to provide the department adequate latitude to test new applicants.

RESPONSE: The department has incorporated into 12.6.502(1)(b) the language "when deemed necessary by the department."

COMMENT: Some concern was expressed that the specification of a given type of first-aid kit for a particular part of an outfitting operation would be unnecessarily inflexible. In addition, comment was made that the classification of the kinds of first-aid kits necessary should include a classification for floating craft.

RESPONSE: It is the department's position that specification of a certain kind of first-aid kit or its equivalent is necessary to assure adequate first-aid equipment for outfitters. In addition, the department has amended its proposal to include "watercraft" among its specifications for first-aid equipment.

COMMENT: Considerable comment was received expressing concern that the department's original proposal to require only Type I personal flotation devices was insufficiently narrow.

RESPONSE: After consideration of these comments and applicable federal law, department has amended its proposal to allow Type I, Type II, or Type III personal flotation devices for each person aboard.

COMMENT: The Montana Legislative Council recommended that Sec. 12.6.504 (2) be amended to read: "All livestock corrals must be at least 100 feet from any surplus water or meet 'local, state, or federal standards.'" Their concern was that the language as proposed by the department would be insufficiently specific to guide outfitters.

RESPONSE: The department has adopted the language as recommended by the Legislative Council.

COMMENT: A number of outfitters suggested that Sec. 12.6.507 be limited to regulation of outfitters while they are engaged in their outfitting activity.


RESPONSE: The department has adopted that recommendation.

COMMENT: Considerable comment was made concerning experience standards for outfitters. Concern was expressed that the previous experience standards unduly hindered outfitters from selling their businesses while providing no adequate assurance about the capabilities of the applicant for an outfitter's license.

RESPONSE: It is the department's position that an experience standard does not provide adequate assurance of competency. In response, the department has done away with the two year's experience standard as an outfitter and replaced it with a requirement of adequate experience in the areas of fishing, packing, and camping, handling livestock and equipment or, in the alternative, previous experience as a professional guide with discretion in the director to require a practical field examination to determine the applicant's ability to use the equipment required.

COMMENT: Many outfitters objected to the department's proposal to define the term "hunting in competition with the client" as is used in the outfitter law. Their concern was that the language, as proposed, was so broad as to preclude any outfitter or guide from hunting at any time and that such a limitation was impractical and unfair to the outfitter and guides he employs.

RESPONSE: The department has deleted its definition of "shooting in competition" at this time.


ORVILLE W. LEWIS, DEPUTY DIRECTOR

Certified to the Secretary of State October 29, 1982

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION)	NOTICE OF ADOPTION OF RULE
of Rule I (42.25.101) to)	I (42.25.101) relating to
clarify reporting require-)	reporting requirements for
ments for persons subject to)	persons subject to the
the metaliferous mines tax.)	metaliferous mines tax.

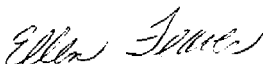
TO: All Interested Persons:

1. On September 16, 1982, the Department of Revenue published notice of the proposed adoption of Rule I (42.25.101) to clarify the reporting requirements for persons subject to metaliferous mines tax, codified at 15-37-101, MCA, et seq., at page 1685 of the 1982 Montana Administrative Register, issue number 17.

2. The Department has adopted the rule as proposed.

3. No comments or testimony were received.

4. The authority of the Department to adopt the 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 10/29/82

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION)	NOTICE OF ADOPTION OF RULE
of Rule I (42.25.201) to)	I (42.25.201) relating to
clarify reporting require-)	reporting requirements for
ments for persons subject to)	persons subject to the
the gross proceeds tax.)	gross proceeds tax.

TO: All Interested Persons:

1. On September 16, 1982, the Department of Revenue published notice of the proposed adoption of Rule I (42.25.201) to clarify the reporting requirements for persons subject to metal mines gross proceeds tax, codified at 15-23-801, MCA, et seq., at page 1683 of the 1982 Montana Administrative Register, issue number 17.

