

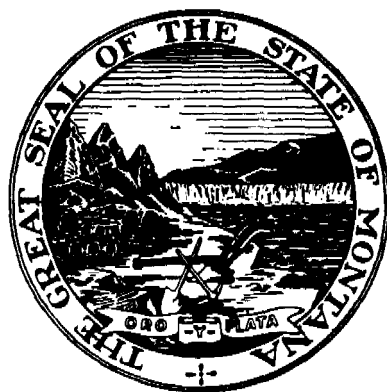
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MONTANA ADMINISTRATIVE REGISTER

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OF MONTANA

1984 ISSUE NO. 22
NOVEMBER 29, 1984
PAGES 1656-1777



MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 22

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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

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BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption)	NOTICE OF PUBLIC HEARING ON
of a new rule, the amendment)	PROPOSED ADOPTION OF A NEW
of rules and the repeal of)	RULE, AMENDMENT OF RULES
rules relating to the)	ARM 2.21.216, 2.21.221,
administration of annual)	2.21.222, 2.21.223,
vacation leave)	2.21.224, 2.21.226,
	2.21.227, 2.21.228,
	2.21.230, 2.21.232,
	2.21.234, AND 2.21.241,
	AND REPEAL OF RULES ARM
	2.21.225, 2.21.231, AND
	2.21.233 RELATING TO ANNUAL
	VACATION LEAVE

TO: All Interested Persons.

1. On December 20, 1984 at 12:15 P.M. in Room C-209, Cogswell Building, Helena, a public hearing will be held to consider the adoption of a new rule, amendment of rules ARM 2.21.216, 2.21.221, 2.21.222, 2.21.223, 2.21.226, 2.21.227, 2.21.228, 2.21.230, 2.21.232, 2.21.234 and 2.21.241, and repeal of rules ARM 2.21.225, 2.21.231, and 2.21.233 relating to annual vacation leave.

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 The rules proposed to be repealed are on pages 2-602, 2-603 and 2-604 of the Administrative Rules of Montana.

3. The proposed rule provides as follows:

RULE I POLICY AND OBJECTIVES (1) It is the policy of the state of Montana to grant executive branch employees annual vacation leave benefits in accordance with 2-18-611, 2-18-612, 2-18-614 through 2-18-617 and 2-18-621, MCA.

(2) Nothing in this policy guarantees approval of the granting of annual vacation leave in any instance. Each request will be judged by the agency in accordance with this policy.

(3) The objective of this policy is to establish uniform procedures for calculating and granting annual vacation leave benefits in accordance with 2-18-611 through 2-18-617 and 2-18-621, MCA.

(Auth. 2-18-604, MCA; Imp. 2-18-611, 2-18-612, 2-18-614 through 2-18-617, and 2-18-621, MCA)

(4) The rules proposed to be amended provide as follows:

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

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

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

(3) "Jurisdiction" means the extent sphere of authority of any state, county or city local government, entity within which the limits of authority or control may be exercised. State government is a single jurisdiction.

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

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

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

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

(8) "Year" means 2,080 hours in a pay status.

(Auth. 2-18-604, MCA; Imp. 2-18-601, 2-18-611, 2-18-612, 2-18-614 through 2-18-617 and 2-18-621, MCA)

2.21.221 ACCRUAL AND ELIGIBILITY TO USE VACATION LEAVE CREDITS (1) ~~As provided in~~ In accordance with 2-18-611, MCA, all employees:

~~that whether serving in positions which are permanent, temporary, intermittent, or seasonal, are eligible to earn vacation leave credits.~~ As provided in 2-18-611(5), MCA, "temporary employees do not earn vacation leave credits,"

except that a temporary employee who is subsequently hired into a permanent position within the same jurisdiction without a break in service and temporary employees who are employed continuously longer than 6 months may count as earned, leave credits for the immediate term of temporary employment."

(b)--Accrue vacation leave credits--"from the first day of employment"; and

(e) (2) An employee must be "continuously employed for the qualifying period of 6 calendar months" to be eligible to use vacation leave. Unless there is a break in service, an employee is only required to serve the qualifying period once. After a break in service, an employee must complete anew the qualifying period to be eligible to use annual vacation leave.

(3) Annual vacation leave credits accrue from the first day of employment, except as provided in (1) for employees in temporary positions. Leave credits may not be advanced nor may leave be taken retroactively.

(2) (4) A seasonal employee's accrued vacation leave credits may be:

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

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

(3) (5) When a seasonal employee carries over vacation leave credits, If annual vacation leave credits are carried over, employment in two or more seasons is continuous employment and can be counted toward the 6-month qualifying period, provided a break in service does not occur.

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

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

(6) An employee A person simultaneously employed in two or more positions in the same or in different agencies:

(a) will accrue vacation leave credits in each position according to the number of hours worked, except overtime hours; Only hours paid at the regular rate will be used to calculate leave accrual. Under no circumstances will an employee accrue annual vacation leave credits for more than 40 hours of work in a week.

(b) must use (7) Vacation leave credits will be used only from the position in which the credits are earned and with approval of the supervisor or appropriate authority for the that position; and. The agency may refuse to approve annual leave which results in a total of more than 40 hours in a pay status for the workweek.

(c) (8) will forfeit credits which exceed the maximum allowed on an apportioned basis When a person who is

simultaneously employed as provided in (6) exceeds the maximum accrual of vacation leave credits, the number of hours forfeited will be apportioned to each position in proportion to the balance of vacation credits for each position.

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

(10) As provided in 2-18-611(4), MCA, "an employee may not accrue annual vacation leave credits while in a leave without pay status."

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

(12) An employee who has not worked the qualifying period for use of annual vacation leave must repeat that period upon returning to work from a continuous leave of absence without pay exceeding 15 working days. The employee will not lose any accrued annual leave credits, but will not be eligible to use any earned annual leave credits until after working 6 continuous months.

(Auth. 2-18-604, MCA; Imp. 2-18-611, 2-18-617, MCA)

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

RATE EARNED SCHEDULE

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

(2) In accordance with 2-18-601, MCA, time as an elected state, county or city official, as a school teacher, as an independent contractor or personal services contractor does not count toward the rate earned.

~~(2) As provided by 2-18-611, MCA, "for calculating years of employment, 2,080 hours of employment equals 1 year."~~

(3) As of October 13, 1984, an employee must be in a pay status 2,080 hours to be credited with a year of employment toward the rate earned schedule. Prior to that date, agencies may have used different methods to accrue years of employment.

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

(4) Only regular hours in a pay status will count as hours worked toward the rate earned. Overtime hours (those in excess of 40 per workweek) will not count toward the rate earned.

(4) (5) As required by provided in 2-18-614, MCA, the "a period of absence from employment with an agency for military service during a war or national emergency, including 90 days thereafter, shall be honored for computing years of employment for purposes of the rate earned schedule; the state, county, or city occurring either during a war involving the United States or in any other national emergency and for 90 days thereafter for one of the following reasons is considered as service for the purpose of determining the number of years of employment used in calculating vacation leave credits under this section:

(a) having been ordered on active duty with the armed forces of the United States;

(b) voluntary service on active duty in the armed forces or on ships operated by or for the United States government; or

(c) direct assignment to the United States department of defense for duties related to national defense efforts if a leave of absence has been granted by the employer."

(6) The employee must have been employed by the state, immediately prior to serving with the armed forces and return to state service within 90 days after separation or discharge; must have been employed by a county immediately prior to serving with the armed forces and return to county service within 90 days after separation or discharge; or must have been employed by a city immediately prior to serving with the armed forces and return to city service within 90 days after separation or discharge.

(5) (7) An agency shall require an employee to produce documentation of eligible previous public employment or military service time which may be applied toward the rate earned. It is will be the responsibility of the employee's responsibility to supply documentation of any previous employment time or military service time to be counted toward the rate earned schedule.

(8) An employee who provides appropriate documentation of eligible previous public employment or military service shall have that time used to calculate the future leave accrual rate. The employee's leave credit balance and the employee's accrual rate shall not be adjusted retroactively. The employee shall begin earning leave at an adjusted scale, where appropriate, at the beginning of the next pay period.

(9) Where specific records of hours worked are not readily available, the agency may approximate the number of hours of service, relying on the 2,080 hours equals 1 year

formula.

(Auth. 2-18-604, MCA; Imp. 2-18-611, 2-18-612, 2-18-614, MCA)

2.21.223 PAY PERIOD ACCRUAL OF VACATION LEAVE CREDITS

(1) Where an employee is paid through the state central pay-roll division, if the employee is ~~regularly-scheduled-to-work~~ in a pay status at least 80 hours or more in a bi-weekly pay period, the employee accrues the number of hours of vacation leave credits indicated in the following schedule:

FULL-TIME BI-WEEKLY PAY PERIOD SCHEDULE

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

(2) If the an employee is ~~regularly-scheduled-to-work~~ in a pay status less than 80 hours in a bi-weekly pay period or works on an intermittent basis, the employee accrues the number of hours of vacation leave credits calculated by using the applicable amount from the following schedule multiplied by the hours worked:

PART-TIME BI-WEEKLY PAY PERIOD SCHEDULE

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

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

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

(Auth. 2-18-604, MCA; Imp. 2-18-611, 2-18-612, MCA)

2.21.224 MAXIMUM ACCRUAL OF VACATION LEAVE CREDITS (1)

As provided in 2-18-6147(1), MCA, ~~An employee may, without restriction, carry-over into the next calendar year twice the annual vacation leave credits the employee could earn in a year according to the rate earned schedule. Any additional~~

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~~accumulated credits are excess vacation leave credits and must be used in the first 90 days of the next calendar year or be forfeited.~~ "annual vacation leave may be accumulated to a total not to exceed two times the maximum number of days earned annually as of the end of the first pay period of the next calendar year. Excess vacation time is not forfeited if taken within 90 calendar days from the last day of the calendar year in which the excess was accrued."

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

(Auth. 2-18-604, MCA; Imp. 2-18-617, MCA)

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

(Auth. 2-18-604, MCA; Imp. 2-18-611, 2-18-612 MCA)

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

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

(3) ~~The vacation leave must be approved or denied in writing by the immediate supervisor or appropriate authority.~~ In no case may the number of hours of annual leave taken exceed the number of hours the employee is regularly scheduled to work.

(Auth. 2-18-604, MCA; Imp. 2-18-611, 2-18-615, 2-18-616, MCA)

2.21.228 VACATION LEAVE RECORDS (1) ~~Documentation of~~ An employee's vacation leave credits earned and vacation leave credits used must be maintained recorded by each agency the payroll/personnel/position control system. Agencies not paid through the state central payroll division must keep their own records.

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

(3) ~~At the end of each calendar year, new employee leave records must be created.~~ For agencies on a bi-weekly

pay period schedule, adjustments to an employee's accrual and use totals should be reported to the agency payroll clerk on a bi-weekly basis.

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

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

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

(Auth. 2-18-604, MCA; Imp. 2-18-611, 2-18-612, 2-18-614 through 2-18-617, MCA)

2.21.230 ABSENCE DUE TO ILLNESS (1) As provided in 2-18-615, MCA, unused vacation leave credits may not be used when "absence from employment by reason of is due to illness, unless the employee approves. shall not be chargeable against unused vacation leave credits unless the employee approves," approved by the employee."

(Auth. 2-18-604, MCA; Imp. 2-18-615, MCA)

2.21.232 LUMP-SUM PAYMENT UPON TERMINATION (1) When As provided in 2-18-617(2), MCA, "an employee who terminates his employment with an agency, the employee is for reason not reflecting discredit on himself shall be entitled upon the date of such termination to cash compensation for unused vacation leave, upon the date of termination, providing: assuming that the employee has worked the qualifying period."

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

(b) the employee has worked the qualifying period.

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

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

(4) Where the employee works in more than one agency, upon termination from one position the employee may, at the remaining agency's discretion, transfer leave credits to the remaining position. If the employing agency will not accept the transfer of credits, it is the responsibility of the agency from which the employee is terminating to cash out the employee, as provided in this rule.

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

(Auth. 2-18-604, MCA; Imp. 2-18-617, 2-18-621, MCA)

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

(2) If a break in service in excess of 5 working days occurs during a transfer change in employment between agencies or if ~~on~~ the employee transfers accepts a position in different another jurisdiction, the employee must receive a ~~cash-cut~~ lump-sum payment for accrued vacation leave credits and must begin anew the qualifying period for use of leave at the new agency or jurisdiction.

(Auth. 2-18-604, MCA; Imp. 2-18-617, MCA)

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

(Auth. 2-18-604, MCA; Imp. 2-18-611, 2-18-612, 2-18-614 through 2-18-617 and 2-18-621, MCA)

5. Changes in the rules are being proposed to implement amendments to 2-18-611, MCA, which were effective October 1, 1983; to implement the opinion of the Attorney General issued July 31, 1984 relating to accrual of time; in response to requests from the personnel policy network, a group of executive branch personnel officers and from managers who must administer annual vacation leave.

6. The rules are proposed to be adopted, amended, and repealed to make minimum requirements for administration of annual leave more clear; to remove some specific procedural requirements from these rules and to delegate authority for establishing such requirements to the agencies; to reorganize the rules so they are easier to follow, and to modify record keeping requirements to be consistent with the operation of the Payroll/Personnel/Position Control automated record keeping system.

Major specific changes include:

- a. repeal of language in ARM 2.21.231 which allowed an employee to earn leave credits while in a leave without pay status, as provided in 2-18-611, MCA;
- b. implementation in ARM 2.21.222 of the consistent use of the definition of a year as 2,080 hours in all phases of leave administration as required by the recent attorney general's opinion;

- c. creation of specific requirements in ARM 2.21.222 for an employee to meet to claim prior government or military service time to be applied toward the rate earned;
- d. repeal of ARM 2.21.233 which allows an employee to extend the termination date by using annual leave.

This provision has created a hardship for agencies, because it creates extended delay in the agency's ability to fill a vacant position. While this will no longer be required, the proposed rules do not prohibit extension of the termination date. It is the intent that this option be available for use at the agency's discretion.

Avoidance of excessive withholding in the first check was the reason for adoption of this rule. The terminating employee may make adjustments through payroll to avoid excessive income tax withholding in the final check, which includes the cash out.

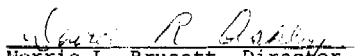
- 7. Interested parties may submit their data, views or arguments concerning the proposed adoption, amendment, and repeal in writing to:

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

no later than December 31, 1984.

- 8. Mark Cress, Chief, Employee Relations Bureau, State Personnel Division, Department of Administration, Mitchell Building, Helena, Montana 59620, has been designated to preside over and conduct the hearing.

- 9. The authority of the agency to make the proposed adoption, amendment, and repeal is based on Section 2-18-604, MCA, and the rules implement sections 2-18-611, 2-18-612, 2-18-614 through 2-18-617 and 2-18-621, MCA.


Morris L. Brusett, Director
Department of Administration

Certified to the Secretary of State November 19, 1984.

22-11/29/84

MAR Notice No. 2-2-140

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF PSYCHOLOGISTS

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of 8.52.613 concern-) OF 8.52.613 CODE OF PROFES-
ing the code of professional) SIONAL CONDUCT
conduct.)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On December 29, 1984, the Board of Psychologists proposes to amend the above-stated rule.

2. Subsection (1) of the rule is proposed to be amended and will read as follows: (new matter underlined, deleted matter interlined) (full text of rule is located at page 8-1425, Administrative Rules of Montana)

8.52.613 CODE OF PROFESSIONAL CONDUCT (1) The board considers the 'Ethical Standard of Psychologists' as published by the American Psychological Association, Inc. in 1957 June 1981 to be the code of ethics governing the professional conduct of all psychologists licensed by the board.

(2) ..."

Auth: 37-17-202 (1), MCA Imp: 37-17-311 (1)(c)

3. The rule is proposed to be amended as the Ethical Standards of Psychologists has been updated and continues to be updated as time and events change. To continue to use the out-of-date 1957 edition would be detrimental to the public.

4. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Psychologists, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than December 27, 1984.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Psychologists, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than December 27, 1984.

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 are directly affected by the proposed amendment, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who will be directly affected, a public 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 13 based on the 130 licensees in Montana.

BOARD OF PSYCHOLOGISTS
PHILLIP RUSSELL, Ph.D,
CHAIRMAN

BY: 

GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, November 19, 1984.

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the matter of the amend-	)	NOTICE OF PROPOSED AMEND-
ment of Rule 10.6.103 out-	)	MENT OF ARM 10.6.103, INI-
lining the process for ini-	)	TIATING SCHOOL CONTROVERSY
tiating the school con-	)	PROCEDURES PROCESS
troversy procedure)	

No hearing contemplated.

TO: All interested persons.

1. On December 31, 1984, the Superintendent of Public Instruction proposes to amend Rule 10.6.103, Initiating School Controversy Procedure Process.

2. The proposed rule will read as follows:

10.6.103 INITIATING SCHOOL CONTROVERSY PROCEDURE PROCESS

(1) A person who has exhausted all remedies available within a school district and who has been aggrieved by a final decision of the governing authority board of trustees of a school district in a contested case is entitled to commence such action before the county superintendent, except as provided in subsection 2.

(2) A person who requests a due process hearing concerning special education may appeal to the county superintendent before receiving a final decision of the board of trustees. Upon receipt by the county superintendent of such notice of appeal of a special education controversy the county superintendent shall

(a) Promptly advise the board of trustees of the notice of appeal.

(b) Provide the board of trustees up to and including ten calendar days in which to address the special education controversy in the school district, and reach a final decision.

(c) Not later than 45 days after the receipt of a notice of appeal, a final decision is reached and a copy of the decision is mailed to each party. The parties to the school controversy case may waive this time limitation upon request of the county superintendent or upon request of the other parties and provided that all parties are in agreement of such waiver.

(2)(3) A school controversy contested case shall be commenced by filing a notice of appeal with the county superintendent within 30 days after the final decision of the governing authority of the school district is made.

Sec. 20-3-107(3) MCA; IMP: Sec. 20-3-107(3) MCA

3. The change is being proposed to bring Montana rules into compliance with Federal Public Law 94-142. The current rule jeopardizes federal funding for Montana school districts.

4. Interested parties may submit their data, views or arguments concerning the proposed rule in writing to Rick Bartos, Staff Attorney, Office of Public Instruction, State Capitol, Helena, Montana 59620 no later than December 28, 1984,

5. If a person who is directly affected by the proposed rule amendment 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 this request along with any written comments to Rick Bartos, Staff Attorney, Office of Public Instruction, State Capitol, Helena, Montana 59620 no later than December 28, 1984.

6. If the Superintendent receives requests for a public hearing on the proposed rule amendment from either 10 percent or 25, whichever is less, of the persons who are directly affected by the proposed rule; from the Administrative Code Committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 1,500 or 10 percent of 15,000 handicapped students in the state of Montana.

Ed Argenbright

ED ARGENBRIGHT

Superintendent of Public Instruction

By *Marilyn Mieler*

MARILYN MIELER

Executive Assistant

Certified to the Secretary of State November 19, 1984.

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the matter of the amend-	)	NOTICE OF PROPOSED A-
ment of special education	)	MENDMENT OF ARM 10.16.
rules concerning evaluation	)	1101, 10.16.1201 and
procedures and the child	)	10.16.1205 CONCERNING
study team process	)	SPECIAL EDUCATION EVALUATION
	)	PROCEDURES AND THE CHILD
	)	STUDY TEAM PROCESS

No hearing contemplated.

To: All interested persons.

1. On December 31, 1984, the Superintendent of Public Instruction proposes to amend Rules 10.16.1101, 10.16.1201 and 10.16.1205 concerning special education evaluation procedures and the child study team process.

2. The proposed rules will read as follows:

10.16.1101 PROTECTION IN EVALUATION PROCEDURES

(1) Remains the same.

(2) (a) through (h) remains the same.

(i) The interpretation of the assessment information and the subsequent determination of the ~~educational-placment-of the-child handicapping condition~~ is made by a team ~~ex-group-of~~ of persons.

(j) All relevant information with regard to functional abilities of the child is utilized in the ~~placement deter-~~ mination of the handicapping condition. Secs. 20-7-403, 20-7-414, MCA; IMP, Secs. 20-7-403(1), 20-7-403(7), MCA;

10.16.1201 CHILD STUDY TEAM PROCESS

(1), (2) and (3) Remain the same.

(4) Once a decision is made by the majority of the child study team that a child is handicapped and is not receiving an appropriate education in the present educational program, recommendations are made to the board of trustees. The district has 30 days in which to initiate the appropriate changes in the child's program. Secs. 20-7-403, 20-7-414, MCA; IMP, Secs. 20-7-403(2), 20-7-403(7), MCA;

10.16.1205 COMPOSITION OF SPECIFIC CHILD STUDY TEAMS

(1) In addition to the core team, a school psychologist is a required member of the child study team for a child suspected of being mentally retarded child.

(2) In addition to the core team, a physician's report and pertinent medical information shall be obtained and utilized in the comprehensive evaluation for a child who-is suspected of being orthopedically impaired.

The child study team shall determine the child's educational needs resulting from the orthopedic handicap including

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

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

District and state services should be coordinated to ensure comprehensive services without unnecessary duplication.

(4) In addition to the core team where a child is suspected of being hearing impaired, a consultant for the hearing impaired, audiologist, and speech pathologist may be needed. The team shall also utilize a physician's report and pertinent medical information. District and state services should be coordinated to ensure comprehensive services without unnecessary duplication.

(5) In addition to the core team, a speech pathologist is a required member of the child study team for a child who is suspected of being speech/language impaired. The speech pathologist may be the special education person on the core team.

(6) The team shall consist of a core team plus other personnel as determined necessary for a child suspected of being the other health impaired child. In addition, eligibility for a homebound program must be documented by a physician.

(7) In addition to the core team, ~~a teacher or administrator with training or knowledge in the area of specific learning disabilities and other appropriate professional individuals as needed~~ a school psychologist is a required member of the child study team for a child suspected of having a specific learning disability or disabilities.

(8) In addition to the core team, a (certified/approved) psychologist and/or a (licensed/certified) psychiatrist is needed for the study of the educational needs of a child suspected of being the emotionally disturbed child. Secs. 20-7-403, 20-7-414, MCA; IMP, Secs. 20-7-403(2), 20-7-403(7), MCA;

3. The change is being proposed to correct minor inaccuracies in the language of the present rule.

4. Interested parties may submit their data, views or arguments concerning the proposed rule in writing to Rick Bartos, Staff Attorney, Office of Public Instruction, State Capitol, Helena, Montana 59620 no later than December 28, 1984.

5. If a person who is directly affected by the proposed rule amendment 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 this request along with any written comments to Rick Bartos, Staff Attorney, Office of Public Instruction, Helena, Montana 59620 no later than December 28, 1984.

6. If the Superintendent receives requests for a public hearing on the proposed rule amendment from either 10 percent or 25, whichever is less, of the persons who are directly affected by the proposed rule; from the Administrative Code Committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 1,500 or 10 percent of 15,000 handicapped students in the state of Montana.

Ed Argenbright

ED ARGENBRIGHT
Superintendent of Public Instruction

Marilyn Miller

By
MARILYN MILLER
Executive Assistant

Certified to the Secretary of State November 19, 1984.

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the matter of the adoption	)	NOTICE OF PROPOSED ADOPTION
of a rule outlining additional	)	OF A RULE, ADDITIONAL PRO-
procedures for evaluating	)	CEDURES FOR EVALUATING
specific learning disabilities	)	SPECIFIC LEARNING DIS-
		ABILITIES

No hearing contemplated.

TO: All interested persons.

1. On December 31, 1984, the Superintendent of Public Instruction proposes to adopt a rule outlining additional procedures for evaluating specific learning disabilities.

2. The proposed rule will read as follows:

RULE ONE. ADDITIONAL PROCEDURES FOR EVALUATING SPECIFIC LEARNING DISABILITIES

(1) Additional team members. In evaluating a child suspected of having a specific learning disability, in addition to the requirements of Rules 10.16.1204 and 10.16.1205, each public agency shall include on the child study team:

(a) The child's regular teacher; or
(i) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or

(ii) For a child of less than school age, an individual qualified by Montana certification to teach a child of his or her age; and

(b) Speech-language pathologist and/or remedial reading teacher if either or both have conducted individual evaluations of the child.

