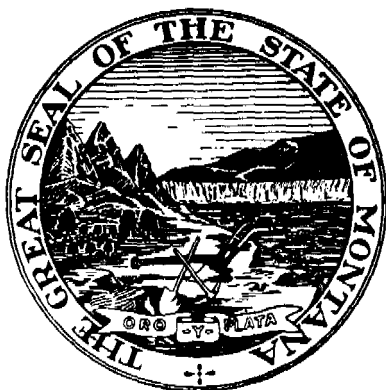


RESERVE

MONTANA ADMINISTRATIVE REGISTER

1983 ISSUE NO. 8
APRIL 28, 1983
PAGES 313-366



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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 8

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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 ARCHITECTS

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of ARM 8.6.413 con-) OF ARM 8.6.413 FEE SCHEDULE
cerning the fee schedule.)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On May 28, 1983, the Board of Architects proposes to amend rule ARM 8.6.413 concerning fees.

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

"8.6.413 FEE SCHEDULE

- (1) ARE examination and re-examination:
- | | |
|--|-----------|
| (a) <u>Professional-Examination-Section-A</u> | \$ 90.00 |
| <u>Division A - Pre-Design</u> | 59.00 |
| (b) <u>Professional-Examination-Section-B</u> | 100.00 |
| <u>(when-taking-all-four-parts)</u> | |
| <u>Division B - Site Design</u> | 52.00 |
| (c) <u>Professional-Examination-Section-B-</u> | 25.00- |
| <u>(when-taking-only-one-part)</u> | |
| <u>Division C - Building Design</u> | 86.00 |
| (d) <u>Qualifying-Test</u> | 60.00 |
| <u>(when-taking-all-four-parts)</u> | |
| <u>(Division D - Structural -- General</u> | 28.00 |
| (e) <u>Qualifying-Test</u> | per 25.00 |
| <u>(when-taking-less-than-four-parts)</u> | part |
| <u>Division E - Structural -- Lateral</u> | |
| <u>Forces</u> | 21.00 |
| (f) <u>Structural - Long Span</u> | 14.00 |
| (g) <u>Mech/Plbg/Elec/Life Safety</u> | 29.00 |
| (h) <u>Materials and Methods</u> | 35.00 |
| (i) <u>Construction Documents and Services</u> | 41.00 |
| (2) ... | |
| (7) <u>All fees are non-refundable."</u> | |

3. Section 37-1-134, MCA gives the licensing boards the authority to set fees commensurate with program costs. The board will be using the Architectural Registration Examination. The above costs are those the board has determined necessary to cover the administrative costs of the examination.

4. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Architects, 1424 9th Avenue, Helena, Montana 59620-0407, no later than May 26, 1983.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Board of Architects, 1424 9th Avenue, Helena, Montana 59620-0407, no later than May 26, 1983.

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

proposed amendment; from the Administrative Code Committee of the legislature; from a governmental agency or subdivision; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 3 based on approximately 30 candidates per year.

7. The authority of the board to make the proposed amendment is based on sections 37-1-134 and 37-65-304, MCA and implements the same.

BOARD OF ARCHITECTS
JERRELL BALLAS, A.I.A.,
PRESIDENT

BY: 

GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, April 18, 1983.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENTS
amendments of ARM 8.48.604 con-) OF ARM 8.48.604 RECIPROCITY
cerning comity consideration of) FOR REGISTERED LAND SURVEYORS;
land surveyors; 8.48.901 and) 8.48.901 EXPIRATION OF REGIS-
8.48.902 concerning maintenance) TRATION - RENEWAL; 8.48.902
of professional competency; 8.) VERIFICATION OF COMPETENCY;
48.904 concerning license re-) 8.48.904 EXPIRED CERTIFICATE -
newal grace period; 8.48.1101) 24 MONTHS; 8.48.1101 ENGINEER
concerning temporary licensing) NON-RESIDENT PRACTICE IN
of non-resident engineers; and) MONTANA - LIMITED EXEMPTION;
proposed adoption of a rule for) PROPOSED ADOPTION OF
corner recordation.) A NEW RULE GOVERNING CORNER
RECORDATION

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On May 28, 1983, the Board of Professional Engineers and Land Surveyors proposed to amend and adopt the above-stated rules.

2. The proposed amendment of 8.48.604 will read as follows: (new matter underlined, deleted matter interlined)

"8.48.604 RECIPROCITY FOR REGISTERED LAND SURVEYORS

(1) The board may, upon application and payment of proper fees and passing a written ~~8-hour~~ examination, issue a certificate of registration as a land surveyor to any person who submits evidence that he holds a certificate of registration issued to him by proper authority of any state or territory or possession of the United States, ~~or of any country~~ provided that the applicant's qualifications meet the requirements of the law and rules established by the board at the time he was originally licensed."

3. In its present form ARM 8.48.604 provides for comity consideration of surveyors who are properly licensed in foreign countries as well as in any state, territory, or possession of the United States. However, section 37-67-313, MCA, which governs comity consideration of surveyors does not extend to foreign countries. The proposed amendment will bring the rule into conformance with the controlling statute. The authority of the board to make the proposed change is based on section 37-67-202, MCA, and implements section 37-67-312, MCA.

4. The proposed amendment of 8.48.901 amends subsection (2) and will read as follows: (new matter underlined, deleted matter interlined)

"8.48.901 EXPIRATION OF REGISTRATION - RENEWAL (1)...

(2) The department will notify every registered person by mailing a letter to the address in the roster or to a corrected address 30 to 60 days prior to the date of

expiration of his certificate. The letter will specify the fees for renewal for a 2 year period. The letter will include a form for a verification-of-competency; which-the-registrant-must-sign-and-return-to-the-board-verified statement by the registrant that he has maintained his professional competency during the preceding biennium. This statement must be signed, and sworn to before a notary public, and returned to the board before the registrant's registration will be renewed."

5. Section 37-67-315 (2), MCA, provides that the license of a professional engineer or land surveyor may not be renewed unless the registrant submits to the board a "verified statement" that he has maintained his professional competence during the preceding biennium. A verified statement is a statement signed and sworn to before a public official authorized to administer oaths such as a notary public. ARM 8.48.902, which was adopted to implement 37-67-315 (2), MCA, currently requires not a verified statement of continued competence, but a "verification of competency" which need not be sworn to. ARM 8.48.901 (2), concerning the department's notification to registrants of the impending expiration of their licenses, also refers to a "verification of competence". The proposed amendment and the following proposed amendment to ARM 8.48.902 will bring these rules into conformance with the controlling statute. The authority of the board to make the proposed change is based on section 37-67-202, MCA, and implements section 37-67-315, MCA.

6. The proposed amendment of 8.48.902 will read as follows: (new matter underlined, deleted matter interlined)

"8.48.902 VERIFICATION STATEMENT OF COMPETENCY (1) At the time the registrant applies for renewal, he is to verify submit to the board a verified statement that he has maintained his professional competency.

(a) The verified certification by the registrant that he has practiced engineering or land surveying for a minimum of 520 hours during each of the 2 years preceding renewal is accepted as evidence verification of maintained competency.

(2) If the registrant has not continued in practice as in (1)(a) above, he must provide evidence to the board that he has completed a minimum combined time of 520 hours per year of practice, formal course work, home study, and/or group study. ~~have been completed.~~ Verified certification of the preceding will be accepted as evidence verification of maintained competency.

(3) In determining whether an applicant for renewal has satisfied the requirements of this rule, the board will not allow credit for the practice of professional engineering or land surveying during a period in which the registrant's license was invalid."

7. The purpose of the proposed amendment of 8.48.902 (1) and (2) is discussed in item 5, above. The purpose of proposed section (3) is as follows:

A significant number of the board's registrants allow their licenses to lapse and remain lapsed (and therefore void) until just before the end of the one-year renewal grace period. They then apply to renew their licenses and, in satisfaction of section 37-67-315 (2), MCA, sign a statement that they have maintained professional competence during the "last biennium".

ARM 8.48.902 provides that to establish continued professional competence, a registrant must either have practiced his profession for a total of 520 hours during each of the preceding two years or have accumulated 520 hours of combined practice and academic study. It appears that, in making their statement of continued competency, many delinquent licensees claim credit for practicing during the period that their licenses were expired and their continued practice was illegal. Proposed subsection (3) puts registrants on notice that in determining whether applicants for renewal have maintained professional competence, the board will not consider any such illegal practice. The authority of the board to make the proposed change is based on section 37-67-202, MCA, and implements section 37-67-315, MCA.

8. The proposed amendment of 8.48.904 will read as follows: (new matter underlined, deleted matter interlined)

"8.48.904 EXPIRED CERTIFICATE --24-MONTHS-RENEWAL

GRACE PERIOD (1) If the process of renewal is not completed within 24-months one year of the expiration date of the certificate, the applicant shall be considered a new applicant with all pertinent laws and rules applying."

9. ARM 8.48.904 currently provides a license renewal grace period of 24 months following expiration of a professional engineer or land surveyor license. However, Section 37-67-315 (3), MCA, upon which the rule is based, was amended by the 1981 legislature to reduce the statutory grace period from two years to one year. The proposed amendment will reconcile the rule with the statute. The authority of the board to make the proposed change is based on section 37-67-202, MCA, and implements section 37-67-315, MCA.

10. The proposed amendment of 8.48.1101 will delete the current rule in its entirety and replace it with new language reading as follows: (new matter underlined, deleted matter interlined)

"8.48.1101 ENGINEER-PRACTICE BY NON-RESIDENT ENGINEERS

PRACTICE-IN-MONTANA--LIMITED-EXEMPTION - TEMPORARY

PERMITS

(1) A person not a resident of and having
no established place of business in this state, practicing

or offering to practice within the profession of professional engineering, when such practice is for one specific engagement not exceeding one year shall not be required to register in Montana provided:

(a)--such person is legally qualified by registration to practice the said profession in his own state or country in which the requirements and qualifications under which he registered were not lower than those of this state;

(b)--such person notify the board of his desire to practice in this state, prior to making an agreement for such practice, and setting forth the name of the client, description of the job, date such practice will start and cease;

(c)--such person submit evidence of legal registration in his own state, and receive the approval of the board for such practice; and

(d)--such person notify the board at the completion of practice, and of the exact date such practice started and ended. A person registered to practice professional engineering in another state or country who is not a resident of, or has no established place of business in Montana, may, after obtaining a temporary permit from the board, practice or offer to practice engineering in this state for a period not exceeding one year in connection with a specific project.

