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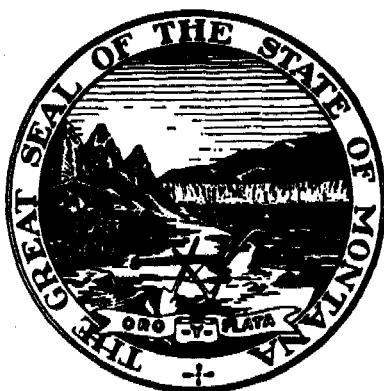
MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 24

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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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In the matter of the amendment) NOTICE OF PUBLIC HEARING
of rule 2.44.507 relating to) ON PROPOSED AMENDMENT OF
the Teachers' Retirement System) RULES RELATING TO THE
TEACHERS' RETIREMENT SYSTEM

1. On January 15, 1988 at 9 A.M. a public hearing will be held in the office of the Teachers' Retirement System, at 1500 6th Avenue, Helena, Montana, to consider the amendment of rule 2.44.507.
2. The rule proposed to be amended provide as follows:

2.44.507 FORMULA FOR DETERMINING CONTRIBUTIONS DUE ON TERMINATION PAY (1) The formula for determining the contributions due for option (i) 19-4-101(5) (a) shall be 5:75%-times a percentage of the termination pay, based upon the members age at the time of retirement, times the total years of creditable service. The total contributions due shall be divided between the member shall pay--2.80%-times the--termination--pay--times--the--total--years--of--creditable service; and the employer shall pay---2.95%-times--the termination--pay--times--the--years--of--creditable--service--in the same ratio as employee and employer contributions required under 19-4-602 and 19-4-605 MCA are to the total. AUTHORITY. Sec. 19-4-201 MCA; IMP, 19-4-101(5) MCA;

The formula currently used to determine the contributions due to adequately compensate the system for the additional retirement benefits has caused some underfunding from members who retired at young ages. Early retirements had not been anticipated at the time the original formula was devised. The proposed changed will provide that the system is adequately compensated as required under 19-4-101(5) MCA.

6. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Bada Lovitt, Chief Legal Counsel, Department of Administration, Helena, MT 59620, no later than January 22, 1988.

7. Beda Lovitt has been designated to preside over and conduct the hearing.

BY:

DAVID L. SENN, EXECUTIVE SECRETARY
TEACHERS' RETIREMENT DIVISION

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF COSMETOLOGY

In the matter of the proposed amendments of rules pertaining to schools, instructors, applications, examinations, electrology, sanitary standards and salons, and the repeal of a rule pertaining to licenses)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULES PERTAINING TO COSMETOLOGY, ELECTROLOGY, AND MANICURING AND THE REPEAL OF A RULE PERTAINING TO LICENSES
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TO: All Interested Persons:

1. On February 1, 1988, a public hearing will be held in the downstairs conference room to consider the proposed amendment of ARM 8.14.601, 8.14.603, 8.14.604, 8.14.606; 8.14.802 through 8.14.806, 8.14.808, 8.14.810, 8.14.813 through 8.14.815; 8.14.901 through 8.14.903, 8.14.905 through 8.14.907, 8.14.909; 8.14.1003, 8.14.1004, 8.14.1010; 8.14.1104 through 8.14.1106, 8.14.1108; 8.14.1201, 8.14.1202, 8.14.1206, 8.14.1208 through 8.14.1210, 8.14.1212, 8.14.1214 through 8.14.1216, and the proposed repeal of 8.14.1001

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

"8.14.601 APPLICATION (1) through (4)(e) will remain the same.

(f) a bond in the amount of \$5,000, for a school of cosmetology and/or a school of manicuring, which shall be subject to the inspection of the board; and

(1) through (6) will remain the same."

Auth: 37-1-134, 37-31-203, MCA Imp: 37-31-302, 37-31-311, MCA

REASON: The rule is being amended to conform to statutory amendments.

"8.14.603 SCHOOL REQUIREMENTS (1) through (5) will remain the same.

(6) Daily attendance records and records of all subjects taught and practiced shall be submitted to the office of the department on or before the 10th 15th of each month. These records shall be accurate and reflect attendance to the minute.

(7) through (12) will remain the same.

(13) ~~Students are not permitted to operate any equipment in which there is known operating hazards unless supervised.~~ Use by students of defective equipment in which there are known operating hazards is not permitted.

(14) School owners shall use may discipline students on school premises during school hours and only may dock students by reduction of hours already served when a school rule or

board-rule-has-been-violated. school hours. (Any) violation of a school or board rule may be taken into consideration.

(a) --All-hours-docked-must-be-reported-to-the-department giving--the--reason--and--must--be--subtracted--form-the-hours accumulated-on-the-monthly-hours-report--The prior successful completion of a course or hours therein may NOT be "docked" by the schools as a form of disciplinary sanction.

(15) and (17) will remain the same.

(a) The cosmetology student's required training time continues on the date of the re-enrollment unless over 60 more than 45 calendar days has have lapsed from the last date of attendance. The manicuring student's required time continues on the date of the re-enrollment unless over more than 7 calendar days has have lapsed from the last date of attendance. The Board will take into consideration any prolonged medical withdrawal on a case by case basis.

(18) through (25) will remain the same."

Auth: 37-1-131, 37-31-203, 37-31-311, MCA AUTH Extension, Sec. 13, Ch. 602, L. 1985, Eff. 1/1/86 IMP: 37-31-304, 37-31-311, MCA

REASON: The amendments are needed to conform our law in order to qualify for federal funds.

"8.14.604 SUBSTITUTE INSTRUCTOR (1) Substitute instructors may be engaged by cosmetology schools by notifying the board. --Substitute instructors may not teach more than--10 for--an--active-instructor-in-any-calendar-year. Instructors with inactive licenses may be engaged by those schools licensed under the provisions of this chapter and section 37-31-302 MCA, by notifying the department. Instructors with inactive licenses may not substitute more than 10 days for an active instructor in any calendar year."

Auth: 37-1-131, 37-31-203, 37-31-322, MCA Imp: 37-31-311, 37-31-322, MCA

REASON: The majority of those affected by this rule agree that this was too restrictive and unfair and limited free enterprise.

"8.14.606 STUDENT REGISTRATION (1) through (d) will remain the same.

(2) --Students-in-a--school--of--cosmetology--desiring--to change--to--another--school--shall--notify--the--office--of-the department--of--such-a-change--A registered school shall accept the verified statement from the "disenrolling" school indicating the number of hours the student has had in training when the student transfers to a different registered school. This verified statement must agree with the department records. If a student transfers from one registered school to a different registered school, the prior registered school must grant full credit for all hours and any minute thereof successfully completed by the transferring student.

(3) and (4) will remain the same.

(5) All cosmetology students who have been out of school for a period of time in excess of 60 calendar days would forfeit 80 hours of accumulated credit for each month or fraction thereof since the last day of attendance in a beauty school.

(a) All manieuring students who have been out of school for a period of time in excess of 7 calendar days would forfeit 20 hours of accumulated credit for each week or fraction thereof since the last day of attendance in a manieuring school.

(6) Students of cosmetology or manieuring may lose credit for training time during which a school license is invalid.

(7) through (9) will remain the same but will be renumbered (5) through (7)."

Auth: 37-1-131, 37-31-203, 37-31-311, MCA AUTH
Extension, Sec. 13, Ch. 602, L. 1985, Eff. 1/1/86 Imp:
37-31-304, 37-31-311, 37-31-323, MCA

REASON: The rule amendment is needed to conform to statutory amendments and clarify conditions for student transfers.

"8.14.802 EXAMINERS - EXAMINATIONS (1) Examinations for licenses shall be conducted by the board or by examiners appointed by the majority of the board, at places and times specified by the board. Examinations for licenses shall be held at places and times specified by the board. The examination shall be conducted by the department in accordance with 37-1-101(4), MCA.

(2) through (7) will remain the same.

(8) Applicants must appear for examination in a clean white or pastel washable uniform and must furnish their own pencil for their written examination and light colored apparel and have with them all equipment necessary for performing the practical examination.

(9) Any applicants who have taken the examination and failed any part thereof, must notify the office of the department of their desire to be re-examined 25 20 days before the next examination and pay the required fee.

(10) and (11) will remain the same.

(12) Applicants will be notified only of whether they "Pass" or "Fail". Upon receipt of a notarized letter, unsuccessful applicants will be notified of those practical areas in which they were deficient.

(13) will remain the same."

Auth: 37-1-131, 37-31-203, MCA AUTH Extension, Sec. 13, Ch. 602, L. 1985, Eff. 1/1/86 Imp: 37-31-303, 37-31-308, MCA

REASON: Standards contained in the rules are being updated because they are obsolete.

"8.14.803 QUALIFICATIONS FOR EXAMINATION - MONTANA STUDENTS (1) through (3) will remain the same.

(a) In case of dispute between the school and the department as to whether the 2,000 hour requirement has been

met, the department shall submit the record to the board for decision.

(4) through (6) will remain the same."

Auth: 37-1-131, 37-31-203, MCA AUTH Extension, Sec. 13,
Ch. 602, L. 1985, Eff. 1/1/86 Imp: 37-31-304, 37-31-307,
37-31-311, MCA

REASON: This amendment is needed to make services more available to the public.

"8.14.805 APPLICATION - OUT-OF-STATE COSMETOLOGISTS/ MANICURISTS (1) and (2) will remain the same.

(3) Applicants shall take the practical and written examinations ~~covering each of the branches of cosmetology or manicuring and cosmetology for cosmetology, manicuring and/or electrology, also the law and rules examination, administered by the board department.~~

(4) through (6) will remain the same."

Auth: 37-1-131, 37-31-203, MCA AUTH Extension, Sec. 13,
Ch. 602, L. 1985, Eff. 1/1/86 Imp: 37-31-303, 37-31-304,
37-31-306, 37-31-308, MCA

REASON: The rule is being amended because it is obsolete.

"8.14.806 LICENSED WITHOUT EXAMINATION - RECIPROCITY

(1) through (b) will remain the same.

~~(2) -- For purpose of -- (i) (a) -- and -- (b) -- above -- any -- hours completed -- while -- working -- on -- a -- federal -- reservation -- will -- not -- be -- recognized --."~~

Auth: 37-1-131, 37-31-203, MCA Imp: 37-31-304,
37-31-306, MCA

REASON: The subsection is being deleted to conform to federal laws and to qualify for federal funds.

"8.14.808 BRUSH-UP COURSES (1)

A licensed cosmetologist who wishes to take advance hair styling, tinting, bleaching, permanent waving, or hair cutting shall be registered with the office of the department ~~not to exceed 3 consecutive months and shall be permitted to practice on the public. No -- hours of credit shall be given. Schools must hold an advanced training license."~~

Auth: 37-1-131, 37-31-203, MCA Imp: 37-31-302,
37-31-303, 37-31-321, MCA

REASON: The amendment is necessary to provide a procedure by which applications can be made for state funding.

"8.14.810 ITINERANT COSMETOLOGISTS (1) through (3) will remain the same.

~~(4) -- An itinerant license will not be issued unless the application form, duplicate copy of a current cosmetology license and the proper fee has been filed with the office of the department."~~

~~(5)--The application form will specify time, place or location, type of service or demonstration to be given and sponsor or company represented.~~

~~(6)(4) . . . "~~

Auth: 37-1-131, 37-31-203, MCA AUTH Extension, Sec. 13, Ch. 602, L. 1985, Eff. 1/1/86 Imp: 37-1-131, 37-31-101, 37-31-203, MCA

REASON: The deletion is needed to more clearly interpret section 37-17-101, MCA, and clarify the distinctions between activities of itinerant cosmetologists and the practice of cosmetology.

"8.14.813 LAPSED LICENSE (1) through (b) will remain the same.

(2) If a license has lapsed for a period of up to 4 years, but no longer than 4 years, the license may be renewed upon payment of license fees plus penalty fees for years due the reinstatement fee.

(3) If a license has lapsed for a period of 4 years to 6 years, but no longer than 6 years, it is required that in addition to payment of license fees plus penalty fees for years due, reinstatement fee an applicant must take a course of 80 hours of training in a properly licensed school of cosmetology, providing certification thereof.

(4) If a license has lapsed for a period of 6 to 8 years, but no longer than 8 years, it is required that in addition to payment of license fees plus penalty fees for years due, the reinstatement fee an applicant must take a course of 160 hours of training in a properly licensed school of cosmetology, providing certification thereof.

(5) If a license has lapsed for a period of 8 to 10 years, but no longer than 10 years, it is required that in addition to payment of license fees plus penalty fees for years due, the reinstatement fee an applicant must take a course of 300 hours training in a properly licensed school of cosmetology, providing certification thereof.

(6) will remain the same."

Auth: 37-1-131, 37-31-203, 37-31-322, MCA AUTH Extension, Sec. 13, Ch. 602, L. 1985, Eff. 1/1/86 Imp: 37-31-322, MCA

REASON: The amendment is to conform rule language with that in current common use among regulative agencies in this and other states.

"8.14.814 FEES, INITIAL, RENEWAL, PENALTY AND REPUND FEES (1) Student registration fees shall be ~~\$10.00~~ \$5.00 for initial enrollment plus ~~\$10.00~~ \$5.00 for each re-enrollment following each withdrawal.

~~(2)--Application fee for licensing or examination, shall be \$25.00 in addition to any other license or examination fee.~~

(a) Applications are not considered complete until all information, including fees, has been received by the department.

(b) Applications not completed within 90 days will be considered withdrawn and a new application and fee will be required.

~~(3)~~(2) Temporary license fee for cosmetologists shall be \$10.00.

~~(4)~~(3) ~~Examination-to-practice--shall--be--\$40.00,--plus \$25.00--manager-operator--or--manicurist--license--fee,--The~~
cosmetology examination fee shall be \$20.00, plus \$25.00 manager/operator license fee.

~~(5)~~(4) Examination to teach shall be \$100.00, plus \$25.00 instructor license fee.

~~(7)~~(5) Reciprocal license shall be ~~\$100.00~~ \$50.00, plus \$25.00 manager-operator or manicurist license fee.

~~(8)~~(6) Duplicate license fee shall be \$6.00.

~~(9)~~(7) Initial inspection fee ~~of-a-salon~~ for all salons shall be ~~\$50.00~~ \$25.00.

~~(10)~~(8) Transcripts - certification of training and licensing shall be \$10.00.

~~(11)~~(9) Manager-operator and manicurist license fee shall be \$25.00.

~~(12)~~(10) ~~Cosmetologist-salon-and-manicure-salon--license fee--shall--be--\$35.00.~~ All salon license fees shall be \$25.00.

(13) through (22) will remain the same but will be renumbered as (11) through (20).

(21) Manicurists examination fee shall be \$40.00 plus \$25.00 license fee.

(22) Electrology examination fee shall be \$100.00 plus \$25.00 license fee.

Auth: 37-1-134, 37-31-203, 37-31-323, MCA AUTH
Extension, Sec. 13, Ch. 602, L. 1985, Eff. 1/1/86 Imp:
37-31-302, 37-31-304, 37-31-307, 37-31-321, 37-31-322,
37-31-323, 37-32-304, 37-32-305, 37-32-306, MCA

REASON: The fees are being changed to make them commensurate with program area costs.

"8.14.815 CONTINUING EDUCATION - INSTRUCTORS (1) and (2) will remain the same.

~~(3)---Advance--styling--will---not---be---considered---as teacher-training.~~

(4) through (6) will remain the same but will be renumbered (3) through (5)."

Auth: 37-1-131, 37-31-203, MCA Imp: 37-31-322, MCA

REASON: This subsection is being deleted to broaden the scope of continuing education available to instructors.

"8.14.901 SCHOOLS - APPLICATION (1) through (5) will remain the same.

(6) A school shall have in its employ a licensed teacher who is at all times in the immediate supervision of the work of the school. There may not be more than 10 students per each electrology teacher.

~~(7)---No-teacher-or-student-teacher-may--be--permitted--to practice---electrology---on---the--public---in---a--school. An~~

electrology teacher may be permitted to demonstrate on the public in a school for technical and practical purposes only.

(8) through (11) will remain the same.

(12) A detailed floor plan of the school, showing adequate floor space of at least 1,000 square feet for the first 4 10 students and 60 square feet for each additional student;--which may. This may include locker room, and office space, and reception area, subject to board approval.

(13) will remain the same.

~~(14)--A bond in the amount of \$6,000, which shall be subject to the inspection of the board--and shall specifically state--that--in--case--this--proposed--new--school--goes--out--of--business--that--any--prepaid--tuition--will--be--refunded. A bond in the amount of \$5,000, which shall be submitted to the department and shall specifically state in case this proposed schools goes out of business, any prepaid tuition will be refunded. This bond must be submitted to the board office before the license can be issued.~~

(15) through (17) will remain the same."

Auth: 37-1-131, 37-32-201, 37-32-304, 37-32-306, MCA
Imp: 37-32-201, 37-32-304, MCA

REASON: The standards are being updated because they are obsolete.

"8.14.902 SCHOOL REQUIREMENTS (1) will remain the same.

(2) Daily attendance records and records of all subjects taught and practiced shall be submitted to the office of the department on or before the ~~10th~~ 15th of each month, on forms furnished by the department. Records must be signed by a qualified instructor or someone designated by the owner and the student.

(3) through (7) will remain the same.

(8) Upon re-enrollment in a school, the department shall be notified of the student's re-enrollment within 5 days.

(9) through (12) will remain the same."

Auth: 37-1-131, 37-32-201, MCA Imp: 37-32-302(1)(b), MCA

REASON: The amendment is proposed to conform reporting requirements with those for schools of cosmetology, which the board also regulates. This will make reporting and regulation more uniform.

"8.14.903 INSPECTION AND EQUIPMENT (1) through (4) will remain the same.

~~(5)~~ (5) One dozen Needles, in of various sizes, shall be provided each student upon completing 50 hours of basic training.

~~(7)~~ (6) One locker shall be provided for each student enrolled for personal items.

~~(8)~~ (7) There shall be separate rest rooms for male and female persons;--which shall include lavatories with hot and cold running water convenient to students;--employees--and

~~patrons. Bath rooms with hot and cold running water shall be convenient to students, employees and patrons.~~

~~(9)(8) No school shall provide cups or glasses or other drinking receptacles for common usage. Schools shall provide only disposable single service drinking cups.~~

(10) through (12) will remain the same but will be renumbered (9) through (11)."

Auth: 37-1-131, 37-32-201, 37-32-304, 37-32-306, MCA
Imp: 37-32-302, 37-32-304, MCA

REASON: Standards are being updated because they are obsolete. Instances of incompetence indicate that rule changes are needed to reduce such occurrences.

"8.14.905 STUDENT REGISTRATION (1) Upon enrollment, a student must submit to the school, the following items which the school must send to the office of the department within 10 days:

(a) proof of high school graduation, or equivalent

(b) photostatic copy of birth certificate

(c) certificate of health issued by a licensed physician stating the individual has no communicable diseases.

(2) and (3) will remain the same."

Auth: 37-1-131, 37-32-201, 37-32-302, MCA Imp:
37-32-201, 37-32-302, MCA

REASON: This rule is being amended to provide information which will protect the public.

"8.14.906 CURRICULUM - STUDENTS (1) The hours of training courses shall consist of 600 hours of technical instruction and practical operations covering all practices of an electrologist in not less than 15 weeks or a maximum of ~~19~~ 20 weeks.

(2) will remain the same.