2. The Department has adopted the rule as proposed.

3. Written comment in support of the proposed adoption was received from S. L. Groff of Butte, Montana.

4. The authority of the Department to adopt the 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 10/29/82

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the repeal) NOTICE OF REPEAL OF RULES,
of rules on advisory opinions) TITLE 44, CHAPTER 4,
from the Secretary of State.) ETHICS

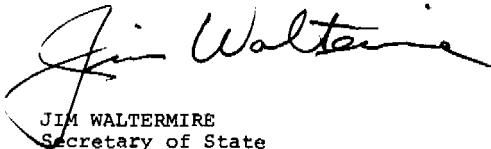
TO: All Interested Persons:

1. On September 16, 1982, the Secretary of State published a notice of proposed repeal of rules on advisory opinions, Title 44, Chapter 4, Ethics at page 1687, 1982 Montana Administrative Register, issue number 17.

2. The Secretary of State has repealed the rules as proposed.

3. No comments or testimony were received.

Dated this 29th day of October, 1982.



JIM WALTERMIRE
Secretary of State

VOLUME NO. 39

OPINION NO. 76

THIS OPINION SUPERSEDES VOLUME 39, NO. 70, WHICH IS WITHDRAWN.

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:

The interest rate of $\frac{5}{6}$ of 1% per month provided by chapter 6, 1981 Montana Laws, First Special Session, applies to all delinquent taxes collected after November 30, 1981, for the entire period of delinquency.

26 October 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 under 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). 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, § 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 the new uniform interest rate should be applied retroactively to the entire period of delinquency or only to the period of delinquency after the effective date of the amendment.

The question of retroactivity of interest rates was considered by the Montana Supreme Court in State v. Marsh, 175 Mont. 460, 575 P.2d 38 (1978). In that case, the Montana Legislature had changed the interest rates on condemnation awards from six percent per annum to ten percent. The Court held that "the rate of interest payable should be that rate current in the periods during which the delay in payment has occurred." 175 Mont. at 469, 575 P.2d at 44. Based on this holding, it would appear upon first examination that the calculation of interest rates on delinquent taxes collected after November 30, 1981, might involve the use of all three of the formulas in effect over the past several years, including the two-tiered formula that was approved on May 1, 1981, and rejected on November 25, 1981. I am persuaded, however, that the latest amendment to section 15-16-102, MCA, differs significantly from the law discussed in Marsh, and that the holding in Marsh therefore does not apply.

The Montana Supreme Court recognized in Marsh that laws may apply retroactively if the Legislature expressly declares such an intent. 175 Mont. at 469, 575 P.2d at 44 (citing the predecessor to section 1-2-109, MCA, and Davidson v. Love, 127 Mont. 366, 370, 264 P.2d 705 (1953)); see also 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). In Marsh, the amendment to the interest rate provision was entirely silent as to effective date or applicability. 1975 Mont. Laws, ch. 534. In the present case, by contrast, the act amending section 15-16-102, MCA, included the following section:

Section 4. Effective date and applicability.
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. (Emphasis added.)

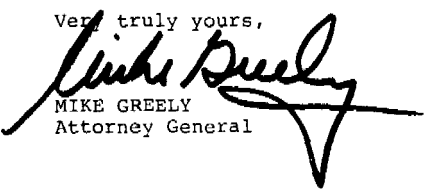
1981 Mont. Laws 1st Spec. Sess., ch. 6. Had the Legislature intended the new interest rate to apply only to the period of delinquency after the effective date of the amendment, no language concerning applicability would have been necessary under the Marsh holding. The language adopted indicates that the applicability of the amendment is to be determined according to the date of payment of the taxes, rather than the period of delinquency. The new interest rate applies to all taxes paid on or after November 30, 1981, retroactive to the date the taxes became delinquent. 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).

This conclusion is buttressed by the legislative history of chapter 6 of the First Special Session. The two-tier system that was approved on May 1, 1981, had created an "administrative nightmare." Minutes, Senate Taxation Committee, 11/23/81. To eliminate these problems, the Legislature adopted the new uniform rate of 5/6 of 1% per month. If the new rate were to apply prospectively only, the administrative problems would not be eliminated, but would be aggravated. I do not believe that the Legislature intended such a result.

THEREFORE, IT IS MY OPINION:

The interest rate of 5/6 of 1% per month provided by chapter 6, 1981 Montana Laws, First Special Session, applies to all delinquent taxes collected after November 30, 1981, for the entire period of delinquency.

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 September 30, 1982. This table includes those rules adopted during the period October 1, 1982 through December 31, 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 September 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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