(2) To obtain a temporary permit, the applicant must submit to the board a written application which contains or is accompanied by:

(a) evidence that the applicant is registered to practice engineering in another state or country in which the requirements and qualifications for registration are no less than those of Montana;

(b) the name of the applicant's prospective client, a description of the project, and the tentative dates that the practice will commence and conclude; and

(c) the fee for temporary permits established by 8.48.1105.

(3) Upon approving an application, the board will issue a permit which specifies the period during which the applicant may practice engineering in this state and the project on which he may be employed.

(4) A person licensed under this rule shall notify the board at the completion of this practice of the actual dates his practice commenced and concluded."

11. Section 37-67-319 (1), MCA, authorizes the board to issue temporary permits for periods of up to one year to engineers licensed in other states to complete specific jobs in Montana. Although ARM 8.48.1101 was apparently intended to effectuate this provision, it does not clearly convey

the statute's requirements that before a non-resident may undertake a project within this state, he must (1) submit an application for a temporary permit accompanied by an application fee, and (2) obtain a written permit issued by the board for a definite period of time. The proposed revision is intended to clarify the rule and more accurately reflect the requirements of the governing statute. The authority of the board to make the proposed change is based on section 37-67-202, MCA, and implements section 37-67-319, MCA.

12. The proposed new rule governing corner recordation will read as follows:

"1. FORM OF CORNER RECORDS - INFORMATION TO BE INCLUDED

(1) The form for recordation of corners pursuant to the Corner Recordation Act of Montana has been prescribed by and may be obtained from the Board of Professional Engineers and Land Surveyors, 1424 9th Avenue, Helena, Montana, 59620-0407.

(2) The information to be included in a corner record is as follows:

(a) Original and or subsequent record: This item should describe or quote those portions of the original or subsequent record which were used in evaluating the corner position. The original record will usually be the general land office field notes. Subsequent record can come from several sources: previously filed corner records, maps and plats, private and public records, etc. Some of the subsequent record, even though not in the public record, but known to have validity by the surveyor, may be quoted and appropriately noted. The record data helps support the reestablished corner position because they clearly show what history the surveyor based his corner position on. In some cases, however, the record may be known or not pertinent. A statement to that effect should appear on the corner record.

(b) Description of evidence found or method of locating corner position: This item will describe the original or subsequent record evidence found. If portions of the found evidence cannot be reconciled with the record, then the disregarded record should be noted, and, if possible, an opinion as to its cause narrated. If no physical evidence of the original or subsequent monuments and accessories can be found, then the method used to reestablish the lost or obliterated corner (single proportion, fence intersection, parcel evidence, terrain calls, centerline or road, etc.) shall be indicated.

(c) Description of monuments and accessories set to perpetuate the corner position: This item should list all details about the corner and its location which will help exclusively identify the corner position; including size and type of monument, how marked if

not shown in sketch, and distinguishing topographic calls which help locate the corner. In many cases, instructions on how to find the corner should be included. References or ties to other corners are optional and may be drawn on the face or back of the corner record form, or references to Certificate of Survey may be made. Separate drawings may be attached to the corner form. If state plane coordinate values for the corner position are shown, then the control upon which they are based should be indicated.

(d) Sketch of corner: This item will usually show how a found or set corner is marked and may also show topography or accessory monuments found or set and their relation to the corner. There is no stipulated format; the sketch could be transcribed field note entries.

(e) Certification: The name and signature of the ground party chief is optional. The surveyor who performed or directed the field work which is depicted on the "Certified Corner Record: shall sign and affix his seal in the Certification. The employer blank is optional but useful in tracking down original field note data or adjacent record if, in the future, questions arise about the corner.

(f) Cross index and section diagram: The Cross Index at the bottom of the page should be completed by the surveyor. Only the single Township Index where the corner is filed shall be completed. The lower right-hand corner is a corner location diagram and should have the pertinent section filled in at the top and a closed circle indicating the appropriate corner position in the section filled in. This is intended to be an aid in searching the "Record" once it has been filed."

13. Section 70-22-107, MCA, of the Corner Recordation Act of Montana requires the board to prescribe by regulation the information to be included in corner records and the form for these records. Although the board has approved and distributed a "Certified Corner Recordation" form, this form has never been adopted in accordance with the Montana Administrative Procedure Act and, thus, technically does not satisfy the requirement of Section 70-22-107, MCA. The proposed rule would incorporate the form and requirements of the present Certified Corner Recordation form into the board's administrative regulation. The authority of the board to make the proposed change is based on section 70-22-107, MCA, and implements section 70-22-107, MCA.

14. Interested persons may submit their data, views or arguments concerning the proposed amendments and adoption in writing to the Board of Professional Engineers and Land Surveyors, 1424 9th Avenue, Helena, Montana 59620-0407, no later than May 26, 1983.

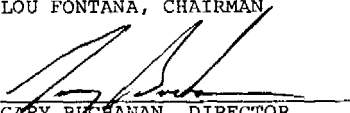
15. If a person who is directly affected by the proposed amendments and adoption wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Board of Professional Engineers and Land Surveyors, 1424 9th Avenue, Helena, Montana 59620-0407, no later than May 26, 1983.

16. If the board receives requests for a public hearing on the proposed amendments and adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendments and adoption; 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 250 based on the board's 2500 licensees.

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

BOARD OF PROFESSIONAL ENGINEERS
AND LAND SURVEYORS
LOU FONTANA, CHAIRMAN

BY:


GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, April 18, 1983.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF WATER WELL CONTRACTORS

In the matter of the proposed) NOTICE OF PROPOSED ADOPTION
adoption of a fee schedule.) OF A FEE SCHEDULE

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On May 28, 1983, the Board of Water Well Contractors proposes to adopt a fee schedule which will read as follows:

"1. FEE SCHEDULE

- | | |
|--|----------|
| (1) Application and examination | \$175.00 |
| (2) Re-examination | 110.00 |
| (3) Renewal | 90.00 |
| (4) Late renewal (in addition to
renewal fee) | 55.00 |
| (5) Duplicate license | 25.00" |

2. The board is proposing the fee schedule to correspond with program costs mandated by section 37-1-134, MCA. The fees are based on fiscal year 84 budget figures and are those the board has determined are necessary to cover the administrative costs for the operation of the board.

3. Interested persons may submit their data, views or arguments concerning the proposed adoption in writing to the Board of Water Well Contractors, 1424 9th Avenue, Helena, Montana 59620-0407 no later than May 26, 1983.

4. 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 Water Well Contractors, 1424 9th Avenue, Helena, Montana 59620-0407 no later than May 26, 1983.

5. If the board receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the Administrative Code Committee of the legislature; from a governmental 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 25 based on the 250 licensees.

6. The authority of the board to make the proposed adoption is based on sections 37-1-134, and 37-43-202, MCA. The adoption implements sections 37-1-134, 37-43-303, and 307, MCA.

BOARD OF WATER WELL CONTRACTORS
WESLEY LINDSAY, CHAIRMAN

BY:

GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, April 18, 1983.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the Matter of the Amendment)	NOTICE OF PROPOSED
of Rules 23.3.119, 23.3.121,)	AMENDMENT OF RULES
23.3.125, 23.3.203, 23.3.204,)	23.3.119, 23.3.121,
23.3.209 and 23.3.211)	23.3.125, 23.3.203,
Concerning Vision Standards,)	23.3.204, 23.3.209,
Road Signs, Rules and Incom-)	and 23.3.211
plete Driving Examination,)	
Eligibility for Driver)	
Rehabilitation Program, Par-)	
ticipation in the Driver Re-)	
habilitation Program, With-)	
drawal of Consent for a Minor)	
and Medical Conditions)	NO PUBLIC HEARING
Affecting Driver Licenses.)	CONTEMPLATED

TO: All Interested Persons

1. On June 3, 1983, the Department of Justice proposes to amend rules 23.3.119 concerning vision standards for driver license applicants, 23.3.121 concerning road signs and road rules, 23.3.125 concerning incomplete driving examinations, 23.3.203 concerning eligibility for participation in the Driver Rehabilitation Program, rule 23.3.204 concerning participation in the Driver Rehabilitation Program, rule 23.3.209 concerning withdrawal of consent for a minor's driver permit, and 23.211 concerning medical conditions affecting driver license statutes.

2. The proposed rules provide as follows:

23.3.119 VISION STANDARDS (1) If the applicant's uncorrected vision is 20/40 or better in each eye or both eyes together, and no medical problems affect the vision, the applicant may receive a driver's license without corrective lens restrictions.

(2) If the applicant's uncorrected vision is worse than 20/40 in each eye or both eyes together and the vision can be improved, the applicant may receive a driver's license with corrective lens restrictions.

(3) If the applicant's best corrected vision in both eyes together is worse than 20/40 but 20/70 or better, the applicant may receive a driver's license that restricts him to driving during daylight hours only, 55 miles per hour on the interstate and 45 miles

per hour otherwise, and forbids him from driving during inclement weather. The applicant must also take pass the driving portion of the examination at renewal.

(4) If the applicant's best corrected vision in both eyes together is worse than 20/70 but is 20/100 or better, the applicant must submit himself to the headquarters of the Motor Vehicles Division, which shall conduct a special examination and recommend restrictions. an unrestricted driver license will be denied but the applicant may request that a restricted license be issued. A special evaluation will be conducted by the District Supervisor or Chief Examiner to determine whether a need for the license exists. If a need cannot be established the license will be denied.

If the need for a driver license is established, additional factors will be considered to determine whether the need can be satisfied safely by issuance of a restricted license. Such factors shall include population and traffic density, geographic area, and type of driving that would be required of the applicant. A driving test will be given to the applicant over the routes necessary to satisfy the need. Upon demonstration by the applicant of satisfactory driving ability under the existing conditions, a restricted license may be recommended to the Driver Improvement Committee. Restrictions may include but are not limited to time of day, type of vehicle, area, routes, and speed limits.