(3) The course and training shall include professional ethics, personal hygiene, good grooming, normal cleanup duties, required keeping of student records, ~~modeling~~, ~~positioning~~, reception desk and other related duties; and may also include guest speakers, with topics relevant to the electrolysis profession.

(4) All students shall have completed the specific minimum of required hours and operations upon completion of the 600 hour course and the school must send the record of completion to the department within ~~2~~ 5 days.

(5) Students, upon graduation from a school and pending passing the state examination, may not engage in the practice of electrolysis."

Auth: 37-1-131, 37-32-201, 37-32-302, MCA IMP,
37-32-302 (1)(b), MCA;

REASON: Standards contained in these rules are being updated because they are obsolete and to ensure fair competition.

"8.14.907 STUDENT REQUIREMENTS (1) through (3) will remain the same.

(4) The student's required training time continues on the date of re-enrollment, unless over 60 days 45 calendar days has lapsed from the last date of attendance.

(5) will remain the same.

(6) ~~The student is required to furnish proof immediately of a valid reason or nature of the interruption by filing a physician's statement or other certified statement setting forth the cause for missing such time of training.~~ Any student who is out of school in excess of 45 calendar days, is required to submit a statement from a physician or other authorized statement to show valid reason for withdrawal. Such a leave will be reviewed by the Board."

Auth: 37-1-131, 37-32-201, 37-32-302, MCA Imp: 37-32-302, MCA

REASON: The amendment is proposed to conform with federal regulations to qualify for federal funding.

"8.14.909 EXAMINERS - STUDENT EXAMINATIONS

(1) ~~Examinations for electrologists~~ electrology shall be conducted--by the--board--or by--examiners--appointed by the majority of the board administered by the department and by examiners appointed by the board.

(2) All examiners shall have had at least 2 years of licensed practical experience, in this state, consisting of 30 at least 20 hours per week ~~for a minimum of 52 weeks per year~~ and shall be a licensed electrologist of this state and shall not be connected with any school of electrology.

(3) and (4) will remain the same.

(5) No application for examination will be accepted unless accompanied with the proper fees, credentials, final examination grades received in the school, the final hours record showing that the 600 hours have been completed and records showing that the student has been enrolled for not less than 15 weeks. All applications must be received by the department 20 calendar days prior to the examination date and accompanied with the proper fees, credentials, examination grades, final hours and completed application papers.

(a) Applications received after the 20 day deadline for registration, shall be held for the next examination.

(b) Applicants shall not appear for examination unless they have been notified to appear by the department.

(6) An applicant must appear for examination in a clean white--or--pastei--washable--uniform light colored clothing and/or a lab coat, plus all equipment necessary for performing the practical examination. ~~must furnish their own pencil for their written examination--and--all--equipment--necessary--for performing the practical examination.~~

(7) through (10) will remain the same.

(11) Applicants who have been notified of failing the examination, must may re-apply within 1 year of failure of the first examination and pay the examination fee and retake the complete examination.

(12) Any applicant who does not re-apply for examination within 1 year of failure of the first examination must complete a 400 300 hour brush-up course in a registered school of electrology and ~~take~~ to be eligible for any further examination.

(13) will remain the same.

(14) Applicants registered for examination, who for good cause cannot appear, must notify the office of the department 48 hours prior to before the examination date or forfeit the examination fees.

(15) will remain the same."

Auth: 37-1-131, 37-32-201, 37-32-302, MCA Imp:
37-32-201, 37-32-302, MCA

REASON: The amendments are necessary to conform to statutes and to update rules that were obsolete.

"8.14.1003 EXAMINATION (1) Examinations for an a electrologist--license--will-be-held-at-least-once-a-year-at-a place-and time-specified-by--the--board license to practice electrology will be held three times a year during the months of September, January and May at a time and place specified by the board.

(2) through (4) will remain the same."

Auth: 37-1-131, 37-32-201, 37-32-302, MCA Imp:
37-32-302, MCA

REASON: To increase the frequency with which licensing exams are offered and reduce the amount of time applicants must wait to take the exam.

"8.14.1004 SALON (1) will remain the same.

(2) Any change of ownership and/or location requires a new application for registration and a-new-registration any appropriate fees to be paid.

(3) and (3)(a) will remain the same.

(b) A An electrology salon shall must have a separate entrance and a separate enclosed area for working on patrons.

(c) A An electrology salon shall must have separate convenient-handwashing facilities.

(d) will remain the same."

Auth: 37-1-131, 37-32-201, 37-32-306, MCA Imp:
37-32-304, 37-32-306, MCA

REASON: To update rules that are obsolete and conform them to current sanitary standards and practices in the sanitary regulations.

"8.14.1010 FEES, INITIAL, RENEWAL, PENALTY AND REFUNDS

(1) through (2)(a) will remain the same.

(b) Electrology salon license fee shall be \$35.00.
\$25.00

(c) through (j) will remain the same."

Auth: 37-1-134, 37-32-201, MCA Imp: 37-1-134,
37-32-304, 37-32-305, MCA

REASON: Fees are charged to make them commensurate with program area costs.

"8.14.1104 TOILET FACILITIES (1) Every electrolysis salon shall provide adequate toilet facilities for its employees and patrons in a convenient location, with a self-closing door. The door is to remain closed.

(2) through (5) will remain the same."
Auth: 37-1-131, 37-32-201, MCA Imp: 37-32-201,
37-32-304, 37-32-306, MCA

REASON: To conform with current sanitary standards and practices in the field.

"8.14.1105 HANDWASHING FACILITIES (1) will remain the same.

(2) A soap dispenser, supplied with liquid soap will--be considered--satisfactory. is preferred.

(3) Sanitary towels approved may will be individual single use of paper towels, sanitary type roller or approved air dryer."

Auth: 37-1-131, 37-32-201, 37-32-306, MCA Imp:
37-32-201, 37-32-304, 37-32-306, MCA

REASON: To conform with current sanitary standards and practices in the field.

"8.14.1106 CONSTRUCTION, CLEANING AND SANITIZING TOOLS AND EQUIPMENT (1) through (3) will remain the same.

(4) The headrest of chairs and tables shall be covered with a clean--towel--or--paper--towel single use towel for each patron.

(5) will remain the same.

(6) Before use, each electrolysis needle or tweezer shall be first wiped--clean--with--a--70%--alcohol--solution cleansed with warm water and soap, rinsed thoroughly and placed into an ultrasonic cleanser or chemical sterilant presook, and then sterilized by one of the following methods:

(a) saturated--steam, sterilizing packets with saturated steam 15 PSI, and 250 F, 30 minutes

(b) sterilizing packets with dry heat lab oven, 340 F, 60 minutes

(c) Boiling--submerged--in--distilled--water--20--minutes cold sterilants with bead sterilizer 450 F, 10 minutes

(d) through (9) will remain the same.

(10) Tools and equipment shall be handled in such a manner as to prevent contamination, as--far--as--practicable--and--shall--mean--avoiding--overhandling--of--a--clean--article--before--it--is--used--on--the--next--customer.

(11) Cream--and--other--unguents Topicals must be removed from containers with spatulas or similar--utensils pump dispenser.

(12) through (14) will remain the same."

Auth: 37-1-131, 37-32-201, 37-32-304, MCA Imp:
37-32-201, 37-32-304, 37-32-306, MCA

REASON: To conform with current sanitary standards and practices in the field. These amendments were recommended by the State Department of Health.

"8.14.1107 DISPOSAL OF WASTE (1) will remain the same.

(2) Refuse containers shall have plastic liners, be kept in good repair and thoroughly cleaned after being emptied frequently.

(3) and (4) will remain the same."

Auth: 37-1-131, 37-32-201, 37-32-304, 37-32-306, MCA
Imp: 37-32-201, 37-32-304, 37-32-306, MCA

REASON: To conform with current sanitary standards and practices in the field.

"8.14.1108 PERSONAL HYGIENE (1) All electrology salon licensees shall wear clean washable--white--lab--coats--or uniforms--used-for-no-other-purpose. appropriate professional attire. Socks/nylons and shoes shall be worn at all times.

(2) and (3) will remain the same."

Auth: 37-1-131, 37-32-201, 37-32-304, 37-32-306, MCA
Imp: 37-32-201, 37-32-304, 37-32-306, MCA

REASON: To conform with current sanitary standards and practices in the field.

"8.14.1201 FLOORS (1) and (2) will remain the same.

(a) Acceptable floor coverings are cement, tile, ~~terrazzo~~, hardwood (if well kept ~~and--filled~~), good-grade linoleum or vinyl plastic, or suitable carpeting.

(3) Floors will be considered clean when free of accumulated soil, hair and other materials.

(a) Dustless method of cleaning shall mean the use of sweeping compounds, treated dust mops or other cleaning method that prevents dust and hair from flying."

Auth: 37-1-131, 37-31-203, 37-31-204, MCA Imp: 37-31-204, MCA

REASON: To conform with current sanitary standards and practices in the field.

"8.14.1202 WALLS AND CEILINGS (1) Walls and ceilings of all rooms and booths shall have a smooth washable surface, kept clean, in good repair and finished in a ~~light--color~~ professional manner.

(a) All walls in booths and work rooms shall be smooth enough for easy washing, without cracks or holes and splash areas require a heavy duty finish. Curtains and--hangings shall--be--of--washable--material--and--changed, drapes and wall hangings shall be cleaned frequently."

Auth: 37-1-131, 37-31-203, 37-31-204, MCA Imp: 37-31-204, MCA

REASON: To conform with current sanitary standards and practices in the field.

"8.14.1206 TOILET BATH ROOM FACILITIES (1) Every beauty salon or school shall provide ~~toilet~~ bath room facilities for its employees and patrons in a convenient location, with a self-closing door.

(a) Mechanical door closers or screen door springs will be considered satisfactory. The door is to remain closed.

(2) Durable and legible handwashing instructions shall be posted in each ~~toilet~~ bath room used by employees, directing them to wash their hands before returning to work.

(3) ~~Toilet~~ Bath rooms shall be completely closed by walls and ceilings and plumbing must comply with the Montana plumbing code.

(a) will remain the same.

(4) No articles shall be stored in ~~toilet~~ bath room that will interfere with cleaning it.

(a) If ~~toilet~~ bath room is used for storage of cleaning equipment, a closet shall be provided."

Auth: 37-1-131, 37-31-203, 37-31-204, MCA AUTH
Extension, Sec. 13, Ch. 602, L. 1985, Eff. 1/1/86 Imp:
37-31-204, MCA

REASON: To conform with current sanitary standards and practices in the field.

"8.14.1208 HANDWASHING FACILITIES (1) Handwashing facilities shall be convenient to work area, ~~shall be provided~~, including hot and cold running water, with a soap dispenser and approved sanitary towels. No employee shall work after using the toilet room without first washing his hands and arms. Hands must be washed before and after touching any patron. Employees shall wash their hands after using the bath room and before and after touching a patron.

(a) and (b) will remain the same."

Auth: 37-1-131, 37-31-203, 37-31-204, MCA Imp:
37-31-204, MCA

REASON: To conform with current sanitary standards and practices in the field.

"8.14.1209 CONSTRUCTION OF UTENSILS AND EQUIPMENT

(1) will remain the same.

(a) All tools, utensils and equipment (shelves, tables, etc.) shall be constructed and located for easy cleaning, and repair. ~~It is especially important that surfaces coming in contact with the skin or hair, including shampoo bowls and basins, be in good condition and constructed for easy cleaning.~~

~~(b) Permanent wave machines and all other electrical accessories shall be inspected and checked frequently by a qualified electrician, who shall submit a written report of the facts regarding the inspection.~~

(c) will remain the same.

~~(d) Cups or glasses shall not be used for serving coffee or other liquids unless there are cup or glass washing facilities provided for washing and sanitizing of utensils in accordance with the department of health and environmental~~

24-12/24/87

MAR Notice No. 3-14-40

science-regulations-for-eating-and-drinking-establishments.
Paper-cups-are-highly-recommended-in-the-absence-of-such
facilities. Single service paper cups are to be used for all patrons.

Auth: 37-1-131, 37-31-203, 37-31-204, MCA Imp:
37-31-204, MCA

REASON: To conform with current sanitary standards and practices in the field.

"8.14.1210 CLEANING AND SANITIZING TOOLS AND EQUIPMENT

(1) All-tools-and-equipment, including shelves, tables, sinks, shampoo-bowls, beard-and-spray-hoses shall be kept clean-and-free-of-contaminating-materials. All tools (brushes, combs, instruments, etc.) shall be thoroughly cleaned-and-effectively-subjected-to-an-approved-sanitizing process-before-being-used-again-on-the-next-customer. Cloth towels-and-other-linens-used-in-the-beauty-salon-or-school shall-be-effectively-laundered-before-being-used-again-on-the-next-customer. Single-service-items-such-as-gauze-or-cotton permanent-wave-pads, paper-neck-strips-or-headrest-coverings shall-be-used-only-once. All tools, equipment and electrical instruments, shall be thoroughly cleaned and subjected to an approved sanitizing process before being used again. Cloth towels and other linens shall be laundered before use. Single service items shall be used only once.

(a) No-salon-or-school-shall-use-brush-rollers-or-neck brushes-unless-they-are-the-property-of-the-customer-and-he-or she-shall-take-them-home-and-not-store-them-in-the-salon-or school. Salons and schools are not to possess or store brush or velcro rollers. If the patron brings in their own items, they can be used on this one patron.

(2) Wash-sink-or-pan-shall-be-of-adequate-size-to contain-a-detergent-solution-for-washing-of-all-tools-and shall-be-thoroughly-cleaned-before-using. A sink or pan shall be of adequate size to hold all the articles to be cleaned plus a cleaning solution.

(a) Sanitized-container-shall-be-large-enough-so-that all articles-are-completely-covered-by-the-sanitizing solution. A-cylinder-type-container-may-not-be-sufficient-for holding-all-types-of-tools-and-instruments-used-during-a-day in-a-salon-or-school. The sanitizing container shall be large enough to completely cover all articles with a sanitizing solution. A cylinder container may not be adequate to sanitize brushes.

(3) through (c) will remain the same."

Auth: 37-1-131, 37-31-203, 37-31-204, MCA Imp:
37-31-204, MCA

REASON: To conform with current sanitary standards and practices in the field.

"8.14.1212 STORAGE AND HANDLING OF TOOLS AND EQUIPMENT

(1) After being subjected to the sanitizing process, all tools shall be stored at a sufficient height above the floor

in a clean dry place protected from dust and other contamination.

~~(a)--Tools-and-equipment--shall--be--handled--in--such--a manner--as--to--prevent--contamination--as--far--as--practicable--and shall--mean--avoiding--overhandling--of--a--clean--article--before--it is--used--on--the--next--customer.~~

~~(b)(a) will remain the same.~~

~~(c)(b) will remain the same."~~

Auth: 37-1-131, 37-31-203, 37-31-204, MCA Imp:
37-31-204, MCA

REASON: The material proposed for deletion has been found to be unmanageable and unenforceable.

"8.14.1214 DISPOSAL OF WASTE - SEWAGE (1) All refuse shall be stored in easily cleanable, leakproof, fly-tight non-absorbent containers that are supplied in sufficient numbers to accommodate all refuse, trash-and-rubbish-removed-from-the premises.

(a) Refuse containers shall be kept in good repair and thoroughly cleaned after being emptied.

~~(b)--Storage-of-refuse-containers-on-suitable-racks-helps reduce-health-hazards-and-nuisances-and-prolongs-the--life--of the-containers.~~

~~(c)(b) Frequent--removal--of--waste--prevents--offensive odors--and--the--unsightly--overflow--of--containers;--that--may--be--a menace--to--health. There shall be frequent removal of refuse to prevent overflow, which could be a menace to health.~~

~~(2) and (3) will remain the same."~~

Auth: 37-1-131, 37-31-203, 37-31-204, MCA Imp:
37-31-204, MCA

REASON: To conform with current sanitary standards and practices in the field.

"8.14.1215 PERSONAL HYGIENE OF PERSONNEL (1) All persons working in schools and beauty salons shall keep their hands, fingernails and--arms clean, and wear clean, light colored washable--uniforms--or--dresses--or--large--clean--white aprons--or--coats--used--for--no--other--purpose clothing. Shoes and socks/nylons shall be worn at all times.

~~(2) will remain the same."~~

Auth: 37-1-131, 37-31-203, 37-31-204, MCA Imp:
37-31-204, MCA

REASON: To conform with current sanitary standards and practices in the field.

"8.14.1216 PREMISES (1) through (5) will remain the same.

~~(6) Animals--are--prohibited--in--working--areas--of--salons--or schools--where--operators--are--working. Animals, birds and reptiles are prohibited in all salons and schools. With the exception of guide and hearing dogs."~~

Auth: 37-1-131, 37-31-203, 37-31-204, MCA Imp:
37-31-204, MCA

REASON: This amendment is being proposed on recommendation of the Department of Health.

3. 8.14.1001 LICENSES is being proposed for repeal. Full text of the rule is located at page 8-455, Administrative Rules of Montana.

Auth: 37-32-201, MCA Imp: 37-32-302, 37-32-303, MCA

REASON: This repeal is being proposed because the rule repeats statutory language.

4. Interested persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Board of Cosmetologists, 1424 9th Avenue, Helena, Montana 59620, no later than February 1, 1988.

BOARD OF COSMETOLOGISTS
DUDLEY WILLIAMS, PRESIDENT

BY:



GEOFFREY L. BRAZIER, ATTORNEY
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, December 14, 1987.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF PHARMACY

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of 8.40.404 and 8.) OF RULES PERTAINING TO FEES
40.1215) AND DANGEROUS DRUGS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On January 23, 1988, the Board of Pharmacy proposes to amend the above-stated rules.

2. The proposed amendment of 8.40.404 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-1134, Administrative Rules of Montana)

"8.40.404 FEE SCHEDULE

(1) through (11) will remain the same.

(12) Examination fee ~~100.00~~ 175.00"

Auth: 37-1-134, 37-1-201, MCA Imp: 37-1-134, 37-7-201, 37-7-302, MCA

REASON: The board is raising the examination fee because the cost to the board for the NABPLEX examination is being raised by \$75.00 by the test provider, The National Association of Boards of Pharmacy.

3. The proposed amendment of 8.40.1215 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-1180 through 8-1182, Administrative Rules of Montana)

"8.40.1215 ADDITIONS, DELETIONS, & RESCHEDULING OF DANGEROUS DRUGS (1) through (4) will remain the same.

(5) . . .

(a) Schedule I

~~(1) -- alfentanil under section 50-32-222 (1), MCA, opiates~~

~~(1) (1) methaqualone under section 50-32-222 (4), MCA, depressants~~

(11) 3,4-methylenedioxymethamphetamine (MDMA) under section 50-32-222 (3), MCA, hallucinogenic substances

(11) will remain the same.

(b) Schedule II

(1) alfentanil under section 50-32-224 (2), MCA, opiates

~~(1) (1) . . .~~

~~(11) (11) . . .~~

~~(1v) (1v) . . .~~

Auth: 50-32-103, MCA Imp: 50-32-103, 50-32-222, 50-32-224, MCA

REASON: 3,4-methylenedioxymethamphetamine (MDMA) has been placed in Schedule I in the U.S. Code of Federal Regulations

(CFR). This action was based on the finding that this substance fits in the category for inclusion in Schedule I in the CFR. This amendment was published in the Federal Register 10/14/86, Federal Register Citation 51 FR36552, and was finalized November 13, 1986. Alfentanil was rescheduled into Schedule II in the CFR. It was formerly listed as Schedule I. This change was based on the finding that this substance now fits the category for inclusion in Schedule II in the CFR. This amendment was published in the Federal Register 1/23/87, Federal Register Citation 52 FR2516, and was finalized January 23, 1987.

4. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Pharmacy, 1424 - 9th Avenue, Helena, Montana 59620-0407, no later than January 21, 1988.

5. If a person who is directly affected by the proposed amendments wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Pharmacy, 1424 - 9th Avenue, Helena, Montana 59620-0407, no later than January 21, 1988.

6. If the board receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from an association having 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 108 based on the 1084 licensees in Montana.

BOARD OF PHARMACY
ANTHONY J. FRANCISCO, R.Ph.
PRESIDENT

BY: 
GEOFFREY L. BRAZIER, ATTORNEY
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, December 14, 1987.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF PSYCHOLOGISTS

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT,
amendment of ARM 8.52.401, 8.) REPEAL, AND ADOPTION OF RULES
52.402, 8.52.602, 8.52.604, 8.) PERTAINING TO PSYCHOLOGY
52.606, 8.52.608, 8.52.609, 8.)
8.52.610, 8.52.611, 8.52.612,)
8.52.616, the proposed repeal)
of 8.52.603, 8.52.605, 8.52.)
607, 8.52.613, 8.52.620, 8.52.)
621, and the proposed adoption)
of new rules I. through V.)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On January 23, 1988, the Board of Psychologists proposes to amend, repeal and adopt the above-stated rules.
2. The proposed amendments will read as follows: (new matter underlined, deleted matter interlined)

"8.52.401 OBJECTIVES (1) The board of psychologists hereby establishes rules for conducting the business of the board, including the acceptance of applications and the administration of examinations for applicants for licensure as psychologists, and for regulating the practice of psychology in the state of Montana. ~~These rules were adopted by the board on November 18, 1971.~~

(2) through (4) will remain the same."

Auth: 37-17-202, MCA Imp: 37-17-202, MCA

REASON: The rule provision is outdated and unnecessary. The Administrative Rules of Montana contain rule histories.

"8.52.402 BOARD MEETINGS (1) through (5) will remain the same.

(6) Ordinarily meetings will be announced one month in advance through ~~the MPA newsletter~~ and appropriate means and media. Special meetings may be called at any time deemed necessary by the board when members agree. Meetings may be by telephone and balloting by mail.

(7) through (9) will remain the same."

Auth: 37-17-202, MCA Imp: 37-17-201 MCA

REASON: The proposed deletion provides the Board with more flexibility as to the method of giving notice of meetings.

"8.52.602 NONRESIDENT PSYCHOLOGICAL SERVICES

(1) Nonresident consulting psychological services are ~~these activities and services~~ defined in section 37-17-104(4),

MCA. They may be rendered to individuals, but--usually--to groups, corporations or the public for compensation or fee.

(2) To provide such services and engage in such activities in the state of Montana, a psychologist duly licensed in the state or county of his residence shall file with the board a completed and notarized application form and--on-forms--devised provided by the board, a--statement--of stating the nature, location, and duration of said services should--these that exceed 10 days within any calendar year.

(3)--License-is-interpreted-by-the--board--to-mean--only those-granted-by-other-states-under-statutory-provisions.

(4)--Such--services--and--activities--in--Montana--by--a nonresident--licensed-psychologist--are-limited-by-law-to-a total-of-60-days-within-one-calendar-year-and-subject-to-these rules.

(5) (3) A letter verifying termination of said services shall be filed with the board at the time of termination."

Auth: 37-1-131(1), 37-17-202, MCA Imp: 37-17-104, MCA

REASON: The Board proposes these amendments to remove portions of the rule that duplicate the statute and to make the language of the rule more concise.

"8.52.604 APPLICATION PROCEDURES (1) The--board aApplications for licensure which when properly filled out by the applicant will ordinarily must provide the board with that information necessary to ascertain whether or not the applicant meets the requirements of the law as to education and experience. It--will-be-noted-that-the-aApplication forms must reflect-not--only satisfactorily the requirements of Montana law, but-the-standards-of-the-American-Psychological Association--Only-by--maintaining--such--standards--can reciprocity-with-licensing-bodies-in-other-states-be-obtained.

(a) Any-pPersons seeking licensure must apply on the board's official forms which may be obtained through the department.

(b) Completed applications shall be delivered to the department, accompanied by the application fee.

(c) Applicants will be notified in writing of any deficiencies in their applications. If the requested information is not received by the board to remedy such deficiencies within 6 months of the date of the written notice, the applications shall be terminated, deemed to have been withdrawn.

(2) A completed application file shall consist of the completed and notarized application form, transcripts of all graduate work completed, endorsement-forms--from-at-least--2 licensed--psychologists--who-are-familiar-with-the-applicant's work-experience-and-3-other-(minimum-of-5)-who-are-members--of the--American--Psychological--Association--the--Montana Psychological-Association--and-have-knowledge-of--applicant's work-experience--or--education--course program and course descriptions from the official college catalog(s), three work

samples, and completed reference forms from a minimum of five references of good moral character. An application file must be complete at least 60 days in advance of the April or October examination dates.

(a) Work samples shall be written examples of recent work, at least two of which must be psychological evaluations. The evaluations must demonstrate competence in history taking, administration and interpretation of formal tests of intelligence, and administration and interpretation of objective and projective tests of personality. Tests utilized must include, but are not limited to, those widely recognized and respected in the practice of psychology. Examples must also demonstrate competence in formulating appropriate recommendations. Questions regarding the work samples may be included in the oral examination and candidates may be requested to present the raw data upon which their work samples were based.

(b) Reference letters must be from people familiar with the quality of the applicant's education and work experience. At least three of the references should be licensed psychologists and at least three should be members of the American Psychological Association.

(3) The board shall examine the transcripts of every applicant to determine whether his degrees were awarded by accredited institutions of higher learning with adequate course study in psychology as defined in ARM 8.52.605A.

(4) The board shall will consider the acceptability of the professional experience presented by the applicant for consideration in keeping with ARM 8.52.606.

(5) When the application file is complete and judged--to be--potentially acceptable by-the-board, the applicant shall will be notified in writing as to the time and place of the examination. It shall be the duty of the applicant to inform the department in-writing when it is not feasible to appear at the time and place stated for the examination.

(a) If a candidate is scheduled for the examination a second time and does not appear, without legitimate excused reasons, he may lose his eligibility for the examination."

Auth: 37-1-131(1), 37-17-202, MCA Imp: 37-17-303, MCA

REASON: The Board is proposing these amendments to update application procedures, to make the language of the rule more concise and to make procedures more uniform with those in other states, and to conform with current practice in the field.

"8.52.606 REQUIRED SUPERVISED EXPERIENCE (1) Acceptable experience must involve the practice of psychology and must have been performed competently at a professional level in order to be considered satisfactory in scope and quality. Experience limited to essentially repetitious and routine tasks at the pre-professional level will not be accepted, e.g., administering and scoring structured tests, as in a practicum course, computing statistics by-hand-or-machine, assisting an instructor in psychology courses or personal

therapy. Such experiences are primarily preparatory to the practice of psychology. No experience of any kind gained prior to the completion of all requirements for the master's degree in psychology or its equivalent applies to the provisions of this act. Satisfactory examples of professional experience includes tasks which depend upon the application of skills, concepts, and principles made available during the applicant's formal professional education; e.g., Examples of these types of activities include: administering and interpreting psychological tests, providing clients or patients assistance in solving their professional or personal problems, designing original research projects, analyzing and reporting research data, ~~or--and~~ teaching a course in psychology.

(2) ~~It-is-expected-that~~ The work described in (1) above should have been done throughout the year under the face-to-face (personal) supervision of a licensed psychologist with training and experience equivalent to that required by the state of Montana for licensing, who is experienced and competent in the skills and knowledge in which the applicant was--is engaged. ~~and--who--is--a--regular--staff--member--or consultant--in--the--organization--in--which--the--person--is acquiring-his-experience.~~ It-is-further-expected--that Such supervision should have been conducted according to standards at least equivalent to those described in these rules, that the supervision be for at least a minimum of one hour per week throughout the year of experience.

(3) The term "year" shall mean a calendar year, including leaves for vacation with pay, during which the individual was engaged in employment on a full-time ~~per--week~~ basis.

(a) In case of full-time employment, the work schedule in the employing agency, clinic, institution, or organization shall be for a calendar year, meaning that work will be during consecutive months.

(b) In the case of part-time employment credit for such periods of employment shall be calculated by the calendar month or year according to section 1-1-301, MCA, in such manner that the number of hours actually worked per week will be divided by 40, and the resulting fraction shall be applied to the number of calendar months of employment reported to determine the number of months to be credited to the applicant. Example: applicant employed from July 1, 1970 through October 31, 1971 on an average of 20 hours per week, total period - 16 months at one-half time. Applicant is credited with 8 months of experience.

(4) Qualified professional experience may include one calendar year of supervised experience after the master's degree and must include at least one calendar year postdoctoral. One year may be an internship in an approved training program for the Ph.D. in clinical psychology; the postdoctoral year is figured from the time of completion of all requirements for the doctoral degree. Such time of completion may be established by communication from an

appropriate institutional official, ordinarily, the registrar or the dean of the graduate school.

(5) Independent private practice shall not be considered as acceptable professional experience for purposes of the experience requirement, rather the supervisee must be a salaried employee receiving both administrative and clinical supervision from a supervisor who receives compensation for providing these services. independent-is-interpreted-to-mean private-practice-wherein-the-practitioner--does-not-maintain regular--appropriate--consultative--relationships-in-regard-to the-handling-of-his-case-load.

(6) ~~A-licensed-psychologist~~ and ~~Aa~~ person who holds a doctorate in psychology and wishes to gain a year of postdoctoral supervised experience acceptable to the board, may must submit a form provided by the board, indicating an agreement acceptable to the board, between the holder of the doctorate degree and the supervisor, certifying the existence of a supervisory relationship as defined in subsection (1), (2), (3), (4) above for a specified period when the doctorate level person will be working- in--an--organization under supervision. In this case, work considered relevant to subsequent practice of psychology shall be assessed and criticized constructively; in this sense "supervision" is differentiated from consultation.

(a) A diary or record of supervisory contracts shall be kept and submitted to the board in support of the experience. The diary shall provide dates of contact and sufficient detail to represent clearly the issues and problems discussed, but no material of a confidential nature shall be included.

(b) In the event the relationship is terminated, it is the responsibility of the applicant to request the supervisor to inform the board in writing of the effective date of the termination and the reasons for termination as well as indicate the nature and effectiveness of the applicant's response to such supervision.

(c) through (e) will remain the same.

~~(f)--References-as-to-moral-character--and--professional experience--shall-be-requested--by--the--applicant--on--the appropriate-form-and-shall-be-mailed-directly-by-the-reference to-the-department.~~

~~(7)--A-qualified-professional-endorser-shall-be-an individual-who-has-personal-knowledge-of-the-applicant's claimed-educational-and-professional-experience--This-person shall-not-be-a-member-of-the-board-at-the-time-the recommendation-is-provided.~~

~~(8)--An-applicant-who-meets-the-standards--for--licensing as--provided-by-the-laws-of-the-state-of-Montana-shall-receive a-licence-appropriate-for-display-in-his/her-office."~~

Auth: 37-1-131(1), 37-17-202, MCA Imp: 37-17-302, MCA

REASON: The Board proposes these amendments to make the language of the rule more concise to conform to legislative changes, and to clarify provisions that have been questioned in recent contested cases.

"8.52.608 EXAMINATION (1) ~~Examination dates set by the board shall be announced by the department~~ The applicant will be notified of the examination time schedule at least 1 month in advance. This examination schedule will establish: time(s), place(s), the amount of the examination fee, and other pertinent information and/or instructions.

~~(2) all applicants who are required to take an examination in order to qualify shall be so notified by the department~~

~~(3) In such a case, the board requests the applicant file in advance a statement regarding his arrangements for securing this further professional training and experience. The board wishes to encourage such efforts and whenever possible to increase the likelihood that the quality of the training and experience will be satisfactory to the board.~~

(2) (4) The board shall determine the subject matter and scope of specialized psychological areas and techniques for the examination. Examinations may will be written; and oral; or both. These will be conducted by the board or its duly constituted representative(s). The written examinations developed by the national licensing program with the support of the American Association of State Psychology Boards may be given. The acceptable level of performance on the written examination shall be determined by the board based on national norms as established by the American Association of State Psychology Boards or as established by the professional examination service which provides the examination and will be announced in advance.

(3) The Oral examinations shall include such matters as professional ethics for the purpose of determining the applicant's competence to conduct himself in a professional manner and to probe his knowledge and judgment. The examination shall be scored on a 5-point scale: 5(excellent), 4(good), 3(fair), 2(poor), 1(very poor). A mean score of 3 derived from the ratings of all examiners is required for passing. Candidates must have a mean of 3 based on total points divided by the number of scales evaluated. Additionally, they cannot have a mean of 2 or less on any one scale they are evaluated on. Oral examinations for candidates shall include, but not be limited to questions in the following areas:

- (a) psychopathology
- (b) diagnosis and assessment
- (c) ethics
- (d) Montana mental health law
- (e) psychotherapy
- (f) previously submitted work samples.

~~(4) Applicants shall be informed of the results of the examination {pass/fail} by the department. As a rule, there will be no disclosure of test scores.~~ All applicants who pass shall be considered licensed if they have met all other requirements. The department shall transmit the board's decision in writing to each applicants and, when appropriate, inform ~~him~~ them of ~~his~~ their right to appeal. Reasons for

actions shall be specified. The communication shall be sent to the last known address of the applicant by mail.

~~(6) Although the above criteria serve as guidelines, the final decision of the board will be based on all available information concerning the candidate's professional ability to function as a psychologist within the requirements of the law. Final determination of pass/fail will be based on the majority opinion of the board.~~

(5) Applicants who fail the written examination will be required to retake both the written and oral examinations. Applicants failing the oral examination once will only be required to retake the oral examination. Applicants who fail the written or oral examinations twice shall, in addition to being retested, file in advance a statement regarding arrangements for securing further professional training and experience.

~~(7) If in the best judgment of the board, the applicant has already demonstrated competence in areas covered by the examination as, for example, by being a Diplomate in good standing of the American Board of Examiners in Professional Psychology of the APA, the board may waive the examination requirements."~~

Auth: 37-1-131(1), 37-17-202, MCA Imp: 37-17-303, MCA

REASON: These amendments are being proposed to clarify examination procedures and the scoring method of the oral examination. Oral examination information from 8.52.621 is incorporated here. Redundant language is being removed.

"8.52.609 RECIPROCITY (1) When a person applies for licensure under this provision, the board shall obtain information from the other state(s), and determine whether the requirements for obtaining such other license(s) or certificate(s) was {were} at least as great as provided in Montana law.

(2) Any person seeking a license by reciprocity on the basis of having been examined and then issued a license by another state shall submit to the board information concerning the nature of the prior examination with ~~his~~ their completed application forms. The information shall be evaluated by the board, ~~who~~ which may request additional information before making a decision to waive the written examination. The requirements of the other state must be verified by the board as at least substantially equivalent to those of the state of Montana.

(3) "License" or "certificate" is interpreted to mean only those granted by other states under statutory provision.

(4) will remain the same.

(5) Other supporting documents will be required only if information received from the other state(s) (referred to in (1) above) leaves the determination unclear as to whether the requirements are ~~not~~ equivalent. The applicant may be ~~advised~~ required to take the written examination.

(6) A psychologist who is a Diplomate in good standing of the American Board of Examiners in Psychology of the

American Psychological Association may apply for licensure by reciprocity.

(7) All candidates for licensure by reciprocity will be required to pass an oral examination."

Auth: 37-1-131(1), 37-17-202, MCA Imp: 37-17-304, MCA

REASON: The Board proposes these amendments to make the language of the rule more concise and to consolidate information regarding requirements for licensing by reciprocity in this section.

"8.52.610 PREPARATION OF LICENSES (1) Licenses shall be numbered in the order in which they are awarded. Numbers that are revoked or retired shall not be reissued.

(2) Licenses shall be signed by the members of the board, including the secretary, under the seal of the board. Applicants who meet the standards for licensing as provided by the laws of the state of Montana shall receive a license appropriate for display in their office."

Auth: 37-17-202, MCA Imp: 37-17-305, MCA

REASON: This amendment transfers 8.52.606(8) to a more appropriate section and deletes unnecessary material.

"8.52.611 RENEWALS (1) At least one month (December 1) before the renewal date (January 21 of the following year), a renewal notice will be sent by the department to each certificate holder to the last address in the board's file. Failure to receive such notice shall not relieve the certificate holder of his obligation to pay renewal fees in such a manner that they are received by the department on or before the renewal date.

(2) will remain the same.

(3) The board hereby interprets the intent of the law, section 37-17-306, MCA, to mean that renewals may be granted for successive periods without examination, unless a complaint has been received regarding the competency or ethics of the person and an investigation is in process."

(4)(3) The board reserves the right to allow renewal of a license after the time when renewal would normally have been required if the circumstances justify such action.

(a) Renewal of a lapsed license after a lapse of 18 months or less will not change the annual renewal date established by the previously held license and the validity period of the renewed lapsed certificate shall be less than one year."

Auth: 37-1-131(1), 37-17-202, MCA Imp: 37-17-306, MCA

REASON: The Board proposes these amendments to remove redundant language and make the renewal date consistent with the statute.

"8.52.612 CONTINUING EDUCATION (1) will remain the same.

(2) To achieve this purpose, the board will periodically review new developments in research, training, and the practice of psychology.

(3) will remain the same."

Auth: 37-17-202, MCA Imp: 37-17-202, MCA

REASON: This amendment is proposed to update the language of the title of this section.

"8.52.616 FEE SCHEDULE (1) The department will collect the following fees, none of which are refundable:

(a) Application fee	75.00	110.00
(b) Examination fee	95.00	150.00
(c) Renewal fee	100.00	110.00
(d) --Certificate fee	10.00	

Auth: 37-1-134, 37-17-202, MCA Imp: 37-17-302, 37-17-303, 37-17-306, 37-17-307, MCA

REASON: The Board is proposing to raise the examination fee because the cost to the Board for the EPPP examination is being raised to \$135.00 in FY 89. The additional amendments are proposed by the Board to set fees commensurate with costs of operating the Board programs.

3. The rules proposed for repeal are as follows:

"8.52.603 UNLICENSED SALARIED EMPLOYEES is being proposed for repeal. Full text of the rule is located at pages 8-1417 and 8-1418, Administrative Rules of Montana."

Auth: 37-17-202, MCA Imp: 37-17-104, MCA

REASON: The Board is proposing to repeal this rule to clarify the use of titles by unlicensed persons. For this purpose the Board is also proposing to adopt new Rule 8.52.603A.

"8.52.605 EDUCATIONAL TRAINING FOR LICENSURE is being proposed for repeal. Full text of the rule is located at page 8-1419, Administrative Rules of Montana."

Auth: 37-17-202, MCA Imp: 37-17-302, MCA

REASON: The Board is proposing to repeal this rule and replace it with 8.52.605A to conform rules to recent legislative enactments.

"8.52.607 DESCRIPTION OF STANDARD FORMS is being proposed for repeal. Full text of the rule is located at page 8-1422, Administrative Rules of Montana."

Auth: 37-17-202, MCA Imp: 37-17-202, MCA

REASON: The Board is proposing to repeal this rule as a description of forms used by the Board is unnecessary and obsolete.

"8.52.613 CODE OF PROFESSIONAL CONDUCT is being proposed for repeal. Full text of the rule is located at page 8-1425, Administrative Rules of Montana."