(2) Criteria for determining the existence of a specific learning disability. The team may determine that a child has a specific learning disability if:

(a) The child does not achieve commensurate with his or her age and ability levels in one or more of the areas listed in paragraph (b) of this section, when provided with learning experiences appropriate for the child's age and ability levels; and

(b) The team finds that a child has a severe discrepancy between achievement and intellectual ability in one or more of the following areas:

- (i) Oral expression;
- (ii) Listening comprehension;
- (iii) Written expression;
- (iv) Basic reading skill;
- (v) Reading comprehension;
- (vi) Mathematics calculation; or
- (vii) Mathematic reasoning.

(c) The team may not identify a child as having a specific learning disability if the severe discrepancy between ability and achievement is primarily the result of:

(i) A visual, hearing or motor handicap;

(ii) Mental retardation;

(iii) Emotional disturbance; or

(iv) Environmental, cultural or economic disadvantage.

(3) Observation:

(a) At least one team member other than the child's regular teacher shall observe the child's academic performance in the regular classroom setting.

(b) In the case of a child of less than school age or out of school, a team member shall observe the child in an environment appropriate for a child of that age.

(4) Written report. The team shall prepare a child study team report of the results of the evaluation.

(a) The report must include a statement of:

(i) Whether the child has a specific learning disability;

(ii) The basis for making the determination;

(iii) The relevant behavior noted during the observation of the child;

(iv) The relationship of that behavior to the child's academic functioning;

(v) The educationally relevant medical findings, if any;

(vi) Whether there is a severe discrepancy between achievement and ability which is not correctable without special education and related services; and

(vii) The determination of the team concerning the effects of the environmental, cultural, or economic disadvantage.

(b) Each team member shall certify in writing whether the report reflects his or her conclusion. If it does not reflect his or her conclusion, the team member must submit a separate statement presenting his or her conclusions.

Auth: 20-7-403 MCA Imp: 20-7-403 (4), MCA

3. The rule is being proposed to incorporate federal regulation into Montana rules. This amendment has been approved by the state Special Education Advisory Council.

4. Interested parties may submit their data, views or arguments concerning the proposed rule in writing to Rick Bartos, Staff Attorney, Office of Public Instruction, State Capitol, Helena, Montana 59620 no later than December 28, 1984.

5. If a person who is directly affected by the proposed rule adoption wishes to express data, views or arguments orally or in writing at a public hearing, he or she must make written request for a hearing and submit this request along with any written comments to Rick Bartos, Staff Attorney, Office of Public Instruction, State Capitol, Helena, Montana 59620, no later than December 28, 1984.

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

has been determined to be 1,500 or 10 percent of 15,000 handicapped students in the state of Montana.

Ed Argenbright
ED ARGENBRIGHT
Superintendent of Public Instruction

By Marilyn Miller
MARILYN MILLER
Executive Assistant

Certified to the Secretary of State November 19, 1984.

BEFORE THE MONTANA STATE LIBRARY
OF THE STATE OF MONTANA

In the matter of the amend-	)	NOTICE OF PUBLIC HEARING ON
ment and repeal of rules in	)	PROPOSED AMENDMENT AND REPEAL
Chapter 101, sub-chapter 1	)	OF ARM CHAPTER 101,
concerning the organizational	)	ORGANIZATIONAL AND PROCEDURAL
rule; and Chapter 102, sub-	)	RULES AND CHAPTER 102,
chapters 1 and 11 concerning	)	SUBSTANTIVE RULES
general policy and public)	
library development)	

TO: All Interested Persons:

1. On January 24, 1985 at 3:30 PM, a public hearing will be held in the conference room of the Montana State Library, 1515 East 6th Ave., Helena, Mt. to consider the amendment and repeal of rules in Chapter 101, sub-chapter 1, Organizational Rule; and Chapter 102, sub-chapter 1 and 11, General Policy and Public Library Development.

2. The rules proposed to be amended are as follows (matter to be stricken is interlined, new material is underlined):

10.101.203 GUIDELINES FOR PUBLIC PARTICIPATION (1)
Meetings and agendas: The Commission holds regular meetings on the Friday preceding the second Monday in April, July, September and December. Agendas for each meeting are prepared in advance and are available from the office of the State Librarian. The Commission shall meet during the last week of February, at the Montana Library Association Conference, June, August and October and in the first week of December, and at such other times as may be appropriate. Special meetings may be called by the chair or at the request of two members. An agenda for each regular meeting shall be prepared by the State Librarian in consultation with the chair and will be distributed in advance, with supporting documents to the members.

(2) Information: the State Library publishes a newsletter containing news about libraries in Montana and activities of the Commission and State Library. This publication, the Montana Newsletter, will be mailed without charge to any interested person requesting the same. Agendas are available to the public from the office of the State Librarian. Supporting documents may be requested from that office. Each commission agenda shall provide an open time for the public to address the commission. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.101 STATEMENT OF PHILOSOPHY AND OBJECTIVES (1)
(a) The Montana State Library Commission believes that an

enlightened citizenry constitutes the foundation of democracy and that every resident in Montana should have the opportunity to foster his own development in pursuit of education throughout his life;

(b) that all libraries are intrinsic to education and that the library is a vital and integral part of the community's total educational resources;

(c) that the primary function of the library is to serve as an essential cultural, informational and educational resource for all people regardless of age, race, creed, sex or occupation.

(2) (a) All Montanans should have legal and reasonably convenient access to a public library, and through it, to the library resources in their area, the state and the nation.

(b) Only through the establishment of public library systems known as federations of libraries can local communities approach this goal in Montana.

(c) It is the objective of the Montana State Library Commission to foster the development of strong library federations in accord with statutory public policy.

(3) (a) The State Library Commission affirms its belief in the basic policies which govern the services of all libraries stated in the Library Bill of Rights, Freedom to Read Statement, Intellectual Freedom Statement, Resolution on Challenged Materials and Statement on Labeling of the American Library Association.

(b) The Library Commission supports the principle that freedom to read is the right of every citizen.

(4) To serve the people of Montana, the Commission maintains a State Library which provides materials and services:

(a) to supplement the resources of local libraries through services to federations headquarters libraries, and through them, to other public libraries, school libraries, academic and special libraries;

(b) to provide lending reference and readers' advisory services directly to:

(i) state government officers and employees and federal or other governmental agencies to support the research needs of the agencies;

(ii) residents of state institutions;

(iii) these residents of the state who have no city or county public library but whose local governments contract for library services from a federation headquarters library;

(iv) persons who because of a physical or visual handicap are unable to use conventional printed materials. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

3. Sections 10.101.203 through 10.102.101 have been amended to conform with MCA 20-1-101 through MCA 20-1-103, and to reflect revisions of the State Library Commission Policy.

10.102.1101 STANDARDS FOR PUBLIC LIBRARIES (1) The State Library Commission, on October 20, 1969, adopted Montana Public Library Standards, and directed that they be published and distributed. These standards cover the structure and government of libraries, their service, the selection, organization and control of materials, personnel and physical facilities. The standards are set forth in the following forty-eight rules. The State Library Commission adopted revised Montana Public Library Standards December, 1982. These standards replaced the Montana Public Library Standards published in 1969. The new standards were published in 1983; these standards are based on the American Library Association standards, the public library mission statement and its imperatives for service. These emphasize the planning process and meeting the needs of individual communities, rather than proposing a single set of standards for all libraries.

(2) Copies of the standards in pamphlet form with appendices of ancillary materials have been distributed to all public libraries and library board members in the state, and they are available locally in every community in Montana which has a public library. Copies are available, without charge, upon request to from the State Library in Helena, MT. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1102 STRUCTURE AND GOVERNMENT OF LIBRARIES GOVERNANCE, FUNDING AND ADMINISTRATION (1) Montana law provides for the establishment and maintenance of public libraries. Government officials, library boards, librarians, friends of libraries and other interested citizens should be familiar with the legal provisions affecting library service. Governance, funding, and administration of the public library in Montana must reflect the following realities:

(a) Every person needs and has a right to access to the human record, appropriate to her or his own level of concern.

(b) The public library is uniquely responsible for providing and coordinating this access for its total community.

(c) Since a mobile population now moves freely in and out of political jurisdictions, the local public library can no longer consider its local constituency as its only responsibility.

(d) The local public library can no longer meet the needs of its local constituency solely with local resources or local funding.

(e) The needs of people in whatever support area cannot be met by the resources of any one type of library or libraries. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1103 LIBRARY BOARDS (1) All public libraries as agencies of local government shall be ~~controlled~~ operated by boards of trustees appointed by the local governing authority(ties).

(2) Library board members ~~should~~ shall be chosen because of their interest in libraries and their concern for total library service to the community, to assure broad representation from the community and to provide periodic infusion of new ideas.

(3) Board members must be aware of their duties and responsibilities as stipulated in Montana state law. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1104 LIBRARY BOARD MEETINGS (1) Meetings of the board of trustees should be held regularly.

(2) The librarian shall attend board meetings as secretary to the board and prepare the agenda for these meetings in consultation with the chairman.

(3) These meetings shall be open to the public and shall be publically announced prior to the stipulated meeting date. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1105 LIBRARY BOARD BYLAWS (1) All library boards of trustees shall adopt bylaws for the conduct of their business. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1106 LIBRARY BOARD POLICIES (1) The trustees, with the advice of the librarian, shall adopt written policies and objectives for the operation of the library (e.g., i.e.: for book selection, personnel management, hours and extent of service, etc.) and ~~periodically~~ annually review these policies.

(2) The library's policies should include adoption of the Library Bill of Rights, ~~as amended~~ and the Freedom to Read statement.

(3) The board shall delegate active management of the library to the librarian, giving him/her full responsibility for carrying out these policies. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1107 LIBRARY BOARD PLANNING (1) The board, together with the librarian and the staff, is responsible for long-range planning a five-year plan for library development with stated goals and objectives, in accordance with the Montana plan for the development of library service, to insure that such planning is recognized as an essential function of local government and included with other plans for community development.

(2) This planning should include a careful evaluation of the library's services, complete documentation of its present needs and potential future activities based upon an assessment of community needs. The planning should be reviewed annually. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1108 LIBRARY ANNUAL REPORTS (1) An annual report of the library's activities should shall be prepared by the librarian and submitted to the board of trustees; the board in turn shall submit this report to the governing body(ies). (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1109 LIBRARY BUDGET (1) An annual budget for the library ~~is~~ shall be prepared by the librarian, for discussion and adoption by the board. The board and the librarian will present the budget to the governing body(ies). The budget shall be administered in accordance with Montana state laws. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1110 LIBRARY LEGISLATION (1) The library board and the librarian should be actively familiar with legislation on local, state and national levels that affects libraries. This implies a high level of political sophistication and involvement on the part of public library administrators and trustees. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1111 AFFILIATION WITH FEDERATIONS (1) individual community libraries have a responsibility to seek affiliation with the central library in a federation- Montana's state-wide library federation system revolves around the concept of resource sharing. Libraries are advised to participate fully in federation activities. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1112 INTERLIBRARY RELATIONSHIPS MULTI-TYPE LIBRARY COOPERATION (1) Public libraries should must work together with other libraries in the community state to assure that all resources are utilized to the fullest, working

toward an expansion, rather than a duplication of library service.

(2) All librarians in the community should meet together regularly to keep each other informed of current activities, to plan for coordination of services and development of collections, and to consider the feasibility of joint activities. To this end all libraries in the state should communicate regularly with other local librarians and through their affiliation with their statewide professional organizations to keep each other informed of current activities, to plan for coordination and services, development of collections, and to consider the feasibility of joint activities.

(3) Special attention should be paid to the library needs of students; public librarians should meet regularly with teachers and school administrators as well as school librarians to keep informed of their problems, and to keep them informed of the public library's resources and services. Public libraries in the state of Montana should constantly consider new patterns of funding. Alternatives to the property tax, alternatives to the single municipality, and alternatives to the single type library must be actively investigated. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1113 PUBLIC LIBRARY SERVICES (1) The public library exists to serve all people, regardless of their age, education, economic level or human condition in their need for information and understanding. Public libraries exist to serve all Montanans. They should, insofar as possible, strive toward being cultural, educational, informational, recreational and rehabilitative centers for their communities.

(2) All services in the following discussion are possible to some degree in any library unit, whether small or large, providing that the library's staff is dedicated to service. The services of public library are:

(a) The collection of books, periodicals and other materials and the arrangement of them for convenient access and borrowing. Public libraries have a special obligation to collect local information and materials.

(b) Guidance in the general use of collection.

(c) Reference service for provision of information and pursuit of research.

(d) Interlibrary loan service for providing materials beyond the immediate community.

(e) Opportunity for lifelong learning.

(3) Participation in a well established federation insures that these services can be adequately provided by every public library in every size of community.

- (4) The services performed by a public library are-
- (a) the accumulation and logical organization of the materials of communication (books, magazines, films, sound recordings, pamphlets, etc.) for convenient use through classification, cataloging and shelf arrangement;
 - (b) the lending of these materials so that they may be used in a location and at a time convenient to each individual, including whatever tools and services are necessary to provide service to the handicapped and disadvantaged;
 - (c) guidance and interpretation in the finding and use of these materials;
 - (d) the provision of information and research services designed to locate facts as needed;
 - (e) assistance to civic, social and educational organizations in locating and using these materials in the pursuit of their own ends;
 - (f) Stimulation of the use of the library through publicity, displays, reading lists, story hours, book talks, book and film discussion and other appropriate means either in the library or in community organizations. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1116 HOURS OF SERVICE (1) Each public library should be open for service at least 15 hours per week at fixed times and uniform hours; all should be open some evening hours. Hours shall reflect patterns of use. Libraries are obligated to consider flexible hours in the interest of the patron.

(a)	Population	Hours open
	under 2,500	15 hours weekly
	2,500-4,999	15-30 hours weekly
	5,000-9,999	30-45 hours weekly
	10,000-24,999	45-60 hours weekly
	25,000-49,999	60-69 hours weekly
	over 50,000	69 or more hours weekly

- (2) During open hours, service should be maintained for all library users - children, young adults and adults.
- (3) The library should review the hours of service each year in consideration of adequate service to the community.
- (4) Bookmobiles should stop at least every two weeks in each community served.
- (a) Frequency of visits should be increased as use increases.
- (b) The length of time spent at each visit should be sufficient to serve all library needs of the community -

circulation of books; answering or recording reference needs; etc.; at no time should the visit be less than 30 minutes. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1117 LENDING REGULATIONS (1) Lending The regulations of a public library should shall be developed solely to facilitate the use of its materials and should be regularly reviewed so that it is remembered that rules are never become ends in themselves.

(2) Within a federation all libraries should make use of uniform loan periods; reciprocal borrowers' privileges; regular delivery service and interlibrary loan procedures; consideration should be given to use of uniform circulation systems. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1118 REFERENCE SERVICE (1) Public libraries should shall provide for all persons factual information and professional guidance in the use of reference sources.

(a) Such assistance should utilize, through the proper channels, all library resources available, beyond the not only in the community, but also in the state, region and nation.

(b) Intensive reference and searching should be done to meet the scholarly, business and industrial interest of the community.

(c) Within justifiable limits, preparation of reports, compilation of statistical information, abstracting, etc., should be among the library's services.

(2) The public libraries should shall provide telephone information and reference service and should utilize the most effective, rapid means of communication to serve its community when practical and appropriate.

(3) The public library should maintain a central source of information about educational opportunities for children, adults and young adults and about organizations in the area.

(4) It should provide information about individuals or groups who offer programs and individuals who serve as resource persons. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1119 GUIDANCE PROGRAMMING (1) All public libraries should provide individual reading guidance and counsel to children, young adults and adults, as well as to the blind, the home-bound and the disadvantaged; such guidance can be given through book talks, lectures, story telling, special subject programs, reading improvement programs, as well as individual counseling. Libraries are encouraged to plan creative programs in fulfilling their multiple roles.

(2) All public libraries should provide guidance and counsel to groups, both formal and informal, in planning, organizing and conducting significant activities for all people in the community; when possible, the library should provide resource persons, materials, facilities and equipment to further the success of such programs.

(3) The public library should take leadership in initiating and stimulating educational programs which are needed in the community; at times it should focus its resources and services on socially significant questions. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1120 PUBLIC INFORMATION LOCAL HISTORY (1)

The public library should have a specific program to inform the community in an interesting and understandable way about its services, through such means as radio, television, the press, service talks, displays etc. Public libraries can make a major contribution to their communities by collecting and preserving the cultural materials of their locales. Libraries should collect books, newspapers, pamphlets, broadsides, pictorial materials, personal manuscripts and business records. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1121 MATERIALS- SELECTION RESOURCES (1)

The public library as an institution exists to provide materials which communicate experience and ideas from one person to another.

(2) Its function is to assemble, organize, preserve and make easily and freely available to all people printed and non-printed materials.

(3) Public library materials may include all forms of recorded knowledge: books, periodicals, pamphlets, newspapers, pictures, slides, films, sheet music, maps, cassettes, records, microforms, videoforms, etc.

(4) Each public library board shall adopt written policies for the acquisition selection and selection acquisition of materials. The actual selection of the materials shall be the responsibility of the librarian and library staff.

(5) Libraries participating in a federation will develop these policies cooperatively.

(6) The actual selection of materials shall be the responsibility of the librarian and the library staff.

(7) These policies should shall be reviewed periodically and revised in accordance with changes in the library's activity and the level of service provided in the programs of the federation headquarters and participating libraries to fit the changing needs of the community and/or

federation. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1122 SELECTION CRITERIA (1) In choosing library materials the following factors ~~should~~ shall be ~~observed~~ considered:

(a) the extent to which the library intends to own materials and to which it expects to borrow, both within and outside the federation;

(b) ~~the current and anticipated educational, informational and recreational needs of the community; The educational, informational, and recreational needs of the community as determined by community study.~~

~~(c) the value and significance of the subject; the authority and intent of the author and the effectiveness of presentation and format.~~

(2) Specialized appropriate resources and nationally recognized guides should be utilized in selection and evaluation of the collection in all public libraries. Access to these guides shall be available at the federation headquarters library.

~~(3) At least all of the following guides should be in the headquarters library in a federation; at least the last two guides should be found in even the smallest public library.~~ (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1126 COLLECTION ORGANIZATION (1) The library's collection ~~must~~ shall contain the ~~various opinions expressed on important, complicated or controversial questions; materials that reflect all points of view, including the unpopular or unorthodox positions.~~

(2) ~~Materials of the required quality, serving which serve the purposes of the library and relating to an existing need or interest which will fulfill a community need will not be removed from the collection; nor will materials lacking these qualities be added solely because of pressure by groups of or individuals.~~

(a) ~~The selection policy should indicate the library's subscription to the "Freedom to Read Statement", adopted in 1953 by the AHA Council. A policy for the evaluation of material for withdrawal from the collection should be established and implemented.~~

(i) Materials that are outdated, worn out or inappropriate should be removed from the collection and replaced with new titles or new editions; as appropriate. Public libraries, in cooperation with state library agencies, should assume leadership in negotiating a policy for retention on the regional and state level.

(ii) The character and emphasis of the collection of the federation headquarters and participating libraries should be influenced by the collections of other libraries in the community and federation area.

(iii) Materials may be selected in any format: print, sound recordings, slides, transparencies, films, recordings, microforms, etc., depending on availability and appropriateness for use. The format that will meet the community need for the longest period of time for the money spent should be the format purchased. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1129 EPHEMERAL PRINTED MATERIALS (1) Public libraries should maintain collections of ephemeral printed materials, pamphlets, etc., on subjects of interest to the community; special attention should be paid to the collection and useful organization of manuscripts, books, letters, clippings, pamphlets reports and other documents relating to the history of the community and area. Every public library has the responsibility to develop materials collection sufficient to meet the majority of local needs. Federation headquarters libraries shall be responsible for developing a materials collection that meets the needs of the federation to the greatest extent possible. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1130 FILMS (1) All public libraries should maintain membership in the Montana Public Library Cooperative Film Service and supply information about films shall promote the use of the Montana Public Library Cooperative Film Service.

(2) The federation headquarters library should have at least 200 films in its own collection and should supply projectors for use within the federation. This collection should be sufficient to meet the general needs of libraries of the state.

(3) The collection in the Montana Public Library Cooperative Film Services should include at least 1,000 film titles. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1134 PERSONNEL (1) The quality of public library service in Montana is directly dependent upon how well each library maintains high standards for personnel. For the public library to achieve its mission, recruitment and development of personnel are of primary importance. In addition to traditional bibliographic skills, public librarians must be able to:

(a) Assess needs, set objectives, and evaluate and measure the effectiveness of public library programs.

(b) Select materials and provide guidance in the use of all library resources.

(c) Work within the political and social structures of the community.

(d) Communicate and work effectively with trustees and staff.

(e) Make use of current and emerging technologies for information and communication.

(2) The library's unique function of serving as the one unbiased, nonpartisan source of information for all the people calls for personnel of the highest competence and integrity. These personal and professional demands require librarians with broad general education, appropriate subject knowledge, and specialized skills, with capacity to interpret and achieve institutional objectives, and with commitment to client needs. The public library should also utilize personnel from other disciplines as needed to support the library service program.

(3) In order for public libraries and federations to provide an adequate and effective program, it is necessary that they have a competent, professionally qualified, well selected and properly compensated staff.

(4) Library governing bodies are responsible for the employment of personnel who will ensure technical competence and inspirational leadership.

(5) A competent staff and their high job satisfaction and morale are keys to the assurance of effective library service.

(6) Since public libraries are above all public service institutions, it is imperative that they be staffed by people who are dedicated to service, motivated by a desire to help people and eager to give service in a friendly manner.

(Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1135 POSITION CLASSIFICATION (1) Library positions as defined in a written job description should be clearly defined and differentiated in terms of requirements, duties and responsibilities.

(2) Each library should have a position classification plan, grouping similar positions for equitable personnel administration. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1136 WRITTEN PERSONNEL POLICIES (1) In addition to the position classification plan, each library should have written personnel policies which provide for All public libraries should have a written personnel policy which requires affirmative action and equal opportunity in hiring, training and promotion of staff. That policy should include:

(a) appointments, promotions and dismissal of personnel in libraries on the basis of merit, without regard to race, sex, marital status, national origin, political opinions or religious beliefs;

(b) a specified probationary period for new employees and periodic performance evaluation for all staff members;

(c) benefits, such as vacation and sick leave allowances, retirement, health and life insurance;

(d) leaves of absence, with pay and travel allowance, for attendance at professional meetings, institutes and workshops. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1137 SALARIES (1) Salaries for all staff members should reflect their responsibility within the library, or federation, and be competitive within the job market.

(a) within the community for those positions normally filled locally; and

(b) nationally; for those positions for which the library competes in a national market.

(2) Salary schedules should provide for regular increases. Where practicable, there should be provision for special salary increases for superior performance. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1140 IN-SERVICE TRAINING AND PROFESSIONAL GUIDANCE CONTINUING EDUCATION (1) The larger library should provide a program of routine and specialized in-service training for its staff and should provide opportunities for its staff members to participate in training programs offered by local, regional, state and national organizations and agencies. Staff at all levels have the right to continuing education opportunities and a responsibility to participate in them. Library administrators should be committed to continuous personnel development, providing both incentives and opportunities.

(2) The smaller library should provide opportunities for its staff to participate in training offered by such agencies.

(3) All librarians should encourage staff to belong to and participate in activities of professional library organizations.

(4) The headquarters library in a federation should provide regular training opportunities for all library staff members in the federation area.

(5) All Montana public libraries should utilize the professional assistance and guidance available from the Montana State Library. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1141 PHYSICAL FACILITIES (1) Each public library building in Montana should be planned to accommodate a program emphasizing the use of library services and materials; public library buildings must also comply with fire, safety, sanitary and other applicable rules in the state and local building codes in Montana that cannot readily accommodate or reach all persons in the local service area should make provisions for alternative or additional services.

(2) Because areas of service (whether local community, county or federation) vary from one part of the state to another, specific standards of size for library buildings are not suggested here. Traditional library buildings should be considered as only one way to deliver library service. Innovative systems should be designed to deliver library services through a full range of physical and electronic means to the places where people live and work.

(3) A library which serves as a federation center must obviously have a building sufficient in size to enable it to perform federation-wide services. Library service must be provided for persons of all ages, all economic levels, and all races. Consideration of the total population should be given in regard to library material, the physical facility and patron service.

(4) Other library buildings within the federation may also be large, because of distance from the central library. The public library should encourage the use of the library building for activities other than library related services.