(5) If the applicant's best corrected vision is worse than 20/100, the applicant must be denied a driver's license of any type.

(6) If the applicant's best corrected vision in either eye is worse than 20/500 and the other eye qualifies, the applicant's license must have a "LEFT OUTSIDE MIRROR" restriction

(7) If a report from an eye specialist indicates any special visual problems, such as a problem resulting from a medical condition, the applicant's license may have a restriction requiring submission of reports by an eye specialist on a schedule appropriate to the condition.

(8) If a report from an eye specialist indicates difficulty seeing at night, the applicant's license must be restricted to daylight hours only.

(9) If the applicant is color blind, inform him so he may take precautions whenever he drives where signal lights are located. Do not fail him because of color blindness.

(10) A license shall be denied to any applicant wearing a telescopic lens, bioptic telescope or similar device.

AUTH: Sec. 44-1-103 MCA; IMP, 61-5-101 et seq.
MCA

23.3.121 ROAD SIGNS AND ROAD RULES (1) In order to be licensed, an applicant must be able to:

(a) ascertain the meaning of standard warnings and regulatory signs and understand what the driver should do upon approaching them; and

(b) successfully answer questions on highway laws and regulations, either orally or written.

(2) Illiterates must be examined orally by having the examiner state the questions on the Road Rules Test, and by having the applicant identify the signs on the Sign Test.

(3) Applicants who are observed cheating on the examination must immediately be disqualified on that portion of the examination.

(4) The maximum score for each written test is 100%. For each incorrectly marked answer, the following points must be deducted:

(a) Operator Rules: 5 points (minimum passing score 75);

(b) Chauffeur Rules: ~~3~~ 3.3 points (minimum passing score 76.9); and

(c) Signs: 10 points (minimum passing score 80).

(d) Combined Operator/Signs Test: 7 or less wrong is passing score.

AUTH: Sec. 44-1-103 MCA; IMP, 61-5-101 et seq. MCA

23.3.125 INCOMPLETE EXAMINATION An examination may be incomplete with the applicant neither passing nor failing. He may not pass until he has successfully completed each part of the examination separately. He ~~must fail as soon as he demonstrates he is unable to pass.~~ The examination is incomplete, therefore, when it is discontinued for some reason other than the applicant's lack of ability. For example, when a vehicle ~~runs out of gas,~~ has a puncture or otherwise ~~fails to function~~ malfunctions during the driving test for reasons not attributable to the driver, the test is discontinued but the driver is not disqualified. AUTH: Sec. 44-1-103 MCA; IMP, 61-5-101 et seq. MCA

23.3.203 PERSON ELIGIBLE FOR DRIVER REHABILITATION PROGRAM

(1) A person whose license is suspended because of the accumulation of 15 or more Driver Rehabilitation points must be referred to a Driver Rehabilitation Program.

(2) A person whose license is suspended for any reason other than refusal to submit to a chemical test of his blood, breath, or urine is eligible to participate in the Driver Rehabilitation Program if he complies with all requirements for reobtaining a license after suspension.

(3) A person whose license has been revoked for 3 months of a 1 year revocation or 1 year of a 3 year revocation is eligible to participate in the Driver Rehabilitation Program if he complies with all requirements for reobtaining a license after revocation.

AUTH: Sec. 61-2-302(1) MCA; IMP, 61-2-302 MCA.

23.3.204 DRIVER REHABILITATION PROGRAM The Driver Rehabilitation Program must include but is not limited to:

(1) A personal appearance by the violator at a Driver Rehabilitation Session. The violator must be notified in writing of the time and place of the appearance at least 20 days prior to it.

(2) The violator must be informed of his record and accumulated points, and of the consequences of further violations.

(3) The Rehabilitation Officer ~~shall~~ may refer the violator to programs the officer determines are necessary to induce proper driving attitudes, habits, and techniques. Examples of referrals are classroom instruction in rules of the road, driving techniques, defensive driving, or driver attitudes and habits; on-the-road training; alcohol counseling or treatment; mental evaluation or treatment; physical evaluation or treatment; and visual examination or treatment.

AUTH: Sec. 61-2-302(1) MCA; IMP, 61-2-302 MCA.

23.3.209 CANCELLATION FOR WITHDRAWAL OF CONSENT FOR A MINOR If the signer of a minor's application for an operator's permit withdraws consent under section 61-5-109, MCA, or dies, the minor's license is immediately cancelled upon receipt by the Division of notification that consent has been withdrawn or signer has died. AUTH: Sec 44-1-103 MCA; IMP, 61-5-109 and 61-5-202.

23.3.211 OTHER INFORMATION RESULTING IN CHANGE OF STATUS OF DRIVER'S LICENSE (1) A person who indicates that he has suffered from fainting or dizzy spells, epilepsy or epileptic type seizures, heart trouble or

paralysis must furnish the Motor Vehicles Division information from a medical doctor as follows:

(a) For fainting or dizzy spells a report must be submitted if the last occurrence was within the preceding 5 years.

(b) For epilepsy or epileptic type seizures, a report must be submitted regardless of date of occurrence.

~~(c) For heart trouble, a report must be submitted if the last occurrence was within the preceding 3 years.~~

(c) For heart ailments, a report must be submitted if the last treatment was within the preceding 3 years.

(d) For paralysis, a report must be submitted only if the examiner determines it is necessary.

(2) A person who indicates he suffers from a physical or mental defect that would make it difficult to operate a vehicle must submit a medical report only if the examiner determines it is necessary.

(3) A person whose physical appearance or conduct at the time of driver license renewal or application indicates a medical or mental problem may be requested by the examiner to submit a report on the condition and/or may be required by the examiner to complete the driving portion of the examination or both.

(4) A person who has been reported to the Motor Vehicles Division as having a physical, mental, visual or driving skills problem may be requested to furnish the Division with an appropriate report concerning the condition, and/or may be requested to complete the entire examination or both if the staff determines it is necessary. (Form DES-1004, Accident Report.)

(5) Medical questions arising from the above items may be submitted to the State Health Officer for assistance in determining appropriate action. AUTH: Sec. 44-1-103 MCA; IMP, 61-5-105(8), 61-5-111(2) and 61-5-207.

23.3.212 ALTERED DRIVER'S LICENSE A license received by the Division that indicates on its face that the birthdate, license number, name, any data or photograph has been altered may be suspended for 6 months. A statement must be received indicating that the individual who picked up the license received it from the individual pictured and/or named on the license. AUTH: Sec. 44-1-103 MCA; IMP, 61-5-105 and 61-5-206 MCA.

3. The rules are proposed to be amended to institute changes in the practices of the department in

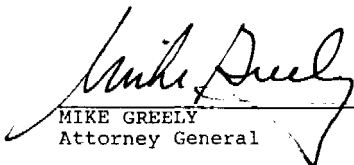
administering the driver license and driver rehabilitation programs.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to Assistant Attorney General Sarah M. Power, Justice Building, 215 N. Sanders, Helena, Montana, 59620, no later than May 31, 1983.

5. If a person who is directly affected by the proposed amendments wishes to express data, views and arguments orally or in writing at a public hearing, he or she must make written request for a hearing and submit the requests along with any written comments to Assistant Attorney General Sarah M. Power, Justice Building, 215 N. Sanders, Helena, Montana, 59620, no later than May 31, 1983.

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 subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to 59,000 person based on the 590,000 licensed drivers in Montana.

7. The authority of the department to make the proposed amendments is based on section 61-2-302 and 61-5-102, MCA.


MIKE GREELY
Attorney General

Certified to the Secretary of State April 18, 1983.

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

In the Matter of the Adoption	)	NOTICE OF ADOPTION OF
of an Amendment to a federal	)	AN AMENDMENT TO A
agency rule pertaining to guide-	)	FEDERAL AGENCY RULE
lines on sex discrimination	)	PRESENTLY INCORPORATED
		BY REFERENCE IN 24.9.
		1407, ADOPTION OF EEOC
		SEX DISCRIMINATION
		GUIDELINES

NO PUBLIC HEARING
CONTEMPLATED

TO: All Interested Persons:

1. The Human Rights Commission hereby gives notice of the adoption and incorporation by reference of a later amendment to Title 29 C.F.R., Chapter XIV, Part 1604. Title 29 C.F.R., Chapter XIV, Part 1604 is presently incorporated by reference in 24.9.1407, Adoption of EEOC Sex Discrimination Guidelines. The amendments set forth slight modifications of the guidelines to bring them into compliance with the Pregnancy Discrimination Act of 1978 and an appendix of Questions and Answers regarding the Pregnancy Discrimination Act (published at 44 FED. REG. 23804, April 20, 1979). The amendments also set forth guidelines on sexual harassment (published at 45 FED. REG. 77676, Nov. 10, 1980). Copy of the CFR Section may be obtained from Human Rights Division, Room C-317, Cogswell Building, Capitol Station, Helena, MT 59620.

2. The effective date for the adoption of the later amendment is June 1, 1983.

3. If the Commission receives requests for a public hearing under 2-4-315, MCA, on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment, from the Administrative Code Committee of the Legislature, from a governmental subdivision or agency, or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

4. The Authority of the Commission to make the proposed rule is based on section 49-2-204, MCA, and the rule as amended implements section 49-2-303, MCA.

HUMAN RIGHTS COMMISSION

By: Margery H. Brown
Margery H. Brown, Chair

Certified to the Secretary of State April 18, 1983.

MAR Notice No. 24-9-10

8-4/28/83

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

In the matter of the adoption) NOTICE OF PUBLIC HEARING
of rules pertaining to the) ON THE PROPOSED ADOPTION
blind vendors program) OF RULES PERTAINING TO
) THE BLIND VENDORS PROGRAM

TO: All Interested Persons

1. On May 19, 1983, 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 adoption of rules pertaining to the blind vendors program.

2. The rules proposed to be adopted are as follows:

RULE I DEFINITIONS (1) "Act" means the Blind Vendors Act codified as Part 4 of Title 18, Chapter 5, MCA.

(2) "Blind person" means a person whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses or whose visual acuity is greater than 20/200 but is accompanied by a limitation in the field of vision in the better eye to such a degree that the widest diameter of the visual field subtends an angle no greater than 20 degrees as determined by an ophthalmologist or a physician skilled in diseases of the eye.