Auth: 37-17-202, MCA AUTH Extension, Sec. 8, Ch. 347, L. 1987, Eff. 10/1/87 Imp: 37-17-311, MCA

REASON: The Board proposes to repeal this section and substitute sections 8.52.617 and 8.52.618 in order to conform with recent legislative enactments.

"8.52.620 EQUIVALENT DEGREES is being proposed for repeal. Full text of the rule is located at page 8-1429, Administrative Rules of Montana."

Auth: 37-17-202, MCA Imp: 37-17-302, MCA

REASON: The Board proposes to repeal this section and adopt 8.52.605A to conform with recent legislative enactments.

"8.52.621 ORAL EXAMINATION is being proposed for repeal. Full text of the rule is located at pages 8-1429 and 8-1430, Administrative Rules of Montana."

Auth: 37-17-202, MCA Imp: 37-17-303, MCA

REASON: The Board proposes to repeal this section and incorporate the oral examination requirements in sections 8.52.608 and 8.52.609 to improve organization.

4. The proposed new rules will read as follows:

"I. PUBLIC PARTICIPATION RULES (1) The board of psychologists hereby adopts and incorporates by this reference the public participation rules of the department of commerce as listed in Chapter 2 of this title."

Auth: 2-3-103, MCA Imp: 2-3-103, MCA

REASON: The Board desires to comply with the public participation rules of the department of commerce as mandated by the legislature.

"II. USE OF TITLE (1) Persons who are not licensed under Chapter 17, Title 37, MCA may use certain titles in representing themselves to the public, as long as the titles clearly delineate the nature and the level of training. Such persons may use titles such as "psychological trainee," "psychological intern," and "psychological assistant," provided that such persons perform their activities under the direct supervision and responsibility of a licensed psychologist. Nothing in this section shall be construed to apply to any person other than:

(a) a matriculated graduate student in psychology whose activities constitute a part of the course of study for a graduate degree in psychology at an institution of higher education;

(b) an individual pursuing postdoctoral training or experience in psychology, including persons seeking to fulfill

the requirements for licensure under the provisions of this Act; or

(c) a qualified assistant employed by, or otherwise directly accountable to, a licensed psychologist.

(2) Nothing in these rules shall be construed to prevent the teaching of psychology, the conduct of psychological research, or the provision of psychological services or consultation to organizations or institutions, provided that such teaching, research, or service does not involve the delivery or supervision of direct psychological services to individuals or groups of individuals who are themselves, rather than a third party, the intended beneficiaries of such services, without regard to the source or extent of payment for services rendered.

(3) Individuals who have been certified as school psychologists by the Office of Public Instruction may use the titles "school psychologist" or "certified school psychologist." Use of these titles shall restrict practice to employment within those settings under the purview of the state board of education."

Auth: 37-1-131, 37-17-202, MCA Imp: 37-17-104, 37-17-301, MCA

REASON: The Board proposes to adopt this rule to delineate the permissible use of titles by unlicensed persons under statutory exemptions to licensing requirements.

"III. MINIMUM STANDARDS A doctorate degree qualifies under 37-17-302(2)(d)(iii) if it is obtained from a psychology program which meets the following criteria:

(1) Training in professional psychology is doctoral training offered in a regionally accredited institution of higher education.

(2) The program, wherever it may be administratively housed, must be clearly identified and labeled as a psychology program. Such a program must specify in pertinent institutional catalogues and brochures its intent to educate and train professional psychologists.

(3) The psychology program must stand as a recognizable, coherent organizational entity within the institution.

(4) There must be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines.

(5) The program must be an organized sequence of study planned by those responsible for the training program to provide an integrated education experience appropriate to the professional practice of psychology.

(6) There must be an identifiable psychology faculty and a psychologist responsible for the program.

(7) The program must have an identifiable body of students who are matriculated in that program for a degree.

(8) The program must include supervised practicum, internship, field or laboratory training appropriate to the practice of psychology.

(9) The curriculum shall encompass a minimum of three academic years of full time graduate study. In addition to instruction in scientific and professional ethics and standards, research design and methodology, statistics and psychometrics, the core program shall require each student to demonstrate competence in each of the following substantive content areas. This typically will be met by including a minimum of three or more graduate semester hours (4 or more graduate quarter hours) in each of these 4 substantive content areas:

(a) Biological bases of behavior: Physiological psychology, comparative psychology, neuropsychology, sensation and perception, psychopharmacology.

(b) Cognitive-affective bases of behavior: Learning, thinking, motivation, emotion.

(c) Social bases of behavior: Social psychology, group processes, organizational and systems theory.

(d) Individual differences: Personality theory, human development, abnormal psychology.

(e) In addition, the person's training program must include: adequate training in psychodiagnosis, psychological assessment and intervention procedures. Training must provide skills which encompass several types of assessment and intervention procedures, rather than being restricted to a single type. The applicant must be familiar with major assessment and intervention techniques and their theoretical bases.

(i) The training program shall include at least 60 quarter hours or 40 semester hours of formal graduate study in psychology. The achievement in each course shall have been satisfactory and the instruction shall have been provided in the regular graduate psychology program of a regionally accredited degree-granting institution. The number of university extension credits that may be credited toward the requirement for the doctoral degree shall not exceed 15 quarter hours (10 semester hours).

(ii) Of the 60 quarter hours the doctoral program in psychology shall include at least 45 quarter hours (30 semester hours) of course work clearly designated on the university transcript as a graduate level psychology course, exclusive of practicum and dissertation credits and exclusive of transfer credits. The above 45 quarter-hour credits shall be taken during the period in which the applicant is matriculated in the doctoral program. The doctoral program shall include examination and grading procedures designed to evaluate the degree of mastery of the subject matter by the student.

(iii) The major emphasis of the doctoral program shall be in applied areas such as clinical psychology, counseling psychology, school psychology or industrial-organizational psychology. The training also must include a set of coordinated practicum, which total at least three terms (two semesters) in the practicum setting.

(iv) Training programs should provide a variety of faculty (staff) role models and be relatively stable (e.g., continuity of funding and staff).

(v) A responsibility which all programs share is to convey to students values of professional ethics and scientific responsibility and integrity. This includes principles of professional ethics with regard to the use of both assessment and intervention techniques and with regard to the confidentiality of interviews and records. Ethical principles such as those pertaining to research with human subjects, extent of obligations to parents and to institutions, and the nature and consequences of the psychologist's concern for human welfare should also be conveyed to students."

Auth: 37-1-131(1), 37-17-202, 37-17-302, MCA AUTH
Extension, Sec. 8, Ch. 347, L. 1987, Eff. 10/1/87 Imp:
37-17-302(2)(d)(111), MCA

REASON: The Board proposes to adopt this rule to conform to recent legislative enactments and specify minimum standards for courses of study to qualify as a doctoral degree in psychology from an accredited college which qualifies the applicant to take the licensing examination.

"IV. UNPROFESSIONAL CONDUCT For the purpose of implementing the provisions of section 37-17-311(c), MCA, the board defines "unprofessional conduct" as follows:

(1) Any act involving moral turpitude, dishonesty, or corruption relating to the practice of psychology whether the act constitutes a crime or not. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action. Upon such a conviction, however, the judgment and sentence is conclusive evidence at the ensuing disciplinary hearing of the guilt of the license holder or applicant of the crime described in the indictment or information, and of the person's violation of the statute on which it is based. For the purpose of this section, conviction includes all instances in which a plea of guilty is the basis for the conviction and all proceedings in which the sentence has been deferred or suspended.

(2) Engaging in a sexual relationship with a patient;

(3) Violation of any state or federal statute or administrative rule regulating the practice of psychology, including any statute or rule defining or establishing standards of patient care or professional conduct or practice;

(4) Advertising which is false, fraudulent, or misleading;

(5) Resorting to fraud, misrepresentation or deception in the examination or treatment of a person or in billing or reporting to a person, company, institution or organization;

(6) Incompetence, negligence, or use of any practice or procedure in the practice of the profession which creates an unreasonable risk of physical or mental harm or serious financial loss to the client;

(7) Malpractice, or an act or acts below the standard of care for psychologists whether actual physical or mental injury or harm was suffered by any client;

(8) Suspension, revocation, or restriction of the individual's license to practice the profession by competent authority in any state, federal, or foreign jurisdiction for reasons that would be grounds for disciplinary sanction in this jurisdiction. A certified copy of the order or agreement being conclusive evidence of the revocation, suspension, or restriction;

(9) The possession, use, addiction to, prescription for use, diversion, or distribution of controlled substances or legend drugs in any way other than for legitimate or therapeutic purposes, or violation of any drug law;

(10) Failure to cooperate with an investigation by:

(a) Not furnishing any papers or documents;

(b) Not furnishing in writing a full and complete explanation covering the matter contained in the complaint; or

(c) Not responding to subpoenas issued by the Board or the Department, whether or not the recipient of the subpoena is the accused in the proceedings;

(11) Interfering with an investigation or disciplinary proceeding by wilful misrepresentation of facts or by the use of threats or harassment against any patient, client, or witness to prevent them from providing evidence in a disciplinary proceeding or any other legal action;

(12) Failing to make available copies of documents in the possession and under the control of the licensee, as per the appropriate health care records acts;

(13) Failure to comply with an order issued by the Board or an assurance of discontinuance entered into with the Board;

(14) Any of the following except when reasonably undertaken in an emergency situation to protect life, health, or property:

(a) Practice beyond the scope of practice encompassed by the license;

(b) Practice beyond the level of practice for which the licensee is trained;

(c) Accepting and performing occupational responsibilities which the licensee knows or has reason to know that he or she is not competent to perform;

(d) Failing to refer patient or client to qualified professional when such advice or service is called for.

(15) Violation of statutory child abuse and elderly abuse reporting requirements;

(16) The wilful betrayal of a practitioner-patient privilege as provided by law;

(17) Offering, undertaking, or agreeing to cure or treat disease or affliction by a secret method, procedure, treatment, or the treating, operating, or prescribing for any health condition by a method, means, or procedure which the licensee refuses to divulge upon demand from the Board;

(18) Failing to adequately supervise auxiliary staff to the extent that the client's mental or physical health or safety is at risk;

(19) Aiding or abetting an unlicensed person to practice when a license is required;

(20) Practicing psychology while the practitioner's license is suspended, revoked, or not currently renewed.

(21) Wilful or repeated violations of rules established by any health agency or authority of the state or a political subdivision thereof."

Auth: 37-1-131(1), 37-17-202, 37-17-311, MCA AUTH
Extension, Sec. 8, Ch. 347, L. 1987, Eff. 10/1/87 Imp:
37-17-311, MCA

REASON: The Board proposes to adopt this rule to conform with and implement recent legislative enactments.

"V. ETHICAL PRACTICE OF PSYCHOLOGY (1) "Ethical practice of psychology" means regard for all of the matters covered in this section.

(2) The psychologist shall not misrepresent the psychologists' professional qualifications, affiliations, and purposes, and those of the institutions and organizations with which the psychologist is associated:

(a) A psychologist shall not claim either qualifications that differ from actual qualifications, nor shall the psychologist misrepresent affiliation with any institution, organization, or individual, nor lead others to assume any affiliations that the psychologist does not have. The psychologist shall be responsible for correcting others who misrepresent the psychologist's professional qualifications or affiliations;

(b) The psychologist shall not misrepresent an institution or organization with which the psychologist is affiliated by ascribing to it characteristics that it does not have;

(c) A psychologist shall not use affiliation with the American Psychological Association or its divisions for purposes that are not consonant with the stated purposes of the Association; and

(d) A psychologist shall not associate with or permit the psychologist's name to be used in connection with any services or products in such a way as to misrepresent them, the degree of the psychologist's responsibility for them, or the nature of the psychologist's affiliation.

(3) Modesty, scientific caution, and due regard for the limits of present knowledge shall characterize all statements of psychologists who supply information to the public, either directly or indirectly:

(a) Psychologists who interpret the science of psychology or the services of psychologists to clients or to the general public have an obligation to report fairly and accurately. Exaggeration, sensationalism, superficiality, and other kinds of misrepresentation shall be avoided;

(b) When information about psychological procedures and techniques is given, care shall be taken to indicate that they should be used only by persons adequately trained in their use; and;

(c) A psychologist who engages in radio or television activities shall not participate in commercial announcements recommending purchase or use of a product.

(4) Safeguarding information about an individual that has been obtained by the psychologist in the course of teaching, practice, or investigation is a primary obligation of the psychologist. Such information shall not be communicated to others unless certain important conditions are met:

(a) Unless state or federal law mandates otherwise, information received in confidence may be revealed only after careful deliberation and where there is clear and imminent danger to an individual or to society, and then only to appropriate professional workers or public authorities;

(b) Information obtained in clinical or consulting relationships, or evaluative data concerning children, students, employees, and others may be discussed only for professional purposes and only with persons clearly concerned with the case. Written and oral reports should present only data germane to the purposes of the evaluation; every effort shall be made to avoid undue invasion of privacy;

(c) Clinical and other materials may be used in classroom teaching and writing only when the identity of the persons involved is adequately disguised;

(d) The confidentiality of professional communications about individuals shall be maintained. Only when the originator and other persons involved give their express permission is a confidential professional communication shown to the individual concerned. The psychologist shall inform the client of the limits of the confidentiality;

(e) Only after explicit permission has been granted may the identity of research subjects be published. When data have been published without permission for identification, the psychologist shall assume responsibility for adequately disguising sources; and

(f) The psychologist shall make provisions for the maintenance of confidentiality in the preservation and ultimate disposition of confidential records.

(5) The psychologist shall respect the integrity and protect the welfare of the person or group with whom the psychologist is working;

(a) The psychologist in industry, education, and other situations in which conflict of interest may arise among various parties, as between management and labor, or between the client and employer of the psychologist, shall define the nature and direction of the psychologist's loyalties and responsibilities and keep all parties concerned informed of these commitments;

(b) When there is a conflict among professional workers, the psychologist shall be concerned primarily with the welfare

of any client involved and only secondarily with the interest of the psychologist's own professional group;

(c) The psychologist shall attempt to terminate a clinical or consulting relationship when it is reasonably clear to the psychologist that the client is not benefiting from it;

(d) The psychologist may ask that an individual reveal personal information in the course of interviewing, testing, or evaluation, or allow the information to be divulged to the psychologist only after making certain that the responsible person is fully aware of the purposes of the interview, testing, or evaluation and of the ways in which the information may be used;

(e) In cases involving referral, the responsibility of the psychologist for the welfare of the client continues until this responsibility is assumed by the professional person to whom the client is referred or until the relationship with the psychologist making the referral has been terminated by mutual agreement. In situations where referral, consultation, or other changes in the conditions of the treatment are indicated and the client refuses referral, the psychologist shall carefully weigh the possible harm to the client, the psychologist, and the psychologist's profession that might ensue from continuing the relationship;

(f) The psychologist who requires the taking of psychological tests for didactic, classification, or research purposes shall protect the examinees by insuring that the tests and test results are used in a professional manner;

(g) When potentially disturbing subject matter is presented to students, it is discussed objectively, and efforts are made to handle constructively any difficulties that arise;

(h) Care shall be taken to insure an appropriate setting for clinical work to protect both client and psychologist from actual or imputed harm and the profession from censure; and

(i) In the use of accepted drugs for therapeutic purposes special care shall be exercised by the psychologist to assure the psychologist that the collaborating physician provides suitable safeguards for the client.

(6) The psychologist shall inform the prospective client of the important aspects of the potential relationship that may affect the client's decision to enter the relationship:

(a) Aspects of the relationship likely to affect the client's decision include the recording of an interview, the use of interview material for training purposes, and observation of an interview by other persons;

(b) When the client is not competent to evaluate the situation (as in the case of a child), the person responsible for the client shall be informed of the circumstances which may influence the relationship;

(c) The psychologist shall not enter into a professional relationship with members of the psychologist's own family, intimate friends, close associates, or others whose welfare might be jeopardized by such a dual relationship; and

(d) The psychologist shall not engage in any type of sexual activity with a client.

(7) Psychological services for the purpose of diagnosis, treatment, or personalized advice may be provided only in the context of a professional relationship, and shall not be given by means of public lectures or demonstrations, newspaper or magazine articles, radio or television programs, mail or similar media. The preparation of personnel reports and recommendations based on test data secured solely by mail is prohibited unless such appraisals are an integral part of a continuing client relationship with a company, as a result of which the consulting psychologist has intimate knowledge of the client's personnel situation and can be assured thereby that the psychologist's written appraisals shall be adequate to the purpose and shall be properly interpreted by the client. These reports shall not be embellished with the detail analyses of the subject's personality traits as would be appropriate only after intensive interviews with the subject. The reports shall not make specific recommendations as to employment or placement of the subject which go beyond the psychologist's knowledge of the job requirements of the company. The reports shall not purport to eliminate the company's need to carry on the other regular employment or personnel practices as appraisal of the work history, checking of references, or past performance in the company.

(8) A psychologist shall adhere to professional rather than commercial standards in making known the psychologist's availability for professional services.

(a) A psychologist shall not directly solicit clients for individual diagnosis or therapy;

(b) Individual listings in telephone directories shall be limited to name, highest relevant degree, certification status, address, and telephone number. They may also include identification in a few words of the psychologist's major areas of practice; for example, child therapy, personnel selection, industrial psychology. Agency listings shall be equally modest;

(c) Announcements of individual private practice shall be limited to a simple statement of the name, highest relevant degree, certification or diplomate status, address, telephone number, office hours, and a brief explanation of the types of service rendered. Announcements of agencies may list names of staff members with their qualifications. They shall conform in other particulars with the same standards as individual announcements, making certain that the true nature of the organization is apparent;

(d) A psychologist or agency announcing nonclinical professional services may use brochures that are descriptive of services rendered but not evaluative. They may be sent to professional persons, schools, business firms, government agencies, and other similar organizations;

(e) The use in a brochure of "testimonials from satisfied users" is prohibited. The offer of a free trial of services is prohibited if it operates to misrepresent in any way the nature or the efficacy of the services rendered by the

psychologist. Claims that a psychologist has unique skills or unique devices not available to others in the profession may be made only if the special efficacy of these unique skills or devices has been demonstrated by scientifically acceptable evidence;

(f) The psychologist shall not encourage (nor, within the psychologist's power, even allow) a client to have exaggerated ideas as to the efficacy of services rendered. Claims made to clients about the efficacy of the psychologist's services shall not go beyond those which the psychologist would be willing to subject to professional scrutiny through publishing the results and the psychologist's claims in a professional journal.

(9) A psychologist shall act with integrity in regard to colleagues in psychology and in other professions:

(a) A psychologist shall not offer professional services to a person receiving psychological assistance from another professional worker except by agreement with the other worker or after the termination of the client's relationship with the other professional worker; and

(b) The welfare of clients and colleagues requires that psychologists in joint practice or corporate activities make an orderly and explicit arrangement regarding the conditions of their association and its possible termination. Psychologists who serve as employers of other psychologists have an obligation to make similar appropriate arrangements.