(5) Some basic principles prevail regardless of the size of the building. The public library's physical facilities must reflect its role as a community cultural, information, educational, and rehabilitative agency. In planning new or remodeled facilities, libraries should develop building programs for the guidance of architects. Public library buildings must also comply with fire, safety, sanitary, and other applicable rules in the state and local building codes.

(6) Because areas of service (whether local community, county or federation) vary from one part of the state to another, specific standards of size for library buildings are not suggested here. A library which serves as a federation center must obviously have a building sufficient in size to enable it to perform federation-wide services. Other library buildings within the federation may also be large, because of distance from the central library. Some basic principles, however, obtain regardless of the size of the building. (Auth. Sec. 22-1-103(4), MCA; IME, Sec. 22-1-103(4), MCA.)

10.102.1142 PLANNING FOR BUILDING (1) No library facility should be constructed or remodeled without careful planning and analysis of the library's present service, its

planned future services and the projected growth of its service area.

(a) This type of planning frequently will require the assistance of an outside consultant, since experience in planning buildings is valuable and because a consultant can assist in examination of service needs.

(2) When possible the librarian, library board, and key members of the library staff should visit other library buildings of appropriate size and study features that they consider successful and unsuccessful, always asking the staff if they would have done anything differently. "If you were to build again, what would you do differently?"

(3) A building program statement should be prepared by the librarian, or by the consultant if one is to be engaged.

(a) The program statement should define the library's space needs and the relationship between different areas so that the architect can develop a workable plan. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1145 BUILDING FLOOR LAYOUT (1) The building should be so designed that related activities (both of the user and of the staff) are in adjacent areas, and that illogical flow of activity is kept to a minimum.

(2) Public areas should be so arranged as to eliminate problems of supervision; staff on duty at a circulation desk or service desk should have visual control of most of the area.

(a) Library personnel should be visible and identifiable.

(b) Library departments and areas should be conspicuously identified.

(c) Hours of service should be conspicuously displayed.

(d) The public library building should have space for book display and exhibits. Libraries seek to attract and promote their services rather than simply store volumes. The library should have separate storage for operational supplies away from public areas, but adjacent to work areas. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1147 LIBRARY LIGHTING (1) Lighting for libraries should be provided according to the recommendation of the Illuminating Engineering Society energy efficient and adequate for library functions.

(2) Because of the critical problem of stack lighting, it is essential that placement of light fixtures not be finally determined until location of stacks is fixed.

10.102.1149 LIBRARY COMMUNICATION FACILITIES (1) There should shall be telephones in all public libraries.

(2) Libraries participating in a federation should utilize the most efficient means of communication between member libraries.

(3) There should be rapid communication between bookmobiles and the federation center to handle reference questions and facilitate filling requests rural book delivery systems and the federation headquarters. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

4. Sections 10.101.1101 through 10.101.1149 have been amended as a result of the revision of public library standards by the Montana Library Association and the Montana State Library Commission.

10.102.5203 ACCESS TO CIRCULATION RECORDS (1) With the passage of the Library Services and Construction Act in 1957, and in the succeeding years, state libraries have been given an increasing role in the development of library services in the individual states. The Montana State Library Commission formally adopts the policy which specifically:

(a) recognizes its circulation records and other records identifying the names of library users with specific materials to be confidential.

(b) Advises all librarians and library employees that such records shall not be made available to any agency of state, federal or local government except pursuant to such process, order or subpoena as may be authorized under the authority of and pursuant to federal, state or local law relating to civil, criminal, or administrative discovery procedures or legislative investigatory power.

(c) Resist the issuance of enforcement of any such process, order or subpoena until such time as a proper showing of good cause has been made in a court of competent jurisdiction.

(2) The confidence placed in state libraries through the allocation of funds to foster library development in the states carries with it a responsibility for the state libraries to assume major leadership roles.

(3) (a) All libraries within a state need to be able to look to their state library for guidance, assurance, endorsement and help in carrying out their jobs at the local level:

(b) This help must go beyond the provision of services and take in the more intangible aspects of leadership.

(c) This is especially true in the area of intellectual freedom, a concept which is fundamental to all library services.

(4) (a) The library profession, through its national association and many individual libraries, has endorsed two intellectual freedom documents - the Freedom to Read Statement and the Library Bill of Rights.

(b) Both are thoughtful and straightforward affirmations of the profession's belief in the right of every citizen to have access to a variety of materials; and, they seek to protect borrowers from individuals and groups who would decide for others what may or may not be available to them in libraries.

(5) (a) Another aspect of the public's intellectual freedom is the borrower's right to privacy in the matter of what materials he shall borrow from the library.

(b) In a number of U.S. cities representatives of federal government agencies have, without benefit of process, order or subpoena, requested the names of library users who have borrowed books in certain subject areas.

(6) (a) The freedom to read is automatically diminished, even if a full range of materials has been made available, if the library user is confronted with the prospect of any individual or agency examining the record of his transactions with the library.

(b) Individuals with no malicious intent may hesitate to borrow materials on certain topics if in doing so they may be subjected to the possibility of harassment or put under a veil of suspicion; their freedom to read has been substantially curtailed and suppressed.

(7) Because this is a relatively new variety of attack on intellectual freedom, many libraries may not know the course to follow when confronted with these requests.

(8) In light of the above-

(a) The Montana State Library Commission establishes as policy for the Montana State Library and recommends similar actions by each Montana library-

(i) that its circulation records be treated as confidential regardless of the source of inquiry;

(ii) that such records not be made available to any party, governmental or private, unless pursuant to an order or subpoena or other legal process.

(9) (a) The legal process requiring the production of circulation records will ordinarily be in the form of a subpoena duces tecum, requiring the librarian to attend court or the taking of his deposition and may require him to bring along certain designated circulation records.

(b) At this stage in legal proceedings the individual librarian may choose any of the following alternatives:

(i) obey the requirements of the subpoena in full;

{iii} retain an attorney who will attend the court hearing or deposition with the librarian and attempt to obtain a protective order from the court quashing the subpoena because the record search required is unduly burdensome and onerous, or because the material sought is not relevant to the issues of the case;

{iiii} attend the court hearing or deposition, but refuse to divulge the records, in which event the individual involved will undoubtedly be charged with contempt of court and fined or jailed. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

5. Section 10.102.5203 has been amended to delete obsolete language and to insure conformance with MCA 2-6-101-111.

10.102.5207 CHARGES FOR LOST OR DAMAGED BOOKS (1) Books and other library materials borrowed from the State Library and due on or after January 1, 1977, will be subject to a charge if lost or damaged beyond further reasonable use.

{2} Libraries or individuals reporting books lost or returning damaged books should be informed that a bill for the charge will be mailed to them; no attempt should be made to quote charges over the telephone or to collect payment while the patron waits.

{3} Charges will be made according to the following schedule:

{a} for each item, a service charge of \$2.00 to cover cost of ordering, cataloging and/or processing of replacement, maintenance of records, etc.;

{b} for materials still in print, the current list price will be charged;

{c} out-of-print materials which cannot be replaced will be charged at the list price at the time they were acquired;

{d} for out-of-print materials which will be replaced by another copy of the same title, if it can be obtained, the actual cost of the replacement.

{4} Reports of lost books will be given to the State Librarian, or a staff member designated by her, for action.

{5} Any deviation from this policy must be approved by the State Librarian, or the staff member designated by her, in advance of action. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.8001 GRADUATE SCHOLARSHIP PROGRAM (1) The Montana State Library Commission may, as funds are available, offer scholarships for graduate study in library science; the number and value of such scholarships shall be determined by the Commission. The Montana State Library Commission may as

funds are available offer scholarships for the graduate studies in library science, educational media or information science. The number and value of such scholarships shall be determined by the Commission. The Commission shall adopt procedures insuring grants are designed to increase the professional staffing for Montana Libraries.

(2) Because this program is designed to increase the professional staffing of public libraries and of the State Library, consideration will be given to applicants who plan a career of public library or State Library service.

(3) Applicants must further-

(a) present evidence of admission to a graduate program in library science accredited by the American Library Association;

(b) plan to pursue a course of study leading to a graduate degree from an accredited library school;

(c) agree to work for at least two years in a public library, or in the State Library or in a library operation funded wholly or in part by the State Library in Montana.

(4) Except in unusual circumstances, the Commission will consider only applicants who are recommended by a public library federation which can give reasonable assurance of employment, in an appropriate professional position, upon graduation from library school (or by the State Librarian, in the case of applicants considered for future employment at the State Library).

(5) Candidates will make written application on forms supplied by the Montana State Library.

(a) Qualifying candidates will be interviewed by a member of the State Library Commission and/or the State Library staff.

(b) The State Library Commission reserves the right not to give any awards if no qualified applicants apply.

(c) The Commission's decisions on all matters affecting the scholarships are final.

(6) Recipients may enroll for study in any library school offering a graduate program accredited by the American Library Association.

(7) Arrangements will be made by the State Library Commission with the scholarship recipient and the school attended for payment in regular installments or in a lump sum.

(8) The scholarship recipient must repay any amount of the scholarship funds received, on failure to complete the full training program, or failure to accept employment in Montana as outlined, for reasons within his control.

(9) All necessary papers must be completed and received by the Montana State Library at least two months before the beginning of the term at the library school.

(10) Requests for application forms should be sent to Scholarship Program, Montana State Library, 930 East Lyndale Avenue, Helena, Montana 59601. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

6. Sections 10.102.5207 and 10.102.8001 have been amended to allow the Montana State Library Commission to revise changes in procedures and to delete obsolete portions.

7. Those rules proposed to be repealed are as follows:

10.102.1114 SERVICE GOALS The rule proposed to be repealed is on page 10-1217 of the Administrative Rules of Montana. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1115 LIBRARY'S RELATIONSHIP TO COMMUNITY The rule proposed to be repealed is on page 10-1218 of the Administrative Rules of Montana. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1123 GUIDES TO THE SELECTION OF BOOKS The rule proposed to be repealed is on page 10-1220 and 10-1221 of the Administrative Rules of Montana. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1124 JOURNALS WHICH INCLUDE BOOK REVIEWS The rule proposed to be repealed is on page 10-1221 of the Administrative Rules of Montana. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1125 GUIDES TO THE SELECTION OF NON-BOOK MATERIALS The rule proposed to be repealed is on page 10-1221 of the Administrative Rules of Montana. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1127 THE BOOK COLLECTION The rule proposed to be repealed is on page 10-1222 of the Administrative Rules of Montana. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1128 THE PERIODICAL COLLECTION The rule proposed to be repealed is on page 10-122 of the Administrative Rules of Montana. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1131 RECORDINGS The rule proposed to be repealed is on page 10-1223 of the Administrative Rules of Montana. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1132 COLLECTIONS FOR BOOKMOBILES The rule proposed to be repealed is on page 10-1223 of the Administrative Rules of Montana. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1138 STAFFING REQUIREMENTS The rule proposed to be repealed is on page 10-1224 and 10-1225 of the Administrative Rules of Montana. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.1139 PROFESSIONAL AND SUPPORT STAFF The rule proposed to be repealed is on page 10-1225 of the Administrative Rules of Montana. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.3601 APPLICATIONS FOR GRANTS The rule proposed to be repealed is on page 10-1249 of the Administrative Rules of Montana. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.3602 PRIORITIES FOR GRANTS The rule proposed to be repealed is on page 10-1249, 10-1250, and 10-1251 of the Administrative Rules of Montana. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.3603 USE OF FEDERAL FUNDS TO SUPPORT LIBRARY FEDERATIONS The rule proposed to be repealed is on page 10-1251 and 10-1252 of the Administrative Rules of Montana. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

10.102.5208 PHOTOCOPY SERVICE The rule proposed to be repealed is on page 10-1278 of the Administrative Rules of Montana. (Auth. Sec. 22-1-103(4), MCA; IMP, Sec. 22-1-103(4), MCA.)

8. Sections 10.102.1114 through 10.102.5208 have been deleted because they are obsolete.

9. Interested parties may submit their data, views, or arguments concerning the proposed repeals and amendments no later than January 24, 1985 to Sara Parker, Montana State Library, 1515 East 6th Ave., Helena, MT 59620.

10. The State Librarian of the Montana State Library has been designated to preside over and conduct the hearing.

11. The authority of the Department to make changes is given by MCA-22-1-103(4).

JoAnn Fallang
FOR SARA PARKER, STATE LIBRARIAN
MONTANA STATE LIBRARY
BY JOANN FALLANG

Certified to the Secretary of State November 15, 1984.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION)	NOTICE OF PUBLIC HEARING on
of Rules I through VI)	the proposed ADOPTION of NEW
relating to the implementa-)	RULES I through VI relating
tion of the alcohol tax)	to the implementation of the
incentive and administration)	alcohol tax incentive and
act.)	administration act.

TO: All Interested Persons:

1. On December 20, 1984, at 1:30 p.m., a public hearing will be held in Room 160 of the Mitchell Building, corner of Fifth and Sanders Streets, at Helena, Montana, to consider the proposed adoption of new rules I through VI relating to the implementation of the alcohol tax incentive and administration act.

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

RULE I (42.27.601) INTENT (1) The following rules are intended to implement the alcohol tax incentive and administration act, Title 15, chapter 70, part 5, MCA, and are designed to facilitate the efficient payment of the alcohol tax incentive while insuring against fraud, waste, and abuse under the act.

(2) These rules are meant to be read and administered as a whole and in conjunction with the other rules in ARM, Title 42, chapter 27.

AUTH: 2-4-201 and 15-70-104 MCA; IMP: Title 15, chapter 70, part 5 MCA.

RULE II (42.27.602) DEFINITIONS (1) As used in this subchapter, the definitions found in ARM, Title 42, chapter 27 and 15-70-503 and 15-70-201, MCA, apply.

(2) The following definitions also apply:

(a) "Act" means the "alcohol tax incentive and administration act", Title 15, chapter 70, part 5, MCA.

(b) "Division" means the motor fuel tax division, department of revenue.

AUTH: 2-4-201 and 15-70-104 MCA; IMP: Title 15, chapter 70, part 5 MCA.

RULE III (42.27.603) PROCESSING OF THE TAX INCENTIVE PAYMENT (1) The alcohol distributor shall make one application, on forms available from the motor fuel tax division, for the payment of the tax incentive to the division not later than the 25th day of the calendar month following the month or months during which the alcohol was sold and delivered to the gasoline distributor. The alcohol distributor may not submit more than one application during a month. If alcohol is omitted from one month's application, it may be applied for in the application for a subsequent month.

(2) The application must be accompanied by the original or a copy of the production records and invoices for all the alcohol for which the alcohol distributor is applying for the tax incentive payment.

(3) The application must contain:

(a) the name of the alcohol distributor;

(b) the license number of the alcohol distributor;

(c) the total number of gallons of alcohol manufactured or imported by the distributor during the preceding calendar month;

(d) the name of each gasoline dealer to whom the alcohol was sold; and

(e) the number of gallons of alcohol sold to each dealer.

(4) The application must be sent to:

Motor Fuel Tax Division
Department of Revenue
Box 5895
Mitchell Building
Helena, Montana 59620

(5) The applications for the alcohol tax incentive shall be processed by the division beginning on the 25th day of each month.

(6) If the information on the alcohol tax incentive payment application by the alcohol distributor does not match the information on the gasoline distributor's report or other information supplied to the division, the division will withhold payment of the alcohol tax incentive until such time as the division can determine the accuracy of the alcohol tax incentive application.

(7) The report may include an application for refund of the basic gasoline license tax on gasoline which was used to denature alcohol. The application for refund shall include:

(a) the gallons of anhydrous alcohol which were denatured by the alcohol distributors;

(b) gallons of gasoline used in denaturing; and

(c) the total amount of refund at \$.15 per gallon.

(8) Original bills of lading or invoices or copies shall be attached to each report which contains an application for refund of the basic gasoline license tax on gasoline which was used to denature alcohol.

AUTH: 2-4-201 and 15-70-104 MCA; IMP: Title 15, chapter 70, part 5 MCA.

RULE IV (42.27.604) PAYMENT OF ALCOHOL TAX INCENTIVE

(1) Pursuant to 15-70-523(3), MCA, the alcohol tax incentive payment shall be reduced by the amount of tax due on alcohol to be blended for gasoline under 15-70-204, MCA.

(2) Except as provided for in 15-70-522(3), MCA, the net alcohol tax incentive payment on each gallon of alcohol distilled under 15-70-522(1), MCA, after adjustment for the tax due under 15-70-204(3), MCA, is:

<u>Date</u>	<u>Tax Incentive Payment per Gallon</u>
After July 1, 1983	55¢
After April 1, 1985	35¢
After April 1, 1986	15¢
After April 1, 1989	No payment

(3) In order to qualify for the above tax incentive payment, the alcohol must be both sold and delivered prior to the date specified in subsection (2).

(4) The division shall calculate the share of the total nonaviation gasoline and gasoline market represented by gasoline according to information contained in the gasoline distributor's returns on the first state business day after April 1, June 1, October 1, January 1 of each year the act is in effect. The tax incentive payment provided for in subsection (2) shall be modified in accordance with the provisions of 15-70-522(3), MCA, effective May 1, July 1, November 1, or February 1, following the date of adjustment.

AUTH: 2-4-201 and 15-70-104 MCA; IMP: Title 15, chapter 70, part 5 MCA.

RULE V (42.27.605) OFFSETS (1) The division shall offset against any alcohol tax incentive payments which are due under the act:

(a) any overpayment or unauthorized payment made on a prior alcohol tax incentive applications; and

(b) any finally assessed tax due from the alcohol distributor under Title 15, MCA.

AUTH: 2-4-201 and 15-70-104 MCA; IMP: Title 15, chapter 70, part 5 MCA.

3. These rules provide for the efficient administration of the "Alcohol Tax Incentive and Administration Act of 1983". Title 15, chapter 70, part 5, MCA. These rules are necessary because 2-4-201, MCA, requires the Motor Fuel Tax Division to adopt rules of practice, and persons affected by these procedures need an opportunity to participate in their development and adoption. The division has had sufficient experience with the act to develop the necessary knowledge with which to write rules. These rules inform the public of the procedures and practices which the division will use in administering the act.

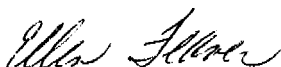
4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to:

Ann Kenny
Department of Revenue
Legal Division
Mitchell Building
Helena, Montana 59620

no later than December 28, 1984.

5. Roy Andes, Agency Legal Services, Department of Justice, has been designated to preside over and conduct the hearing.

6. The authority of the Department to make the proposed adoptions is based on §§ 2-4-201 and 15-70-104, MCA. The rules implement Title 15, chapter 70, part 5, MCA.



ELLEN FEAVER, Director
Department of Revenue

Certified to Secretary of State 11/19/84

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION)
of NEW RULES I through XIV)
relating to the waiver of)
penalty and interest by the)
Department of Revenue.)

NOTICE OF PUBLIC HEARING on
the Proposed ADOPTION of NEW
RULES I through XIV relating
to the waiver of penalty and
interest by the Department of
Revenue.

TO: All Interested Persons:

1. On December 20, 1984, at 10:00 a.m., a public hearing will be held in Room 160 of the Mitchell Building, corner of 5th and Sanders Streets, at Helena, Montana, to consider the adoption of new rules I through XIV relating to the waiver of penalty and interest by the Department of Revenue.

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

RULE I PURPOSE (1) The taxes which the department enforces variously provide for the abatement or waiver of interest and/or penalties at the sound discretion of the department. These rules are guidelines for the uniform, fair, and equitable exercise of that discretion. It is a purpose of these rules to treat all similarly situated taxpayers in a similar manner. In evaluating each request for waiver or abatement of interest and/or penalty, the taxpayer's request will be considered on a case by case basis. Abatement or waiver of a penalty and/or interest will be considered the exception rather than the rule.

(2) The purpose of a penalty and interest on a penalty is to secure the proper and timely filing of a tax return or statement and the prompt payment of the tax by penalizing the delinquent taxpayer. The purpose of interest on a tax is, in part, to compensate the state of Montana for the cost of money which is incurred while the tax is delinquent. Therefore, interest on the tax will rarely, if ever, be abated or waived by the department for a taxpayer who:

(a) files a tax return or statement or makes a tax payment over five days late;

(b) has previously filed a late tax return or statement or made a late payment; or

(c) has previously not complied with the tax law or regulations.

(3) Rules I through XIV are to be read, interpreted, and enforced as a whole in order to give full effect to each provision. A specific clause is not to be read or interpreted separately from the entire set of rules as a whole.

(4) Except as specifically provided by statute, the waiver or abatement of penalty and interest is a discretionary act by the department. "Discretion" means the power to do or to refrain from doing a certain thing. These rules do not make the exercise of the department's discretion to waive or abate

penalty and interest mandatory or compulsory.

AUTH: 2-4-201, 15-1-201, 15-1-206, 15-30-305, 15-31-501, 15-35-122, 15-36-107, 15-37-108, 15-38-107, 15-53-104, 15-54-111, 15-55-108, 15-56-111, 15-58-106, 15-59-106, 15-59-205, and 15-70-104 MCA; IMP: 2-4-201, 15-1-206, 15-30-321, 15-31-502, 15-35-105, 15-36-107, 15-37-108, 15-38-107, 15-53-111, 15-54-111, 15-55-108, 15-56-111, 15-58-106, 15-59-106, 15-59-205, 15-70-210, and 15-70-330 MCA.

RULE II APPLICATION OF RULES I THROUGH XIV (1) All references in rules I through XIV to "these rules" means rules I through XIV of the Administrative Rules of Montana.

(2) These rules apply only to penalty, interest on a penalty, and interest on a tax which are due because the taxpayer failed to file a tax return or statement or failed to pay any tax on time.

(3) These rules do not apply to any penalty, interest on penalty, or interest on a tax due to any other failure to comply with the tax laws or rules. Specifically, these rules do not apply to penalty, interest on penalty, and interest on a tax assessed as a result of a deficiency assessment or assessed because of fraud or other violation of the law.

(4) In addition, these rules do not apply to any of the following:

(a) to a penalty or interest associated with any license or fee which is not a tax and which is collected by the department;

(b) to any criminal sanction associated with the laws enforced by the department.

(c) to the collection of child support under Title 40, chapter 5, MCA, to welfare or medicaid fraud under Title 53, chapter 2, MCA, or to similar laws which are administered by the department;

(d) to any debt owed by the department by way of contract, tort, or other nontax related activity of the department; or

(e) to any claim or proceeding before a bankruptcy court.

(5) Except as provided in 15-1-206(1), MCA, these rules do not apply to a tax which has no provision for waiver or abatement of a penalty and interest.

AUTH: 2-4-201, 15-1-201, 15-1-206, 15-30-305, 15-31-501, 15-35-122, 15-36-107, 15-37-108, 15-38-107, 15-53-104, 15-54-111, 15-55-108, 15-56-111, 15-58-106, 15-59-106, 15-59-205, and 15-70-104 MCA; IMP: 2-4-201, 15-1-206, 15-30-321, 15-31-502, 15-35-105, 15-36-107, 15-37-108, 15-38-107, 15-53-111, 15-54-111, 15-55-108, 15-56-111, 15-58-106, 15-59-106, 15-59-205, 15-70-210, and 15-70-330 MCA.

RULE III ABATEMENT OR WAIVER OF INTEREST ON THE TAX Except as otherwise provided by statute or rule, interest may be abated or waived by the department for the same reasons or causes as provided in these rules for the waiver or abatement of penalties. However, 15-1-206(2), MCA, forbids the abatement or

waiver of more than \$100 in interest on the tax. Therefore, under no circumstances will interest on a tax in excess of \$100 per applicable taxing period be abated or waived by the department.

AUTH: 2-4-201, 15-1-201, 15-1-206, 15-30-305, 15-31-501, 15-35-122, 15-36-107, 15-37-108, 15-38-107, 15-53-104, 15-54-111, 15-55-108, 15-56-111, 15-58-106, 15-59-106, 15-59-205, and 15-70-104 MCA; IMP: 2-4-201, 15-1-206, 15-30-321, 15-31-502, 15-35-105, 15-36-107, 15-37-108, 15-38-107, 15-53-111, 15-54-111, 15-55-108, 15-56-111, 15-58-106, 15-59-106, 15-59-205, 15-70-210, and 15-70-330 MCA.

RULE IV WAIVER OR ABATEMENT OF PENALTIES OR INTEREST

ASSESSED AS THE RESULT OF LITIGATION Except as specifically provided for by rule or statute, penalty and interest may be waived for the same reason or cause as provided for in these rules in legal actions prior to a final decision by the state tax appeal board or state courts. However, when a final decision has been rendered by the state tax appeal board or a state court which found a tax, penalty, and interest to be due, the department may not waive the penalty and interest.