(3) "Blind vendor" means a person certified as a blind person for the purpose of this sub-chapter and who is operating a vending facility administered by the department.

(4) "Blind vendors program" means the program administered by the department for the purpose of providing to certified blind persons the business opportunities authorized by Title 18, chapter 5, part 4, MCA. The blind vendors program is administered in conjunction with the business enterprise program of the department.

(5) "Business enterprise facility" for the purpose of this sub-chapter means a vending facility administered by the department.

(6) "Certified blind person" means a blind person whom the department has determined is a blind person as defined in this sub-chapter, is in need of vocational opportunities, and is qualified to operate a vending facility.

(7) "Department" means the department of social and rehabilitation services.

(8) "Federal property" means buildings or portions of buildings or other real property owned or leased by the federal government excluding military reservations upon which the department may administer vending facilities by an agreement entered into under the authority of the federal Randolph-Sheppard Act, as amended.

(9) "License" means the certification of a blind person provided for in 18-5-403, MCA, for the purpose of providing

vocational opportunity through a state-administered vending stand.

(10) "Licensing agency" means the visual service division, department of social and rehabilitation services, state of Montana.

(11) "Other property" means all real property other than state or federal property as defined in this rule.

(12) "State property" means those buildings or portions of buildings or other real property owned or leased under a lease-purchase agreement, or in the case of a building, leased in its entirety by the state or agencies of the state that are utilized in the conduct of state matters and occupied principally by state employees. State property for the purpose of this subchapter does not include vocational institutions or institutions of higher education.

(13) "Vending facility" means an area and equipment inclusive of vending machines on state, federal or other property which is or may be utilized in providing a food, beverage, or other service to employees and other persons present on the property, and may include any of the following:

(a) shelters, counters, shelving, display and wall cases, refrigerating apparatus, and other appropriate auxiliary equipment that is necessary for the vending of articles that are approved by the agency, or other authority having care, custody and control of the property in or on which the vending stand is located;

(b) manual or coin operated vending machines or similar devices for vending the approved articles;

(c) cafeteria or snack bar facilities for the dispensing of approved foods and beverages.

(14) "Vending machine" means a device for the dispensing of foodstuffs, liquids, or other products when money is inserted into the device. Vending machine does not include postage stamp machines or coin-operating telephones.

(15) "Vendor" means either a blind vendor or any person who is by contract temporarily managing and operating a business enterprise facility which is part of the blind vendors program.

(16) "Vocational rehabilitation programs" means those programs provided for under the federal Randolph-Sheppard Act, as amended, and Title 53, chapter 7, part 3, MCA.

The authority of the department to adopt the rule is based on Section 18-5-414, MCA and the rule implements Sections 18-5-401 through 18-5-416, MCA.

RULE II ESTABLISHMENT OF BUSINESS ENTERPRISE FACILITIES

(1) Upon written notification by an agency in control of state property or responsible for the construction or remodeling of state property that a vending facility is desired on the property, or, upon its own initiative, the department

shall:

(a) survey the property (or blueprints, plans, and other similar, available information) to determine if the installation of a business enterprise facility for the blind vendors program is feasible and consonant with its vocational rehabilitation objectives; and if it so determined, provide for a business enterprise facility to be installed on that property by the department.

(2) State agencies which now have a vending facility not administered by the department as a business enterprise facility shall give notice to the department when any existing agreement relating to the management of that facility terminates. At that time the department may exercise its authority to administer that facility as a business enterprise facility.

(3) The department is responsible for designating business enterprise facility locations on state and other property for the purposes of the blind vendors program.

(4) An agency responsible for state and other property shall at the direction of the department alter the property to make it suitable for a vending facility.

(5) The installation, modification, relocation, removal, and renovation of vending facilities will be subject to prior approval and supervision of the on-site official responsible for the property and the department. The costs of relocation of vending facilities shall be paid by the initiator of the request.

(6) Additional vending facilities may not be installed on property having a business enterprise vending facility unless an agreement is reached between the agency and the department concerning the installation and operation of the competing vending facilities.

The authority of the department to adopt the rule is based on Section 18-5-414, MCA and the rule implements Section 18-5-411, MCA.

RULE III ISSUANCE AND CONDITIONS OF CERTIFICATION (1) In order to be eligible to be a certified blind person for the purposes of this sub-chapter, one has to be an accepted client of the vocational rehabilitation program.

(2) Criteria in the issuance of certification. Preference will be given to blind persons who are in need of employment for economic reasons and who are residents of the state of Montana, but in all instances certifications will be issued only to persons who meet the following criteria:

(a) the person has been determined to be blind as defined in rule I (2) by the department;

(b) the person is a citizen of the United States;

(c) the person is at least 18 years of age;

(d) the person is determined by the department to be qualified to operate a business enterprise facility; and

(e) the person is determined by the department to be in need of vocational opportunities.

(3) List of eligibles for placement:

(a) Applications for a position as a blind vendor will be accepted from anyone who meets the cited criteria. A record will be maintained of those applying. From this list of applications the department will select those suitable for training.

(b) Applicants who have successfully completed the training program or who have otherwise been certified as qualified blind vendors will be placed on the eligible list for placement in the following order:

(i) applicants who reside in the geographical area where a vacancy occurs or a new facility is being established;

(ii) substitute vendors who merit being placed as regular managers;

(iii) newly trained vendors; these persons will be placed on the list in order of their certification for the program;

(iv) former blind vendors who desire to return to the program and whose previous records do not preclude their return.

(c) The final selection of blind vendors will be the decision of the department.

(4) Initial appointment to be probationary:

(a) An applicant selected for appointment as a blind vendor will initially be on probationary appointment for a period of six months.

(b) The probationary appointment is to provide for:

(i) adjustment of the blind vendor to the requirements of the physical environment;

(ii) adjustment of the blind vendor to the mental and physical requirements of a continuous work situation;

(iii) amelioration of any training deficiencies;

(iv) insuring that requirements of the building management can be satisfactorily filled.

(c) If during the probationary period the department determines that the probationary blind vendor is not successfully meeting the duties of facility operation or is unable to meet the requirements of the building management, the probationary appointment will be terminated unless extended at the discretion of the department.

The authority of the department to adopt the rule is based on Section 18-5-414, MCA and the rule implements Section 18-5-403.

RULE IV TRANSFER AND TERMINATION (1) If the transfer of a blind vendor from one stand to another becomes desirable or necessary, a transfer will be made only when the depart-

ment, the blind vendors program and the blind vendor would benefit from such transfer. To be taken into consideration will be the vendor's capacity to perform the duties of a particular facility, relationship to the public as a result of the transfer, effect to the particular business enterprise facility, the tenure and earnings of the vendor involved.

(2) In the event of the inability of the blind vendor to fulfill his responsibilities, the department may forthwith assume the operation of the facility. When circumstances warrant such action, the blind vendor may be temporarily relieved of duties by the department.

(3) Termination:

(a) Certifications shall be issued for one year but may be terminated by the blind vendor giving sixty (60) days written notice to the department if he desires to resign.

(b) Any certification issued to a blind vendor may be revoked by the department, by written notice when the department determines that the facility is not being operated in accordance with these rules and regulations, the terms and conditions governing the permit with the building management, or the contract with the blind vendor.

(c) Any certification may be terminated or suspended, if because of improvement of vision, the blind vendor no longer meets the criteria as defined in this rule.

(d) Any certification may be terminated or suspended because of extended illness with medically documented diagnosis of prolonged incapacity of the blind vendor to operate the vending facility in a manner consistent with the needs of the location or other available locations in the program.

(e) The blind vendor shall expressly release the department, its agents or employees from any loss, injury, damage or expense which the vendor may suffer, sustain, or incur by reason of such termination.

(f) The sixty (60) day written notice may be waived by mutual consent of all parties concerned.

The authority of the department to adopt the rule is based on Section 18-5-414, MCA and the rule implements Sections 18-5-403, 18-5-411 and 18-5-415, MCA.

RULE V EQUIPMENT AND STOCKS (1) The department will provide each business enterprise facility with fixtures and equipment in such quantity and of such quality so as to give reasonable assurance of successful operation by the vendor. Funds for this purpose may be made available from federal and state allocations or appropriations, including set aside funds.

(a) The department shall retain the right, title, and interest to all facility equipment and leases. It shall have the authority to direct, control, transfer, and dispose of

such equipment when necessary.

(b) The vendor will make no additions or reductions to the facility and its operation either in the form of equipment, fixtures, goods for resale, or facilities without first obtaining authorization from the appropriate agent of the department.

(2) The department will maintain or cause to be maintained all equipment in a safe and satisfactory working condition subject to the following:

(a) Replacement in lieu of repair shall be a decision of the department.

(b) It is the vendor's responsibility to report at the first opportunity to the department any incident resulting in damage, breakage, theft, defacement or malfunction of equipment or fixtures provided for his use. The first \$400 of yearly maintenance and repairs will be paid by the vendor.

(c) The vendor is authorized to arrange for emergency repairs to avoid loss of perishable stocks, to avoid endangering life or property. The reporting requirement of subsection (b) is to be followed in all cases.

(d) Each vendor shall take reasonable care of equipment in his facility and carry out routine, day to day maintenance procedures.

(3) The department will provide to a blind vendor initial stock for resale and a "change fund" in the amount of \$50.00 for opening of the business enterprise facility. The blind vendor will maintain an inventory of stock and/or cash which may exceed the value of the initial stock and "change fund" but may not be less than 80% of the initial stock and "change fund". Merchandise considered unsalable by the blind vendor shall not be included in the value of any beginning inventory. The blind vendor will be assessed the value of the initial stock against the net profit of the facility upon his resignation from the blind vendors program with the following provisions:

(a) upon resignation or termination, an inventory, valued at wholesale, shall be taken;

(b) any amount in excess of the beginning inventory shall be due the blind vendor after any outstanding obligations to suppliers are met;

(c) any amount less than the beginning inventory shall become an obligation of the blind vendor.

The authority of the department to adopt the rule is based on Section 18-5-414, MCA and the rule implements Section 18-5-415, MCA.