(10) Financial arrangements in professional practice shall be in accord with professional standards that safeguard the best interest of the client and the profession:

(a) In establishing rates for professional services, the psychologist shall consider carefully both the ability of the client to meet the financial burden and the charges made by other professional persons engaged in comparable work. The psychologist is willing to contribute a portion of the psychologist's services to work for which the psychologist received little or no financial return;

(b) No commission or rebate or any other form of remuneration shall be given or received for referral of clients for professional services;

(c) The psychologist in clinical or counseling practice shall not use relationships with clients to promote commercial enterprises of any kind for personal gain or the profit of an agency;

(d) A psychologist shall not accept a private fee or any other form of remuneration for professional work with a person who is entitled to the psychologist's services through an institution or agency. The policies of a particular agency may make explicit provision for private work with its clients by members of its staff, and in such instances the client shall be fully apprised of all policies affecting the client;

(e) A psychologist shall not bill for services or treatment not directly performed for a client; provided that a psychologist may bill for services or treatment not directly performed if there is an agreement between the agency or client that permits this type of billing; and

(f) A psychologist shall not bill a client for treatment or services not performed; provided that this shall not apply to prior arrangements between the psychologist and client to bill for a cancelled appointment or failure to appear.

(11) Psychological tests and other assessment devices, the value of which depends in part on the naivete of the subject, shall not be reproduced or described in popular publications in ways that may invalidate the techniques. Access to such devices shall be limited to persons with professional interests who shall safeguard their use:

(a) Sample items made up to resemble those of tests being discussed may be reproduced in popular articles and elsewhere, but scorable tests and actual test items shall not be reproduced in professional publications; and

(b) The psychologist shall be responsible for the control of psychological tests and other devices and procedures used for instruction when their value may be damaged by revealing to the general public their specific contents or underlying principles.

(12) Test scores, like test materials, may be released only to persons who are qualified to interpret and use them properly:

(a) Materials for reporting test scores to parents, or which are designed for self-appraisal purposes in schools, social agencies, or industry shall be closely supervised by qualified psychologists or counselors with provisions for referring and counseling individuals when needed;

(b) Test results or other assessment data used for evaluation or classification shall be communicated to employers, relatives, or other appropriate persons in such a manner as to guard against misinterpretation or misuse. In the usual case, an interpretation of the test results rather than the score is communicated; and

(c) When test results shall be communicated directly to parents and students, they shall be accompanied by adequate interpretive aids or advice.

(13) Psychological tests may be offered for commercial publication only to publishers who present their tests in a professional way and distribute them only to qualified users:

(a) A test manual, technical handbook, or other suitable report on the test may be provided which describes the methods of constructing and standardizing the test, and summarizes the validation research;

(b) The populations for which the test has been developed and the purposes for which it is recommended shall be stated in the manual. Limitations upon the test's dependability, and aspects of its validity on which research is lacking or incomplete, shall be clearly stated. In particular, the manual shall contain a warning regarding interpretations likely to be made which have not yet been substantiated by research;

(c) The catalog and manual shall indicate the training or professional qualifications required for sound interpretation of the test;

(d) The test manual and supporting documents shall take into account the principles enunciated in the "Standards of Educational and Psychological Tests and Manuals"; and

(e) Test advertisements shall be factual and descriptive rather than emotional and persuasive.

(14) The psychologist shall assume obligations for the welfare of the psychologist's research subjects, both animal and human:

(a) Only when a problem is of scientific significance and it is not practicable to investigate it in any other way is the psychologist justified in exposing research subjects, whether children or adults, to physical or emotional stress as part of an investigation;

(b) When a reasonable possibility of injurious aftereffects exists, research may be conducted only when the subjects or their responsible agents are fully informed of this possibility and agree to participate nevertheless;

(c) The psychologist shall seriously consider the possibility of harmful aftereffects and avoid them, or remove them as soon as permitted by the design of the experiment;

(d) A psychologist using animals in research shall adhere to the provisions of the rules regarding animals, drawn up by the Committee on Precautions and Standards in Animal Experimentation and adopted by the American Psychological Association; and

(e) Investigations of human subjects using experimental drugs (for example: hallucinogenic, psychotomimetic, psychedelic, or similar substances) shall be conducted only in such settings as clinical hospitals, or research facilities maintaining appropriate safeguards for the subjects."

Auth: 37-1-131, 37-17-202, MCA Imp: 37-1-131, MCA

REASON: This rule is being proposed for adoption to delineate the ethical standards which govern the professional conduct of psychologists and in turn protect the public's health, safety and welfare. These rules are based on the American Psychological Association's guidelines for ethical behavior.

5. Interested persons may submit their data, views or arguments concerning the proposed amendments, repeals and adoptions in writing to the Board of Psychologists, 1424 - 9th Avenue, Helena, Montana 59620-0407, no later than January 21, 1988.

6. If a person who is directly affected by the proposed amendments, repeals and adoptions wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Board of Psychologists, 1424 - 9th Avenue, Helena, Montana 59620-0407, no later than January 21, 1988.

7. 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 14 based on the 148 licensees in Montana.

BOARD OF PSYCHOLOGISTS
WILLIAM BREDEHOFT, Ph.D.
CHAIRMAN

BY: Geoffrey L. Brazier
GEOFFREY L. BRAZIER, ATTORNEY
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, December 14, 1987.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF MILK CONTROL

In the matter of proposed	)	NOTICE OF PUBLIC HEARING ON
amendments of Rule 8.86.301	)	PROPOSED AMENDMENTS OF RULE
(6)(g),(h) as it relates to	)	8.86.301 (6)(g), (h)
the class I price formula.	)	PRICING RULES
	)	DOCKET #81-87

TO: ALL LICENSEES UNDER THE MONTANA MILK CONTROL ACT
(SECTION 81-23-101, MCA, AND FOLLOWING) AND TO ALL INTERESTED
PERSONS:

1. On Monday, January 25, 1988 at 9:00 a.m., or as soon thereafter as interested persons can be heard, a public hearing will be held in the SRS Auditorium, 111 Sanders, Helena, Montana 59620.

The hearing will continue at said place from day to day thereafter, until all interested persons have had a fair opportunity to be heard and to submit data, views or arguments.

2. The hearing will be held in response to two separate petitions. The petitions were submitted by Mr. K.M. Kelly and Mr. John Alke.

The petition by Mr. K.M. Kelly was submitted on behalf of Meadow Gold Dairies, Inc., Clover Leaf Dairy, Equity Supply Co., and Vita Rich Dairy, Inc.

The petition by Mr. John Alke was submitted on behalf of Ryan's Wholesale Food Distributors, Jack's IGA, Associated Food Stores, Country Classic Dairies, Inc., and Beartooth Food Farm.

3. Since the filing of the two petitions submitted by Mr. K.M. Kelly and Mr. John Alke, an emergency petition has been filed by Meadow Gold Dairies, Inc., requesting an emergency order deleting all references to service and restrictions concerning service from the present rule, ARM Rule 8.86.301 (6)(g). The emergency order having been granted the Board will consider all evidence and testimony on whether to make permanent those changes as requested.

4. The petition filed by Mr. K.M. Kelly proposes amending Rule 8.86.301 (6)(g) as follows: (full text of the rule is located at pages 8-2539 through 8-2549 Administrative Rules of Montana) (new matter underlined, deleted matter interlined).

"8.86.301 PRICING RULES

(1) . . .

(6) . . .

(g) The minimum regular wholesale price will be marked up to ten percent (10%) to arrive at minimum retail prices.

(i) Special wholesale prices for retail grocery stores will be based on the procedures provided in subsection (A), (B) and (C) below. All milk purchased under one of the procedures indicated below must be paid within fifteen (15) days after invoicing unless there is a different time frame specified in the applicable rule section. Retailers are prohibited from purchasing milk at more than one level-of-service price level from any one distributor, and distributors are prohibited from offering more than one level-of-service price level to any one retailer in any single billing period. This does not prohibit a retailer from changing price levels of-service in subsequent billing periods.

(A) A special wholesale price for retail grocery stores will be calculated by multiplying regular retail prices by a factor of eighty-nine percent (89%) eighty-eight percent (88%) for full service delivery by a distributor. Any milk purchased herein must be paid for within fifteen (15) days after invoicing.

(B) Wholesale drop service price for retail stores:

(I) ~~Distributor--delivery--shall--be--limited--to--the service--door--or--refrigerated--storage--box.~~ Except for factory defects, pick up of returns is prohibited.

(II) Deliveries shall be limited to a maximum of four (4) times per week, with a one hundred fifty dollar (\$150.00) minimum sale.

~~III--The--retail--store--shall--assume--all--responsibility for--servicing--the--dairy--case--and--rotating--the--stock--of--fluid milk--products--in--store--service--by--the--distributor--is--not permitted.~~

~~IV--The--retail--store--shall--assume--all--responsibility for--loss--of--occasional--expiration--of--product--code--dates.~~

~~V--(III) The minimum retail price will be marked down by sixteen--percent--(16%)~~ seventeen and one-half percent (17.5%) to arrive at a minimum wholesale drop service price.

(C) Wholesale dock pickup or delivery price:

(I) Delivery shall be F.O.B. the distributor's dock, or F.O.B. the wholesale grocer's dock.

(II) The minimum retail price will be marked down by twenty-two--and--three--tenths--percent (22.3%) as noted below to arrive at the minimum wholesale dock pickup or delivery price:

<u>1 gallon, 3 quarts and</u>	<u>Chocolate and chocolate lowfat</u>
<u>1/2 gallon whole and</u>	<u>milk, buttermilk, skim milk,</u>
<u>lowfat milk marked down</u>	<u>chocolate drink, half &</u>
<u>twenty-six percent (26%)</u>	<u>cream, commercial cream, and</u>
	<u>whipping cream marked down</u>
	<u>twenty-four percent (24%)</u>

(III) Any milk purchased herein Milk must be paid for within ten (10) days after invoicing.

(IV) Resale by wholesale grocers will be based upon the wholesale price, wholesale--full--service special wholesale price for retail grocery stores or wholesale drop service price, whichever is applicable.

(V) A The minimum pickup delivery--will--be is five hundred (500) gallons.

(h) . . ."

5. The purpose for Mr. K.M. Kelly's proposed amendments to Rule 8.86.301 (6)(g) is "to eliminate the serious, disruptive competitive pressures facing the dairy industry; to correct the serious imbalance in retail price margins and provide a fair, equitable wholesale price margin for retailers."

6. The petition filed by Mr. John Alke proposes amending Rule 8.86.301 (6)(g),(h) as follows: (full text of the rule is located at pages 8-2539 through 8-2549 Administrative Rules of Montana)(new matter underlined, deleted matter interlined)

"8.86.301 PRICING RULES

(1) . . .

(6) . . .

(g) The minimum wholesale price will be marked up ten percent (10%) and then subtract four cents (\$.04) per gallon to arrive at minimum retail prices.

~~(i)---Special-wholesale-prices-for-retail-grocery--stores will--be--based--on--the--procedures--provided--in--subsection--(A)--(B)--and--(C)--below---All--milk--purchased--under--one--of--the procedures--indicated--below--must--be--paid--within--fifteen--(15) days--after--invoicing--unless--there--is--a--different--time--frame specified--in--the--applicable--rule--section---Retailers--are prohibited--from--purchasing--milk--at--more--than--one--level--of service--from--any--one--distributor--and--distributors--are prohibited--from--offering--more--than--one--level--of--service--to--any one--retailer--in--any--single--billing--period---This--does--not prohibit--a--retailer--from--changing--levels--of--service--in subsequent--billing--periods.~~

(A) A special wholesale price for retail grocery stores outlets and institutional bids will be calculated by multiplying regular retail prices by a factor of eighty-nine ~~eighty-seven~~ percent (89%) (87%) for full service by a distributor. Any milk purchased herein by a grocery outlet must be paid for within fifteen (15) days after invoicing. The special price school milk (1/2) pints as addressed in 8.86.301(k) will remain the same.

(I) Prices charged by a distributor which are less than the special wholesale prices that are eighty-seven percent (87%) of the regular retail prices will dictate that no services are permitted to be performed by a distributor in a retail store.

(B) Wholesale drop no service for retail stores:

(I) Distributor delivery shall be limited to the service door or refrigerated storage box.

~~(H)---Deliveries--shall--be--limited--to--a--maximum--of--four (4)---times--per--week--with--a--one--hundred--fifty--dollar--(\$150.00) minimum--sale.~~

~~+(III)~~ (II) The retail stores shall assume all responsibility for servicing the dairy case and rotating the stock of fluid milk products. In store service by the distributor is not permitted.

~~+(IV)~~ (III) The retail stores shall assume all responsibility for loss of occasional expiration of product code dates.

~~+(V)~~ (IV) The minimum retail price will be marked down by ~~sixteen-percent-(16%)~~ twenty-two percent (22%) to arrive at a minimum wholesale drop no service price.

(V) The distributor may give credits for manufacturing defects on a particular Class I dairy product only if the product has a shelf life of at least four (4) days before expiration of the code date.

(C) Wholesale dock pickup or delivery price:

(I) Delivery shall be F.O.B. the distributor's dock or ~~F.O.B. the wholesale grocer's dock.~~

(II) The minimum retail price will be marked down by ~~twenty-two---and---three-tenths---percent---(22+3%)~~ twenty-eight percent (28%) to arrive at the minimum wholesale dock pickup or delivery price.

(III) Any milk purchased herein must be paid for within ten (10) days after invoicing.

(IV) Resale will be based upon the wholesale full service price or wholesale drop service price, whichever is applicable.

(V) A minimum pickup or delivery will be five hundred (500) gallons.

(h) Minimum jobber prices will be calculated by multiplying the--difference--between-the-applicable-wholesale price-and-raw-products-cost-times-a-factor-of-55.597%--with-the resulting--answer-being-added-to-the-current-raw-product-cost. The-jobber--prices--calculated--will--be--the--minimum--jobber prices, regular retail prices by a factor of sixty-eight percent (68%).

(i) . . ."

7. The purpose for Mr. John Alke's proposed amendments to Rule 8.86.301 (6)(g), (h) is "to moderate some of the Montana sanctioned inefficiencies in milk distribution, to provide retail grocer margins that are sufficient to cover retailing costs of milk products and correct the incentive to purchase milk outside the state of Montana for resale in Montana."

8. The petition submitted by Mr. K.M. Kelly asks that the rule be adopted immediately after the hearing.

9. In view of the implications of the three petitions submitted, the Board deems it appropriate to serve notice that since all justification for granting separate tiered pricing might be eliminated, as a result of these proceedings, the Board may consider the elimination of unnecessary prices and regressing the economic formula to the level that reflects that predominant wholesale price.

10. Specific factors which the Board will take into consideration in these proceedings will include, but not be limited to, the following:

a) The cost factors in distributing milk, which shall include among other things the prices paid by distributors for equipment of all types required to process and market milk and prevailing usage rates in the state.

b) The cost factors in jobbing milk which shall include among other things: raw product and ingredient costs, carton or other packaging costs, processing cost and that part of general administrative costs of the supplying distributor which may properly be allocated to the handling of milk to the point at which such milk is at the supplying distributor's dock, equipment of all types required to market milk, and prevailing usage rates in this state.

c) The cost factors in retailing milk which shall include among other things that part of general and administrative cost which may be properly allocated to the handling of milk, equipment of all types required to market milk, and cost of wages in relation to the total dollar volume of fluid milk sales.

d) The rate that fluid milk turns over in relation to other non-fluid milk items.

e) The cost of stocking store cooler and shelves.

f) The percentage of fluid milk sales to total supermarket sales.

11. In its consideration on the merits of the petition, the Board takes official notice as facts within its own knowledge of the following:

TABLE I

RETAIL PRICE SURVEY IN ADJACENT AND SURROUNDING AREAS
(A simple average of retail prices)
November 30 - December 4, 1987

	WHOLE MILK		LOWFAT MILK		SKIM MILK	
	1/2 G. Gal.	1/2 G. Gal.	1/2 G. Gal.	1/2 G. Gal.	1/2 G. Gal.	1/2 G. Gal.
<u>IDAHO</u>						
Blackfoot	\$1.21	\$2.28	\$1.14	\$1.90	\$1.02	\$1.94
Boise	1.10	2.08	1.01	1.85	.93	1.57
Coeur D'Alene	1.28	2.30	1.19	2.13	1.01	1.91
Glenn's Ferry	1.17	2.29	1.07	2.12	1.09	*
Grangeville	1.25	2.27	1.18	2.15	1.05	1.86
Idaho Falls	1.27	2.22	1.17	2.00	1.05	1.71
Kellogg	1.12	2.19	1.04	1.99	.98	1.80
Lewistown	1.20	2.22	1.14	2.04	.98	1.84
Moscow	1.29	2.43	1.21	2.16	1.06	1.82
Pocatello	1.09	1.98	1.01	1.84	1.01	1.56
Twin Falls	1.17	2.25	1.11	2.03	.91	1.57
Wallace	1.24	2.45	1.15	2.25	.99	1.69

MONTANA

Statewide	1.29	2.57	1.21	2.40	1.10	2.18
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NORTH DAKOTA

Dickinson	1.18	2.42	1.13	2.32	1.07	2.20
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SOUTH DAKOTA

Rapid City	1.35	2.46	1.31	2.25	1.17	2.00
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WASHINGTON

Pullman	1.20	2.38	1.11	2.20	.97	1.85
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Spokane	1.28	2.31	1.20	2.15	1.01	1.91
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South of Spokane	1.37	2.40	1.24	2.30	1.12	2.04
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WYOMING

Buffalo	1.31	2.47	1.24	2.41	1.10	*
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Casper	1.15	2.22	1.05	2.09	1.04	1.85
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Cheyenne	1.22	2.24	1.17	2.13	1.03	1.79
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Douglas	1.32	2.56	1.24	2.31	1.19	2.04
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Edgerton	1.43	2.79	1.33	2.59	*	*
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Gillette	1.40	2.66	1.32	2.49	1.23	2.29
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Jackson	1.27	2.36	1.20	1.93	1.00	1.62
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Newcastle	1.33	2.56	1.30	2.41	1.17	2.23
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Sheridan	1.23	2.67	1.29	2.27	1.13	2.01
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Torrington	1.28	2.25	1.25	2.09	1.02	1.84
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Wheatland	1.35	2.53	1.25	2.35	1.15	2.02
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* Items not sold.

TABLE II - part 1

PRICE SURVEY OF LOW & HIGH PRICES

November 30 - December 4, 1987

	WHOLE MILK		WHOLE MILK		LOWFAT MILK	
	1/2 Gallon		Gallon		1/2 Gallon	
	Low	High	Low	High	Low	High
<u>IDAHO</u>						
Blackfoot	\$1.12	\$1.32	\$2.09	\$2.44	\$1.12	\$1.17
Boise	1.03	1.11	1.94	2.34	.89	1.10
Coeur D'Alene	1.27	1.30	2.23	2.36	1.17	1.22
Glenn's Ferry	1.10	1.25	2.19	2.39	1.00	1.12
Grangeville	1.24	1.25	2.26	2.29	*	1.18
Idaho Falls	1.17	1.59	1.99	2.59	.99	1.59
Kellogg	1.09	1.19	*	2.19	1.02	1.09
Lewistown	1.11	1.27	2.08	2.29	1.06	1.19
Moscow	1.23	1.32	2.24	2.52	1.15	1.25
Pocatello	.97	1.28	1.90	2.05	.90	1.27
Twin Falls	1.09	1.39	1.94	2.52	1.04	1.28
Wallace	1.09	1.48	2.19	2.70	1.02	1.34
<u>MONTANA</u>						
Statewide	*	1.29	*	2.57	*	1.21
<u>NORTH DAKOTA</u>						
Dickinson	*	1.18	*	2.42	*	1.13

SOUTH DAKOTA

Rapid City	1.19	1.59	1.99	2.69	1.16	1.59
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WASHINGTON

Pullman	1.18	1.22	2.35	2.45	1.09	1.12
Spokane	1.27	1.30	2.26	2.36	1.19	1.22
South of Spokane	1.29	1.47	2.35	2.49	1.19	1.31

WYOMING

Buffalo	1.09	1.77	2.29	2.74	1.05	1.67
Casper	.97	1.40	1.99	2.69	.87	1.29
Cheyenne	1.05	1.49	2.03	2.75	.97	1.37
Douglas	1.18	1.47	2.35	2.69	1.08	1.39
Edgerton	1.43	1.43	2.79	2.79	1.33	1.33
Gillette	1.32	1.59	2.39	2.89	1.19	1.59
Jackson	1.20	1.31	2.23	2.51	1.11	1.27
Newcastle	1.20	1.56	2.19	3.13	1.24	1.51
Sheridan	1.13	1.75	2.45	3.45	1.12	1.65
Torrington	1.27	1.31	2.19	2.59	1.24	1.29
Wheatland	1.24	1.45	2.39	2.79	1.05	1.37

* Only 1 price.