AUTH: 2-4-201, 15-1-201, 15-1-206, 15-30-305, 15-31-501, 15-35-122, 15-36-107, 15-37-108, 15-38-107, 15-53-104, 15-54-111, 15-55-108, 15-56-111, 15-58-106, 15-59-106, 15-59-205, and 15-70-104 MCA; IMP: 2-4-201, 15-1-206, 15-30-321, 15-31-502, 15-35-105, 15-36-107, 15-37-108, 15-38-107, 15-53-111, 15-54-111, 15-55-108, 15-56-111, 15-58-106, 15-59-106, 15-59-205, 15-70-210, and 15-70-330 MCA.

RULE V REASONABLE CAUSE FOR WAIVER OR ABATEMENT OF PENALTY AND INTEREST ON THE PENALTY (1) "Reasonable cause" for waiver or abatement of penalty and interest is construed in favor of the collection of the penalty and interest.

(2) "Reasonable cause" exists for waiver or abatement of penalty and interest if the taxpayer exercised ordinary business care and prudence and was nevertheless unable to file the return and/or pay the tax within the prescribed time. What constitutes the exercise of ordinary business care and prudence must be determined by the facts of a particular case. The existence of "reasonable cause" will be determined on a case by case basis at the discretion of the department.

(3) Except where otherwise provided by statute or these rules, "good cause" and "sufficient cause" shall be considered synonymous with "reasonable cause" as defined by these rules.

(4) Except where otherwise provided by statute or by these rules, "neglect" means the failure to exercise ordinary business care and prudence.

(5) Examples of "reasonable cause" for failure to file a tax return or report or pay a tax on the date required by statute by a taxpayer include:

(a) where it can be substantiated that the return was mailed in time (whether or not the envelope bore sufficient postage) to reach the department of revenue in the normal course of mails, within the legal period, (if the due date is a Saturday, Sunday, or holiday, the following business day is within the legal period);

(b) where it can be substantiated that the delay or failure was due to erroneous information given the taxpayer by an employee of the department of revenue;

(c) where the delay was caused by death or extended serious illness of the taxpayer;

(d) where the delinquency was caused by the destruction by fire or other casualty of the taxpayer's place of business or business records;

(e) where the taxpayer mailed the tax statement or return and/or the tax payment to the Internal Revenue Service or the tax collector of another state on time;

(f) where a taxpayer is unable, for reasons beyond his control, to obtain the records necessary to determine the amount of tax due.

(6) The examples stated in subsection (5) are for illustration only. Other reasonable causes may exist for failure to properly and timely file the tax statement or return and pay the tax. Each request for waiver or abatement will be considered on a case by case basis using the following criteria:

(a) Do the taxpayer's reasons address the penalty and interest that was assessed?

(b) Does the length of time between the event which was cited as a reason and the filing or payment date negate the event's effect?

(c) Could the event that caused the taxpayer's noncompliance or increased liability have reasonably been anticipated?

(d) Has the taxpayer provided sufficient detail (dates, relationships) to determine whether he exercised ordinary business care and prudence?

(e) Has the taxpayer documented all pertinent facts?

(f) Could the taxpayer have requested an extension or filed an amended return?

(7) The following are examples which do not constitute reasonable cause for abatement or waiver of penalty and interest and do demonstrate neglect:

(a) forgetfulness or inadvertence on the part of a taxpayer, a taxpayer's employee, a taxpayer's agent, or the taxpayer's professional tax preparer;

(b) failure to file because of advice by a professional tax preparer, attorney, or accountant;

(c) religious, political, or philosophical opposition to the tax;

(d) the advent of new tax laws, regulations, or administrative requirements which create complex problems and significantly delay the taxpayer in preparing returns;

(e) inability of a professional tax preparer to secure competent help in sufficient time to cope with the workload;

(f) a failure to secure the proper forms;

(g) the taxpayer started to prepare the return in sufficient time but finds that because of complicated issues he was unable to finish the return.

(8) The examples stated in subsection (7) are for illustration only. Other circumstances may exist which do not constitute reasonable cause for waiver or abatement of penalty and interest.

(9) Ignorance of the law does not constitute "reasonable cause".

(10) Inability to pay a tax does not constitute reasonable cause for failure to file a tax return or statement on time.

AUTH: 2-4-201, 15-1-201, 15-1-206, 15-30-305, 15-31-501, 15-35-122, 15-36-107, 15-37-108, 15-38-107, 15-53-104, 15-54-111, 15-55-108, 15-56-111, 15-58-106, 15-59-106, 15-59-205, and 15-70-104 MCA; IMP: 2-4-201, 15-1-206, 15-30-321, 15-31-502, 15-35-105, 15-36-107, 15-37-108, 15-38-107, 15-53-111, 15-54-111, 15-55-108, 15-56-111, 15-58-106, 15-59-106, 15-59-205, 15-70-210, and 15-70-330 MCA.

RULE VI. HARDSHIP AS "REASONABLE CAUSE" (1) Unless otherwise specified by statute or these rules, hardship means economic hardship. "Economic hardship" means the financial inability of the taxpayer to pay a tax when the tax is due. Economic hardship alone is not reasonable cause for failure to file a tax return or report when that return or report is due by law. Economic hardship will be considered as reasonable cause for abatement or waiver of a penalty and/or interest only when the taxpayer demonstrates the economic hardship was due to acts which were beyond the taxpayer's control and were not capable of being anticipated or provided for by an ordinary and prudent person.

(2) Examples of economic hardship which may constitute reasonable cause for waiver or abatement of penalties and interest include:

(a) inability to pay the tax because of an act of God, natural disaster, or emergency as declared by the governor or president;

(b) inability to pay the tax because property and assets were seized by a foreign government;

(c) inability to pay because of seizure of property and assets by a court of law when the court action was not due to acts by the taxpayer;

(d) inability to pay because the taxpayer's assets are temporarily impounded or frozen because of a bank failure;

(e) catastrophic medical expenses.

(3) The examples given in subsection (2) are for illustration only. Other circumstances may exist which constitute economic hardship sufficient to waive or abate penalty and/or interest.

(4) Examples of economic hardship which do not constitute reasonable cause for waiver or abatement of penalty and interest include:

(a) inability to pay because of a divorce settlement or maintenance action;

(b) inability to pay because of fire or other loss which the taxpayer could have insured against; or

(c) lack of funds because of insufficient planning or foresight.

(5) The examples given in subsection (4) are for illustration only. Other circumstances may exist which do not constitute economic hardship sufficient to waive or abate penalty or interest.

(6) Economic hardship will be considered as reasonable cause for waiver or abatement of penalties and/or interest on the penalty only when the taxpayer has tendered full payment of the tax and interest on the tax. If the taxpayer pays the tax on a time payment plan, the decision on whether or not the penalty and/or interest on the penalty will be abated or waived will not be made until after the taxpayer has completed full payment of the tax and accrued interest on the tax.

AUTH: 2-4-201, 15-1-201, 15-1-206, 15-30-305, 15-31-501, 15-35-122, 15-36-107, 15-37-108, 15-38-107, 15-53-104, 15-54-111, 15-55-108, 15-56-111, 15-58-106, 15-59-106, 15-59-205, and 15-70-104 MCA; IMP: 2-4-201, 15-1-206, 15-30-321, 15-31-502, 15-35-105, 15-36-107, 15-37-108, 15-38-107, 15-53-111, 15-54-111, 15-55-108, 15-56-111, 15-58-106, 15-59-106, 15-59-205, 15-70-210, and 15-70-330 MCA.

RULE VII. PROOF OF REASONABLE CAUSE OR LACK OF NEGLIGENCE (1)

The taxpayer who requests abatement or waiver of penalty and interest on a tax has the burden of proving to the department that reasonable cause exists for the failure to timely file the tax statement and report and/or timely pay the tax. The taxpayer also must prove he was not guilty of neglect when he failed to timely file the tax statement and report and/or timely pay the tax.

(2) Unless reasonable cause is apparent in the department's file or is public knowledge, all requests for waiver or abatement of penalty and interest must be in writing.

(3) The simple statement that "reasonable cause" existed for the failure to timely file the tax statement or return and/or to timely pay the tax is never sufficient to receive an abatement or waiver. All requests for abatement or waiver of penalty and interest must include the facts which the taxpayer believes demonstrate reasonable cause and lack of neglect.

AUTH: 2-4-201, 15-1-201, 15-1-206, 15-30-305, 15-31-501, 15-35-122, 15-36-107, 15-37-108, 15-38-107, 15-53-104, 15-54-111, 15-55-108, 15-56-111, 15-58-106, 15-59-106, 15-59-205, and 15-70-104 MCA; IMP: 2-4-201, 15-1-206, 15-30-321, 15-31-502, 15-35-105, 15-36-107, 15-37-108,

15-38-107, 15-53-111, 15-54-111, 15-55-108, 15-56-111,
15-58-106, 15-59-106, 15-59-205, 15-70-210, and 15-70-330 MCA.

RULE VIII INTEREST ACCRUING TO A COUNTY OR COUNTIES AND PENALTIES The Department does not have authority to waive any penalty or interest which accrues to the benefit of a county or counties.

AUTH: 2-4-201, 15-1-201, 15-1-206, 15-30-305, 15-31-501,
15-35-122, 15-36-107, 15-37-108, 15-38-107, 15-53-104,
15-54-111, 15-55-108, 15-56-111, 15-58-106, 15-59-106,
15-59-205, and 15-70-104 MCA; IMP: 2-4-201, 15-1-206,
15-30-321, 15-31-502, 15-35-105, 15-36-107, 15-37-108,
15-38-107, 15-53-111, 15-54-111, 15-55-108, 15-56-111,
15-58-106, 15-59-106, 15-59-205, 15-70-210, and 15-70-330 MCA.

RULE IX WHEN DECISION TO WAIVE OR ABATE IS MADE The final decision to waive or abate penalty and interest will not be made until the taxpayer tenders full payment of the tax together with interest on the tax.

AUTH: 2-4-201, 15-1-201, 15-1-206, 15-30-305, 15-31-501,
15-35-122, 15-36-107, 15-37-108, 15-38-107, 15-53-104,
15-54-111, 15-55-108, 15-56-111, 15-58-106, 15-59-106,
15-59-205, and 15-70-104 MCA; IMP: 2-4-201, 15-1-206,
15-30-321, 15-31-502, 15-35-105, 15-36-107, 15-37-108,
15-38-107, 15-53-111, 15-54-111, 15-55-108, 15-56-111,
15-58-106, 15-59-106, 15-59-205, 15-70-210, and 15-70-330 MCA.

RULE X PAYMENT WITH AN NSF CHECK IS NOT CONSIDERED A PAYMENT OF TAXES If a check or other type of payment which is tendered to pay any tax due under Title 15, MCA, is returned by the bank because of insufficient funds in the taxpayer's account or the check is otherwise dishonored by an operating bank or payor, the tax payment is considered void and the taxpayer will be treated as if no payment had been received by the department. Collection of penalty in this case will be discretionary.

AUTH: 2-4-201, 15-1-201, 15-1-206, 15-30-305, 15-31-501,
15-35-122, 15-36-107, 15-37-108, 15-38-107, 15-53-104,
15-54-111, 15-55-108, 15-56-111, 15-58-106, 15-59-106,
15-59-205, and 15-70-104 MCA; IMP: 2-4-201, 15-1-206,
15-30-321, 15-31-502, 15-35-105, 15-36-107, 15-37-108,
15-38-107, 15-53-111, 15-54-111, 15-55-108, 15-56-111,
15-58-106, 15-59-106, 15-59-205, 15-70-210, and 15-70-330 MCA.

RULE XI CALCULATION OF TIME PERIODS AND FILING DATES (1) Except as otherwise provided by statute or these rules, a "day" means the normal working day for the department as prescribed by statute or the rules of the department of administration.

(2) Except as otherwise provided by statute or these rules, any claim, statement, remittance, or other document which is transmitted to the department through the United States mail shall be deemed filed and received by this State on the date

shown by the post office cancellation mark upon the envelope or other appropriate wrapper containing it. Any claim, statement, remittance, or other document which is mailed but not received by the department or where received with a cancellation mark that is illegible, erroneous, or omitted shall be deemed filed and received on the date mailed if the sender establishes by competent evidence that the claim, statement, remittance, or other document was deposited in the United States mail on or before the date due for filing. In cases of such nonreceipt of a claim, statement, remittance, or other document, the sender must file with the state a duplicate within 30 calendar days after written notification is given to the sender by the department of its nonreceipt of such claim, statement, remittance, or other document.

(3) If any claim, statement, remittance, or other document is sent by United States registered mail, certified mail, or certificate of mailing, a record authenticated by the United States post office of such registration, certification, or certificate shall be considered competent evidence that the report, claim, tax return, statement, remittance, or other document was mailed to the addressee, and the date of registration, certification, or certificate shall be deemed the postmarked date.

(4) If the date for filing any claim, statement, remittance, or other document falls upon a Saturday, Sunday, or legal holiday, the filing shall be considered timely if done on the next business day. Such reports shall be considered filed or received on the date or as provided by law.

(5) Mail with no legible postmark but received within 3 days after the date for filing may be deemed received on the filing date.

AUTH: 2-4-201, 15-1-201, 15-1-206, 15-30-305, 15-31-501, 15-35-122, 15-36-107, 15-37-108, 15-38-107, 15-53-104, 15-54-111, 15-55-108, 15-56-111, 15-58-106, 15-59-106, 15-59-205, and 15-70-104 MCA; IMP: 2-4-201, 15-1-206, 15-30-321, 15-31-502, 15-35-105, 15-36-107, 15-37-108, 15-38-107, 15-53-111, 15-54-111, 15-55-108, 15-56-111, 15-58-106, 15-59-106, 15-59-205, 15-70-210, and 15-70-330 MCA.

RULE XII A TAX WILL NOT BE WAIVED The department shall not waive a duly assessed tax.

AUTH: 2-4-201, 15-1-201, 15-1-206, 15-30-305, 15-31-501, 15-35-122, 15-36-107, 15-37-108, 15-38-107, 15-53-104, 15-54-111, 15-55-108, 15-56-111, 15-58-106, 15-59-106, 15-59-205, and 15-70-104 MCA; IMP: 2-4-201, 15-1-206, 15-30-321, 15-31-502, 15-35-105, 15-36-107, 15-37-108, 15-38-107, 15-53-111, 15-54-111, 15-55-108, 15-56-111, 15-58-106, 15-59-106, 15-59-205, 15-70-210, and 15-70-330 MCA.

RULE XIII WAIVER FOR EXTRAORDINARY CIRCUMSTANCES AND IN THE INTEREST OF THE JUST AND EFFICIENT ENFORCEMENT OF THE LAW
Except as otherwise provided by statute, the director or the

deputy director for operations may, in their discretion waive a penalty and interest when the taxpayer demonstrates extraordinary circumstances which justify the waiver of the penalty and interest for the just and efficient enforcement of the law.

AUTH: 2-4-201, 15-1-201, 15-1-206, 15-30-305, 15-31-501, 15-35-122, 15-36-107, 15-37-108, 15-38-107, 15-53-104, 15-54-111, 15-55-108, 15-56-111, 15-58-106, 15-59-106, 15-59-205, and 15-70-104 MCA; IMP: 2-4-201, 15-1-206, 15-30-321, 15-31-502, 15-35-105, 15-36-107, 15-37-108, 15-38-107, 15-53-111, 15-54-111, 15-55-108, 15-56-111, 15-58-106, 15-59-106, 15-59-205, 15-70-210, and 15-70-330 MCA.

RULE XIV APPLICATION OF § 15-1-206(1), MCA. (1) Except for the individual income tax provided for in Title 15, chapter 30, MCA, and except as provided for in subsection (2) of this rule, 15-1-206(1), MCA, will not be applied to a penalty and interest due because a taxpayer failed to file a tax return or statement or failed to pay any tax on time.

(2) Section 15-1-206(1), MCA, applies only to the first time a taxpayer files a late tax statement or return and/or pays the tax due late under Title 15, chapter 70, MCA, (motor fuel taxes) or under Title 15, chapter 30, part 2, MCA (withholding tax). Upon any second or subsequent late filings and/or payments, the penalty and interest due will be waived only upon a showing of reasonable cause for the late filing and/or payment by the taxpayer.

AUTH: 2-4-201, 15-1-201, 15-1-206, 15-30-305, 15-31-501, 15-35-122, 15-36-107, 15-37-108, 15-38-107, 15-53-104, 15-54-111, 15-55-108, 15-56-111, 15-58-106, 15-59-106, 15-59-205, and 15-70-104 MCA; IMP: 2-4-201, 15-1-206, 15-30-321, 15-31-502, 15-35-105, 15-36-107, 15-37-108, 15-38-107, 15-53-111, 15-54-111, 15-55-108, 15-56-111, 15-58-106, 15-59-106, 15-59-205, 15-70-210, and 15-70-330 MCA.

3. These proposed rules are designed to implement the various provisions in Title 15, MCA, that allow the Department to waive or abate penalty and interest when the taxpayer demonstrates "reasonable cause" for the late filing of a tax return or payment of a tax or falls within the provisions of § 15-1-206(1), MCA. The proposed rules, as much as possible, provide for uniform treatment of similarly situated taxpayers while providing for treatment of each individual taxpayer based on the individual situation of the taxpayer. Under the proposed rules, the taxpayers will be treated similarly by each division of the Department of Revenue. These rules are necessary for the purpose of ensuring equitable treatment and to ensure that taxpayers know how they will be treated when they mail a tax return or pay a tax late. Section 2-4-201, MCA, requires these practices of the Department be adopted as rules.

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:

Arn Kenny
Department of Revenue
Legal Division
Mitchell Building
Helena, Montana 59620

no later than December 28, 1984.

5. Barbara L. Bozman-Moss, Agency Legal Services, Department of Justice, has been designated to preside over and conduct the hearing.

6. The authority of the Department to make the proposed adoptions is based on §§ 2-4-201, 15-1-201, 15-1-206, 15-30-305, 15-31-501, 15-35-122, 15-36-107, 15-37-108, 15-38-107, 15-53-104, 15-54-111, 15-55-108, 15-56-111, 15-58-106, 15-59-106, 15-59-205, and 15-70-104 MCA; and the rules implement §§ 15-1-206, 15-30-321, 15-31-502, 15-35-105, 15-36-107, 15-37-108, 15-38-107, 15-53-111, 15-54-111, 15-55-108, 15-56-111, 15-58-106, 15-59-106, 15-59-205, 15-70-210, and 15-70-330 MCA.


ELLEN FEAVER, Director
Department of Revenue

Certified to Secretary of State 11/19/84

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE REPEAL)	NOTICE OF PUBLIC HEARING on
of Rules 42.12.112,)	the General Revision of
42.12.201, 42.12.311; the)	Chapter 12 relating to liquor
AMENDMENT of Rules 42.12.101)	division licenses and permits.
through 42.12.103, 42.12.111)	
42.12.121, 42.12.123 through)	
42.12.128, 42.12.141 through)	
42.12.143 relating to license)	
applications; the AMENDMENT)	
of Rules 42.12.202,)	
42.12.204, 42.12.206,)	
42.12.221, and 42.12.222)	
relating to license transfer)	
suspension, and revocation;)	
the AMENDMENT of Rules)	
42.12.301 through 42.12.306,)	
42.12.312, and 42.12.323)	
relating to special licenses)	
and permits; the ADOPTION of)	
NEW RULES I (42.12.114) II)	
(42.12.131), and III)	
(42.12.144) relating to)	
licensing, IV (42.12.207))	
relating to conditional)	
approval of applications,)	
and V (42.12.208) relating to)	
temporary authority.)	

TO: All Interested Persons:

1. On December 19, 1984, at 1:30 p.m., a public hearing will be held in Room C-209 of the Cogswell Building, corner of Broadway and Sanders Streets, at Helena, Montana, to consider the general revision of Chapter 12 relating to liquor division licenses and permits.

2. The Department proposes to repeal rule 42.12.112 relating to additional fees for a census, rule 42.12.201 relating to the assignment or transfer of licenses, and rule 42.12.311 relating to passenger carrier licenses. The rules as proposed to be repealed may be found respectively on pages 42-1211, 42-1241, and 42-1271 of the Administrative Rules of Montana.

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

42.12.101 APPLICATION FOR LICENSE (1) All applications for licenses to sell liquor or beer alcoholic beverages at retail or wholesale must be made to the liquor division of the department upon forms supplied by the department liquor division.

(2) Applications for licenses shall be in the names of all persons financially interested or to be financially interested in the business to be conducted pursuant thereto. The names of all such persons shall appear on such licenses. A The disqualification of any one or more of such persons applicants to hold such licenses shall disqualify the license disqualifies all thereof.

(3) The term "financial interest" means a direct financial sharing in the profits, the losses, or the liabilities incurred through the daily operation of the business conducted under the alcoholic beverage license.

AUTH: 16-1-303 MCA; IMP: 16-4-404 MCA.

42.12.102 SUPPORTING DOCUMENTATION -- NONURBAN LOCALS
PUBLIC CONVENIENCE AND NECESSITY (1) Applications for all-beverage or beer retail alcoholic beverages licenses for use at premises situated outside of any incorporated city or incorporated town and outside the area within a distance of 5 miles from the corporate limits thereof or for use at premises situated within any unincorporated town, shall must be supported by evidence of public convenience and necessity. Supporting evidence (which may be in the form of affidavits) that the issuance of the license applied for is required by public convenience and necessity, when applying for:

(a) a new retail all-beverages license including a 16-4-204, MCA, all-beverages license;

(b) a new resort retail all-beverages license; or

(c) a new retail on-premises beer license for use at a premises situated more than five miles from the nearest corporate city boundaries.

(2) Evidence may include:

(a) written statements outlining the applicant's plans for the facility; the type of service to be offered; the clientele to be served; characteristics of the general area in which the premises will be located; area growth patterns and potential; traffic patterns; types of current and possible businesses the area supports; and other information the applicant deems appropriate to support the application;

(b) exhibits, drawings, or plats; and

(c) petitions from interested parties or potential customers supporting the application.

AUTH: 16-1-303 MCA; IMP: 16-4-105 and 16-4-203 MCA.

42.12.103 SUPPORTING DOCUMENTATION -- CORPORATE APPLICANTS

(1) A corporate application shall be accompanied by list:

(a) a sworn statement showing the names of all the owners of all the issued stock; of such corporation, together with

(b) the amount of stock owned by each stockholder; and

(c) the residence addresses of said owners; or all stockholders.

(2) In the case of a corporation whose stock is listed on a national exchange, supporting documentation shall include a sworn statement showing the names of the principal identifying all directors and officers of the corporation, together with a copy of the most recent annual report of the corporation.
AUTH: 16-1-303 MCA; IMP: 16-4-205 and 16-4-401 MCA.

42.12.111 APPLICATION PROCESSING FEES (1) The following are the fees to be charged for processing applications for new licenses:

All-beverage All-beverages license (including veterans' or fraternal)	\$100
Catering endorsement (for use with existing all-beverage all-beverages license)	\$ 50
All-beverage All-beverages license with catering endorsement (when applied for concurrently)	\$100
Retail on-premises beer license (including veterans' or fraternal)	\$100
Wine amendment (for use with existing on-premises retail beer license)	\$ 50
Retail on-premises beer license and wine amendment (when applied for concurrently)	\$100
Retail off-premises beer license for off-premises consumption	\$100
Retail off-premises table wine license for off-premises consumption	\$100
Retail off-premises beer and table wine license (when applied for concurrently for off-premises consumption)	\$100
Wholesale beer license	\$100
Wholesale beer sub-warehouse license	\$ 50
Wholesale table wine license	\$100
Wholesale table wine sub-warehouse	\$ 50
Wholesale beer and table wine license	\$100
Brewer's license	\$100
Resort all-beverage all-beverages license	\$100
Resort retail beer license	\$100

(2) The processing fee for determination of resort area shall be is \$250.

(3) The processing fee for the transfer of any license issued by the department shall be is \$100.

(4) When applying for a new license, the The applicable license fee and applicable processing fee must accompany the application all applications. The processing fee for an application for transfer of a license must be remitted at the time of application. Processing fees are not refundable.

(5) The processing fee for registration to ship table wine to licensed wholesalers of a winery or table wine importer, as provided for in ARM 42.13.401, is \$75.