RULE VI VENDOR RESPONSIBILITIES (1) The vendor shall receive all income derived from the operation of the business enterprise facility and any assigned vending machines after deducting the operational costs and charges mutually agreed

upon. Vending machines on non-federal property in direct competition with the facility will be assigned to the vendor (a vending machine will be considered to be in direct competition with the business enterprise facility if it vends articles of a type authorized by the applicable license and is so located that it attracts customers who would otherwise patronize the business enterprise facility).

(2) The duties of the vendor shall be to:

(a) perform faithfully and to the best of his ability the necessary duties in connection with the operation of the facility in accordance with the department's rules and regulations, the terms of the permits, the agreement, and shall perform in the best interests of the blind vendors program as a whole;

(b) cooperate with duly authorized representatives of the department in connection with their official responsibilities under the program;

(c) operate the facility in accord with all applicable health laws and regulations;

(d) furnish such reports as the department may from time to time require;

(i) submit the SRS-VSD-BE-1 by fifteenth of each month;

(ii) participate in annual inventory by fifteenth of October;

(e) follow generally acceptable accounting practices;

(f) take no action in the derogation of, or inconsistent with, the paramount right, title, and interest of the department to the facility, its equipment and the lease or agreement with the management of the property;

(g) maintain the highest standard of personal appearance, grooming and behavior so as to win and retain the respect of the clientele of the facility;

(h) pay cash for all merchandise or immediate payment upon receipt of billing;

(i) obtain and maintain in force, as an expense to the unit, applicable public liability and products liability insurance with minimum limits of \$50,000 each occurrence, \$1,500 aggregate, \$1,000 medical payments, \$5,000 each accident;

(ii) such insurance shall name the vendor and the state of Montana as named insured;

(iii) to obtain a certificate and file same with the department indicating that such insurance is in force and the terms of the policy;

(iv) to report to the department in writing, as soon as practicable, the occurrence of any accident at this facility. This requirement is in addition to the vendor's duty to report any accident of the insurance carrier;

(v) to report to the department any claim or suit which may be brought against the vendor as the result of any accident at the facility. This requirement is in addition to the

vendor's duty to report such information to the insurance carrier.

(3) Employment of staff by a vendor:

(a) The vendor shall employ a sufficient number of employees so as to assure the efficient operation of the facility and to provide adequate service to the public. His relationship to this staff shall be the normal employer/employee relationship existing in private business enterprises.

(b) In the employment of permanent and temporary employees the vendor shall give preference to qualified legally blind individuals.

(4) Vacations and leaves of absence:

(a) Annual vacations may be taken by vendors in accord with accepted business practices. Vendors planning to take a vacation should select a substitute vendor, preferably a certified blind person, to assume responsibility for the operation of the facility. Substitute vendors shall be paid by the vendor. The selection of the substitute vendor is a responsibility of the vendor but must be approved by the department. The department must be notified fourteen (14) days in advance of the period vacations are selected.

(b) Requests for extended vacation periods or leaves of absence for other purposes shall be presented to the department. These requests will be evaluated on their individual merits.

(5) Business relationships:

(a) With vendors;

(i) the vendor shall have a free choice of the vendors from whom he is to make his purchases, provided however, that such vendors are reputable.

(b) With customers;

(i) all business enterprise facilities are to be operated on a cash basis except in unusual circumstances warranting the extension of credit to meet specific recurring customer needs, and then only after prior approval by the department.

(c) With building officials;

(i) the vendor will comply with all requests concerning the operation of the facility that may be made by officials of the building in which the facility is located provided that such requests do not conflict with the certification agreement, the rules and regulations issued by the department and the contract. At no time should the vendor expect the building management or their employees to provide special services or favors.

(ii) When differences arise between the vendor and the building management, the vendor shall bring the matter to the immediate attention of the department for appropriate action.

(6) The department shall in no way be obligated by any debts incurred by the vendor, other than those authorized in writing by the appropriate agent of the department.

The authority of the department to adopt the rule is based on Section 18-5-414, MCA and the rule implements Section 18-5-415, MCA.

RULE VII TRAINING OF BLIND VENDORS (1) The department will provide vocational and other training services to assist the individual in preparing for the operation of a vending facility, including personal and vocational adjustment, books, tools, and other training materials. These services shall be provided to blind individuals as vocational rehabilitation services under the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended by the Rehabilitation Act Amendments of 1978 (Pub. L. 95-602). Such programs will also include on-the-job training in all aspects of vending facility operation and upward mobility training (including further education and additional training or retraining for improved work opportunities) for all certified blind persons.

The authority of the department to adopt the rule is based on Section 18-5-414, MCA and the rule implements Sections 18-5-404 and 18-5-415, MCA.

RULE VIII DEPARTMENT'S SET ASIDE FUNDS (1) The department will set aside from the net proceeds of the operation of business enterprise facilities under the blind vendors program. To the extent that set aside funds are accumulated as provided for in subsections (2) and (3), those funds may be used for the purposes of:

- (a) maintenance and replacement of equipment;
- (b) the purchase of new equipment;
- (c) management consultant services;
- (d) assuring a fair maximum of return to vendors; or
- (e) the establishment and maintenance of retirement or pension funds, health insurance contributions, paid sick leave and vacation time, if it is so determined by a majority vote of blind vendors certified by the department, after providing each such vendor information on all matters relevant to such proposed purposes.

(2) Extent of funds to be set aside:

- (a) The schedule of funds to set aside may be revised by the department periodically as the accounting records and other objective criteria may indicate and as it may deem advisable and in the best interest of the blind vendor program.

- (b) The department has established the following schedule for the amount of funds to be set aside:

- (i) The actual net proceeds shall be the amount remaining from the sale of articles or services of vending facilities and any vending machine or other income accruing to vendors after deducting the cost of such sales and other expenses (excluding set-aside charges required to be paid by such oper-

ators).

(ii) The amount of net proceeds for set aside purposes will be computed and reported on the SRS-VSD-BE-1 and paid monthly.

(iii) Each unit's set aside fee will be computed upon the net proceeds as per following schedule:

- (A) first \$400 of expected profit - 2%;
- (B) \$401 to \$500 of the net proceeds - 5% of amount over \$400 plus \$8.00;
- (C) \$501 to \$600 of the net proceeds - 10% of amount over \$500 plus \$13.00;
- (D) \$601 to \$700 of the net proceeds - 15% of amount over \$600 plus \$23.00;
- (E) \$701 and over of the net proceeds - 20% of amount over \$700 plus \$38.00.

The authority of the department to adopt the rule is based on Section 18-5-414, MCA and the rule implements Section 18-5-406, MCA.

RULE IX NECESSARY COMPLIANCE (1) All vendors shall be responsible for acquainting themselves with, and conforming to all laws, ordinances, and governmental rules and regulations pertinent to the conduct and operation of a business enterprise facility.

(2) It shall be the responsibility of the vendor to apply to the appropriate authority to secure required licenses, permits, authorizations and insurance.

(3) While every assistance will be given the vendor by the department it shall be the responsibility of the vendor to familiarize himself with the laws and ordinances relative to the operation of the facility and to file any necessary tax returns or other reports.

(4) This program will operate in compliance with Section 80.4(b) of the regulations of the department of health, education and welfare (45 CFR, Part 80 effectuating Title VI of the Civil Rights Act of 1964).

The authority of the department to adopt the rule is based on Section 18-5-414, MCA and the rule implements Sections 18-5-404, 18-5-413 and 18-5-415, MCA.

RULE X ORGANIZATION AND ELECTION - STATE COMMITTEE OF BLIND VENDORS (1) Committee members shall be elected at an annual meeting of all blind vendors.

(2) The committee shall consist of three (3) blind vendors, who shall select a chairperson.

(3) Nomination may be made by any of the assembled blind vendors.

(4) Committee members shall be elected for a two (2) year term and may serve no more than three (3) consecutive terms.

(5) The committee shall meet on an annual basis at a place within the state agreed on by them. Additional meetings may be called by the department or by the chairperson.

(6) Between meetings, functions of the committee will be carried on by individual members of the committee so designated.

The authority of the department to adopt the rule is based on Section 18-5-414, MCA and the rule implements Section 18-5-413, MCA.

RULE XI FUNCTIONS OF COMMITTEE (1) The blind vendors committee may advise the department in all matters relating to the blind vendors program.

(2) Committee members shall be kept informed by the department of matters within its purview that are being considered for decision. The committee will receive written notice of and invitations to attend important discussion and decision making meetings in these areas.

(3) The department has the ultimate responsibility of the administration of the blind vendors program and if the department does not adopt the views and positions of the committee it will notify the committee in writing of the decision reached or the action taken and the reasons therefor.

(4) The committee shall receive and transmit to the department any grievance at the request of a vendor, and serve as advocates for such vendor in connection with such grievances.

(5) The committee actively participates with the department in the development of training and retraining program for blind vendors.

(6) If an elected committee member is unable to complete his term on the committee, the chairperson shall appoint another qualified vendor to serve his unexpired term.

The authority of the department to adopt the rule is based on Section 18-5-414, MCA and the rule implements Section 18-5-413, MCA.

RULE XII TEMPORARY OPERATION OF FACILITY BY THE DEPARTMENT (1) When a qualified blind vendor is unavailable to operate a vending facility administered by the department under the blind vendors program, the department may provide, through contract, for the temporary management of that facility by a person other than a blind vendor.

The authority of the department to adopt the rule is based on Section 18-5-414, MCA and the rule implements Section 18-5-415(2), MCA.

RULE XIII CONTRACTS WITH VENDING COMPANIES (1) The department will negotiate all contracts with vending companies for the installation or locating of vending machines in or to be assigned to business enterprise facilities.

(2) The vending company will be selected by competitive bid. Contracts with vending companies will stipulate the type of equipment, periods of service, and the percentage of commission to accrue to the business enterprise facility.

(3) Vending company payments for commissions will include information relative to sale (meter readings if available) and will be made to the vendor.

(4) The department will negotiate contracts with vending machine companies for the installation of vending machines in public and other buildings in which there is no competition with an existing business enterprise facility. Proceeds from these vending machines may be used, as determined by the department, as best benefits the blind vendors program.