TABLE II - part 2

PRICE SURVEY FOR LOW & HIGH PRICES
November 30 - December 4, 1987

	LOWFAT MILK		SKIM MILK		SKIM MILK	
	Gallon		1/2 Gallon		Gallon	
	Low	High	Low	High	Low	High
<u>IDAHO</u>						
Blackfoot	\$1.67	\$2.34	\$ *	\$1.02	\$ *	\$1.94
Boise	1.70	2.08	.90	.98	*	1.57
Coeur D'Alene	2.06	2.19	.98	1.04	1.89	1.95
Glenn's Ferry	1.99	2.29	*	1.09	*	*
Grangeville	2.14	2.16	1.02	1.07	1.85	1.87
Idaho Falls	1.59	2.59	.91	1.09	1.66	1.75
Kellogg	*	1.99	.94	1.04	*	1.80
Lewistown	1.85	2.09	.95	1.01	1.79	1.89
Moscow	2.13	2.20	.95	1.11	1.79	1.88
Pocatello	1.83	1.95	.84	1.18	1.53	1.63
Twin Falls	1.75	2.38	.88	.95	1.53	1.60
Wallace	1.99	2.52	*	.99	*	1.69
<u>MONTANA</u>						
Statewide	*	2.40	*	1.10	*	2.18
<u>NORTH DAKOTA</u>						
Dickinson	*	2.32	*	1.07	*	2.20
<u>SOUTH DAKOTA</u>						
Rapid City	1.87	2.59	1.02	1.37	1.85	2.11
<u>WASHINGTON</u>						
Pullman	2.17	2.24	.95	.99	1.85	1.89
Spokane	2.14	2.19	.99	1.04	1.89	1.95
South of Spokane	2.19	2.44	1.05	1.18	1.99	2.09

WYOMING

Buffalo	2.19	2.67	1.03	1.24	*	*
Casper	1.81	2.53	.93	1.19	1.85	1.85
Cheyenne	1.78	2.65	.89	1.25	1.72	1.85
Douglas	1.79	2.70	1.15	1.23	1.85	2.23
Edgerton	2.59	2.59	*	*	*	*
Gillette	2.19	2.74	1.15	1.25	2.27	2.37
Jackson	1.67	2.35	1.00	1.01	1.55	1.68
Newcastle	1.93	3.03	1.15	1.19	2.23	2.23
Sheridan	1.89	3.25	1.09	1.20	1.85	2.09
Torrington	1.99	2.51	.99	1.07	1.79	1.89
Wheatland	1.93	2.73	1.15	1.15	1.99	2.23

* Only 1 price.

TABLE III

RECAP OF SELECTED WHOLESALE PRICES
November 30 - December 4, 1987

	WHOLE MILK		LOWFAT MILK		SKIM MILK	
	1/2 G. Gal.		1/2 G. Gal.		1/2 G. Gal.	
<u>IDAHO</u>						
Kellogg	.9467	1.755	.8844	1.630	.74	*
<u>SOUTH DAKOTA</u>						
Rapid City	1.05	2.09	1.03	2.05	.99	1.93
	.94	1.77	.88	1.66	*	*
<u>WASHINGTON</u>						
Oaksdale	.9622	1.7825	.9022	1.66	.76	1.42
Rosalie	.9880	1.869	.8920	1.679	.761	*
<u>WYOMING</u>						
Buffalo	*	2.01	*	1.86	*	*
	.97	1.94	.89	1.78	*	*
	1.20	2.42	1.13	2.27	1.03	*
Casper	.97	1.97	.87	1.81	*	*
Cheyenne	1.09	2.11	.99	1.91	*	*
Gillette	1.08	2.15	.98	1.90	*	*
Newcastle	1.05	2.09	1.03	2.05	*	*
Sheridan	.98	1.98	.93	1.88	.84	1.75
Wheatland	*	2.50	*	2.50	*	*

* Prices for these items were not provided.

The Board takes official notice of a five (5) store Helena area survey on January 9th and 10th, 1982, in which the frequency of milk delivery was three to four times a week with an average inventory turnover of 2.76 times per week.

The Board also takes official notice that forty-seven (47) accounts were reported as violations to the Milk Control Bureau office between February 18, 1987 and October 19, 1987.

Of those reported violations, processors were charged with violations on thirty-four (34) of those accounts. For administrative purposes each account was treated as one violation whereas under the Milk Control law, each day that each account was in violation could have been treated as a separate offense.

The Board takes further notice that allegations filed in an affidavit by Meadow Gold Dairies, Inc. that certain Montana IGA stores have recently substantially reduced or altogether discontinued Meadow Gold shelf space in favor of Country Classic Dairies, Inc. or increased the price of Meadow Gold milk in relation to other brands. The Board recognizes this conduct if true and if escalated could cause immediate and irreparable harm to Meadow Gold Dairies, its jobbers and producers. To ignore such conduct could jeopardize and threaten the supply of milk to institutions and consumers and thus undermine public health and welfare.

12. Interested persons may participate and present data, views or arguments pursuant to section 2-4-302, MCA, either orally or in writing at the hearing or by mailing the same to the Milk Control Bureau no later than January 21, 1988.

13. Geoffrey L. Brazier, Esq., 1424 9th Avenue, Helena, Montana has been appointed as presiding officer and hearing examiner to preside over and conduct this hearing. However, the full Board will sit in convened session at the hearing.

14. Authority for the Board to take the action and adopt the rules as proposed is in section 81-23-302, MCA. Such rules if adopted in the form as proposed or in a modified form, will implement section 81-23-203, MCA.

MONTANA BOARD OF MILK CONTROL
CURTIS C. COOK, CHAIRMAN

BY: William E. Ross
WILLIAM E. ROSS, Bureau Chief

Certified to the Secretary of State December 14, 1987.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE MONTANA HEALTH FACILITY AUTHORITY

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of 8.120.206) OF A RULE PERTAINING TO FEES

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On January 23, 1988, the Montana Health Facility Authority proposes to amend the above-stated rule.

2. The proposed amendment of 8.120.206 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-4407 through 8-4409, Administrative Rules of Montana)

"8.120.206 FEES (1) The authority shall charge each health institution which receives financing from the authority an initial and annual planning service fees as follows:

(a) The An initial planning service fee shall be imposed upon each health institution receiving financing from the authority and shall be a percentage of the principal amount of bonds or notes of the authority issued for the health institution calculated as follows:

(i) will remain the same.

(ii) Issues to provide financing for more than one health institution

Principal Amount
Up to \$5,000,000

FEE
.625% of the
principal amount

\$5,000,001 to \$10,000,000

\$31,250 + .3125%
of the principal
amount in excess
of \$5,000,000

Greater than \$10,000,000

\$46,875 + .125%
of the principal
amount in excess
of \$10,000,000

Ten percent of the fee (based on the estimated principal amount of bonds or notes to be issued or loan amounts to be borrowed) shall be paid to the authority upon submission of an application for financing. The balance of the fee shall be paid to the authority at or prior to the issuance of the bonds or notes or loan closure in one or more installments as determined by the authority upon approval of the application. ~~If bonds or notes are to be issued in a single series to provide financing for more than one health institution, the initial planning service fee shall be allocated among each participating health institution in proportion to its~~

~~respective participation.~~ The initial planning service fee, when paid, shall be non-refundable.

(b) ~~The~~ An annual planning service fee shall be payable on the first and each succeeding anniversary date of the sale and issuance of the bonds or notes, or loan amounts and shall be .15% of the principal amount of the bonds or notes or loan amounts outstanding on each such anniversary date. However, ~~if the total outstanding principal amount of all of the Authority's stand-alone issues exceeds \$55 million on January 1 of a calendar year, the annual planning service fee for that year for institutions financed under a stand-alone issue shall be .05% of the outstanding principal amount of that issuer~~

(c) If bonds or notes are issued in a single series to provide financing for more than one health institution, the initial planning service fee and annual planning service fee shall be allocated among each participating health institution in proportion to its respective participation. The authority may by resolution waive or reduce the amount of the initial planning service fee or annual planning service fee with respect to any health institution if it determines the waiver or reduction to be in the best interest of the authority, the health institution and the users of the health institution.

(2) In addition to the initial and annual planning service fee, unless otherwise agreed by the authority, each health institution shall pay all costs and expenses incurred by the health institution in connection with the issuance and sale of the bonds or notes and shall also pay all costs and expenses incurred by the authority for services provided by third persons in connection with the issuance and sale of bonds or notes and the issuance, administration and servicing of the loan, including accounting, legal, consulting, printing and publication fees, cost and expenses. The health institution shall pay such costs and expenses regardless of whether the bonds or notes are issued and sold.

Auth: 90-7-202, MCA Imp: 90-7-202, 90-7-211, MCA

REASON: To provide board discretion on an individual participant basis to reduce or waive initial and/or annual planning services fees. To provide the Authority the ability to assess fees on loan amounts. To notify program participant by rule of the additional costs associated with loan transactions.

3. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Montana Health Facility Authority, Department of Commerce, 1520 East 6th Avenue, Helena, Montana 59620, no later than January 21, 1988.

4. 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 Montana Health Facility Authority, Department of Commerce, 1520 East 6th Avenue, Helena, Montana 59620, no later than January 21, 1988.

5. If the Authority 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 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.

MONTANA HEALTH FACILITY
AUTHORITY
MARY D. MUNGER, CHAIRMAN

BY:



GEOFFREY L. BRAZIER, ATTORNEY
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, December 14, 1987.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE MONTANA STATE LOTTERY

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of a rule pertaining) OF 8.127.610 LICENSE RENEWAL
to renewals)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On January 23, 1988, the Montana State Lottery proposes to amend the above-stated rule.
2. The proposed amendment will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-4887, Administrative Rules of Montana)

"8.127.610 LICENSE RENEWAL (1) A renewal application shall be made on a form supplied by the director and accompanied by a processing fee of ~~\$50.00~~ \$25.00."

REASON: The \$25.00 fee is sufficient to cover lottery costs in issuing a license renewal. To make fee commensurate with program costs.

3. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Montana State Lottery, 2525 North Montana, Helena, Montana 59620, no later than January 21, 1988.

4. 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 Montana State Lottery, 2525 North Montana, Helena, Montana 59620, no later than January 21, 1988.

5. If the Lottery 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 108 based on the 1088 licensees in Montana.

MONTANA STATE LOTTERY

BY: Diana S. Dowling
DIANA S. DOWLING, DIRECTOR

Certified to the Secretary of State, December 14, 1987.

24-12/24/87

MAR Notice No. 8-127-3

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION
STATE OF MONTANA

In the Matter of the Proposed)	NOTICE OF PUBLIC HEARING ON
Amendments of Rules 10.6.101;)	PROPOSED AMENDMENTS OF
10.6.103; 10.6.104; 10.6.106;)	A.R.M. 10.6.101, 10.6.103,
10.6.108; 10.6.119 through)	10.6.104, 10.6.106, 10.6.108
10.6.122; 10.6.127)	10.6.119 through 10.6.122, and
)	10.6.127 AND ADOPTION OF
)	NEW RULES

To: All Interested Persons.

1. On Monday, February 1, 1988, at 10:00 a.m., a public hearing will be held in Room 104 of the State Capitol in Helena, Montana, to consider the amendment of rules 10.6.101, 10.6.103, 10.6.104, 10.6.106, 10.6.108, 10.6.119 through 10.6.122, and 10.6.127 and the adoption of new rules pertaining to school controversies.

2. The rules as proposed to be amended and/or adopted provide as follows:

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

(a) County Transportation Committee: All matters contested before the county transportation committee shall be governed by these rules of controversy. It shall be the duty of the county superintendent, as chairperson of the county transportation committee, to insure compliance. All references made to the county superintendent as to the procedure on these school rules shall also include the county transportation committee where appropriate.

(b) Special Education: Due process matters concerning and arising from all handicapped children in this state shall be governed by these rules.

(c) Vocational Education: All references made to appropriate federal or state statutes or state plans for school controversies arising from ~~postsecondary-vocational-technical-centers, or postsecondary-vocational-technical-education-and-~~ secondary vocational courses and programs which are a part or portion of secondary school offerings, shall be governed by these rules.

(d) Family and Education Privacy Act. Due process hearings mandated by the Family and Education Privacy Act will be governed by these rules.

(e) All controversies arising under any other provision of Montana law or federal law for which a procedure for resolving controversies is not expressly prescribed shall be governed by these rules.

AUTH: 20-3-107(3), 20-7-301 MCA; IMP: 20-3-107(3), 20-7-301 MCA

10.6.103 INITIATING SCHOOL CONTROVERSY PROCEDURE PROCESS

(1) A person who has been aggrieved by a final decision of the board of trustees of a school district in a contested case is entitled to commence an appeal before the county superintendent except as provided in subsection (2) and (3).

~~(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 must be reached by the county superintendent of schools and a copy of the decision 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) Impartial due process hearings involving educating handicapped children may be initiated by the parent, legal guardian or surrogate parent of a handicapped child if the parent disagrees with action taken by a school district for which notice to parents is required.

(3) Impartial due process hearings involving educating handicapped children may be initiated by a school district board of trustees when, after reasonable efforts at mediation, a parent, legal guardian or surrogate parent either fails to provide a written parental consent for a proposed educational action, or provides a formal disapproval of educational actions. A hearing may also be initiated by a school district board of trustees to show that its educational evaluation is appropriate whenever an independent evaluation is requested by the parent, legal guardian or surrogate parent.

(4) A request for an impartial due process hearing involving the education or possible identification of a handicapped child shall be made in writing to the state superintendent of Public Instruction, State Capitol, Helena, Montana 59620, include a short and plain statement of matters asserted and comply with the notice of appeal requirements of 10.6.107.

(5) A school controversy contested case other than issues involving education of handicapped children 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.

AUTH: 20-3-107(3) MCA; IMP: 20-3-107(3), 20-3-211(4) MCA

RULE I SPECIAL EDUCATION DUE PROCESS HEARING PROCEDURES

(1) Upon receipt by the state superintendent of a written notice of appeal and a request for a due process hearing involving special education controversy the state superintendent shall:

(a) Promptly advise the board of trustees and parent, legal guardian or surrogate parent of the request and 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. Pending the final decision of the board of trustees or upon mutual agreement of the parties, the state superintendent shall provide mediation so long as both parties voluntarily and freely agree to the mediation. The mediation conference is an attempt to resolve the differences and, if possible, avoid a hearing. The mediation shall be:

(i) an intervening, informal process conducted in a non-adversarial atmosphere,

(ii) not be used to deny or delay an aggrieved party rights to a hearing.

(c) Appoint an impartial hearing officer to conduct a due process hearing.

(i) The superintendent of public instruction shall maintain a list of persons who serve as impartial hearing officers.

(ii) Selection of impartial hearing officer:

(A) Upon receiving a copy of the request for hearing, the superintendent of public instruction shall mail to each party a list of five proposed impartial hearing officers together with a summary of their qualifications.

(B) A party shall have seven days to study the list, cross off any two names objected to, number the remaining names in order of preference, and return the list to the superintendent of public instruction. Requests for more information about proposed hearing officers must be directed to the superintendent of public instruction. Unless good cause is shown, this request for more information does not extend the seven day response time.

(C) If, despite efforts to arrive at a mutually agreeable choice, the parties cannot agree upon a hearing officer, the superintendent of public instruction will make the appointment.

(D) Notwithstanding the foregoing provisions, the parties may mutually select the hearing officer from the list provided by the state superintendent.

(iii) Disqualification:

(A) A hearing may not be conducted by a person who is an employee of a school district or other public agency which is involved in the education or care of the child, or who has a personal or professional interest which would conflict with his or her objectivity in the conduct or review of the hearing.

(B) A person who otherwise is qualified to conduct a hearing under paragraph (A) of this subsection is not an employee solely because he or she is paid by contract by the public agency to serve as a hearing officer.

(2) An impartial hearing officer may at any point withdraw from consideration or from service in any hearing in which

the impartial hearing officer believes a personal or professional bias or interest on any of the issues to be decided in the hearing exists which might conflict with the impartial hearing officer's objectivity. Such written withdrawal request shall be directed to the state superintendent. Any subsequent appointment of an impartial hearing officer shall be conducted as provided above.

AUTH: 20-3-107(3) MCA; IMP: 20-3-107(3), 20-3-211(4) MCA

RULE II POLICY STATEMENT The following rules of procedure for all school controversy contested cases before a county superintendent apply to special education hearing officers. Whenever a special education due process hearing is conducted, the following rules 10.6.104 through 10.6.124 shall be used. The impartial hearing officer is substituted for each reference to the county superintendent.

AUTH: 20-3-107(3) MCA; IMP: 20-3-107(3), 20-3-211(4) MCA

10.6.104 JURISDICTION (1) On matters other than controversy involving the education or identification of a handicapped child, the county superintendent shall upon receipt of the Notice of Appeal, determine:

- (a) whether the appeal is a contested case; and
- (b) whether he/she has jurisdiction in the matter.

(2) The county superintendent may determine that he/she does not have jurisdiction or the power to act and therefore render such determination and return such notice and order to the appealing party. The county superintendent, upon determination of proper jurisdiction and proper contested case, shall hear the appeal and take testimony in order to determine the facts related to the contested case.

AUTH: 20-3-107(3) MCA; IMP: 20-3-107(3), 20-3-211(4) MCA

10.6.106 NOTICE OF HEARING (1) All parties to a hearing shall be given a notice of hearing by the county superintendent. The county superintendent shall, within 10 days upon the receipt of the notice of appeal, issue the notice of hearing. The notice of hearing shall include:

- (a) a statement of the time, place and nature of the hearing;
- (b) references to the specific statutes and rules involved available at that time;
- (c) a provision advising the parties of their right to be represented by counsel at the hearing;
- (d) a statement of the issues and matters to be discussed at the hearing;
- (e) a copy attached of the original notice of appeal to the county superintendent.

(2) The notice of hearing shall be sent by certified mail to all parties indicated in the original notice of appeal.

(3) If the county superintendent does not have details of the issues and matters to be discussed at the time of issuing the notice of hearing, the party or county superintendent may later demand a more detailed account of the issues and matters

to be discussed. The dates scheduled by the county superintendent in the notice of hearing may be continued by the county superintendent to such a convenient date as stipulated by the parties and approved by the county superintendent.

If the school controversy involves a pupil as defined by Montana School Law the notice of hearing as well as all communications conducted in the hearing shall be written in language understandable to the general public and in the native language of the parent unless it is clearly not feasible to do so. If the native language or other mode of communication is not written language, the county superintendent shall direct the notice to be translated orally or by other means to the parent in his/her native language or other means of communication.