(6) Fees for addition or deletion of a mortgage, security interest, or lien are set forth in ARM 42.12.205 and fees for the registration of liquor agents are set forth in ARM 42.11.214, and are not included in this schedule.

(7) The application processing fee for addition of driveup window is \$50.

AUTH: 16-1-303 MCA; IMP: 16-1-302 and 16-1-303 MCA.

42.12.121 PROCESSING OF APPLICATION (1) Upon receipt of an application for a license to sell liquor or beer at retail alcoholic beverages, the department will shall make a thorough investigation as to the qualifications of the applicant and the suitability of the premises proposed for carrying on such retail business licensing. If, upon such investigation, it appears that the applicant is qualified under the law and that the premises are suitable for carrying on such retail business licensing under the laws of the state and the rules and regulations of the department, the department will shall issue the license or licenses if all other requirements of the laws law and these rules and regulations are fulfilled.

(2) In all cases where an application has been filed with the department for a license to sell alcoholic beverages at retail or to transfer such license, the department shall hold a hearing pursuant to 16-4-207, MCA.

(3) The department will consider the same matters and conditions on application for renewal of license as for the original application.

AUTH: 16-1-303 MCA; IMP: 16-4-402 MCA.

42.12.123 CONDUCT OF OTHER ACTIVITIES ON PREMISES (1) No licenses ~~except off-premise beer licenses~~ will be issued covering for premises where:

(a) any other business is conducted unless the all-beverage or beer alcoholic beverages business is conducted separate and apart from the other business and the facilities and equipment of the premises licensed to sell liquor or beer alcoholic beverages can be completely closed off from the other business during the time prescribed by 16-3-304, MCA, for closing of the premises licensed to sell alcoholic beverages; or

(b) any gambling activities licensed under Montana law are conducted unless the facilities and equipment of the premises licensed to sell liquor or beer alcoholic beverages can be completely closed off from the gambling activities during the time prescribed by the Alcoholic Beverage Code 16-3-304, MCA, for closing of the premises licensed to sell liquor or beer alcoholic beverages.

(2) For the purposes of this regulation rule, the words "closed off" means mean to absolutely close the front, sides, and rear of that part of restrict persons from gaining access to any alcoholic beverages located in a room or service area which is used for the purpose of selling or serving alcoholic beverages.

AUTH: 16-1-303 MCA; IMP: 16-1-303 and 16-3-305 MCA.

42.12.124 REJECTION OF APPLICATION BECAUSE OF NUMBER OF EXISTING LICENSES (1) An application shall be returned to the applicant with an explanation that the license or transfer applied for cannot legally be allowed by the department when an application is made for:

(a) the issuance of an all-beverage on-premises consumption alcoholic beverages license or retail beer license for premises located within any incorporated city or ~~incorporated~~ town or within a distance of 5 miles from the corporate limits or boundaries of such an incorporated city or town and where the number of licenses of each class already of issue issued for such the area is equal to or exceeds the limitations specified in 16-4-105 and 16-4-201, MCA; so that the department could not legally issue the license applied for; or

(b) the transfer of an all-beverage or beer on-premises consumption alcoholic beverages license under such these circumstances as could not be approved under the requirements of the law.

(2) In each such case described in (1), no notice of application for the issuance or transfer of an all-beverage on-premises consumption alcoholic beverages license shall be published under the provisions of 16-4-207, MCA.

AUTH: 16-1-303 MCA; IMP: 16-4-105, 16-4-201, 16-4-204, and 16-4-405 MCA.

42.12.125 COMBINED AREA QUOTAS (1) If the corporate boundaries of two or more incorporated cities or towns are within 5 miles of each other, the total number of ~~retail all-beverage and beer on-premises consumption alcoholic beverages~~ licenses that may be issued shall be determined on the basis of their combined populations. The purpose of this provision is to allow the aggregation of the populations of adjacent cities and to determine the quota of the entire populated area.

(2) In order to combine populations both cities and towns must be incorporated and their respective corporate limits must be within 5 miles of each other at the nearest point. If these requirements are met the populations of both municipalities are to be combined and the total population figures used to determine the number of retail all-beverage and beer on-premises consumption alcoholic beverages licenses available under the quota.

AUTH: 16-1-303 MCA; IMP: 16-4-105 and 16-4-201 MCA.

42.12.126 OFF-PREMISE SALE OF BEER (1) Remains the same.

(2) For the purposes of this regulation rule, a "bona fide grocery store" shall be defined as means a retail establishment where a variety of articles of staple foodstuffs, including meats, vegetables, fruits, bakery items, produce, and dairy products, and household supplies are sold for consumption off

the premises. A retail inventory of approximately \$3,000 divided proportionately among the required groups will be used as a basis for determining whether an establishment qualifies as a "bona fide grocery store".

AUTH: 16-1-303 MCA; IMP: 16-4-105 MCA.

42.12.127 WINE LICENSE AMENDMENT (1) and (2) remain the same.

(3) It shall be lawful for a retailer holding a beer and wine license to sell and serve wine either on draught, or in bottles, or in cans to be consumed on or off the premises.

AUTH: 16-1-303 MCA; IMP: 16-4-105 MCA.

42.12.128 CATERING ENDORSEMENT (1) Any all-beverage all-beverages licensee, having obtained a catering endorsement under the provisions of 16-4-204, MCA, is authorized to sell alcoholic beverages to persons attending a special event upon premises not otherwise licensed. Only the licensee or the licensee's employees are authorized to sell and serve alcoholic beverages at the special event.

(2) For purposes of this section, a "special event" may be defined as means any occasion including but not limited to picnics, fairs, conventions, receptions, civic or community enterprises, or sporting events lasting one or more consecutive days.

(3) Remains the same.

AUTH: 16-1-303 MCA; IMP: 16-4-204 MCA.

42.12.141 CORPORATE LICENSES No all-beverage alcoholic beverages license shall be issued to a Montana corporation unless the following requirements are met:

(1) The corporation was organized and has existed as a Montana corporation or has been authorized to do business in Montana for at least 30 days prior to making application for an all-beverage alcoholic beverages license.

(2) A majority of the issued stock of said corporation is owned by persons who are otherwise qualified to hold an all-beverage license. The corporate application must be accompanied by a copy of the corporation's certificate of incorporation issued by the secretary of state.

AUTH: 16-1-303 MCA; IMP: 16-4-401 MCA.

42.12.142 CHANCE IN CORPORATE STRUCTURE (1) In all cases where when a corporate license has been issued by the department to a corporate applicant on the basis of an application accompanied by a statement as provided in ARM 42.12.103, the corporation must immediately upon provide written notice to the liquor division of any substantial change in the directors, officers, director's, officer's, or majority stockholders of stockholder's interests in the corporation, and said corporation shall notify the department in writing of such change.

AUTH: 16-1-303 MCA; IMP: 16-4-205 and 16-4-401 MCA.

42.12.143 RESTRICTION ON INTEREST IN OTHER LICENSES (1)

Any person owning stock in a corporation which holds owns an all-beverage or wholesale beer all-beverages license or any member of such person's immediate family shall is not be qualified to have own an interest, either as owner, partner, or stockholder, in another all-beverage or all-beverages, wholesale beer, or table wine distributor's license.

(2) Any person owning stock in a corporation which owns a wholesale beer license is not qualified to own an interest, either as owner, partner, or stockholder in another wholesale beer or retail alcoholic beverages license.

(3) Any person owning stock in a corporation which owns a table wine distributor's license is not qualified to own an interest, either as owner, partner, or stockholder in another table wine distributor's license or retail alcoholic beverages license.

AUTH: 16-1-303 MCA; IMP: 16-4-205 and 16-4-401 MCA.

42.12.202 TRANSFERS WITHIN COMBINED AREAS (1) All-

beverage and beer On-premises consumption retail licenses issued within a combined area, as provided for in ARM 42.12.125, as well as within the a distance of 5 miles from the corporate boundaries of each municipality, may be transferred to any point within the corporate limits of both municipalities and the area within 5 miles of their corporate limits.

AUTH: 16-1-303 MCA; IMP: 16-4-105 and 16-4-201 MCA.

42.12.204 TREATMENT OF LICENSE OF DECEASED LICENSEE (1)

All-beverage and retail beer Alcoholic beverages licenses may be transferred to the executor or administrator personal representative of the estate of any deceased licensee when such an estate consist in whole or in part of the business to which it is applicable under in accordance with appropriate probate proceedings. In all such cases a certified copy of letters testamentary or of administration shall must be filed with the department liquor division. and with the state liquor store regularly serving the establishment of such deceased licensee and a A certified copy of the decree of distribution of said or order of settlement affecting the license or probate order and confirming the said transfer of the same license must also be filed with the department liquor division in connection with any application for the transfer of said the license to the distributee or purchaser. thereof

The qualifications of such The distributee or purchaser to hold of an all-beverage or beer alcoholic beverages license must be approved by the department, as in all other cases, comply with all licensing criteria before the transfer of such the licenses license shall will be effected approved by the liquor division.

(2) If an all-beverage or retail beer alcoholic beverages license is registered jointly in the name of owned by joint tenants with right of survivorship, it may be reissued in the

name of the surviving joint tenant or tenants, upon presentation of proof of death of the other decedent joint tenant or tenants and satisfactory evidence of payment of inheritance taxes owing by reason of such as a result of the death. In all other cases, whether licenses are registered in co-ownership or otherwise, upon the death of a registered licensee it shall be necessary to process transfer proceedings apply for transfer of ownership of the license as provided by the applicable provisions of the Montana Alcoholic Beverage Code 16-4-204 and 16-4-404, MCA.
AUTH: 16-1-303 MCA; IMP: 16-4-204 MCA.

42.12.206 PROHIBITION ON LEASING OF LICENSE (1) A license issued under the provisions of the Alcoholic Beverage Code Title 16, chapter 4, parts 1 through 5, MCA, is a privilege personal to the licensee, and in no case shall said license be leased by the licensee lease the licensee license to any other person. However, such license may be transferred to another person subject to the transfer provisions of 16-4-204, MCA, only with the approval and consent of the department.

(2) Publicly owned golf course beer and wine licenses and airport all-beverages licenses are excepted from this rule.
AUTH: 16-1-303 MCA; IMP: 16-4-109, 16-4-204, and 16-4-208 MCA.

42.12.221 PENALTIES FOR VIOLATION OF RULES OR STATUTES The license of licenses of a licensee may, after notice and hearing, be revoked or at the discretion of the department, suspended for a period not exceeding 90 days, or the licensee may be reprimanded or subjected to a civil penalty not to exceed \$17,500, subject to the opportunity for a hearing under the Montana Administrative Procedure Act:

(1) upon the filing with the department of: Licenses may be suspended or revoked and licensees may be reprimanded or assessed a civil penalty in accordance with 16-4-406, MCA, when:

(a) the department receives:

(i) a certified copy (or other credible evidence) of any judgment or conviction of any such licensee or his agent, servant, or employee for any violation of any criminal law or ordinance of the United States, or of the state of Montana, or of any Montana county, city, or town, relating to alcoholic beverages; or

(ii) a certified copy of the record (or other credible evidence) of the forfeiture by any licensee or his agent, servant, or employee of bond to appear to answer charges of violating any such law or ordinance relating to alcoholic beverages; or

(2) (b) if the department, after investigation, shall have has reasonable cause to believe that any licensee has violated any of the provisions of these rules.

AUTH: 16-1-303 MCA; IMP: 16-3-301, 16-4-406, 16-6-305, and 16-6-314 MCA.

42.12.222 PROCEDURE UPON REVOCATION OR SUSPENSION OF LICENSE (1) When any alcoholic beverages license, either all-beverage or beer, is suspended or revoked by the department, the administrator of the liquor division shall cause a sign notice to be posted on the inside of the licensed premises premise of such licensee, preferably on a window glass or door glass if available, so that said sign the notice can be seen from the outside, stating that such the license has been suspended or revoked, and giving the The notice must identify the number of the license, the name of the licensee, the reason for the suspension or revocation, and time the period of suspension. Said The notice shall must be dated and signed by the administrator of the liquor division. Said The notice shall must be posted at all times during the period of suspension, and in in the case of a revocation, the notice shall must be posted on the premises for a period of 10 days. If said the notice is removed or caused to be removed by said the licensee or any employee of said the licensee during a period of suspension, said the license shall be permanently revoked and said the licensee shall must be so notified in writing at the time of the posting of said notice is posted. The license or licenses suspended shall will be held by the department during the period of suspension.
AUTH: 16-1-303 MCA; IMP: 16-1-303 and 16-4-406 MCA.

42.12.301 RESORT LICENSES (1) The issuance of resort all-beverage all-beverages licenses pursuant to 16-4-201, MCA, shall be is governed by all other applicable provisions of the Alcoholic Beverage Code Title 16, MCA, and the rules and regulations of the department not inconsistent therewith .

(2) A resort area, as determined by the department, shall include includes establishments whose business and operation is designed to attract and accommodate visitors to the a recreational development, and said The primary purpose of the recreational development shall not have as a primary purpose must not be the sale of alcoholic beverages. in this respect the The department shall consider economic factors in the approval of a proposed "resort area" and whether said the recreational development is designed to stimulate and promote the recreational and sporting industry.
AUTH: 16-1-303 MCA; IMP: 16-4-201 and 16-4-202 MCA.

42.12.302 TERMINOLOGY (1) The term "resort "Resort area" shall mean means a location or site in Montana comprising a minimum of 15 contiguous acres where there is situated a recreational development, either proposed or existing, which has the is located. The primary purpose of providing to the general public the resort area must be to provide a suitable location and the necessary facilities where persons the general public may engage in recreational or sporting activity. Said The resort development shall may not qualify as a resort area until it has been duly and properly approved as such by the department.

(2) The term "structure" shall mean "Structure" means the construction of an artificially built up object which is composed of parts or joined together in some definite manner and shall include the buildings and facilities constructed within the recreational development to house the overnight lodging, food and alcoholic beverage service accommodations, and/or facilities constructed for use in recreational or sporting activity.

AUTH: 16-1-303 MCA; IMP: 16-4-201 and 16-4-202 MCA.

42.12.303 VALUATION CERTIFICATE (1) At the time of filing When the proposed resort area plat is filed with the department liquor division, an appraisal must also be prepared and filed by the resort developer which contains a detailed analysis of the current actual valuation of:

- (a) the real property within the proposed resort area; and
- (b) the structure or structures within the proposed resort area.

(2) A certificate by the resort developer in substantially the following form must be attached to the appraisal:

I, , of , a
 do certify that I have appraised the
above-described property on and that the
above appraisal is in my opinion an accurate evaluation and true
representation thereof, and correctly shows the date upon which
I based my opinion.

(signature)

The resort developer shall also submit a sworn statement or affidavit from the appraiser attesting to the accuracy and truthfulness of the appraisal valuation.

(3) The department in may, at its discretion may, at any time prior to its final decision upon an application for approval of concerning a resort area determination, request that an appraisal be made of the proposed resort development by a qualified appraiser of its own choice. 7 and the The cost thereof of the appraisal shall be paid by the applicant.

AUTH: 16-1-303 MCA; IMP: 16-4-201 and 16-4-202 MCA.

42.12.304 PLAT VERIFICATION (1) At the time of filing When the proposed resort area plat is filed with the department said liquor division, the plat must contain a legal description and show the boundary lines of the proposed resort area and the location of buildings and other improvements.

(2) A verification by the The resort developer in substantially the following form must be attached to the drawing: shall submit a sworn statement or affidavit attesting to the accuracy and truthfulness of the plat.

State of

County of _____, being duly sworn, deposes and says:

That he is the _____ (resort developer or landowner) described in the above application/plat filed for approval of a resort area; that he has read the foregoing and knows the contents thereof, and that the same is true of his knowledge, except as to the matters which are therein stated on information or belief, and as to those matters, he believes to be true.

Subscribed and sworn to before me
this _____ day of _____,
19____.

Notary Public for the State of _____

Residing at _____
My commission expires _____

AUTH: 16-1-303 MCA; IMP: 16-4-201 and 16-4-202 MCA.

42.12.305 REQUIRED ACCOMMODATIONS (1) A resort area shall must have restaurant accommodations with a seating capacity at tables for not less than at least 100 persons at one time, and any individual restaurant establishment or An applicant seeking a resort all-beverages license for an establishment serving only alcoholic beverages which shall be licensed pursuant to these rules shall must have a seating capacity at tables for not less than at least 30 persons at one time.

(2) "Restaurant" shall mean means a place which is regularly and in a bona fide manner used and kept open for the serving of meals to guests for compensation and which has suitable facilities connected therewith for cooking and serving an assortment of foods and meals commonly ordered at various hours of the day.

(3) A resort area shall must have rentable accommodations; wherein where, in consideration of payment, overnight lodging is habitually furnished to guests, and wherein are located The lodging facilities must contain at least 25 adequately furnished and completely separate sleeping rooms with adequate toilet bathroom facilities and with sufficient beds to accommodate not less than at least 50 persons at one time, and where persons may apply for and receive overnight accommodations

AUTH: 16-1-303 MCA; IMP: 16-4-201 and 16-4-202 MCA.

42.12.306 FINANCIAL RESPONSIBILITY (1) At the time When an application for approval determination of a resort area is filed with the department liquor division, the applicant shall

must be prepared to explain, to the satisfaction of the department, provide information relating to:

(a) the overall plan for the recreational development, and
(b) the financial condition, experience, and name and address of the resort developer and operators of proposed establishments within the resort area ; as well as ; and
(c) any additional information the department may request relative to prospective employees or any other person or persons to be connected with the operation of a proposed recreational development

AUTH: 16-1-303 MCA; IMP: 16-4-201 and 16-4-202 MCA.

42.12.312 LIQUOR MANUFACTURER'S LICENSE (1) Any person or corporation, duly licensed so to operate under the provisions of the laws of the United States, may apply to the department for a license to engage in the manufacture of liquor in the state of Montana, and shall pay with the The application a must be accompanied by a \$600 license fee, thereafter payable annually, the sum of \$600 to be paid annually upon renewal of the license. The applicant shall submit satisfactory evidence of good moral character and shall also submit evidence that he is qualified to engage in such operation operate under the laws of the United States.

(2) If the department is satisfied from such application or otherwise that the applicant is qualified as herein provided , it shall may issue a license to such person, which license shall must, at all times, be prominently displayed in the applicant's place of business. If the department finds that the applicant is not qualified, no license shall will be granted issued and the license fee shall be returned.

(3) The term "manufacture" includes distillation, rectification, bottling, and processing, as defined under the provisions of the laws of the United States.

AUTH: 16-1-303 MCA; IMP: 16-1-201 MCA.

42.12.323 PERMISSIBLE AND PROHIBITED ACTIVITIES (1) A special permit issued pursuant to 16-4-301(1), MCA, shall entitle entitles the holder thereof to sell and deliver serve beer and/or table wine at retail only at a booth, or stand, or other fixed place of business within the exhibition enclosure mentioned in said section and no described in the application. A holder of any such permit, or his agents or employees shall may not hawk beer in any grandstand, bleacher, or other than at such fixed place of business area. Sale, service, and consumption of beer and/or table wine under a special permit is to be confined only to specified premises or designated areas approved by the division. A special permit is required for each separate booth or stand located within the exhibition enclosure. A separate fee must be submitted for each booth or stand.

(2) Special permits issued under 16-4-301(2), MCA, shall entitle the holder to sell and deliver serve liquor, and/or

beer, and/or table wine at retail only within the hall or building mentioned described in said section and no the application. A holder of any such a special permit, or his agents, or employees shall may not sell liquor, and/or beer, and/or table wine to any persons other than the members of the permittee organization and their bona fide guests. Where posts of nationally chartered veterans organizations or lodges of a recognized national fraternal organization do not own or maintain a permanent post, lodge building, or hall, the department may issue a special permit to the organization for use at premises where the post or lodge regularly meets to conduct its meetings or community related events.

(3) Beer wholesalers and table wine distributors shall not:

(a) allow holders of special permits to sell beer and/or table wine from a truck, van, or other vehicle owned by the wholesaler;

(b) allow their employees to assist the permittee in the sale of beer and/or table wine; or

(c) sell beer to a permittee on a consignment basis, or

(d) pay, in whole or in part, for any advertising or promotional fees for or on behalf of the permittee.

AUTH: 16-1-303 MCA; IMP: 16-4-301 MCA.

RULE I (42.12.114) LICENSE FEES New licenses issued are assessed a yearly an annual license fee in accordance with 16-4-501, MCA. All licenses must be renewed and the license fee paid by July 1 of each year. A change in a license designation due to a change in quota area may affect the statutory license fee. Any change of license fee will be reflected on the next renewal application and the new fee will be due at the time of renewal.

AUTH: 16-1-303 MCA; IMP: 16-4-201 MCA.

RULE II (42.12.131) APPLICATION FOR LAST AVAILABLE LICENSE IN QUOTA AREA When the liquor division receives an application for the last available license in a quota area, the following procedures apply:

(1) all applications timely received at the liquor division will be considered; and

(2) when more than one application is filed, a public hearing shall be conducted in accordance with the provisions of the Montana Administrative Procedure Act.

AUTH: 16-1-303 MCA; IMP: 16-4-105 and 16-4-201 MCA.

RULE III (42.12.144) TRANSFERS BETWEEN QUOTA AREAS - PROCEDURES AND DOCUMENTATION (1) An applicant applying to the liquor division to transfer an all-beverages license under the provisions of 16-4-204(1), MCA, may:

(a) negotiate a bona fide sale with the owner of a license, located in a quota area from which that license may be transferred, to purchase a license and submit an application for transfer of ownership and location; or

(b) defer purchase of a license until after the entry of a final agency decision on the application.

(2) An applicant applying pursuant to (1)(b), whose application is granted by the department, is required to purchase a transferable license within 60 days after receipt of the final agency decision and submit additional documents needed to effect a transfer of ownership and location. An additional fee is required to cover the costs of republishing the transfer notice in a newspaper within the area from which the license is proposed to be transferred.

(3) Documentation required under (1)(a) includes:

- (a) completed application form;
- (b) transfer fee;
- (c) completed assignment form;
- (d) request for termination of existing secured parties' interest and the applicable fee (\$10 each);
- (e) floor plan of proposed premises;
- (f) evidence that public convenience and necessity would be served by such transfer; and

(g) other documents which may be needed or specified on the application form, depending upon the response to certain questions. For example: lease or sales agreements. The department or hearing examiner, in the event of contested case proceedings, may require additional documentation as deemed necessary to reach a final decision.

(4) Documentation required under (1)(b) is the same as that itemized in (3)(a) through (g). However, a completed assignment form and a request for termination of secured parties' interests are not required upon initial filing of the application.

AUTH: 16-1-303 MCA; IMP: 16-4-204, MCA.

RULE IV (42.12.207) APPLICATION APPROVED SUBJECT TO FINAL INSPECTION OF PREMISES (1) The department will consider and process an application for a new license, transfer of location, or transfer of ownership and location whenever the location of the proposed premises is specified but the building to accommodate the proposed premises has not been constructed or requires substantial remodeling.

(2) If, upon investigation, the department determines the applicant is qualified to own a license and it appears that the proposed premises, based on sufficient evidence provided by the applicant, meets all criteria for suitability, the department may enter a final agency decision conditionally approving the application. The conditional approval is subject to a final inspection of the completed premises conducted by department investigative personnel, state or local health officials, or state or local building codes personnel.

(3) Conditional approval does not constitute the issuance of a license. The department will not issue a license until such time as the conditions, upon which approval was granted, are satisfied. An applicant who has received conditional

approval is not authorized to engage in the purchase or sale of alcoholic beverages.

(4) An applicant who receives approval conditioned on the construction or remodeling of a premises is required to complete the premises and arrange for final inspection within a reasonable time. For purposes of this rule, "reasonable time" means 180 days in the case of an unconstructed building and 90 days in the case of a building which requires substantial remodeling, unless otherwise provided in the final agency decision approving the application. In the case of a major construction project, the final agency decision may provide additional time for completion of construction or remodeling and final inspection. An applicant must request such additional time in writing prior to entry of a final agency decision.

(5) In the event an applicant fails to construct or remodel a proposed premises and arrange for final inspection in accordance with this rule, the liquor division may set aside a previously entered final agency decision approving an application, and deny the same application. If intervening circumstances beyond an applicant's control prevent completion of a proposed premises and final inspection within a reasonable time, an applicant must notify the liquor division in writing and provide evidence establishing grounds for extension of time in order to avoid denial of application.