(5) The vendor will be provided a list of assigned vending machines, their locations, and applicable contracts.

The authority of the department to adopt the rule is based on Section 18-5-414, MCA and the rule implements Section 18-5-416, MCA.

RULE XIV DISTRIBUTION AND USE OF VENDING MACHINE INCOME ON FEDERAL PROPERTY (1) Vending machine income from vending machines on federal property and other property which has been disbursed to the department by a property managing department, agency, or instrumentality of the United States under the vending machine income sharing provisions in Section 395.8 of the federal regulations shall accrue to each blind vendor operating a vending operating facility on such federal property in an amount not to exceed the average net income of the total number of blind vendors within such state, as determined each fiscal year on the basis of each prior year's operation, except that vending machine income shall not accrue to any blind vendor in any amount exceeding the average net income of the total number of blind vendors in the United States.

(2) No blind vendor shall receive less vending machine income than he was receiving during the calendar year prior to January 1, 1974, as a direct result of any limitation imposed on such income under this ceiling.

(3) No limitation shall be imposed on income from vending machines, combined to create a vending facility, when such facility is maintained, serviced, or operated by a blind vendor.

(4) The department will retain vending machine income disbursed by a property managing department, agency or instrumentality of the United States in excess of the amount eligible to accrue to blind vendors.

(5) That income accrued for blind vendors will be dispursed quarterly to them by the department.

(6) Vending machine income retained by the department will be used for the establishment and maintenance of retirement or pension plans, for health insurance contributions, and for the provision of paid sick leave and vacation time for blind vendors, if it is so determined by the majority vote of the certified vendors, after each vendor has been furnished information on all matters relevant to such purposes; that any vending machines income not necessary for such purposes shall be used for one or more of the following; maintenance and replacement of equipment; purchase of new equipment; management services; and assuring a fair minimum return to vendors; and that any assessment charged to blind vendors shall be reduced pro rata in an amount equal to the total of such remaining vending machine income.

The authority of the department to adopt the rule is based on Section 18-5-414, MCA and the rule implements Sections 18-5-406, 18-5-413 and 18-5-416, MCA.

RULE XV INFORMING VENDORS OF RIGHTS AND RESPONSIBILITIES

(1) Each blind vendor will be provided with a copy of these rules and regulations.

(2) Each blind vendor will be provided with a vending stand operator's manual explaining their duties as vendors of various type vending stands with the qualifications for the various type stand operators.

(3) Blind vendors shall be provided the opportunity for an administrative review and a fair hearing in accordance with ARM 46.2.201 through 46.2.214 in any contested matter.


The authority of the department to adopt the rule is based on Section 18-5-414, MCA and the rule implements Sections 18-5-404 and 18-5-405, MCA.

3. In 1981 the Montana Legislature enacted legislation to govern the administration for federal and state purposes of a blind vendors program. That program is intended to provide occupational training and financial betterment to blind persons. Those goals are to be accomplished through the utilization of vending facilities located in federal, state and other properties. These proposed rules are to provide direction and criteria for the development of the blind vendors program.

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 May 27, 1983.

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 April 18, 1983.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF LANDSCAPE ARCHITECTS

In the matter of the amendments) NOTICE OF AMENDMENTS OF ARM
of 8.24.404 concerning seals) 8.24.404 SEALS AND ISSUE
and 8.24.406 concerning renew-) LICENSES and 8.24.406 RENEWALS
als.)

TO: All Interested Persons:

1. On March 17, 1983, the Board of Landscape Architects published a notice of amendments of ARM 8.24.404 concerning seals and 8.24.406 concerning renewals at pages 201 - 203, 1983 Montana Administrative Register, issue number 5.

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

3. One comment was received by phone from David Niss, Attorney for the Administrative Code Committee requesting that the board cite section 37-1-134, MCA as an implementing section for rule 8.24.406. No other comments or testimony were received.

DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF PHARMACISTS

In the matter of the amendments) NOTICE OF AMENDMENT OF ARM
of 8.40.403 concerning examina-) 8.40.403 PASSING SCORE FOR
tion for licensure as a regis-) EXAMINATION; 8.40.404 FEE
tered pharmacist; 8.40.404 con-) SCHEDULE; 8.40.602 (3)
cerning the fee schedule; 8.40.) SANITATION AND EQUIPMENT RE-
602 subsection (3) concerning) QUIREMENTS; 8.40.603 (1) NEW
sanitation and equipment; 8.40.) PHARMACY; 8.40.604 CHANGE
603 subsection (1) concerning) IN LOCATION; 8.40.605 CHANGE
new pharmacies; 8.40.604 con-) IN OWNERSHIP; 8.40.706 (1) (i)
cerning change in location; 8.) CLASS IV FACILITY; 8.40.902
40.605 concerning change in) (6) INTERNSHIP PROGRAM DEFINI-
ownership; 8.40.706 subsection) TIONS; 8.40.1209 FEES; AND
(1) (i) concerning class IV) REPEAL OF 8.40.908 PRACTICAL
facilities; 8.40.902 subsection) EXAMINATION
(6) concerning internship pro-)
gram definitions; and 8.40.1209)
concerning the fees; and repeal)
of 8.40.908 concerning practical)
examinations for interns.)

TO: All Interested Persons:

1. On March 17, 1983, the Board of Pharmacists published notice of proposed amendments and repeal of the above stated rules at pages 204 - 209, 1983 Montana Administrative Register, issue number 5.

2. No comments or testimony were received.

3. The board is amending and repealing the rules exactly as proposed with one exception. Rule ARM 8.40.404 subsections

"8.40.404 FEE SCHEDULE

(1) ...

(3)	Pharmacist annual renewal fee	-50-00	40.00
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(4)	Pharmacist late renewal fee	-100.00	80.00
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(5) . . . "n

DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF PUBLIC ACCOUNTANTS

In the matter of the amendment) NOTICE OF AMENDMENT OF ARM
of 8.54.410 concerning the fee) 8.54.410 FEE SCHEDULE
schedule.)

TO: All Interested Persons:

1. On March 17, 1983, the Board of Public Accountants published a notice of proposed amendment of the fee schedule at pages 210 and 211, 1983 Montana Administrative Register, issue number 5.

2. The board received a phone call from David Niss, attorney for the Administrative Code Committee questioning the authority of the board to charge for candidate listings under subsection (6) of the proposed change. Due to the question on the legality of that change, the board is not at this time adding the candidate fee. The proposed change under subsection (7) will become subsection (6) and is adopted as proposed.

3. No other comments or testimony were received.

DEPARTMENT OF COMMERCE

BY: Gary Buchanan
GARY BUCHANAN, DIRECTOR

Certified to the Secretary of State, April 18, 1983.

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

In the matter of the amendment) NOTICE OF AMENDMENT OF ARM
of ARM 8.42.406 concerning) 8.42.406 RECIPROCITY LICENSES
reciprocity licenses.)

TO: All Interested Persons:

1. On November 10, 1982, the Board of Physical Therapy Examiners published a notice of public hearing in the above matter at pages 1992 - 1994, 1982 Montana Administrative Register, issue number 21.

The hearing was duly held on December 6, 1982 at the Highway Department Building, Helena. Members of the board present were Helen Jorgenson, R.P.T. and Thomas G. Larson, R.P.T. Geoffrey L. Brazier, staff attorney was present and conducted the hearing. Phyllis J. Yalovich, Helena, registered professional reporter was present and recorded the hearing. In addition to petitioner, Bruce Charles Campbell, board members and staff, five persons attended the hearing. Letters from 7 individuals were received and made part of the record. In addition 6 letters to Robert H. Nicol, R.P.T., Billings were submitted and made a part of the record. Mr. Nicol was one of the individuals who had submitted a letter to the board.

Three participants initially spoke for adoption of the rule amendment in a form essentially as proposed. One person spoke against the proposal. All present were permitted under the agenda item of rebuttal to engage in a seminar-type discussion of the relative merits and implications of the proposal.

Arguments in support of the proposal include the following: It is within the board's authority and discretion to grant the relief proposed in the petition; many physical therapists were initially licensed under the National Registry Exam and protection should be afforded to them; the National Registry Exam was the only qualifying exam when many of the "older" therapists qualified to practice in Montana, to limit the qualifying exams would be a deterrent to that class of therapists returning to the state; Ohio in 1965 permitted qualification by either exam, so that jurisdiction, at least, felt that either exam provided an adequate measure of competence; current rule 8.42.406 may conflict with section 37-11-207, MCA depending upon how the "substantially equal" phrase is applied; certain applications of the current ARM rule could be an unlawful restraint of trade if they prohibit qualified physical therapists from doing business in the state; applications of the current rule could constitute unlawful age discrimination; the National Registry Exam is substantially equal to the Professional Examination Service exam; since reciprocity is based on equal treatment, arbitrary application of the current rule could result in other states denying licensure to Montana-based physical therapists; the current rule could adversely affect the medical profession in Montana; the initial wording of the current rule in failing

to refer to the National Registry exam is an oversight; adopting the proposed amendment will not affect the level of care provided in Montana; and test results are not an absolutely reliable indicator of professional competence as some very competent practitioners may be poor test takers.

Arguments against the amendment included the following: There is no assurance that a C- on the National Registry Exam is substantially equal to a 1.5 standard deviation below the national mean for the Professional Examination Service exam; the primary purpose of the professional licensing law is the protection of the public from unprofessional and unqualified practitioners, adopting the amendment would be a step backwards; there is no age discrimination in the current rule, because any physical therapist is eligible to take the PES exam regardless of age, and there is no discrimination based solely on age; the present rule does not conflict with statute because the statute permits reciprocity if the requirements in the state or territory where the applicant is licensed were, at the date of his license, substantially equal to the requirements in force in this state; reciprocity is based upon equal requirements by states, as-well-as equal treatment between states; and the requirement that scores be submitted by the applicant to the board could be an invitation to fraud and deceit.

There were suggestions made for treatment of the problems.

In the opinion of the presiding officer, adoption of most, if not all, of the suggested alternatives would be outside of the scope of the board's jurisdiction in the matter, because either, the board does not have statutory authority to adopt the rules suggested or the treatment is too far from the proposed action to be within the scope of the Notice of Hearing.