(4) Special Education - Access to legal assistance. The ~~county superintendent impartial hearing officer~~ shall inform the parent of any free or low-cost legal and other relevant services available in the area ~~upon conferring with the Executive Director of the Montana Bar Association.~~

AUTH: 20-3-107(3) MCA; IMP: 20-3-107(3), 20-3-211(4) MCA

10.6.108 COUNTY SUPERINTENDENT'S PREHEARING PROCEDURE-FORMULATING ISSUES (1) In any action, the county superintendent may, at his/her discretion, direct the parties to appeal before him/her for a conference to consider:

- (a) the simplification of the issues;
- (b) the necessity or desirability of amendments to the pleading;
- (c) the possibility of obtaining admissions of fact and documents which will avoid unnecessary proof;
- (d) a limitation of the number of expert witnesses;
- (e) such other matters as may aid in the disposition of the action.

(2) The county superintendent may make an order which recites the action taken at the conference, the amendments to the notice of appeal and the agreements made by the parties as to any of the matters considered, and which limits the issues for the hearing to those not disposed of by admissions or agreements of counsel. Such order when entered, will control the subsequent course of action, unless modified at the hearing to prevent manifest injustice. The county superintendent, in his/her discretion, may establish by rule a prehearing calendar on which actions may be placed for consideration as provided above.

(3) Individual Privacy: County superintendent shall provide for provision to insure the privacy of matters before them as is required by law. Parents maintain the right to waive their right of confidentiality and privacy in the hearing and may request that the hearing be open to the public. The county superintendent shall also provide or allow an opportunity for the minor to be present at the hearing upon request of the parent or guardian or non-minor pupil.

(4) Location of Hearing. The county superintendent shall conduct the hearing in the county courthouse unless stipulated by all parties and the county superintendent.

AUTH: 20-3-107(3) MCA; IMP: 20-3-107(3), 20-3-211(4) MCA

10.6.119 FINAL ORDER (1) For all issues except those involving education of the handicapped, the final order by the county superintendent shall be in writing and shall include findings of fact and conclusions of law separately stated. Findings of fact, as set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

(a) Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

(b) Each conclusion of law shall be supported by authority or by a reasoned opinion.

(c) Final order shall inform the parties of their right to appeal the order to the State Superintendent of Public Instruction by attaching a copy of the Uniform Rules of Administrative Appellate Procedure for the State Superintendent of Public Instruction with the final order.

~~(2) Special education. The county superintendent shall insure that not later than 45 days after the receipt of a notice of appeal the final decision is reached in the hearing and a copy of the decision is mailed to each party for all cases regarding education for the handicapped. Parties to the school controversy case may waive this time limitation upon request of the county superintendent or upon request of the other party.~~

(3) (2) The county superintendent shall insure for all cases other than cases regarding education of the handicapped that not later than 90 days after the receipt of the notice of appeal a final order is reached and a copy of the findings of fact, conclusions of law and order is mailed to each party. The time limitation provided here may be waived upon request of the county superintendent or a party of the school controversy contested case, upon stipulation of all parties.

(4) (3) County Transportation Committee: In the case of an appeal to the county transportation committee, the committee shall meet and vote in open session whether to grant or deny the appeal or request for consideration. The members of the majority shall appoint one member to prepare findings of fact, conclusions of law and order which shall then be adopted at an open meeting of the transportation committee and signed by all members of the majority. Any member of the minority may put the reasons for his/her vote in writing, and this shall be made part of the record.

AUTH: 20-3-107(3) MCA; IMP: 20-3-107(3), 20-3-211(4) MCA

RULE III FINAL ORDER ON SPECIAL EDUCATION DUE PROCESS HEARING DECISIONS (1) Unless the time limitation for a decision has been waived by both parties, within 45 days after the state superintendent's receipt of the request for hearing, the impartial hearing officer shall render, in writing, findings of fact and conclusions of law separately stated and an order concerning all matters at issue in the hearing and mail, or personally deliver, a written copy of the findings of fact, conclusions of law and order to each of the parties and to the state superintendent. The hearing officer shall also mail or deliver the record as defined in 10.6.118 to the state superintendent.

(2) In the event the impartial hearing officer has received a written stipulation to waive the 45-day period in which to render a final decision, the impartial hearing officer shall notify the state superintendent by affidavit of the additional time necessary for the rendering of a final decision. In the event the decision is not rendered within 90 days from the date the notice of appeal was filed with the state superintendent, the state superintendent may remove the impartial hearing officer and appoint another impartial hearing officer.

(3) The impartial hearing officer may order reimbursement for parents for the unilateral placement of their child where the parent's placement is deemed appropriate and the school district's placement is determined to be inappropriate.

(4) The decision of the independent impartial hearing officer shall be binding upon both parties unless the decision is appealed.

(5) Appeal of Hearing Decision.

Any party who feels aggrieved by the findings and decision of the impartial hearing officer may appeal to a district court or may bring a civil action under 20 U.S.C. Section 615(e)(2) of the Education of the Handicapped Act.

(6) Costs of Hearing.

The office of public instruction shall only be responsible for paying administrative costs related to the hearing, including necessary expenses incurred by the impartial hearing officer and stenographic services. The parties involved shall each be responsible for any legal or other fees that incur.

(7) Every party to a controversy shall comply with these rules of procedure. Failure of one party to do what is required and which substantially prejudices the proceedings may necessitate a request by the hearing officer of a court order for compliance.

(8) In the event that parents of a handicapped child prevail, a court of competent jurisdiction, in its discretion, may award reasonable attorney's fees as part of the costs to the parents. The awarding of attorney's fees is subject to the limitations found in the Education of the Handicapped Act, 20 U.S.C., Section 1415.

AUTH: 20-3-107(3) MCA; IMP: 20-3-107(3), 20-3-211(4) MCA

10.6.120 COUNTY ATTORNEY RULE (1) The county attorney shall serve as the legal advisor for the county superintendent of schools in all school controversy contested cases except in cases involving special education. In the event the county attorney is unable to serve in that capacity, the county superintendent shall designate another qualified attorney to serve as a legal advisor for the county superintendent.

AUTH: 20-3-107(3) MCA; IMP: 20-3-107(3), 20-3-211(4) MCA

UNIFORM RULES OF ADMINISTRATIVE APPELLATE PROCEDURE ON CONTESTED CASES BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION.

10.6.121 APPELLATE PROCEDURE - SCOPE OF RULES (1) The superintendent of public instruction shall decide matters of

controversy when they are appealed from a decision of a county superintendent except for cases involving education of the handicapped.

(2) All references made to the county superintendent as to the procedure on these rules shall also include the county transportation committee where appropriate.

(3) All references made in these rules shall maintain consistency with the Uniform Rules of Procedure for all School Controversy Contested Cases before the county superintendent of the state of Montana.

(4) A party who is aggrieved by a final decision in a contested case before the county superintendent is entitled to appellate review by administrative appeal to the state superintendent. The superintendent of public instruction shall make his/her decision on the basis of the record established at the county superintendent hearing and upon review of the findings of fact, conclusions of law, and order of the county superintendent.

AUTH: 20-3-107(3) MCA; IMP: 20-3-107(4), 20-3-211(4) MCA

10.6.122 APPELLATE PROCEDURE - NOTICE OF APPEAL - FILING (1) An appeal shall be taken by filing a notice of appeal with the state superintendent of public instruction and a copy of such notice of appeal with the county superintendent. Failure of any party to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal but is grounds for such action as the state superintendent deems appropriate, which may include dismissal of the appeal.

~~(2)--All references to state superintendent for purposes of special education cases shall mean the impartial hearing officer at the state education agency level.~~

~~(3)--The impartial hearing officer shall conduct a review of a hearing which resulted in an appeal of the decision of the county superintendent.~~

~~(4)--List of impartial hearing officers--The superintendent of public instruction shall keep a list of persons who serve as hearing officers.~~

~~(5)--Selection of hearing officer for administrative appeal.~~

~~(a)--Upon receiving a copy of the notice of appeal, the superintendent of public instruction shall mail to each party a list of five proposed hearing officers together with their qualifications.~~

~~(b)--A party shall have seven days to study the list, cross off any two names objected to, number the remaining names in order of preference, and return the list to the superintendent of public instruction. Requests for more information about proposed hearing officers must be directed to the superintendent of public instruction.~~

~~(c)--If, despite efforts to arrive at a mutually agreeable choice, the parties cannot agree upon a hearing officer, the superintendent of public instruction will make the appointment.~~

~~(d)--Notwithstanding the foregoing provisions, the parties may mutually select the hearing officer.~~

~~(6)--Disqualification--~~

~~(a)--A hearing may not be reviewed by a person who is an employee of a school district or other public agency involved in the education or care of the child, or who has a personal or professional interest or reason which would conflict with his or her objectivity in the conduct or review of the hearing.~~

~~(b)--A person who otherwise is qualified to conduct or review a hearing under paragraph (a) of this subsection is not an employee solely because he or she is paid by contract by the public agency to serve as a hearing officer.~~

AUTH: 20-3-107(3) MCA; IMP: 20-3-107(3), 20-3-211(4) MCA

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

(2) The decision of the superintendent of public instruction shall be rendered within 90 days after the case has been deemed submitted by the state superintendent. Parties shall be notified by the state superintendent of cases requiring additional time who shall by affidavit attest to the additional time required.

~~(3)--Special Education--The state superintendent shall insure that, no later than 30 days after the receipt of a request for a review, a final decision and order is reached in the review and a copy of the decision and order is mailed to each of the parties. The state superintendent may grant specific extensions of time beyond the period set out beyond 30 days upon the request of either party and/or the state superintendent upon the stipulation of both parties.~~

AUTH: 20-3-107(3) MCA; IMP: 20-3-107(3), 20-3-211(4) MCA

3. The Office of Public Instruction is proposing these amendments and adoptions pursuant to legislative changes that remove county superintendents and the state superintendent as impartial hearing officers for special education controversies and pursuant to recent Office of Special Education Programs, United States Department of Education memorandum and Office of Civil Rights directives. The county superintendent and state superintendent would be replaced with an impartial hearing officer appointed at the state level to hear matters of controversy involving education of handicapped children.

4. Interested parties may submit their data, views, or arguments, either orally or in writing at the public hearing. Written data, views or arguments may also be submitted to Rick Bartos, Assistant Superintendent for Legal Services, Office of Public Instruction, Room 106 State Capitol, Helena, Montana

59620 no later than February 5, 1988. Rick Bartos, Assistant Superintendent for the Office of Public Instruction has been designated to preside over and conduct the public hearing.



Ed Argenbright
State Superintendent

Certified to the Secretary of State, December 14, 1987.

BEFORE THE DEPARTMENT OF INSTITUTIONS
OF THE STATE OF MONTANA

In the matter of the Proposed
Amendment of Rule 20.2.201

NOTICE OF PROPOSED AMEND-
MENT OF RULE 20.2.201

TO: All Interested Persons

1. The 1987 Montana Legislature passed House Bill (HB) 325 which created the Department of Family Services (DFS) and transferred the aftercare functions of the Department of Institutions to DFS effective July 1, 1987. 52-1-103(5) MCA.

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

20.2.201 CONTESTED CASES, GENERAL AUTHORITY (1)
Authority for the adoption of these rules is given to the department under section 53-1-203 MCA. All rules adopted for fair hearings are in accordance with the following:

~~(a)-----Section-53-20-229(1)-MCA-~~

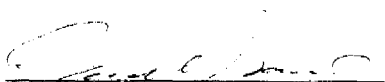
~~(b)(a) section 46-23-421 MCA.~~

~~(e)(b) section 46-23-1023 MCA. (History: Secs. 2-4-203, 53-1-203 MCA; IMP, Secs. 53-30-229(1), 46-23-421, 1023 MCA; NEW, Eff. 1/2/77.)~~

AUTH: 53-1-203, MCA

IMP: 53-1-203
53-30-203
53-30-229

3. The department is proposing this rule change due to the requirements of HB 325.


CARROLL SOUTH, Director
Department of Institutions

Certified to the Secretary of State December 14, 1987

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the)	NOTICE OF PROPOSED
adoption of rules for the)	ADOPTION OF RULES FOR THE
establishment of a State Meat)	ESTABLISHMENT OF A STATE
and Poultry Inspection Program)	MEAT AND POULTRY INSPEC-
	TION PROGRAM

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On January 23, 1988, the Board of Livestock proposes to adopt as rules of the department the federal rules on meat and poultry inspection as they are now described and as they may from time to time be amended.

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

RULE I FOOD SAFETY AND INSPECTION SERVICE (MEAT, POULTRY)

The Department of Livestock hereby incorporates by reference 9 CFR 301 through 9 CFR 381.311 which sets forth the federal rules on meat and poultry inspection with the following exceptions and clarifications thereto:

(1) Any reference to the "U.S. Department of Agriculture" will mean the "Montana Department of Livestock".

(2) Any reference to "U.S. Inspected and Passed" will mean "Montana Inspected and Passed".

(3) Any reference to "U.S. Passed for Cooking" will mean "Montana Passed for Cooking".

(4) Any reference to "U.S. Passed for Refrigeration" will mean "Montana Passed for Refrigeration".

(5) Any reference to "U.S. Inspected and Condemned" will mean "Montana Inspected and Condemned".

(6) Any reference to "U.S. Retained" will mean "Montana Retained".

(7) Any reference to "U.S. Suspect" will mean "Montana Suspect".

(8) Any reference to "U.S. Condemned" will mean "Montana Condemned".

(9) Any reference to "Regional Director" will mean the official in charge of the program within a particular region.

(10) Any reference to "U.S.D.A. Food Inspector" will mean "Montana Meat Inspector".

(11) Any reference to "U.S.D.A. Approval for Export" will mean "Montana Approval for Export".

(12) Any reference to "U.S.D.A. letterhead and seal" will mean the "state of Montana letterhead and seal".

(13) Any reference to "U.S. Rejected" will mean "Montana Rejected".

(14) Any reference to "U.S.D.A. Inspection Legend" will mean "Montana Inspection Legend".

(15) Any reference to the "Standards and Labeling Division, Meat and Poultry Inspection Technical Services, in Washington, D.C." will mean the "Montana Department of Livestock".

(16) Any reference to "Inspector in Charge, Meat & Poultry Inspection Program, Food Safety & Inspection Service, U.S.D.A." will mean "Inspector in Charge, Meat & Poultry Inspection Program, Montana Department of Livestock".

(17) Any reference to "U.S. Government Seals" will mean "State of Montana Seals".

(18) Any reference to the "Department of Agriculture or divisions thereof in Washington, D.C." will mean "Montana Department of Livestock in Helena, Montana".

(19) Any reference to "Compliance Staff, Meat & Poultry Inspection Field Operations, Food Safety & Inspection Service, U.S.D.A., Washington, D.C. 20250" will mean "Compliance Staff, Montana Department of Livestock, Capitol Station, Helena, Montana 59620".

(20) Any reference to "Federally Inspected and Passed" will mean "Montana Inspected and Passed".

(21) Any reference to "Federal Meat Inspection" will mean "State Meat Inspection".

(22) Any reference to "Treasurer of the United States" will mean "Montana Department of Livestock".

(23) Any reference to "General Services Administration" will mean "Montana Department of Livestock".

(24) Any reference to "Secretary" will mean the "Montana Department of Livestock or it's delegate".

(25) Any reference to "Food Safety and Inspection Service" will mean the "Montana Department of Livestock".

(26) Any reference to "Overtime and holiday inspection service" shall be subject to those provisions set forth by the state of Montana for those individuals deemed to be "public employees".

(27) Any reference to "Hearing Clerk of the Food Safety and Inspection Service" will mean "Montana Department of Livestock".

(28) Any reference to the "U.S. Court of Appeals for the Circuit" or "U.S. Court of Appeals for the District of Columbia" will mean "District Court of the State of Montana".

(29) Any reference to "imported into the United States" will mean "imported into the State of Montana".

(30) Copies of the above are on file with the Department of Livestock and may be reviewed at that office. In addition, copies of each document are available from the superintendent of documents, U.S. Government printing office, Washington, D.C. 20402 for a fee by requesting the appropriate rule number(s).

AUTH. 81-9-220

IMP. 81-9-220

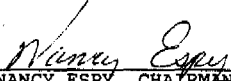
3. The Board of Livestock proposes to adopt these rules pursuant to the mandates of 81-9-220, MCA which requires that a meat inspection program be established by the State of Montana with rules that are "consistent with the requirements of the rules of the U.S. Department of Agriculture governing meat inspection".


4. Interested parties may submit their data, views or arguments concerning the proposed rules in writing to Les Graham, Executive Secretary to the Board of Livestock, Capitol Station, Helena, Montana 59620 no later than January 21, 1988.

5. If a person who is directly affected by the proposed rule wishes to express his data, views, and arguments orally or in writing at a public hearing he must make written request for a hearing and submit this request along with any written comments he has to Les Graham, Executive Secretary to the Board of Livestock, no later than January 21, 1988.

6. If the Board receives requests for a public hearing on the proposed rules from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed rules, 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 Hearing will be published in the Montana Administrative Register.


NANCY ESPY, CHAIRMAN
Board of Livestock

BY: 
LES GRAHAM, Executive Secretary
To the Board of Livestock

Certified to the Secretary of State December 14, 1987

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PROPOSED AMEND-
amendment of ARM 32.3.220	)	MENT OF ARM 32.3.220
regulating the importation	)	REGULATING THE IMPORTATION
of Bovine Semen	)	OF BOVINE SEMEN

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On January 23, 1988, the Board of Livestock acting through the Department of Livestock proposes to amend ARM 32.3.220.

2. It is proposed that ARM 32.3.220 be amended as follows:

32.3.220 BOVINE SEMEN SHIPPED INTO MONTANA; PERMIT REQUIRED

(1) remains the same
(a) through (d) same as existing rule.
(c) Permits will not be granted for semen from sires showing evidence of infection with paratuberculosis, bluetongue disease, or bovine leukosis.

(2) Bovine semen destined for use in artificial insemination in Montana must be extended-a-minimum-of-1-25-in an-extender-treated-by-the-addition-of-not-less-than-500 units-of-penicillin-and-500-micrograms-of-streptomycin-per cubic-centimeter-of-extender-and-held-a-minimum-of-6-hours before-use-to-prevent-the-transmission-of-Vibrio-fetus-and other-bacterial-pathogens treated using a recognized procedure and recognized chemotherapeutic agents to prevent transmission of Campylobacter fetus and other pathogenic microorganisms. Those recognized at this time are:

(a) Semen treated to achieve a final concentration of 50 micrograms tylosin, 250 micrograms gentamycin, and 150/300 micrograms Linco-spectrin per milliliter of frozen semen as described by Lorton and Shin to the National Association of Animal Breeders, 1986 or

(b) Semen treated in accordance with procedures and chemotherapeutic agents, recognized as acceptable by the United States Animal Health Association and the National Association of Animal Breeders.

(3) and (4) remains the same

AUTH, 81-2-102, 81-20-101, MCA IMP, 81-2-102, 81-20-101, MCA

3. These amendments are to update safety standards of disease control for the better protection of the livestock industry of the State of Montana and the public.


4. Interested parties may submit their data, views, or arguments concerning the proposed amendment(s) in writing to Les Graham, Executive Secretary to the Board of Livestock, Capitol Station, Helena, Montana 59620, no later than January 21, 1988.

5. If a person who is directly affected by the proposed amendments wishes to express his data, views, and arguments orally or in writing at a public hearing he must make written request for a hearing and submit this request along with any written comments he has to Les Graham, Executive Secretary to the Board of Livestock, no later than January 21, 1988.