(6) When an applicant applies for either transfer of ownership or location, or both, the license shall remain in the name of the recorded owner of the license until the terms of a conditional approval are satisfied. The recorded owner shall be sent copies of all final agency decisions affecting the license. If the liquor division sets aside a previously entered final agency decision approving an application, and subsequently denies the same application, the recorded owner must resume operating the license within 90 days or the license may lapse as provided in 16-3-310, MCA.

(7) An applicant who desires to change the location of the proposed premises after conditional approval has been granted must withdraw the previous application in writing and reapply.
AUTH: 16-1-303 MCA; IMP: 16-4-104, 16-4-106, 16-4-201, 16-4-402, and 16-4-404 MCA.

RULE V (42.12.208) TEMPORARY AUTHORITY (1) Temporary authority as provided by 16-4-404(6), MCA, may be issued only to an applicant who requests a transfer of ownership and will not be granted on an application for an original license or transfer of location only.

(2) The granting of temporary authority is neither a temporary license nor a permit. It does not constitute a transfer of ownership, nor does it guarantee that the department will grant the application if it finds, subsequent to receipt of a complete investigation report, that the applicant is not qualified to hold a license or the premises are not suitable for the operation of the business.

(3) Temporary authority will be issued for 45 day periods. An applicant may request an extension for an additional 45 day period if the application has not been processed within that time.

(4) In the event liens, attachments, or judgments have attached to the license, the department will not grant an extension beyond the initial 45 days. The recorded owner of the license must resume operation of the business conducted under the license in cases where the temporary authority has expired and cannot be extended.

(5) Temporary authority will be immediately revoked if the applicant to whom temporary authority was granted, or his employees, violate any provisions of Title 16, MCA, or department rules. Such violations may affect the final decision of the department.

(6) Any proposed fine, suspension, or revocation arising out of a violation will be assessed against and is the responsibility of the recorded owner of the license.

AUTH: 16-1-303 MCA; IMP: 16-4-404 MCA.

4.(a) The Department proposes to repeal rules 42.12.112, 42.12.201, and 42.12.311 for the following reasons:

42.12.112 - The Department proposes to repeal rule 42.12.112 because the 1981 amendment (Ch. 25, § 4, L. 1981) to 16-4-502, MCA, removed the question of whether the Department is responsible for obtaining population estimates in the interim between census. Section 16-4-502, MCA, requires the Department to determine population enumerations using the most recent population estimates, published by the bureau of the census, United States department of commerce, in the interim between publication of decennial census enumerations.

42.12.201 and 42.12.311 - The Department proposes to repeal rules 42.12.201 and 42.12.311 because the rules unnecessarily repeat the statutory language. Rule 42.12.201 repeats the requirements found in 16-1-303 and 16-4-204, MCA. Rule 42.12.311 repeats the language found in 14-6-302, MCA.

(b) The Department proposes to amend rules 42.12.103, 42.12.121, 42.12.124, 42.12.126, 42.12.127, 42.12.142, 42.12.202, 42.12.204, 42.12.221, 42.12.222, 42.12.301 through 42.12.306, and 42.12.312 because the language used in these rules is outdated and often difficult to read. The proposed changes in language are consistent with current language and practice. There are no substantive changes proposed to these rules.

(c) Substantive amendments are proposed to the following rules for the following reasons:

42.12.101 - Sections 16-4-205 and 16-4-401, MCA, prohibit a person from possessing an ownership interest in more than one establishment licensed for all-beverages sales. Section 16-4-404, MCA, requires the names of all persons interested in the business to appear on the face of the license. Language has

been added to rule 42.12.101 to define the term "financial interest". By clarifying the term "financial interest", the Department can better convey to licensees what is required under the rules and resolve prior misinterpretations and enforcement difficulties in determining when a party is "financially interested" in a liquor license.

42.12.102 - The Department proposes to amend rule 42.12.102 to clarify the requirements of 16-4-105 and 16-4-203, MCA, with respect to licenses requiring evidence of public convenience and necessity. Members of the public have been confused regarding the types of alcoholic beverages licenses requiring a showing of public convenience and necessity upon application for issuance. Rule 42.12.102 is proposed to be amended to assimilate the requirements of §§ 16-4-105(1)(e), 16-4-202, and 16-4-203, MCA, requiring a showing of public convenience and necessity. In response to further inquiry by the public, the Department has listed the most common forms of showing public convenience and necessity.

42.12.111 - Rule 42.12.111 is proposed to be amended in order to update the list of application processing fees. Corrections in spelling and usage have been made. Reference to a "resort retail beer license" has been removed because there is no such license. And reference to the application processing fee for addition of driveup window has been added because it was omitted in the past.

42.12.123 - The language of the present rule does not clearly define "closed off", thereby creating enforcement problems for department investigators. By clarifying the definition of "closed off", the Department should be able to better convey to licensees what is required under the rules, and resolve prior misinterpretations and enforcement difficulties.

42.12.126 - The language of the present rule as to what constitutes an adequate grocery inventory for qualifying a retail outlet to sell beer and wine off-premises is vague and indefinite to the point of defying adequate and equitable enforcement. The proposed language more thoroughly defines what should comprise an adequate inventory, in addition to establishing a recommended inventory valuation guideline. Such additional criteria will enhance understanding of the rule by licensees and facilitate defensible enforcement.

42.12.128 - The Department is proposing to amend rule 42.12.128 to allow only the licensee or licensee's employees to sell or serve alcoholic beverages at the special event. Licensees have allowed the sponsor and/or participants at an event to either sell or serve the alcoholic beverages. The practice has resulted in a failure to comply with state law, in some instances due to the general public's limited knowledge of liquor laws. The responsibility to comply with state law is the licensee's. The additional language will clarify that responsibility.

42.12.141 - Language requiring a copy of a corporate applicant's certificate of incorporation has been added to rule

42.12.141 to serve as notice to the public of the licensing requirement. The proposed addition of language will clarify the current licensing requirements of corporate applicants and will lessen the need for further communication. The certificate of incorporation serves as proof that a corporate applicant is registered to do business in Montana, a qualification for licensing.

42.12.143 - Rule 42.12.143 was not updated upon passage of the wine amendment in 1974. It is necessary to amend rule 42.12.143 to restrict a wholesale table wine licensee from owning an interest in any other alcoholic beverages license to provide treatment consistent with that of owners of all-beverages or wholesale beer licenses.

42.12.206 - The Montana Alcoholic Beverage Code, § 16-4-404(3), MCA, precludes leasing of an alcoholic beverages license by the owner of record to any other persons or commercial enterprises. However, § 16-4-208, MCA, airport all-beverages licenses, and § 16-4-109, MCA, publicly owned golf course beer and wine licenses, permit such owners, qualified to independently operate or conduct the business, to lease the operation of the business to parties approved by the Department. This rule is intended to explicitly acknowledge such exemptions.

42.12.323 - The primary purpose for amending this rule is to clarify special permit application procedures and practices affecting the use of special permits. A special permittee must apply for a special permit and pay a separate permit fee for every booth or stand at a special event. The proposed amendment to subsection (2) also specifies that a post of a nationally chartered veterans' organization or lodge of a national fraternal organization may be issued special permits for meeting sites if the post or lodge does not own or maintain a permanent building or hall. Subsection (3) indicates what restrictions apply to beer wholesalers or table wine distributors who sell products to special permittees. Subsection (3)(d) is being deleted because it repeats the statutory language found in 16-3-241, MCA.

(d) The Department proposes to adopt three new rules for the following reasons:

NEW RULE I (42.12.114) - Section 16-4-201, MCA, sets forth the license quota provisions, one of which requires a corporate city quota area to include a distance of five miles from the corporate city boundary. Changes in law affecting the five mile distance measurement or changes in a corporate city boundary have required a change in a county or city license designation. A change in license designation may change the statutory license fee. New Rule I (42.12.114) is proposed to clarify for the licensee the timing for the payment of statutory fees due to the change.

NEW RULE II (42.12.131) - Presently there is no administrative rule addressing a situation where the liquor division receives more than one application for the last available

license in a quota area. Proposed New Rule II (42.12.131) will allow all interested parties the opportunity to compete for the last available license in the quota area. New Rule II (42.12.131) will also provide the public with information of the procedures the Department follows when only one license remains available in a quota area. This rule will ensure consistent treatment of all license applicants.

NEW RULE III (42.12.144) - Section 16-4-204, MCA, allows for the transfer of licenses between quota areas. The Department is proposing New Rule III (42.12.144) entitled "Transfers Between Quota Areas - Procedures and Documentation". Addition of this rule will clarify the Department's filing requirements for an applicant wishing to transfer the ownership and location of a license to another quota area. This rule will provide public awareness of department policy and will serve as a guideline for consistent treatment of licensees.

NEW RULE IV (42.12.207) - All-beverages and "city" on-premises retail beer licenses are subject to a quota, and in certain areas of the state demand for these licenses is quite high. When new licenses become available, the division generally receives more applications than there are licenses available.

Current law and rules require that a premises of an applicant meet certain "suitability" requirements before a license may be issued, §§ 16-4-402(2) and 16-4-404(5), MCA; ARM 42.12.121 and 42.12.122. However, the statutes and administrative rules do not specifically address the processing of applications for premises which are not yet constructed.

It would be inequitable to require that applicants for a limited number of licenses invest the capital required to construct a facility to house a bar, restaurant, or tavern business when they are not assured of obtaining a license.

The proposed rule sets out a procedure for processing applications and entering a final agency decision without first requiring the applicant to construct the proposed premises. Applications may be conditionally approved based upon the applicant's proposed premises. The liquor division may make the license available to others in the event the successful applicant does not construct the proposed premises in accordance with the conditions in the final agency decision.

Transfers of location are also included since the same situation essentially exists. If the basic plans are sufficient and the location and applicant satisfy all qualifications, it is more equitable that the department enter a final agency decision before an applicant invests a substantial amount of funds in construction with the possibility he may not receive a license.

NEW RULE V (42.12.208) - Section 16-4-404(6), MCA, allows the Department to permit a qualified purchaser to operate the business to be transferred pending final approval. The Department has established a policy of issuing 45-day increments of temporary operating authority to accommodate situations in which a qualified purchaser wishes to operate under a license prior to

final department approval of a license transfer. The Department is proposing the adoption of New Rule V (42.12.208) entitled "Temporary Authority," in order to set forth department requirements for issuance of temporary authority, to provide explanation to the public, and to ensure consistent treatment of those requesting temporary operating authority.

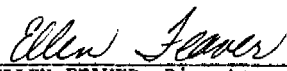
5. Interested parties may submit their data, views, or arguments, either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to:

Ann Kenny
Department of Revenue
Legal Division
Mitchell Building
Helena, Montana 59620

no later than December 28, 1984.

6. Sarah Power, Agency Legal Services, Department of Justice, has been designated to preside over and conduct the hearing.

7. The authority of the Department to make the proposed repeals, amendments, and adoptions is based on § 16-1-303, MCA. The rules implement §§ 16-1-201, 16-1-302, 16-1-303, 16-3-301, 16-3-305, 16-4-104 through 16-4-106, 16-4-109, 16-4-201 through 16-4-205, 16-4-208, 16-4-301, 16-4-401, 16-4-402, 16-4-404 through 16-4-406, 16-6-305, and 16-6-314, MCA.


ELLEN FEAVER, Director
Department of Revenue

Certified to Secretary of State 11/19/84

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE REPEAL)
of Rules 42.11.216,)
42.11.231, and 42.11.241; the)
AMENDMENT of Rules 42.11.201,)
42.11.211 through 42.11.215,)
42.11.217, 42.11.232,)
42.11.242 through 42.11.244,)
42.11.251, and 42.11.252)
relating to liquor vendors;)
and the ADOPTION of NEW RULE)
I (42.11.205) relating to)
vendor's employment of repre-)
sentatives and brokers.)

NOTICE OF PUBLIC HEARING on
the General Revision of
Chapter 11, subchapter 2,
relating to liquor vendors.

TO: All Interested Persons:

1. On December 19, 1984, at 1:30 p.m., a public hearing will be held in Room C-209 of the Cogswell Building, corner of Broadway and Sanders Streets, at Helena, Montana, to consider the general revision of Chapter 11, subchapter 2, relating to liquor vendors.

2. The Department proposes to repeal rule 42.11.216 relating to refusal of registration, rule 42.11.231 relating to vendor identification cards, and rule 42.11.241 relating to privileges of registered agents. The rules as proposed to be repealed may be found respectively on pages 42-1126, 42-1131, and 42-1135 of the Administrative Rules of Montana.

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

42.11.201 DEFINITIONS The following words, unless the context clearly indicates otherwise, shall have the meanings hereinafter ascribed to them:

(1) "Agent" shall mean any individual employed and registered as herein provided by a vendor to promote the sale of liquor within Montana. As used in this chapter, the following definitions apply:

(a) "Broker" means a person, partnership, association, or corporation who acts on behalf of a vendor to promote the sale of liquor within Montana.

(b) "Broker's Permit" means a permit issued to a broker entitling it to act on behalf of a vendor to promote the sale of liquor in Montana and to register representatives in accordance with these rules.

(c) "Representative" means a person employed and registered, as provided by these rules, by a broker or vendor to promote the sale of liquor in Montana.

(2) (d) "Licensee" shall mean any means a person, partnership, association, or corporation holding a Montana all-beverage or retail beer and wine liquor license and retail liquor operations located on U. S. military installations within the state Montana.

(3) (e) "Vendor" shall mean means a natural person, partnership, association, or corporation selling liquor to the department and holding a Montana vendor's permit. A broker acting on behalf of a vendor as herein defined shall be considered as a vendor under these regulations.

(4) (f) "Vendor's Permit" shall mean means a permit issued to a vendor entitling such vendor it to register agents representatives in accordance with this these regulation rules.

(5) (2) Other words and phrases used in these regulations rules shall have the meaning ascribed to them in the Montana Alcoholic Beverage Code, as amended, and if not defined therein shall have their usual and customary meaning.

AUTH: 16-1-303 MCA; IMP: 16-3-103 MCA.

42.11.211 REGISTRATION OF AGENTS REPRESENTATIVES (1) All agents, salesmen, or solicitors Any person acting as a representative of a vendor or broker must be registered with the department in accordance with the provisions of ARM 42.11.212 through 42.11.215 and have been issued identification cards as provided for in ARM 42-11-231 and 42.11.232.

(2) No person may be registered as a representative who is

(a) a retail licensee, as herein defined, or the holder of a wholesale beer or brewer's license, a licensed beer wholesaler, table wine distributor, or brewer;

(b) or an officer, director, agent, or employee of either a retail licensee, as defined, or a wholesale beer or brewer's licensee licensed beer wholesaler, table wine distributor, or brewer; or

(c) who is not at least 18 years of age and of good repute, a citizen of the United States, and of good repute shall be eligible to be registered as an agent of any vendor under this regulation

(3) No individual shall act as an agent, salesman, or solicitor for any vendor in promoting the sales of such vendor's liquor in Montana unless and until he has been properly registered and has been issued such identification card In considering an application for registration of a representative, the department shall consider all matters pertaining to the qualifications, experience, and character (including criminal record, if any) of the representative to be registered.

(4) A request to register a representative must be accompanied by two recent unmounted photographs, 1½ inches square, of the representative to be registered.

AUTH: 16-1-303 MCA; IMP: 16-3-103 MCA.

42.11.212 RESTRICTION ON NUMBER OF AGENTS REPRESENTATIVES

(1) No vendor or broker shall may employ more than two agents, salesmen, or solicitors representatives to promote the sale of his its products in Montana.

AUTH: 16-1-303 MCA; IMP: 16-3-103 MCA.

42.11.213 APPLICATION FOR REGISTRATION VENDOR OR BROKER

PERMIT (1) A vendor or broker of liquor to the department who desires to employ agents representatives to call upon retail licensees and other persons to promote the sale of his brands of liquor must be the holder of a Montana vendor's vendor or broker permit. Such vendor or broker is then eligible to register agents representatives in accordance with ARM 42.11.211 through 42.11.215. The vendor or broker shall make application apply for the registration of agents representatives on the form forms provided by the department, setting forth such information as the department may from time to time require liquor division.

(2) With each vendor's application there shall be filed a "statement of agent" for each agent for whom registration is requested. This "statement of agent" shall be on the form provided by the department and shall contain such information as the department may from time to time require. Accompanying the "statement of agent" there shall be two unmounted photographs of each agent \pm 1 1/2 inches square and taken within a reasonable time before the date of filing. In considering an application for a vendor or broker permit, the department shall consider all matters pertaining to the general reputation of the vendor or broker.

AUTH: 16-1-303 MCA; IMP: 16-3-103 MCA.

42.11.214 FILING FEE PERMIT AND REGISTRATION FEES

(1) In order to register an agent, a vendor shall be required to pay a filing fee of \$25. In the event the application for registration is refused, the filing fee will be retained by the department.

An applicant for a vendor or broker permit must file a written application on the form provided by the liquor division accompanied by a \$25 annual permit fee.

(2) An application for a vendor's permit shall be filed with the department accompanied by the permit filing fee of \$25. A vendor or broker seeking to register a representative must file a registration form provided by the liquor division accompanied by a \$25 annual registration fee.

AUTH: 16-1-303 MCA; IMP: 16-3-103 MCA.

42.11.215 EXPIRATION AND RENEWAL OF PERMITS AND REGISTRATION

(1) A vendor's or broker's permit shall be issued for the fiscal year beginning July 1 and ending June 30. All registrations shall permits expire June 30 of the year in which they become effective. A vendor or broker permit may be renewed annually by filing an application for renewal on forms provided by the liquor division accompanied by the \$25 filing fee.

(2) The registration of an agent may be renewed. A vendor or broker may register representatives for a period of 1 the fiscal year upon the beginning July 1 and ending June 30. Registration may be renewed by filing by the vendor of an application for renewal of registration on forms provided by the liquor division and the payment of paying a \$25 filing fee of \$25. A "statement of agent" for each agent to be registered shall also accompany the application, as shall photographs of each agent, 1 1/2 inches square, to be provided at the time of original application and every 4 years thereafter. Applications for renewal of registration, accompanied by all the necessary forms, shall be filed with the department at the Helena office not later than June 1 of each year.
AUTH: 16-1-303 MCA; IMP: 16-3-103 MCA.

42.11.217 CANCELLATION OF REGISTRATION (1) A vendor may request the cancellation of any of his or its agent's registration by returning the identification card issued to the agent, together with a written request for such cancellation. The department shall cancel the registration of a representative if requested in writing by the vendor or broker.

(2) A vendor who terminates its agreement with a broker must notify the department in writing that the broker and any representatives registered by the broker are no longer authorized to promote the vendor's products.

(3) Whenever a broker acts on behalf of only one vendor and they terminate their agreement, the registration of any representatives employed by the broker must be cancelled by the broker as provided in subsection (1) above.
AUTH: 16-1-303 MCA; IMP: 16-3-103 MCA.

42.11.232 AGENT REPRESENTATIVE IDENTIFICATION CARDS (1) Upon approval of the department of Whenever the liquor division approves a vendor's or broker's application for registration of agents representatives, there the division shall be issued to such authorized agents issue an identification cards card to the representative containing the name, and address, of the vendor and the name and physical description of the agent representative. There shall also be affixed to the identification card a recent photograph of the agent representative must be attached to the identification card. Such The card shall must be countersigned by the administrator or assistant administrator of the liquor division. of the department The identification card, if mailed, will be mailed by the department to the applicant vendor for delivery to the agent. The agent shall representative must return the identification card to the vendor or broker when requested.

(2)--When the employment of any agent is terminated, the vendor shall immediately notify the department in writing

and the identification card issued to the agent shall be surrendered to the department.

AUTH: 16-1-303 MCA; IMP: 16-3-103 MCA.

42.11.242 INFORMATION ON STATE LIQUOR STORE INVENTORIES

(1) Vendors or agents Representatives may apply to call on state liquor stores or to store liquor division personnel for information as to stores' merchandise inventories.

AUTH: 16-1-303 MCA; IMP: 16-3-103 MCA.

42.11.243 SAMPLES (1) A vendor shall be permitted to may use as samples not no more than 24 cases of liquor as samples during any calendar year. This allotment includes all brands of liquor manufactured, produced, or sold by the a vendor. Representatives may distribute samples.

(2) For the purposes of this section and ARM 42.11.244 a sample is defined as a container of liquor presented by a vendor or agent representative for inspection or a demonstration of the quality of the product one which is purchased by the employer or brokerage of the vendor or agent.

(3) A sample will be the smallest size regularly sold in state liquor stores, may not to exceed a 1 pint or its metric equivalent, 500 milliliters.

(4) No A sample of no more than 1 pint or its metric equivalent of any brand of distilled spirits liquor and not no more than 1 gallon or its metric equivalent of any brand of wine, may be furnished or given as a sample to a licensed retailer, licensed by the department, who has not previously purchased that product. Samples of distilled spirits may be furnished or given to the department of revenue, liquor division, under the provisions of 16-3-304, MCA.

(5) Such samples Samples of liquor shall may be purchased only through the state liquor stores at retail price. A separate order for samples shall must be placed for by each registered agent, and the agent's representative whose name shall and identification number must appear on the order.

(6) --The vendor shall file with the department a statement setting forth the territories and names of all registered agents under his supervision.

AUTH: 16-1-303 MCA; IMP: 16-3-103 MCA.

42.11.244 RECORDS RELATED TO SAMPLES -- DEPARTMENT EXAMINATIONS

(1) Each authorized agent representative shall maintain a permanent sample log. Such log which must contain exact information as to a listing of all sample purchases, including the name and location of each recipient, and the date he received the sample was received.

(2) Samples distributed to any licensee must be reported to the department of revenue investigation division program on a monthly basis on forms supplied by the investigation program.

(3) The department may, at any reasonable time and place, examine the books and records of the registered agent or vendor for the purpose of determining compliance with the requirements of this regulation representative. Reasonable For the purposes of this rule, reasonable time and place shall be construed as means normal business hours at the representative's place of business. Thirty calendar days' notice shall be given for any inspection conducted under this regulation.

AUTH: 16-1-303 MCA; IMP: 16-3-103 MCA.

42.11.251 UNLAWFUL ACTS (1) Sections 16-1-304, 16-2-105, 16-3-101 through 16-3-103, 16-6-104(1), and 16-6-301, MCA, of the Montana Alcoholic Beverage Code provide that certain practices in connection with the sale of alcoholic beverages shall be unlawful. All vendors, and agents brokers, and representatives shall be familiar with and abide by the aforementioned these statutes.

(2) Although not limiting the scope of the statutory provisions and with the exception of the advertising specialties of ARM 42.11.245, the following practices are in violation of one or more of these sections:

(a), (b), and (c) remain the same.

(d) to solicit or induce liquor division personnel to promote the sale of particular brands, except as provided in ARM 42.11.242. This prohibition shall does not apply to discussions between the vendor or agent and the administrator, assistant administrator, or purchasing agent of the liquor division in regard to the purchase of liquor by the department vendors, brokers, or representatives and liquor division employees with regard to the department's purchase of liquor and wines.

(e) to grant, allow, or pay money or anything of substantial value (this includes tips in excess of a reasonable amount and the printing of menus) to licensees or their servants, agents or employees in order to induce the sale of particular brands;

(f) to represent, expressly or by implication, that he the vendor, broker, or representative is connected affiliated or has any influence with any department of the state government or has any influence therewith;

(g) remains the same.

AUTH: 16-1-303 MCA; IMP: 16-3-103 MCA.

42.11.252 REVOCATION OR SUSPENSION OF PERMITS OR REGISTRATIONS (1) Upon learning of any violation of these regulations or of any regulation or law of Montana relating to liquor by any vendor or registered or unregistered agent or upon any other sufficient cause shown, the department may, within 2 years from the date of such violation or cause appearing, cite such vendor or registered agent, or both, to appear before it or its examiner not less than 20 days from the date of sending such vendor or registered agent, by certified

mail, a notice addressed to the vendor and the registered agent, at the address filed with the department, to show cause why the permit and/or registration should not be suspended or revoked. Upon such hearing, if satisfied that any such violation has occurred or for other sufficient cause, the department may suspend or revoke such permit and/or registration, notifying the vendor and registered agent by certified mail, addressed to the vendor and registered agent at the address filed with the department.