It was determined that neither the current rule nor the proposed rule clearly fall within any express state or federal statutes relating to age discrimination. The restraint of trade argument also appears tenuous at best.

On the other hand, the board clearly has delegated authority, under the 1979 amendment to 37-11-307, MCA to adopt rules requiring written, oral or practical examinations, as-well-as requiring them in individual cases. It did so in adopting ARM rule 8.42.406 and it can still do so by amending that rule as it relates to examinations.

Because of the comments at the hearing and the reasons stated in the petition, the board is amending the rule with the following changes: (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 substantiated by the records of be-verified-by the American Congress of Physical Medicine, 80 North Michigan Avenue, Chicago, Illinois, 60602. 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-6-7--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- The overall score of those applicants that have taken only the National Registry exam, must be in accordance with the pass or fail grades as mandated by the Registry. Those applicants failing the National Registry exam will not be licensed by reciprocity.

(2)..."

3. No other comments or testimony were received.

DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF PHYSICAL THERAPY EXAMINERS

In the matter of the amendments) NOTICE OF AMENDMENT OF 8.42.
of ARM 8.42.402 concerning) 403 FEES and 8.42.405
examinations, 8.42.403 concern-) TEMPORARY LICENSES
ing fees, 8.42.405 concerning)
temporary licenses, and pro-)
posed adoption of alternative)
disciplinary action rules.)

TO: All Interested Persons:

1. On November 10, 1982 and December 30, 1982, the Board of Physical Therapy Examiners, published notices of proposed amendments and adoptions in the above entitled matter at pages 1995 - 1999, 1982 Montana Administrative Register, issue number 21 and page 2164, 1982 Montana Administrative Register, issue number 24.

On January 29, 1983, the hearing was duly held in the large conference room of the Department of Commerce building, 1424 9th Avenue, Helena, Montana. Present were board members Helen Jorgeson and Thomas Larson, Administrative Assistant Lisa Casman, and Hearing Office, Geoffrey L. Brazier, staff attorney for the board. In addition, 10 persons attended the hearing. Six persons participated. No one spoke as a proponent of the proposals, although support was expressed for increased fees and some form of jurisprudence exam. There was general opposition to the

proposed alternative disciplinary rules.

Five letters from licensees were submitted. One letter containing signatures of 8 licensees was submitted.

Arguments and comments included the following:

Expecting a new graduate to pass the PES exam and proctored jurisprudence exam with a score of 75% at the same time is asking too much; an unproctored open book jurisprudence exam with a 70% passing score would be sufficient to assure a practitioner's familiarity with the applicable law; the proposal for jurisprudence exam is acceptable, standards should be high; there should be no limit on the number of jurisprudence exams that can be taken; the jurisprudence exam should be given after the PES exam; there should be a renewal fee increase; other proposed fee increases were acceptable; the proposed alternative disciplinary rules are premature, unnecessary, vague, ambiguous and open to interpretation; the board presently has ample disciplinary authority; investigation and warning are disciplinary tools that could be used more; the proposed disciplinary rules are not clear enough for licensees to know what are acceptable standards, and there isn't a clear enough distinction stated for each applicable disciplinary category; the proposed rule for emergency action merely reiterates statutory language; Section 37-1-136, MCA is not mandatory; some of the present code of ethics ought to be amended or repealed.

It was determined that because the board enjoys fairly comprehensive disciplinary authority under current statutes, it was not imperative that the board adopt alternative disciplinary rules at this time.

2. Because of comments and testimony at the hearing, the board is not amending 8.42.402 concerning examinations nor adopting the proposed alternative disciplinary rules at this time.

Rule 8.42.403 is being amended exactly as proposed.

Rule 8.42.405 is being amended with the following changes. (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 examination 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 PES examination. ~~or examinations."~~

3. No other comments or testimony were received.

DEPARTMENT OF COMMERCE

BY:


GARY BUCHANAN, DIRECTOR

Certified to the Secretary of State, April 18, 1983.

8-4/28/83

Montana Administrative Register

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT	)	NOTICE OF AMENDMENT
OF RULES 23.3.145, 23.3.148,	)	OF RULES 23.3.145,
23.3.149, and 23.3.202 CONCERNING	)	23.3.148, 23.3.149
EXAMINER'S DUTIES, RELEASE OF	)	and 23.3.202.
DRIVING RECORDS, DUPLICATE)	
LICENSES, AND DRIVER)	
REHABILITATION POINT SYSTEM)	

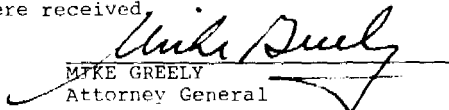
TO: ALL INTERESTED PERSONS:

1. On February 14, 1983, the Department of Justice published notice of proposed amendments of rules concerning the duties of driver examiners, the release of driving records for consumer reports, the issuance of duplicate licenses, and changes in the driver rehabilitation point system at pages 163 through 178 of the 1983 Montana Administrative Register, issue No. 4.

2. The agency has adopted the rule with minor editorial changes, but substantially as proposed.

3. Oral and written comments were received from the staff of the Administrative Code Committee questioning the rulemaking authority cited in the history of Rule 23.3.202. The Committee felt it was necessary to specifically cite sections 61-5-206 and 61-5-207, MCA, in the history notation. The Department agrees and therefore the History notation following the amended rule will include reference to sections 61-5-205 and 61-5-207, MCA. In addition, the Committee wanted a more specific reason for the rule changes stated in paragraph 3. The reason the amendments are proposed is to establish more definite procedures for the release of driving records and the issuance of duplicate licenses; to clarify the duties of driver examiners, and to establish definite standards for the "good cause" necessary under sections 61-5-206 and 61-5-207, MCA, to order a re-examination.

No other comments were received.


MIKE GREELY
Attorney General

Certified to the Secretary of State April 18, 1983.

Montana Administrative Register

8-4/28/83

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment	)	NOTICE OF THE
of Rule 24.9.260, relating to	)	AMENDMENT OF RULE
the use of hearing examiners	)	24.9.260 (COMMISSION
by the Commission	)	USE OF HEARING EXAM-
		INERS)

TO: All Interested Persons:

1. On February 10, 1983, the Human Rights Commission published a notice of the proposed amendment of rule 24.9.260 concerning the Commission's use of hearing examiners at page 119 of the 1983 Montana Administrative Register, issue number 3.

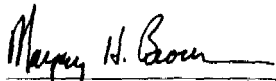
2. The Commission has amended the rule as proposed.

3. The Commission received a written comment from Cresap S. McCracken of Great Falls, Montana, who opposed the use of Commission members as hearing examiners on the grounds that the Commission members were not competent to act as hearing examiners.

The argument of Mr. McCracken is overruled. The rules of the Commission presently provide for Commission members to act as hearing examiners. Rule 24.9.239. The Montana Administrative Procedure Act permits an agency hearing examiner to be a member of the agency adjudicative body. Section 2-4-621(4), MCA. Furthermore, the Montana Administrative Procedure Act requires that hearing examiners be assigned with due regard to the expertise required for the particular matter. Section 2-4-611, MCA. Mr. McCracken's comments suggest that he expects the Commission to appoint Commission members as hearing examiners in violation of this statutory mandate. Mr. McCracken's suggestion that Commission members are not competent to act as hearing examiners is not well founded. Further, the Commission intends to comply with the requirements of section 2-4-611(1), MCA, in the assignment of hearing examiners to particular cases.

4. The authority of the Commission to make the amendment is based on section 49-2-204, MCA, and the rule as amended implements sections 49-2-505, 2-4-611 and 2-4-621, MCA.

HUMAN RIGHTS COMMISSION

BY: 
Margery H. Brown, Chair

Certified to the Secretary of State April 18, 1983.

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

In the matter of the amend-	)	NOTICE OF THE AMENDMENT OF
ment of Rules 46.11.120 and	)	RULES 46.11.120 AND
46.11.125 pertaining to the	)	46.11.125 PERTAINING TO THE
food stamp program; pilot	)	FOOD STAMP PROGRAM
projects.)	

TO: All Interested Persons

1. On January 27, 1983, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.11.120 and 46.11.125 pertaining to the food stamp program; pilot projects at page 67 of the 1983 Montana Administrative Register, issue number 2.

2. The Department has amended Rule 46.11.125 as proposed.

3. The Department has amended Rules 46.11.120 as proposed with the following changes:

46.11.120 FOOD STAMPS, PILOT PROJECTS, MONTHLY REPORTING REQUIREMENTS

Subsections (1) through (3) remain the same.

(4) The department shall notify a household ~~within five (5)-days~~ when the household fails to return their monthly report by the report due date or when the household files a report with missing information. This notice shall be sent to the household so that it is received not later than the time benefits are usually received for that month. FIRST DAY OF THE ISSUANCE MONTH. This notification shall inform the household about the nature of the missing report or information. The household shall have an additional ten (10) days from the date this notice is sent to file the complete monthly report.

(5) Households which fail to file a complete monthly report by their extended filing date shall have their case closed immediately without further notice.

Subsection (6) remains the same.


4. The Department has thoroughly considered all verbal and written commentary received:

Comment: The Department has further changed the proposed amendment of ARM 46.11.120 (4) for clarification purposes only.

Comment: The case of Goldberg v. Kelly requires prior notice and a hearing before welfare benefits are terminated.

Response: The Goldberg case can be distinguished in that a prior hearing was necessary in a situation where there was "grievous loss" caused by a termination of benefits for sever-

al months pending the outcome of a hearing. This rule if read in conjunction with 7 CFR 273.21 [47 Fed. Reg. 22, 684-22,700 (1982)] provides for a "continuation of benefits" within 5 working days of the household request for reinstatement. Thus no "grievous loss" would occur during this short time span.



Director, Social and Rehabilitation Services

Certified to the Secretary of State April 18, 1983.

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

In the matter of the amend-	)	NOTICE OF THE AMENDMENT OF
ment of Rule 46.12.216 per-	)	RULE 46.12.216 PERTAINING
taining to restriction of	)	TO MEDICAL SERVICES
access to medical services)	

TO: All Interested Persons

1. On February 10, 1983, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rule 46.12.216 pertaining to restriction of access to medical services at page 122 of the Montana Administrative Register, issue number 3.