The department may, after notice and opportunity for hearing in conformity with the provisions of the Montana administrative procedure act, deny, suspend, revoke, or cancel a vendor's, broker's, or representative's permit or registration if it determines that the vendor, broker, or representative has violated any provision of the Montana alcoholic beverage code or administrative rule of Montana relating to alcoholic beverages, or upon any other reasonable cause shown.

(2) Any A vendor, or registered agent broker, or representative whose permit or registration has been denied, suspended, revoked, or cancelled shall be is ineligible to hold any permit or registration under this chapter, or any other regulation rule of the department or any law of Montana relating to liquor for a period up to 3 years from the date such the permit or registration was denied, suspended, revoked, or cancelled.

AUTH: 16-1-303 MCA; IMP: 16-3-103 MCA.

NEW RULE 1 (42.11.205) VENDORS EMPLOYMENT OF REPRESENTATIVES AND BROKERS (1) Vendors who desire to have their products promoted within Montana may:

(a) employ individuals under the direct supervision and control of the vendor to represent and promote the vendor's product; or

(b) engage the service of a broker to act on behalf of the vendor to promote the vendor's products.

(2) A vendor who chooses (1)(a) must apply to the liquor division for a vendor's permit which will authorize the vendor to register representatives with the department to call upon retail licensees and other persons, and to promote the sale of the vendor's brand of liquor.

(3) A vendor who chooses (1)(b) must submit a letter to the liquor division authorizing the broker to act on the vendor's behalf in the promotion of the vendor's products within Montana.

(a) A broker engaged by a vendor to promote its products must apply to the liquor division for a broker's permit which will authorize the broker to register representatives with the department who may call upon retail licensees and other persons and to promote the sale of the vendor's brand of liquor.

4.a. The Department proposes to repeal rules 42.11.216, 42.11.231, and 42.11.241 for the following reasons:

42.11.216 - The rule is proposed to be repealed because it unnecessarily repeats the language contained in rules 42.11.211 and 42.11.213.

42.11.231 - This rule is proposed to be repealed because it is not needed. In the nine years this rule has been in effect, only one vendor has requested an I. D. card. Though vendors visit the state, once they have employed and delegated promotional activities to their representatives, the vendor rarely, if ever, gets involved in these activities at the local level.

42.11.241 - The repeal of rule 42.11.241 is proposed because it repeats language contained in rules 42.11.201, 42.11.205, 42.11.211, 42.11.242, and 42.11.243.

b. The Department proposes to amend rules 42.11.201, 42.11.211, 42.11.212, 42.11.213, 42.11.214, 42.11.215, 42.11.217, 42.11.232, 42.11.242, 42.11.251, and 42.11.252 because these rules were originally adopted in 1975 to implement legislation allowing liquor producers and suppliers to employ as many as two agents to actively promote their products in Montana. The original rules made no reference to brokers. Since the use of brokerage firms to represent suppliers is common in the industry, the fact that they were omitted from the original rules became a problem shortly after adoption.

An amendment in 1976 attempted to solve the problem by adding broker in the definition section (ARM 42.11.201(3)) as an adjunct to "Vendor". Over the years this solution simply created additional confusion, e.g., the rule restricts vendors to two representatives. However, if a vendor were to employ two brokers as his agents, the brokers, under the definition of a vendor, might seek to register two agents. The potential result is four agents actively working the market for one vendor to the disadvantage of the vendor who employed agents rather than brokerage firms.

The proposed revisions recognize current trade practices, separately treat brokers and vendors, and remove potential inequities.

c. The Department proposes to amend rules 42.11.243 and 42.11.244 and adopt New Rule I (42.11.205) for the following reasons:

42.11.243 - Amendments to rule 42.11.243 are proposed to update the language used and to bring it into conformance with federal regulations.

42.11.244 - Amendments to rule 42.11.244 are proposed in order to define the meaning of reasonable time and place.

NEW RULE I (42.11.205) - Rule 42.11.205 as proposed would set forth the options available to a vendor desiring to have its product actively promoted within the State of Montana. This section distinguishes between a broker and a vendor and the procedure for each to follow in order to apply for the appropriate permits. Rule 42.11.205 would clarify the Department's requirements and reduce the confusion that now exists concerning permits authorizing the promotion of liquor in Montana.

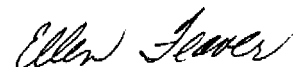
5. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to:

Ann Kenny
Department of Revenue
Legal Division
Mitchell Building
Helena, Montana 59620

no later than December 28, 1984.

6. Sarah Power, Agency Legal Services, Department of Justice, has been designated to preside over and conduct the hearing.

7. The authority of the Department to make the proposed amendments is based on § 16-1-303, MCA. The rules implement § 16-3-103, MCA.



ELLEN FEAVER, Director
Department of Revenue

Certified to Secretary of State 11/19/84

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMEND-	)	NOTICE OF PUBLIC HEARING on
MENT of Rules 42.13.101,	)	the general revision of
42.13.103, 42.13.104,	)	Chapter 13 relating to liquor
42.13.106, and 42.13.107	)	division regulation of
relating to general regula-	)	licensees.
tion of licenses; the AMEND-)	
MENT of Rules 42.13.301,)	
42.13.303, and 42.13.304)	
relating to storage require-)	
ments; the AMENDMENT of Rules)	
42.13.401 and 42.13.402)	
relating to wine; the)	
AMENDMENT of Rules 42.13.501)	
and 42.13.502 relating to)	
driveup windows, and the)	
ADOPTION OF NEW RULE I)	
(42.13.222) relating to beer)	
wholesaler and table wine)	
distributor recordkeeping)	
requirements.)	

TO: All Interested Persons:

1. On December 19, 1984, at 1:30 p.m., a public hearing will be held in Room C-209 of the Cogswell Building, corner of Broadway and Sanders Streets, at Helena, Montana, to consider the general revision of Chapter 13 relating to liquor division regulation of licenses.

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

42.13.101 COMPLIANCE WITH LAWS AND RULES (1) All licensees and their agents and employees must abide by all:

(a) provisions of the laws of Montana and the United States relating to alcoholic beverages; and

(b) county and city or town ordinances relating to alcoholic beverages; and must also abide by all

(c) Indian liquor laws applicable within the areas of Indian country, as defined by 18 U.S.C. § 1151, provided a tribe having jurisdiction over such area of Indian country adopted an ordinance, certified by the secretary of the interior, and published in the federal register; and

(d) rules and regulations of the department relating to alcoholic beverages. In addition, all licensees must conduct the licensed premises in compliance with the rules and regulations of the department of health and environmental sciences, the department of administration, and the department of justice.

(2) Proof of violation by a licensee or his agent or employee of any of the provisions of the above laws, ordinances,

or rules or regulations shall be is sufficient grounds for the revocation or suspension of the license of such licensee and licensees may be reprimanded or assessed a civil penalty in accordance with 16-4-406, MCA.

AUTH: 16-1-303 MCA; IMP: 16-3-301, 16-6-305, and 16-6-314 MCA.

42.13.103 DEPARTMENT EXAMINATIONS (1) The department or its duly authorized representative shall have has the right at any time to make an examination of any premises licensed for the sale of alcoholic beverages and to check the books, records, and stock in trade and to make an inventory of the latter. in the event The department or its authorized representatives may immediately seize and remove any alcoholic beverage is found which is kept or held in violation of the law 7. he may immediately seize and remove the same

(2) At all times when any person or persons other than the licensee or his employees are within or upon the premises licensed for the retail sale of alcoholic beverages, said premises shall be open to immediate inspection by any Any authorized representative of the department or the sheriff of any county. Such persons shall have immediate access to the premises and all parts thereof as designated in subsection (3) shall have immediate access to all parts of the licensed premises. Doors of licensed premises shall not be locked while persons other than the licensee or his employees are within or upon the said licensed premises.

(3) The department of revenue does hereby designate designates as its authorized representative, for the purpose of carrying out 16-6-103, MCA, any member of a county sheriff's department or the police force of a city or town, and said provided the police force is organized pursuant to Title 7, chapter 32, part 41, MCA 7 (metropolitan police law).

AUTH: 16-1-303 MCA; IMP: 16-6-103 MCA.

42.13.104 POSTING OF LICENSES (1) All licenses issued shall must be signed by the administrator of the liquor division of the department and must be posted in a conspicuous place on at the licensed premises. in respect to which said license or licenses are issued

AUTH: 16-1-303 MCA; IMP: 16-4-104 and 16-4-204 MCA.

42.13.106 CHANGE OR ALTERATION IN PREMISES (1) NoA licensee may not change or alteration in alter any premises licensed for the sale of liquor or beer in alcoholic beverages or change the manner of operation thereof, which may or might effect thereby affecting the suitability thereof for licensing or for the operation of an all-beverage or beer business, shall be effected of the licensed premises, without the prior written consent of the department.

AUTH: 16-1-303 MCA; IMP: 16-1-303 MCA and Title 16, chapter 4 MCA.

42.13.107 EXTENSION OF TIME FOR NONUSE (1) Any licensee or applicant requesting an extension of time for nonuse of a license in accordance with 16-3-310, MCA, ~~shall~~ must furnish written evidence, certified to be correct, of the reasons for his failure to place ~~said~~ the license in operation within the time prescribed.

(2) The department may grant up to three extensions of nonuse status in increments not exceeding 90 days. If the license is not put into use within one year, the department may require a licensee to attend an informal conference conducted at the liquor division offices in Helena to afford the licensee or person(s) holding a security interest in the license the opportunity to present evidence establishing justification for any further extension of nonuse status.

(3) The department may deny requests for extensions of nonuse status if the licensee or those person(s) having a security interest in the license fail to establish any progress towards putting the license into public use.

(4) Requests for extension of nonuse status based on voluntary closure due to adverse economic conditions or repeated requests based on a proposed sale of a license will not constitute sufficient grounds for extending nonuse status.

(5) Licenses denied extension of nonuse status are subject to the lapse provisions of 16-3-310, MCA.

AUTH: 16-1-303 MCA; IMP: 16-3-310, MCA.

42.13.301 STORAGE OF BEER AND LIQUOR ALCOHOLIC BEVERAGES

(1) No licensee shall receive or accept delivery of or keep in storage any beer or liquor upon any premises other than those described in his license. A licensee may receive, accept delivery of, and store alcoholic beverages only on his licensed premise.

(2) No licensee shall receive or accept delivery of or keep in storage any liquor upon premises licensed only for beer. Only those alcoholic beverages for which the premises are specifically licensed may be received, accepted, and stored.

AUTH: 16-1-303 MCA; IMP: 16-3-201 and 16-6-301 MCA.

42.13.303 BEER OR TABLE WINE STORAGE FACILITIES (1) Every wholesale licensed beer wholesaler or table wine dealer distributor must have a principal place of business in Montana with proper storage facilities. All deliveries in the state must be made from such the principal place of business or from a licensed sub-warehouse. ~~and all~~ All books, records, and duplicate invoices of sales must be kept at the principal place of business within the state, subject to inspection by the department or its authorized representative. No wholesale license will be issued to any corporation or individual unless such corporation or individual has the qualifications and facilities specified in 16-4-102 and 16-6-104, MCA.

(2) Each wholesale beer and/or table wine licensee shall be entitled to a duplicate license for one warehouse other than his

designated principal place of business; which license shall be designated a sub-warehouse license. If an application for a duplicate license is made at a time other than upon application for a license for the designated principal place of business, an application processing fee will be charged.

AUTH: 16-1-303 MCA; IMP: 16-3-230, 16-4-102, 16-4-103, and 16-6-104 MCA.

42.13.304 STORAGE RESULTING IN TREATMENT AS BEER WHOLESALE OR TABLE WINE WHOLESALE DISTRIBUTOR (1) -- in cases where Whenever beer or table wine is held in storage in wholesaling or jobbing quantities at a fixed place of business and deliveries are made or orders filled therefrom by the person in charge or his employee, the department will treat same these persons as carrying on the business of a wholesaler or distributor, requiring such person to have a wholesale license for such place of business, except in the case of a brewer's storage depot as provided in 16-3-230, MCA.

AUTH: 16-1-303 MCA; IMP: 16-3-230, 16-4-103, and 16-6-104 MCA.

42.13.401 IMPORTATION OF WINE (1) Each winery or importer desiring to ship table wines to licensed wholesalers distributors within the state shall must submit an application for registration to the department of revenue as specified under 16-4-107, MCA. Each application shall must be accompanied by a \$25 processing registration fee and a copy of each product label the winery or importer intends to ship into the state. The department must be notified in writing of any changes, additions, or deletions in product line prior to distribution in Montana.

(2) No table wines may be shipped into the state until such registration is granted by the department.

(3) Each winery or importer registration must be:

(a) submitted on forms supplied by the liquor division;

(b) accompanied by a \$25 fee; and

(c) renewed annually on or before July 1.

(4) Any winery or importer failing to renew or not actively engaged in business in Montana for a period of one year will be subject to cancellation or suspension as provided in 16-4-107, MCA.

AUTH: 16-1-303 MCA; IMP: 16-4-107 MCA.

42.13.402 WINE DISTRIBUTOR'S MONTHLY REPORTS (1) Each table wine distributor shall file with the department liquor division a table wine distributor's monthly tax report (Form AA-50), as required by 16-3-404, MCA, showing the number of liters received sold during the immediately preceding calendar previous month. The form must be filed whether or not the distributor has received sold any wine during the preceding calendar a month. The form is available may be obtained from the Audit and Accounting Centralized Services Division, Department of Revenue, Mitchell Building, Helena, Montana 59601 59620.

(2) The form is to must be accompanied by payment of the tax due under 16-1-411, MCA.

(3) Failure to file the form or pay the table wine tax is sufficient cause for a suspension or revocation of the distributor's license the assessment of penalties and interest in accordance with 16-1-411, MCA, and other penalties provided in 16-4-406, MCA. Unless the distributor is able to show good cause, failure to file subjects the distributor to a fine of \$10 for the first failure, \$50 for the second, and \$100 for each failure thereafter.

AUTH: 16-1-303 MCA; IMP: 16-1-411, 16-3-404, and 16-4-406 MCA.

42.13.501 DRIVEUP WINDOWS (1) The holder of a license to sell alcoholic beverages for off-premises consumption may operate a driveup window for the purpose of selling such alcoholic beverages upon the approval of by the department, and subject to the restrictions provided in requirements of ARM 42.13.502.

(2) An The application for the operation of a driveup window is must be made on forms available from supplied by the liquor division. There is a processing fee of \$50 for the application is required if the applicant is the holder of a license permitting the sale of alcoholic beverages for off-premises consumption. A non-licensee An applicant may include the application for a driveup window as part of the original license application, and no additional fee is will be charged. AUTH: 16-1-303 MCA; IMP: 16-3-303 MCA, Title 16, chapter 3, part 3 MCA, and Title 16, chapter 4 MCA.

42.13.502 OPERATION OF DRIVEUP WINDOWS (1) (a) through (e) remain the same.

(f) The operation of the driveup window is subject to all other statutes and rules generally governing the sale of alcoholic beverages for off-premises consumption.

(2) In determining whether or not to approve an application for a drive-up facility, the department considers whether the conditions of subsection (1) are likely to be met by the applicant. An application will not be approved if the department determines that operation of the driveup facility will create a traffic hazard or hinder law enforcement activities or emergency services.

AUTH: 16-1-303 MCA; IMP: 16-3-303 MCA, Title 16, chapter 3, part 3 MCA, and Title 16, chapter 4 MCA.

RULE 1 (42.13.222) BEER WHOLESALER AND TABLE WINE DISTRIBUTOR RECORDKEEPING REQUIREMENTS (1) Beer wholesalers and table wine distributors shall keep and maintain records at their place of business of all beer or table wine furnished or sold to retailers. These records must contain the following information:

(a) name and address of retailer;

(b) date sold or furnished;

- (c) date delivered;
- (d) item sold or furnished;
- (e) retailer cost per item; and
- (f) date wholesaler or distributor receives retailer's payment.

(2) Commercial records or invoices may be used if they contain the information listed in subsection (1)(a) through (f).
AUTH: 16-1-303 MCA; IMP: 16-3-243, 16-3-404, and 16-3-406 MCA.

3.A. The Department proposes to amend rules 42.13.104, 42.13.106, 42.13.301, 42.13.303, 42.13.304, 42.13.402, and 42.13.502 because the language used in these rules is outdated and often difficult to read. The proposed changes in language are consistent with current usage and practice. There are no substantive changes proposed to these rules.

B. Substantive changes are proposed to the following rules for the following reasons:

42.13.101 - The Department proposes to amend rule 42.13.101 to require licensees to abide by all county as well as city and town ordinances. The past failure of rule 42.13.101 to refer to county ordinances was in error since the Montana Alcoholic Beverages Code specifically requires compliance with state, federal, and local laws, e.g., §§ 16-1-205, 16-3-309, and 16-4-401, MCA, which include county ordinances.

42.13.103 - Rule 42.13.103 is proposed for amendment to clarify that the Department's authorized representatives include any county sheriff and his deputies as well as municipal police forces.

42.13.107 - Section 16-3-310, MCA, allows the Department to extend the length of time a license may be in a nonuse status. Additional language is proposed to rule 42.13.107 to clarify department criteria used to determine whether an extension of nonuse time can be granted. The proposed change in language will provide licensees with knowledge of department requirements and will promote consistent treatment of licensees by the Department.

42.13.304 - Rule 42.13.304 is proposed for amendment to make the language used consistent with that used in the Montana Alcoholic Beverage Code. The Code specifically refers to beer "wholesalers" and table wine "distributors".

42.13.401 - Rule 42.13.401 is proposed to be amended because it does not adequately address "terms of registration" as contemplated by § 16-4-107, MCA. The amended rule will clarify the terms of annual registration, suspension, and cancellation and the proposed changes make it consistent with the handling of similar registration and licensing requirements. The rule is also proposed for amendment in order to clarify that table wine is shipped to a "distributor" and not a "wholesaler".

42.13.501 - Subsection (2) of rule 42.13.501 is proposed to be amended by removing the reference to the \$50 application processing fee. The reference to the fee will be added to rule

42.12.111 which lists all of the application processing fees. The proposed change will make the rule consistent with other department liquor rules.

C. The Department proposes to adopt new Rule I (42.13.222) because § 16-3-243, MCA, requires a retail licensee to pay a brewer or wholesaler in cash for any purchase of beer within 7 days after its delivery. Section 16-3-406, MCA, places the same 7-day payment requirement on a retail licensee purchasing table wine from a table wine distributor. Extensions of more than 7 days is in violation of state law and can result in the suspension or revocation of the licenses of the brewer, wholesaler, distributor, or retail licensees involved in the violation. The Investigation Program is charged with determining compliance with §§ 16-3-243 and 16-3-406, MCA. New Rule I (42.13.222) will provide the wholesaler with notice of recordkeeping requirements and will provide the investigator a means of determining compliance with 16-3-243 and 16-3-406, MCA.

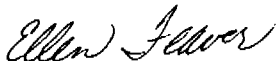
4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to:

Ann Kenny
Department of Revenue
Legal Division
Mitchell Building
Helena, Montana 59620

no later than December 28, 1984.

5. Sarah Power, Agency Legal Services, Department of Justice, has been designated to preside over and conduct the hearing.

6. The authority of the Department to make the proposed amendments is based on § 16-1-303, MCA. The rules implement §§ 16-1-303, 16-1-411, 16-3-201, 16-3-230, 16-3-243, 16-3-301, 16-3-303, 16-3-310, 16-3-404, 16-3-406, 16-4-102 through 16-4-104, 16-4-107, 16-4-204, 16-4-406, 16-6-103, 16-6-104, 16-6-301, 16-6-305, and 16-6-314, MCA.



ELLEN FEAVER, Director
Department of Revenue

Certified to Secretary of State 11/19/84

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

In the matter of the	)	NOTICE OF ADOPTION OF AN
adoption of an amendment to	)	AMENDMENT TO A FEDERAL
a federal agency rule per-	)	AGENCY RULE INCORPORATED BY
taining to the food stamp	)	REFERENCE IN RULE
program, Rule 46.11.101	)	46.11.101, FOOD STAMP
	)	PROGRAM. NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons

1. The Department of Social and Rehabilitation Services hereby gives notice to the adoption and incorporation by reference of later amendments to 7 CFR 272, 273, and 274 published in 49 Fed. Reg. 39035, Wednesday, October 3, 1984. 7 CFR 272, 273, and 274 are presently incorporated by reference in Rule 46.11.101, Food Stamp Program. These amendments: (1) change the requirement to register for work from once every six months to once every year, (2) mandate the disqualification of participating households whose primary wage earner quits their job, (3) add a lack of adequate child care for children between the ages of 6 and 12 as good cause for refusing to accept an offer of employment, (4) establish that failure to comply with comparable work requirements of the WIN program for AFDC recipients or the unemployment compensation program is considered to be the same as failing to comply with food stamp work requirements, (5) exempt from work registration a parent or household member responsible for the care of a dependent child under age 6 rather than the current age 12, (6) lengthens the disqualification for a voluntary quit from 60 to 90 days, (7) extend the definition of voluntary quit without good cause to include federal/state/local employees who are dismissed from their jobs because they participate in a strike, and (8) eliminate the work registration exemption for a parent or caretaker of a child where another parent is subject to work registration requirements.


2. The effective date for the adoption of the later amendment is January 2, 1984.

3. If the department receives requests for a public hearing under 2-4-315, MCA, 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 be 6,084 persons based on 60,848 food stamp recipients.

MAR Notice No. 46-2-421

22-11/29/84

4. The authority of the department to amend the rule is based on Section 53-2-201, MCA and the rule implements 53-2-306, MCA.


Director, Social and Rehabilitation Services

Certified to the Secretary of State November 19, 1984.

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

In the matter of the	)	NOTICE OF ADOPTION OF AN
adoption of an amendment to	)	AMENDMENT TO A FEDERAL
a federal agency rule per-	)	AGENCY RULE INCORPORATED BY
taining to the food stamp	)	REFERENCE IN RULE
program, Rule 46.11.101	)	46.11.101, FOOD STAMP
	)	PROGRAM. NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons

1. The Department of Social and Rehabilitation Services hereby gives notice to the adoption and incorporation by reference of later amendments to 7 CFR 272, 273, and 274 published in 49 Fed. Reg. 39877, Tuesday, October 11, 1984. 7 CFR 272, 273, and 274 are presently incorporated by reference in Rule 46.11.101, Food Stamp Program. These amendments provide a general notice to the public concerning adjustments to the Thrifty Food Plan which determines the maximum amount of food stamps a household can receive, the amount of the standard deduction which all participating households receive, and the maximum amounts for the excess shelter and dependent care deductions available to certain households. These adjustments take into account changes in the cost of living. A copy of this general notice published in 49 Fed. Reg. 39877, Tuesday, October 11, 1984, may be obtained from the Department of Social and Rehabilitation Services, Economic Assistance Division, Box 4210, 111 Sanders, Helena, Montana 59604.


2. The effective date for the adoption of the later amendment is November 29, 1984. This amendment will be implemented retroactive to October 1, 1984. This exception from the standard effective date of 30 days following publication is taken in order to comply with federal law requiring that the new Thrifty Food Plan and deductions shall be effective for all eligible cases as of October 1, 1984.

3. The Department of Social and Rehabilitation Services hereby gives notice of the adoption and incorporation by reference of later amendments to 7 CFR 272, 273, and 274 published in 49 Fed. Reg. 42765, Wednesday, October 24, 1984. 7 CFR 272, 273, and 274 are presently incorporated by reference in Rule 46.11.101, Food Stamp Program. This amendment provides a general notice that food stamp allotments shall be increased to reflect the full value of the Thrifty Food Plan. The October 1, 1984 adjustment to the plan was based on 99 percent of the value of the Thrifty Food Plan. Public Law 98-473 enacted October 12, 1984 provides that effective November 1, 1984, food stamp benefits will be based on 100 percent of the value of the Thrifty Food Plan.

4. The effective date for the adoption of the later amendment is November 29, 1984. This amendment will be implemented retroactive to November 1, 1984. This exception from the standard effective date of 30 days following publication is taken in order to comply with the federal law requiring that the new Thrifty Food Plan shall be effective for all eligible cases as of November 1, 1984.

5. If the department receives requests for a public hearing under 2-4-315, MCA, 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 be 5,477 persons based on 54,771 food stamp recipients.

6. The authority of the department to amend the rule is based on Section 53-2-201, MCA and the rule implements 53-2-306, MCA.


Director, Social and Rehabilitation Services

Certified to the Secretary of State November 19, 1984.

STATE OF MONTANA
DEPARTMENT OF AGRICULTURE
BEFORE THE MONTANA AGRICULTURAL LOAN AUTHORITY
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF AMENDMENT OF
amendment of Rules	)	RULES 4.14.302, 4.14.303,
4.14.302 concerning loan	)	4.14.305, AND 4.14.601
powers and eligible loan	)	CONCERNING THE MONTANA
activities, 4.14.303	)	AGRICULTURAL LOAN AUTHORITY
concerning loan	)	AND THE BEGINNING FARM LOAN
maximums, 4.14.305	)	PROGRAM
concerning applicant)	
eligibility and 4.14.601)	
concerning tax deduction)	

TO: All Interested Persons

1. On October 11, 1984, the Montana Agricultural Loan Authority published notice of the proposed amendment of Rules 4.14.302, 4.14.303, 4.14.305 and 4.14.601 relating to eligible loan activities and maximums, applicant eligibility and tax deduction of the Beginning Farm Loan Program at pages 1427-1429 of the 1984 Montana Administrative Register, issue number 19.

2. The Montana Agricultural Loan Authority has amended rules 4.14.303, 4.14.305 and 4.14.601 as proposed.

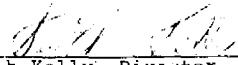
3. The Montana Agricultural Loan Authority has amended Rule 4.14.302 as proposed with the following changes:

4.14.302 Loan Powers and Eligible Loan Activities
Subsections (1) through (2) same as proposed.

(3) All funds provided by the Authority from the sale of bonds will be administered under the terms and conditions of applicable state and federal law, appropriate state and federal rules and regulations including those of the Authority and any agreements and contracts deemed necessary by the Authority.

Auth: 80-12-103, MCA; IMP: 80-12-201, MCA.

4. No written comments or testimony were received.

By 
Keith Kelly, Director
Department of Agriculture
and member, Montana
Agricultural Loan Authority.

Certified to the Secretary of State November 19, 1984.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF NURSING HOME ADMINISTRATORS

In the matter of the amendment) NOTICE OF AMENDMENT OF
of ARM 8.34.418 concerning) ARM 8.34.418 FEE SCHEDULE
the fee schedule)

TO: All Interested Persons:

1. On September 27, 1984, the Board of Nursing Home Administrators published a notice of amendment of the above-stated rule at pages 1398 through 1399, 1984 Montana Administrative Register, issue number 18.

2. Four letters of comment were received. One individual felt the fee increases were retroactive. The fee increases do apply to the renewals in this fiscal year. His concern was if an individual paid his fees early he would still be charged the new amount, not realizing that the fees collected will be for the coming year.

Another administrator expressed concern that the fee increase was to cover administrative costs relating to continuing education. He felt it would be appropriate to leave fees as is and lower the continuing education requirements.

A third objection was expressed concerning the fee increase for inactive licensees.

The fourth letter questioned subsection (11) concerning requests for records of licensure. The concern expressed was that the charge could be related to requests for copies of continuing education information, as well as other routine requests, rather than reciprocity.

In addition to the above concern, the individual questioned the apparent \$3,000 surplus between the budget and total amounts to be collected under the new fees. As the numbers involved with the fees are projected figures and could vary to a degree, as well as budgets and costs continuing to increase, the board does not feel that the \$3,000 would be a large surplus. The actual figure projected for total revenues could conceivably be less than projected, in which case there would be no surplus. No other comments or testimony were received.

3. As the fee increases were based on actual program area costs and the amount of monies necessary to cover those costs, the board is adopting the rules with the one change. The change relates to the wording of subsection (11) in response to the concern expressed and will read as follows: (new matter underlined, deleted matter interlined)

"8.34.418 FEE SCHEDULE (1) ...

(11) Completion of Requests for records of licensure for reciprocal licensing shall require a fee of \$10.

(12) ..."

DEPARTMENT OF COMMERCE

BY: 

GARY BUCHANAN, DIRECTOR

Certified to the Secretary of State, November 19, 1984.

22-11/29/84

Montana Administrative Register

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE MONTANA ECONOMIC DEVELOPMENT BOARD

In the matter of the	)	NOTICE OF AMENDMENTS
amendments of 8.97.410 con-	)	OF 8.97.410 GUARANTEED LOAN
cerning guaranteed loan pro-	)	PROGRAM, 8.97.501 DEFINITIONS,
gram, 8.97.501 concerning	)	8.97.503 DESCRIPTION OF
definitions, 8.97.503 con-	)	ECONOMIC DEVELOPMENT BOND
cerning description of	)	PROGRAM, 8.97.505 ELIGIBILITY
economic development bonds,	)	REQUIREMENTS, 8.97.507
8.97.505 concerning eligib-	)	APPLICATION PROCEDURE, 8.
ility requirements, 8.	)	97.509 APPLICATION AND FIN-
97.507 concerning applica-	)	ANCING FEES, COSTS AND
tion procedures and 8.	)	OTHER CHARGES
97.509 concerning fees.)	

TO: All Interested Persons:

1. On October 11, 1984, the Montana Economic Development Board published a notice of amendments of the above-stated rules at pages 1430 through 1434, 1984 Montana Administrative Register, issue number 19.

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

3. No comments or testimony were received.

DEPARTMENT OF COMMERCE

BY:

GARY BUCHANAN, DIRECTOR

Certified to the Secretary of State, November 19, 1984.

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

In the matter of the adop-	)	NOTICE OF THE ADOPTION OF
tion of Rule 46.11.117 per-	)	RULE 46.11.117 PERTAINING
taining to when eligibility	)	TO THE FOOD STAMP PROGRAM.
of Food Stamps begins.)	

TO: All Interested Persons

1. On October 11, 1984, the Department of Social and Rehabilitation Services published notice of the proposed adoption of Rule 46.11.117 pertaining to when eligibility of Food Stamps begins at page 1464 of the 1984 Montana Administrative Register, issue 19.

2. The Department has adopted Rule 46.11.117, FOOD STAMPS, DETERMINING WHEN ELIGIBILITY BEGINS, as proposed.

3. No written comments or testimony were received.



Director, Social and Rehabilitation Services

Certified to the Secretary of State November 19, 1984.

VOLUME NO. 40

OPINION NO. 79

CONTRACTS - Preference for resident contractors;
MONTANA CODE ANNOTATED - Sections 1-2-101, 18-1-102(1)
and (2), 18-1-103(4);
OPINIONS OF THE ATTORNEY GENERAL - 37 Op. Att'y Gen. No.
59 (1977).

HELD: A resident bidder whose materials are
manufactured in Montana by Montana labor may
not be awarded a state contract under section
18-1-102, MCA, when his bid is more than 3%
higher than that of the lowest responsible
nonresident bidder.

2 November 1984

Morris Brusett, Director
Department of Administration
Room 155, Sam W. Mitchell Building
Helena MT 59620

Dear Mr. Brusett:

You have requested my opinion on a question which I have
stated as follows:

May a resident bidder whose materials are
manufactured in Montana by Montana labor be
awarded a state contract under section
18-1-102, MCA, when his bid is more than 3%
higher than that of the lowest responsible
nonresident bidder?

Section 18-1-102, MCA, deals with the awarding of
certain state contracts. It provides, in pertinent
part:

(1) In order to provide for an orderly
administration of the business of the state of
Montana in awarding contracts for materials,
supplies, equipment, construction, repair, and
public works of all kinds, it shall be the
duty of each board, commission, officer, or
individual charged by law with the

responsibility for the execution of the contract on behalf of the state, board, commission, political subdivision, agency, school district, or a public corporation of the state of Montana to award such contract to the lowest responsible bidder who is a resident of the state of Montana and whose bid is not more than 3% higher than that of the lowest responsible bidder who is a nonresident of this state.

(2) In awarding contracts for purchase of products, materials, supplies, or equipment, such board, commission, officer, or individual shall award the contract to any such resident whose offered materials, supplies, or equipment are manufactured or produced in this state by Montana industry and labor and whose bid is not more than 3% higher than that of the lowest responsible resident bidder whose offered materials, supplies, or equipment are not so manufactured or produced, provided that such products, materials, supplies, and equipment are comparable in quality and performance. [Emphasis added.]

....

Subsection (1) grants a preference to a resident with the lowest responsible bid over a nonresident with the lowest responsible bid, so long as the resident's bid is not more than 3% higher than that of the nonresident. (For a discussion of the meaning of the phrase "lowest responsible bidder" see 37 Op. Att'y Gen. No. 59 (1977).) Subsection (2) provides that a preference be granted to a resident with the lowest responsible bid whose supplies are manufactured in-state by Montana labor over a resident with the lowest responsible bid whose supplies are manufactured out-of-state. With respect to contracts for the purchase of products, any bidder whose materials are manufactured in Montana by Montana labor is considered a resident. § 18-1-103(4), MCA.

The confusion surrounding the statute arises where the bidders on a contract are made up of both residents and nonresidents and the bids are fairly close in dollar amounts. In the example cited in the legal memorandum

that accompanied your opinion request there are two resident bidders and one nonresident bidder. The lowest bidder is an out-of-state company. The first resident company's bid is within 3% of the nonresident's bid; however, the materials offered by that resident company are not manufactured in-state. Nevertheless, applying subsection (1) of section 18-1-102, MCA, the first resident bidder would be awarded the contract. However, the bid of the second resident bidder, whose materials are manufactured in-state, is within 3% of the first resident bidder who was awarded the contract under subsection (1). Your specific question concerns whether, applying subsection (2), the resident bidder whose materials are manufactured in-state should be granted preference over the resident bidder who prevailed under subsection (1). I will use the hypothetical situation that you provided in your opinion as an example. The dollar amounts are as follows:

- Bid of resident using out-of-state materials = \$101.00.
- Bid of resident using in-state materials = \$103.00.
- Bid of nonresident = \$99.00.

If both subsections (1) and (2) of section 18-1-102, MCA, are applied to this example, the operation of subsection (1) will result in the awarding of the contract to the resident with the bid of \$101, who will, in turn, lose out to the resident with the bid of \$103, by operation of subsection (2). The final award of the contract will thus go to a resident whose bid is more than 3% higher than the bid of the nonresident. Such a result is in direct conflict with subsection (1).

It is a rule of statutory construction that a statute is to be construed as a whole, with effect being given, if possible, to every provision so that conflicting parts are made to harmonize. See § 1-2-101, MCA; Montana Automobile Association v. Greely, 38 St. Rptr. 1174, 1180, 632 P.2d 300, 306 (1981); McClanathan v. State, 186 Mont. 56, 61, 606 P.2d 507, 510 (1980); Yurkovich v. Industrial Accident Board, 132 Mont. 77, 84, 314 P.2d 866, 870 (1957). Individual sections of an act should be interpreted in such a manner as to insure coordination with other sections of the act. State v. Meader, 184 Mont. 32, 37, 601 P.2d 386, 389 (1979). Subsections of a statute should be construed to avoid

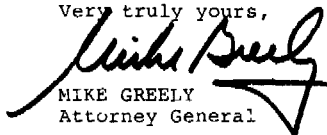
conflict between them. State ex rel. Depuy v. District Court, 142 Mont. 328, 332, 384 P.2d 501, 503 (1963).

Following these rules of statutory construction, I conclude that the two subsections of section 18-1-102, MCA, must operate independently of, rather than in conjunction with, each other. Subsection (1) would apply when the bidders on a particular contract include residents and nonresidents, and where the lowest responsible bid of a resident is not more than 3% higher than the lowest responsible bid of a nonresident. Subsection (2) would apply where the bidders include only residents or where the lowest responsible bidder is not a nonresident. Thus, in the example provided above, subsection (1) would operate to award the contract to the resident whose bid was no more than 3% higher than that of the nonresident, i.e., the bid of \$101. Because the factual situation triggers the application of subsection (1), subsection (2) would not come into operation at all. If section 18-1-102, MCA, is not interpreted in the manner described above, one part of the statute could operate in violation of the other, a result not favored in the law.

THEREFORE, IT IS MY OPINION:

A resident bidder whose materials are manufactured in Montana by Montana labor may not be awarded a state contract under section 18-1-102, MCA, when his bid is more than 3% higher than that of the lowest responsible nonresident bidder.

Very truly yours,


MIKE GREELY
Attorney General

VOLUME NO. 40

OPINION NO. 80

LIENS - "First in time" rule for determining priority with federal mortgages and local tax liens;

LIENS - Priority of local tax liens over private mortgages;

LIENS - Priority of local tax liens over SBA liens;

TAXATION - "First in time" rule for determining priority with federal mortgages and local tax liens;

TAXATION - Priority of local tax liens over private mortgages;

TAXATION - Priority of local tax liens over SBA liens;

MONTANA CODE ANNOTATED - Sections 15-16-401, 15-16-402(1), 15-16-403.

- HELD: 1. Local tax liens on personal or real property have priority over liens of private mortgagees.
2. When federal mortgages are involved, the rule regarding priorities between local taxes and those mortgages is: First in time is first in right, unless federal statute provides otherwise.
3. Under 15 USCA § 646, SBA liens are subordinate to local tax liens.

5 November 1984

J. Allen Bradshaw
Granite County Attorney
Granite County Courthouse
Philipsburg MT 59858

Dear Mr. Bradshaw:

You requested an opinion concerning the priority of local tax liens in relation to federal and other mortgage liens.

Montana law expressly confers priority of tax liens on personal property. Section 15-16-402(1), MCA, provides:

Every tax due upon personal property is a
prior lien upon any or all of such property,
which lien shall have precedence over any

other lien, claim, or demand upon such property, and except as hereinafter provided, every tax upon personal property is also a lien upon the real property of the owner.... [Emphasis added.]

There is no such provision for liens on real property. The tax statutes read as a whole, and the federal case of United States v. Christensen, 218 F. Supp. 722 (D. Mont. 1963), however, lead me to conclude that tax liens on real property have priority over mortgage and other private liens.

Section 15-16-401, MCA, provides:

Every tax has the effect of a judgment against the person, and every lien created by this title has the force and effect of an execution duly levied against all personal property in the possession of the person assessed from and after the date the assessment is made.... The judgment is not satisfied nor the lien removed until the taxes are paid or the property sold for the payment thereof. [Emphasis added.]

Section 15-16-403, MCA, provides:

Lien on real property and improvements. Every tax due upon real property is a lien against the property assessed, and every tax due upon improvements upon real estate assessed to other than the owner of the real estate is a lien upon the land and improvements, which several liens attach as of January 1 in each year. [Emphasis added.]

United States v. Christensen, *supra*, considered these statutes as well as others prescribing the procedures for tax sales, rights of redemption, and quiet title actions. (The pertinent language in the statutes is substantially the same today as in 1963.) The Court observed that in all instances, general tax liens remain against the property until the taxes are paid. The Court discussed the Montana cases of State ex rel. Malott v. Board of Commissioners, 89 Mont. 37, 296 P.2d 1 (1930), and Hartman v. City of Bozeman, 116 Mont. 392, 154 P.2d 279 (1944), which held the priority of general tax liens over special assessments. Both cases

contained strong language implying the priority of general tax liens over other claims. For example, in Hartman the Court quoted a Utah case with approval:

'The necessity and importance of preferring the lien for general taxes over other claims are so impelling that the priority of the sovereign claims of the state will not be depreciated nor denied without warrant from the Legislature in clear and unmistakable terms....'

116 Mont. at 395.

I agree with the holding in Christensen that the foregoing statutes and cases compel the conclusion that tax liens on real property take priority over mortgages.

Your next question concerns the priority of local tax liens in relation to federal mortgages. The answer to this question depends on the particular federal mortgages involved.

Ordinarily, the rule regarding the priority of federal mortgage liens in relation to local tax liens is: The first in time is first in right. U.S. v. Ringwood Iron Mines, 251 F.2d 145 (3d Cir.), cert. denied, 356 U.S. 974 (1958). In certain cases, federal statutes override the "first in time" rule. Title 15 USCA § 646 subordinates SBA (Small Business Administration) liens to state and local tax liens, when state law gives tax liens priority over mortgages. United States v. Christensen, supra, held that tax liens in Montana are superior to all other liens, and are therefore superior to SBA liens.

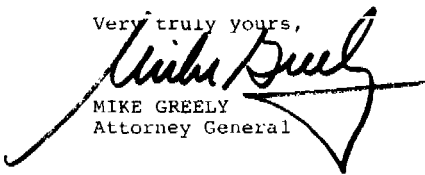
In conclusion, local tax liens have priority over private mortgages. When federal mortgages are involved, the rule is that first in time is first in right, unless federal law changes the rule, as with SBA liens. SBA liens are subordinate to local tax liens in Montana.

THEREFORE, IT IS MY OPINION:

1. Local tax liens on personal or real property have priority over liens of private mortgages.

2. When federal mortgages are involved, the rule regarding priorities between local taxes and those mortgages is: First in time is first in right, unless federal statute provides otherwise.
3. Under 15 USCA § 646, SBA liens are subordinate to local tax liens.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 40

OPINION NO. 81

COUNTIES - Budgeting;
COUNTIES - Setting officials' salaries;
COUNTY OFFICERS AND EMPLOYEES - Setting officials' salaries;
COUNTY OFFICERS AND EMPLOYEES - Time for setting officials' salaries;
COUNTY OFFICIALS - Setting officials' salaries;
COUNTY OFFICIALS - Time for setting officials' salaries;
ELECTED OFFICIALS - Setting county officials' salaries;
ELECTED OFFICIALS - Time for setting county officials' salaries;
SALARIES - Setting county officials' salaries;
MONTANA CODE ANNOTATED - Sections 7-1-2111, 7-1-2112, 7-4-2503, 7-4-2503(1), 7-4-2504, 7-6-2322, 7-6-2324, 7-6-2325;
OPINIONS OF THE ATTORNEY GENERAL - 37 Op. Att'y Gen. No. 101 (1977).

HELD: When a county's classification changes according to section 7-1-2111, MCA, the salaries of the county officials listed in section 7-4-2503(1), MCA, must also change. The salaries must change as of July 1 of the following year, with the onset of a new fiscal year for the county.

13 November 1984

Mark L. Stermitz
Judith Basin County Attorney
P.O. Box 557
Stanford MT 59479

Dear Mr. Stermitz:

You have requested my opinion concerning the computation of certain county officials' salaries according to section 7-4-2503, MCA. Specifically, you asked whether a decrease or increase in taxable valuation and the accompanying change in the county classification, pursuant to section 7-1-2111, MCA, would result in a decrease or increase in the salaries under section 7-4-2503, MCA, and if so, when such decrease or increase would be effective. I conclude that a change in classification would require a change in salary which would become effective for the following fiscal year.

Montana Administrative Register

22-11/29/84

Certain county officials receive salaries computed according to sections 7-4-2503 and 7-4-2504, MCA, both of which were amended in 1981. Section 7-4-2503, MCA, provides:

Salary schedule for certain county officers.

(1) The salary paid to the county treasurer, county clerk and recorder, clerk of the district court, part-time county attorney, county assessor, county superintendent of schools, and county sheriff; the county surveyor in counties where county surveyors receive salaries as provided in 7-4-2812; and the county auditor in all counties wherein such office is authorized, for the fiscal year beginning July 1, 1981, is computed by adding the annual base salary of:

(a) \$14,000 for the counties of the first through fifth class to the population increment of \$10 for each 100 persons or major fraction thereof included in the county's population as determined by the 1980 federal decennial census; or

(b) \$12,000 for counties of the sixth and seventh class to the population increment of \$20 per 100 persons or major fraction thereof in the county's population as determined by the 1980 federal decennial census.

....

Only the county officials listed in subsection (1) of section 7-4-2503, MCA, are the subject of this opinion, as they are the only officials whose salaries are computed according to county classes. Only that subsection links the base salaries to the classes set in section 7-1-2111, MCA.

Section 7-1-2111, MCA, provides:

Classification of counties. (1) For the purpose of regulating the compensation and salaries of all county officers, not otherwise provided for, and for fixing the penalties of officers' bonds, the several counties of this state shall be classified according to that

percentage of the true and full valuation of the property therein upon which the tax levy is made, as follows:

....

This section goes on to designate the "first class" through the "seventh class." It is these classes to which section 7-4-2503(1), MCA, quoted above, refers. These classes are used as a basis for computing the salaries of certain county officials.

Your question concerns the effect of a change of class, pursuant to section 7-1-2111, MCA, on the salaries of the officials listed in section 7-4-2503(1), MCA. Because the Legislature, through the clear language of section 7-4-2503, MCA, has evidenced its intent to base certain salaries on the county classifications, it is logical to conclude that any change in the classification would result in a change in the salaries. Every year the salaries are recomputed according to sections 7-4-2503 and 7-4-2504, MCA.

Less apparent is the Legislature's intent as to when such a change is to occur. Neither section 7-1-2111, MCA, nor section 7-4-2503, MCA, specifically refers to a date upon which such a change in salaries is to take effect. Section 7-4-2503, MCA, refers only to the fiscal year beginning July 1 of each year. As to a change in classification of a county, section 7-1-2112, MCA, provides:

Designation of county classification by county commissioners. (1) The several boards of county commissioners must, at their regular session in September of each year, make an order designating the class to which such county belongs, as determined by the taxable valuation of such county for the year in which such order is made, under and in accordance with the provisions of 7-1-2111.

(2) Such classification shall not change the government of the county then in existence until the next succeeding first Monday in January. [Emphasis added.]

A change in the salaries of county officials covered by section 7-4-2503, MCA, must logically occur at the beginning of the next fiscal year, as a change prior to the following fiscal year would require a change in the county's budget. Section 7-1-2112(1), MCA, requires the county commissioners to make a classification order at their September meeting. By the time the order is issued in September, the budget for the county's fiscal year of July 1 to June 30 will have been set. See § 7-6-2322, MCA. The classification may precede the final setting of the budget, depending on when the commissioners' meeting is held in September, but such timing is not assured. Moreover, section 7-1-2112(2), MCA, states that a change in classification is not to change the county government until January of the following year. Even if the classification order preceded the setting of the budget, the county government is not to change until the following January.

There are only limited provisions for amendment of the budget in the middle of a fiscal year. See § 7-6-2324, MCA. There is no statute which allows an amendment of the budget for an increase in salary due to a change in county classification. Furthermore, section 7-6-2325, MCA, provides that although certain transfers or revisions may be made, "no salary shall be increased above the amount appropriated therefor." Any salary change due to a change of county classification must not affect the salaries of the county officials listed in section 7-4-2503(1), MCA, until the following fiscal year.

An Attorney General's Opinion issued December 20, 1977 concluded, based on the Montana Supreme Court case of Brown v. Board of County Commissioners, 165 Mont. 391, 529 P.2d 328 (1974), that county officials' salaries must be computed according to the taxable valuation made prior to July 1 of the year in question and that any change in salary must be made on July 1 or must be applied retroactively to that date. 37 Op. Att'y Gen. No. 101. I conclude that, due to the amendment in 1981 of section 7-4-2503, MCA, this Attorney General's Opinion and the Brown case are not applicable to determine the issue at hand. The statutory scheme for determining the salaries of the county officials listed in section 7-4-2503(1), MCA, in effect prior to the 1981 amendments, was vastly different from the current scheme and provides little insight into the problems which have

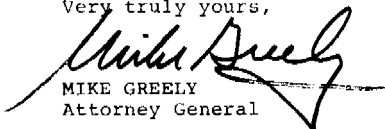
arisen with the current versions of sections 7-4-2503 and 7-4-2504, MCA.

The clear intent of the Legislature, as evidenced by the language of section 7-4-2503, MCA, is that when a county's classification changes according to section 7-1-2111, MCA, the salaries of the county officials listed in section 7-4-2503(1), MCA, must also change. Because the classification will not change until September of the year of the change, after the budget has been set by the county, and because section 7-1-2112, MCA, states that the county government is not to change until January of the following year, the salaries must not change until July 1 of the following year, with the onset of a new fiscal year for the county.

THEREFORE, IT IS MY OPINION:

When a county's classification changes according to section 7-1-2111, MCA, the salaries of the county officials listed in section 7-4-2503(1), MCA, must also change. The salaries must change as of July 1 of the following year, with the onset of a new fiscal year for the 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 bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt or amend 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

Definitions: Administrative Rules of Montana (ARM) is a looseleaf 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 ARM topical index, volume 16. Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute
Number and
Department | 2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers. |

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 1984. This table includes those rules adopted during the period October 1, 1984 through December 31, 1984, and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through September 30, 1984, 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 1984 Montana Administrative Registers.

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