2. The Department has amended the rule as proposed.

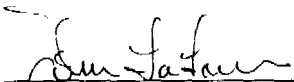
3. The Department has thoroughly considered all verbal and written commentary received:

Comment: The department received testimony concerning subsection (7) of this rule. The question was raised whether physicians would object to the department selecting a primary physician.

Response: The department had the draft rule reviewed by the Medical Services Advisory Committee. Two physicians reviewed the material and no objections were made to the proposed amendment.

Comment: The point was made that providers would be at risk serving patients who are restricted because their claims might be denied by Medicaid and they would not be able to recover from the recipient.

Response: The department has procedures in effect to assure that providers know that a recipient is restricted. Therefore, the provider is given adequate protection to assure that he knows which recipients are restricted.



Director, Social and Rehabilitation Services

Certified to the Secretary of State April 18, 1983.

VOLUME NO. 40

OPINION NO. 8

COUNTIES - County of financial responsibility for nursing home patients on general relief;

COUNTIES - County of financial responsibility where general relief recipient moves to a nursing home in another county;

NURSING HOMES - County of financial responsibility for nursing home patients receiving public assistance;

MONTANA CODE ANNOTATED - Sections 1-2-102, 1-7-215, 53-2-610, 53-3-103, 53-3-105, 53-3-204, 53-3-301, 53-3-302 and 53-3-306, MCA.

HELD: 1. Under section 53-3-306, MCA, a county may not automatically disclaim financial responsibility for new applicants for general relief who have moved to that county in order to receive medical care in a nursing home. The county of financial responsibility is the county where the applicant resides. Residence is determined by factors such as whether the placement in the nursing home is permanent or temporary, in which county the applicant is registered to vote, owns property, owns or leases a home, pays property taxes or registers a vehicle, and in which county the applicant intends to remain.

2. Under section 53-2-610(3), MCA, recipients of general relief who move to a new county in order to receive medical care in a nursing home remain the financial responsibility of the original county unless a court decree declares the recipient's residence to be other than the original county.

7 April 1983

Mr. C. Ed Laws
Stillwater County Attorney
Stillwater County Courthouse
Columbus, Montana 59019

Dear Mr. Laws:

You have requested my opinion on the following question:

Montana Administrative Register

8-4/28/83

Do individuals leaving their county of residence in order to receive medical care in a nursing home facility in another county gain residence in the county in which the nursing home is located for the purpose of applying the provisions of Title 53, chapter 3, MCA, dealing with general relief or do they remain a resident of the county they are leaving for such purposes?

The Legislature, pursuant to Article XII, section 3(3), of the Montana Constitution, has provided for the cooperative state-county administration of a number of programs for economic assistance to the aged or infirm. The program for "general relief" governed by Title 53, chapter 3, MCA, and commonly known as county general assistance, provides aid to those individuals in need of public assistance who are not otherwise cared for through federal-state programs such as Medicaid (Title 53, chapter 6, part 1, MCA) or Aid to Families with Dependent Children (Title 53, chapter 4, part 2, MCA). See 37 Op. Att'y Gen. No. 35 at 157 (1977); Title 71, Ch. 3, R.C.M. 1947 (now codified as Title 53, ch. 3, MCA). General relief encompasses three types of payments: payment of medical expenses (§ 53-3-103, MCA), payment of burial expenses (§ 53-3-105, MCA), and grants of assistance necessary "to meet a minimum subsistence compatible with decency and health" (§§ 53-3-204 and 302, MCA). While the Montana Department of Social and Rehabilitation Services has overall responsibility for the administration of federal and state programs of public assistance, each county is primarily responsible for the administration and financial support of its own general relief program. Compare, e.g., § 53-2-608(1), MCA, with §§ 53-3-301 and 302, MCA.

The general rule concerning county liability for general relief, section 53-3-306, MCA, provides as follows:

(1) General relief assistance shall be paid from the poor fund of the county where the eligible person resides.

(2) A person who leaves Montana with the intent to reside in another state and later returns to reside in Montana is considered a new resident for the purposes of this chapter and 53-2-610(3).

(3) When a person who receives general relief assistance moves to reside in another county, he becomes the financial responsibility of the new county from the date he begins to reside in that new county.

This provision establishes a general rule that a county's liability to make general relief payments depends upon the recipient's present residence, regardless of former place of residence. Where the legislative intent can be determined from the plain meaning of the words used, we need not go further and apply any other means of interpretation. Tongue River Electric Cooperative, Inc. v. Montana Power Company, 38 St. Rptr. 2032, 636 P.2d 862, 864 (1981). Under section 53-3-306, MCA, a county must bear the financial responsibility for all residents, old and new.

Historically, this was not the case. Until 1979 the rule was that a person who moved from one county to another "continue[d] to be a financial responsibility of the original county of residence for one (1) year from the date of his change of residence." § 71-302.2, R.C.M. 1947; see Blaine County v. Moore, 174 Mont. 114, 568 P.2d 1216 (1977). The 1979 enactment of section 53-3-306, MCA, as it now reads unambiguously removed the one-year residency requirement for liability when a person moves to another county, and imposed financial responsibility on that county where a general relief recipient resides. 1979 Mont. Laws, ch. 450. The legislative intent is clear. As a general rule, no county may look to another to shoulder financial responsibility for new residents.

Your question is particularly directed to the issue of the financial responsibility imposed on counties by persons moving into nursing homes located there. Section 53-2-610(3), MCA, deals specifically with these situations:

(3) (a) From the original date of entrustment or the original date of state residency, whichever is earlier, recipients of public assistance who become wards or patients in a licensed nursing home or hospital, foster home, or private charitable institution shall be the financial responsibility of the appropriate county as provided in subsections (3)(b), (3)(c), and (3)(d) of this section.

(b) The county in which commitment of an adult is initiated is considered the county of financial responsibility except where court decree declares the residency to be otherwise. When an adult is transferred from a facility or institution to one of the above-enumerated facilities, the county which initiated the original commitment is considered the county of financial responsibility except in the case of an adult transfer from an out-of-state institution, in which case the county in which the facility is located is considered the county of financial responsibility.

(c) In all cases where a minor patient or ward is involved, the county of financial responsibility is the county in which the parent or guardian resides. If the custody of a minor is entrusted to a state agency, the agency may make a reasonable declaration of the county residency of its ward using applicable guidelines enumerated in this section.

(d) If a person is or becomes an adult while in an institution, he may determine his own county of residence when he is restored to competency and released. Such a person becomes the financial responsibility of the new county of residence.

(Emphasis added.)

It is well settled that in interpreting statutes, sections must be read and considered in their entirety. Effect should be given to all sections where possible. § 1-2-101, MCA; see State v. Meader, 36 St. Rptr. 1747, 606 P.2d 507 (1979). If there is a conflict between statutes, the more specific section must prevail. § 1-2-102, MCA. Applying these rules here, it is necessary to harmonize the more specific statute, § 53-2-610, MCA, with the general provisions in section 53-3-306, MCA. Section 53-2-610(3), MCA, establishes a presumption that a recipient of public assistance who moves to another county in order to become a patient in a licensed nursing home moves for a "special purpose" and therefore does not change residence. § 1-1-215(1), MCA; see In re Ingersoll's Estate, 272 P.2d 1003, 1005 (1954). This presumption may be overcome only by court decree.

Section 53-2-610(3), MCA, is limited only to "recipients of public assistance who become...patients in a licensed nursing home." (Emphasis supplied.) Thus it requires only that a county already providing public assistance to a person must generally continue to provide assistance if that person moves to another county in order to become a nursing home patient. The presumption of section 53-2-610(3), MCA, does not apply to the situation in which a nonrecipient of public assistance moves to another county in order to become a nursing home patient and subsequently applies for public assistance in the new county. Cf. 37 Op. Att'y Gen. No. 35 at 157 (1977). In that situation, the general rule of section 53-3-306, MCA, applies. The new county may not automatically disclaim financial responsibility.

The above interpretation requires that residence, and therefore financial responsibility, be determined on a case-by-case basis. To assist in those determinations I offer the following guidelines.

The general rules for determining residence are contained in section 1-1-215, MCA:

Every person has, in law, a residence. In determining the place of residence the following rules are to be observed:

(1) It is the place where one remains when not called elsewhere for labor or other special or temporary purpose and to which he returns in seasons of repose.

(2) There can only be one residence.

(3) A residence cannot be lost until another is gained.

(6) The residence can be changed only by the union of act and intent.

See McCarthy v. Montana Power Co., 143 Mont. 134, 387 P.2d 438 (1963). Appropriate indicia for determining county residence include home ownership or lease, county vehicle registration, voter registration, property ownership in the county, and payment of county property taxes. 35 Op. Att'y Gen. No. 63 at 153 (1974). It is important to remember, however, that the above factors in and of themselves do not establish residence. The

intention of the individuals must be considered and may be the deciding factor if no other indicia exist.

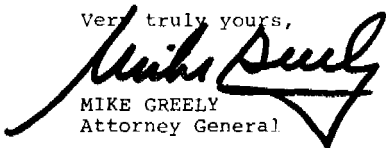
In summary, the financial responsibility for a nursing home patient depends on examination of several factors: the status of the applicant, the legal residence of the individual, and the reason for change of residence all play a role. As stated above, the determination of financial responsibility in this area must be done on a case-by-case basis.

THEREFORE, IT IS MY OPINION:

1. Under section 53-3-306, MCA, a county may not automatically disclaim financial responsibility for new applicants for general relief who have moved to that county in order to receive medical care in a nursing home. The county of financial responsibility is the county where the applicant resides. Residence is determined by factors such as whether the placement in the nursing home is permanent or temporary, in which county the applicant is registered to vote, owns property, owns or leases a home, pays property taxes or registers a vehicle, and in which county the applicant intends to remain.

2. Under section 53-2-610(3), MCA, recipients of general relief who move to a new county in order to receive medical care in a nursing home remain the financial responsibility of the original county unless a court decree declares the recipient's residence to be other than the original county.

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 138, 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 the 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 December 31, 1982. This table includes those rules adopted during the period January 1, 1983 through March 31, 1983, 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 December 31, 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 and 1983 Montana Administrative Registers.

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