6. If the Board receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendments to the rule, from the Administrative Code Committee of the legislature, from a government 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 hearing will be published in the Montana Administrative Register.

7. The authority to adopt the proposed amendments is based on Section 81-2-102, MCA. They implement Section 81-2-102, MCA.


NANCY ESPY, CHAIRMAN
Board of Livestock

BY: 
LES GRAHAM, Executive Secretary
To the Board of Livestock

Certified to the Secretary of State December 14, 1987

STATE OF MONTANA
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
BEFORE THE BOARD OF NATURAL RESOURCES AND CONSERVATION

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING ON
adoption of rules under ARM	)	THE PROPOSED ADOPTION OF RULES
Title 36, Chapter 17, setting	)	UNDER ARM TITLE 36, CHAPTER 17
procedures and policy for the	)	SETTING PROCEDURES AND POLICY
reclamation and development	)	FOR THE RECLAMATION AND
grants program	)	DEVELOPMENT GRANTS PROGRAM

To All Interested Persons:

1. On Wednesday, January 13, 1988, at 9:00 a.m. a public hearing will be held in the Director's Conference Room of the Department of Natural Resources and Conservation Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The proposed adoptions will read as follows:

"1. DEFINITIONS For purposes of this chapter, the following terms shall apply:

- (1) 'Act' means Title 90, chapter 2, part 11.
- (2) 'Board' means the board of natural resources and conservation provided for in Title 2, chapter 15, part 33.
- (3) 'Crucial state need' means a documented set of circumstances or conditions that require action to prevent or eliminate severe and unacceptable damage to public resources or to capture extraordinary public benefits that would otherwise be lost. 'Crucial state need' further implies that a project is of critical importance to Montana and its citizens.
- (4) 'Department' means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.
- (5) 'Financially feasible' means that adequate funds are available to complete the project as approved.
- (6) 'Mineral' means any precious stones or gems, gold, silver, copper, coal, lead, petroleum, natural gas, oil, uranium, or other nonrenewable merchantable products extracted from the surface or subsurface of the state of Montana.
- (7) 'Mineral development' means exploration, extraction, processing, or other activity related to the production of a mineral.
- (8) 'Mitigation' means the act of rectifying an impact by repairing, rehabilitating, or restoring the affected environment; reducing or eliminating an impact over time by operations that preserve or maintain the environment; or compensating for an impact by replacing or providing substitute resources or habitats.
- (9) 'Project' means a planned and coordinated action or series of actions addressing an objective consistent with the policy and purpose of the reclamation and development grants program. A project may consist of problem analysis, feasibility or design studies, environmental monitoring, remedial action plans

or implementation, technology demonstration, research, construction or acquisition of capital facilities, or other related actions.

(10) 'Project type' means a grouping of projects having the same or similar characteristics which distinguishes it from other project types.

(11) 'Public benefits' means those benefits that accrue to citizens as a group and enhance the common well-being of the people of Montana.

(12) 'Public resources' means the natural resources of the state, including air, water, soil, minerals, vegetation, and fish and wildlife, and the economic, social, and cultural conditions of Montana citizens.

(13) 'Qualified' means that an application convincingly demonstrates public benefits, need, and technical and financial feasibility.

(14) 'Substantial compliance' means that the application is consistent with application procedures set by the department and the basic provisions of the act and the administrative rules governing the reclamation and development grants program.

(15) 'Technically feasible' means that a project or activity can be designed, constructed, operated, or carried out to accomplish its objectives, utilizing accepted engineering and other technical principles and concepts."

Auth: 90-2-1105, MCA; Auth. Extension, Sec. 17, Ch. 418, L. 1987, Eff. 7/1/87; Imp: 90-2-1103, 1105, MCA

"II. ELIGIBLE PROJECTS (1) Funding will be recommended only for qualified projects that meet the eligibility requirements of Title 90, chapter 2, part 11, MCA.

(2) Only projects that will be conducted in Montana are eligible for funding.

(3) Projects prohibited by 90-2-1112 are not eligible for funding.

(4) Projects that do not meet the requirements of the Montana Environmental Policy Act, Title 75, chapter 1, part 2 are not eligible for funding."

Auth: 90-2-1105, MCA; Auth. Extension, Sec. 17, Ch. 418, L. 1987, Eff. 7/1/87; Imp: 90-2-1105, 1111, 1112, MCA

"III. ELIGIBLE APPLICANTS Any department, agency, board, commission, or other division of state government or any city, county, or other political subdivision or tribal government within the state may apply in accordance with the procedures established by the department, for a grant from the reclamation and development grants account for a project that is consistent with the policy and purpose of the reclamation and development grants program."

Auth: 90-2-1105, MCA; Auth. Extension, Sec. 17, Ch. 418, L. 1987, Eff. 7/1/87; Imp: 90-2-1111, MCA

"IV. APPLICATION CATEGORIES (1) The act creates three categories of projects: mineral development impacts, crucial state need, and other.

(2) Qualified mineral development impacts and crucial state need categories are of equal priority. The 'other' project category is subordinate in priority to the other two categories.

(3) An applicant shall clearly designate in the application which one of the following three categories it is applying under: mineral development impacts, crucial state need, or other.

(4) Based on its review and evaluation of applications as set forth in rule XIII, the department may assign an application to a different category than that which was originally filed.

(5) Projects categorized as 'other' shall only be recommended for funding if they are qualified and only to the extent that there are funds remaining after funding recommendations are made in the mineral development impacts and crucial state need categories."

Auth: 90-2-1105, MCA; Auth. Extension, Sec. 17, Ch. 418, L. 1987, Eff. 7/1/87; Imp: 90-2-1105, 1112, MCA

"V. LONG-TERM PROJECTS OR PROGRAMS (1) The reclamation and development grants program is not intended to be a continuous source of funding for the administrative or personnel costs of long-term projects or programs that are more appropriately funded through the state budget process. The department may recommend that such projects not be funded.

(2) The department may recommend funding for short-term projects that are part of a long-term project or program. Short-term project implies that the project is less than two years duration and that discrete, identifiable products are realized upon project completion."

Auth: 90-2-1105, MCA; Auth. Extension, Sec. 17, Ch. 418, L. 1987, Eff. 7/1/87; Imp: 90-2-1105, MCA

"VI. SIZE OF AWARD The maximum grant award given to a single project shall be less than the total project cost and shall not exceed \$300,000. There is no minimum funding limit."

Auth: 90-2-1105, MCA; Auth. Extension, Sec. 17, Ch. 418, L. 1987, Eff. 7/1/87; Imp: 90-2-1105, MCA

"VII. NUMBER OF AWARDS PER JURISDICTION There is no limit on the number of awards a particular jurisdiction may receive."

Auth: 90-2-1105, MCA; Auth. Extension, Sec. 17, Ch. 418, L. 1987, Eff. 7/1/87; Imp: 90-2-1105, MCA

"VIII. FUNDING LIMITS PER PROJECT TYPE For non-mineral development projects, a disproportionate amount of total funding available may not be recommended for any one project type. A disproportionate amount of total funding occurs if funding of one project type severely limits the funding of diverse project types."

Auth: 90-2-1105, MCA; Auth. Extension, Sec. 17, Ch. 418, L. 1987, Eff. 7/1/87; Imp: 90-2-1105, MCA

"IX. APPLICATION (1) An applicant shall submit an application on forms prescribed in the department's Guidelines for Preparing Grant Applications.

(2) An applicant proposing more than one project shall submit a separate application for each.

(3) An applicant shall submit four copies of the application to the department at the time of filing and shall provide additional copies as requested by the department."

Auth: 90-2-1105, MCA; Auth. Extension, Sec. 17, Ch. 418, L. 1987, Eff. 7/1/87; Imp: Sec. 90-2-1105, MCA

"X. SUPPLEMENTAL MATERIAL The applicant shall submit additional or supplemental application material as requested by the department."

Auth: 90-2-1105, MCA; Auth. Extension, Sec. 17, Ch. 418, L. 1987, Eff. 7/1/87; Imp: 90-2-1105, MCA

"XI. CHANGES OR ADDITIONS If an applicant desires to change or add to an application other than as required in rule X after it is formally filed, the applicant shall submit the change or addition in writing. The department will consider any substantial change or addition to an application to constitute a new application. No substantial changes or additions will be accepted after the deadline for submittal set forth in rule XII."

Auth: 90-2-1105, MCA; Auth. Extension, Sec. 17, Ch. 418, L. 1987, Eff. 7/1/87; Imp: 90-2-1105, MCA

"XII. APPLICATION SUBMITTAL DEADLINES (1) Applications for reclamation and development program grants must be postmarked or hand-delivered to the department prior to May 15 of even-numbered years.

(2) The department will publicly notice the date on which a grant cycle commences."

Auth: 90-2-1105, MCA; Auth. Extension, Sec. 17, Ch. 418, L. 1987, Eff. 7/1/87; Imp: 90-2-1105, MCA

"XIII. APPLICATION EVALUATION PROCEDURE (1) The department shall review and evaluate all applications to determine compliance with the act and these rules. Eligible and qualified applications shall merit further funding consideration. Applications that do not meet eligibility requirements or fail to convincingly demonstrate public benefits, need, and technical and financial feasibility will be disqualified and recommended for no funding.

(2) Crucial state need applications will be further evaluated to determine if the project clearly and convincingly documents a set of circumstances or conditions that require action to prevent or eliminate severe and unacceptable damage to public resources or to capture extraordinary public benefits that would otherwise be lost. In order to assist the department in making this determination, crucial state need applicants shall submit with their application an opinion from a knowledgeable and authoritative source, preferably a state agency, relative to the following:

- (a) the potential threat to public health and safety;
 - (b) the validity of the problem or need;
 - (c) the consequence of no action or delayed action;
 - (d) the severity of the problem or need;
 - (e) the estimated number of people affected, directly and indirectly;
 - (f) the level of support for the project;
 - (g) whether the stated objectives will meet the need; and
 - (h) whether the source supports the project.
- (3) Crucial state need applications which do not meet the requirements of preceding subsection (2), but which are otherwise qualified, will be assigned to the category designated 'other'.
- (4) All qualified applications will be evaluated for individual merit as well as for relative merit, except that projects designated as 'other' shall not compete against qualified mineral development impacts or crucial state need projects.
- (5) Prior to the submittal deadline set forth in rule XII, and as time permits, the department, upon request, will accept and evaluate a proposed application to determine whether it is in substantial compliance with the act and these rules. If the department determines that a proposed application is not in substantial compliance, the application will be considered deficient, and the department will return the application, notifying the applicant in writing and listing the application deficiencies. A revised application may be re-submitted after the necessary revisions have been made. All listed deficiencies must be corrected and the revised application filed in compliance with rule IX prior to the submittal deadline in order to be eligible for funding consideration."

Auth: 90-2-1105, MCA; Auth. Extension, Sec. 17, Ch. 418, L. 1987, Eff. 7/1/87; Imp: 90-2-1105, 1111, 1112, 1113, MCA

"XIV. PREFERENCES AND RANKING OF QUALIFIED PROJECTS

- (1) After department review and evaluation procedures are completed, qualified projects will be ranked according to 90-2-1112, 90-2-1113 (1-8), MCA, and these rules.
- (2) The department will utilize a numerical point-scoring system to rank all qualified projects. Mineral development impacts and crucial state need project rankings shall be separate from ranking of 'other' projects.
- (3) The results of this scoring will determine prioritized recommendations for funding made to the governor.
- (4) Not all ranked projects may be recommended for funding dependent on the availability of funds.
- (5) All projects recommended for funding will be consistent with the estimates of available funding.
- (6) The applicant will receive written notification of the action taken on the application by the department and the legislature."

Auth: 90-2-1105, MCA; Auth. Extension, Sec. 17, Ch. 418, L. 1987, Eff. 7/1/87; Imp: 90-2-1105, 1111, 1112, 1113, MCA

"XV. SOLICITATION OF VIEWS FROM OTHER INTERESTED PARTIES

(1) The department shall consult public or private agencies or groups knowledgeable about proposed projects or particular problems and will consider these viewpoints in its evaluation of applications.

(2) The department shall provide for outside technical review of applications by other public or private agencies or professionals when deemed necessary to ensure adequate review."

Auth: 90-2-1105, MCA; Auth. Extension, Sec. 17, Ch. 418, L. 1987, Eff. 7/1/87; Imp: 90-2-1111, MCA

"XVI. ENVIRONMENTAL FEASIBILITY AND COMPLIANCE WITH STATUTES AND RULES

(1) The applicant shall identify the probable environmental and ecological consequences of the proposed project by considering all areas of concern identified on an environmental checklist supplied by the department. The department will assess these results and prepare its own environmental assessment to determine if a proposed project will have significant environmental impacts. If further information is required by the department the applicant must provide this information before a department determination will be made. Inability or failure of an applicant to furnish such information in a timely manner will result in that application being declared ineligible for funding.

(2) If the applicant identifies potential adverse environmental and ecological consequences of the proposed project, it shall identify mitigating measures to be implemented that it believes will allow the proposed project to comply with applicable statutory and regulatory standards, such as those protecting the quality of resources such as air, water, land, fish, wildlife and recreational opportunities.

(3) If the project constitutes a major state action significantly affecting the quality of the human environment, an environmental impact statement may be required as prescribed by the administrative rules governing the Montana Environmental Policy Act."

Auth: 90-2-1105, MCA; Auth. Extension, Sec. 17, Ch. 418, L. 1987, Eff. 7/1/87; Imp: 90-2-1112, MCA

"XVII. CONDITIONS OF GRANTS (1) Funds granted under the terms of the act and these rules shall be used only for the purposes described in the contract. Accurate records must be kept by the grant recipient documenting all expenditures.

(2) Grant recipients shall be required to make their projects open to the public during reasonable hours for a period of time agreed to in the grant agreement between the grantee and the department.

(3) The department will retain the right to inspect and monitor the performance of all projects for a specified period of up to five years after completion of the project.

(4) The department will require the grant recipient to assist, guide and inform the department during on-site investigations. The department may make such investigations at reasonable times.

(5) The grant recipient shall operate and maintain his funded project for a specified period to comply with the performance monitoring provisions specified in the grant contract."

Auth: 90-2-1105, MCA; Auth. Extension, Sec. 17, Ch. 418, L. 1987, Eff. 7/1/87; Imp: 90-2-1105, 1114, MCA

"XVIII. GRANT CONTRACT If an applicant's proposal is approved for funding by the legislature, the department will enter into a contractual grant agreement with the applicant under such terms and conditions as the department considers necessary to fulfill legislative directive and the purpose of the project as evidenced in the application submitted to the department or from the proposal to the legislature."

Auth: 90-2-1105, MCA; Auth. Extension, Sec. 17, Ch. 418, L. 1987, Eff. 7/1/87; Imp: 90-2-1111, 1112, 1114, MCA

"XIX. PAYMENT OF GRANTS (1) All grant payments to the grantee are subject to the availability of funds.

(2) The department will reimburse the grantee only for necessary expenditures incurred in compliance with the grant contract.

(3) Expenses incurred by the grantee before the grant contract is fully executed will not be reimbursed by the department.

(4) Any balance of a grant that remains unused at the conclusion of the grant contract period shall revert to the reclamation and development grants special revenue account."

Auth: 90-2-1105, MCA; Auth. Extension, Sec. 17, Ch. 418, L. 1987, Eff. 7/1/87; Imp: 90-2-1104, 1114, MCA

"XX. REPORTS AND ACCOUNTING (1) Each grant recipient shall submit periodic progress reports as specified in the grant contract and shall submit a final report to the department within three months following the completion of the contract period or at such other time specified in the grant contract.

(2) Grant recipients shall make oral or written presentations of progress as agreed to in the grant contract.

(3) The grant recipient shall adequately account for expenditures in a manner acceptable to the department. All records, reports, and other documents that relate to the project and that are required by the department to be maintained by the grant recipient are subject to audit by the office of the legislative auditor, the department and, where required by law, the legislative fiscal analyst."

Auth: 90-2-1105, MCA; Auth. Extension, Sec. 17, Ch. 418, L. 1987, Eff. 7/1/87; Imp: 90-2-1105, 1111, 1114, MCA

"XXI. PROJECT MONITORING AND ACCESS FOR INSPECTION AND MONITORING (1) The department or its agents may monitor and inspect all phases and aspects of the grantee's performance to determine compliance with the grant contract.

(2) The department may bring specific areas of concern to the grantee's attention, providing the opportunity for the grantee to prepare necessary corrective action. The department or the grantee shall initiate necessary corrective action.

(3) The grantee shall provide the department with access at all reasonable times to the project site and all pertinent records."

Auth: 90-2-1105, MCA; Auth. Extension, Sec. 17, Ch. 418, L. 1987, Eff. 7/1/87; Imp: 90-2-1105, 1111, 1114, MCA

"XXII. APPLICATIONS AND RESULTS PUBLIC (1) Applications submitted to the department under the act and these rules are subject to public review, and the applicant waives any claim of confidentiality by filing an application with the department. This waiver requirement may be exempted on good cause shown by the applicant.

(2) The results of all projects that are funded shall be made available to the public."

Auth: 90-2-1105, MCA; Auth. Extension, Sec. 17, Ch. 418, L. 1987, Eff. 7/1/87; Imp: 90-2-1105, MCA

3. The rules are a reflection of experience gained previously by the Department of Natural Resources and Conservation in administering several similar grant programs. External advice and comment was also obtained informally from interested persons familiar with the program in order to tailor the contents to the viewpoints of as many potential applicants as possible. In addition to describing the criteria and guidelines to aid in implementing the Act, the rules prescribe the form and content of applications, describe the terms and conditions of making grants, provide policy and procedure for preparation, evaluation, and administration of applications, and prescribe a monitoring program. More specifically:

Rule I defines terms used in the rules that are significant to a clear understanding of the intent of the rules.

Rules II-XII contain description of eligible applicants and projects, application categories, application material, funding limits, and restrictions and deadlines necessary to give the applicants direction in terms of what is required, why, by whom, and when. These rules are essential for timely and orderly submittal of applications consistent with the Act.

Rule XIII sets forth the procedures for evaluating applications and makes clear what is required to be qualified under a particular category and the information that is needed. It further describes the assistance available from the Department, if needed, in order to avoid obvious application deficiencies. Early contact is seen as one method improving the quality of overall applications.

Rule XIV provides fair and consistent procedures that rate each application objectively and is formulated from the Act and past Department and applicant experience. The rule is intended to insure that only projects best reflecting the Act are recommended for funding.

Rule XV allows for thorough and qualified review by non-Department employees. Due to the wide variety of projects being submitted, it is necessary to consult others in areas where the Department does not have specific expertise.

Rule XVI requires compliance with the Montana Environmental Policy Act. In addition, the rule requires the applicant to indicate how it intends to mitigate adverse environmental impacts.

Rules XVII-XXI set forth basic provisions that will be contained in the grant contract should a project be approved by the legislature. They are seen as essential and clarify the Department's authority to routinely monitor the progress and performance of grant recipients and expenditure of public funds.

Rule XXII is intended to alert the grant applicant that any application submitted is public information and to relieve the Department against any claims of public disclosure. The public's right to know how grant funds are being spent is envisioned as unquestionable. However, if the grant applicant can demonstrate that it is necessary to keep certain information confidential, the Department can provide such confidentiality.

4. Interested parties may present their data, views and arguments, either orally or in writing, at the hearing. Written, data, comments or arguments may also be submitted to the Board of Natural Resources and Conservation, 1520 East Sixth Avenue, Helena, Montana, no later than January 21, 1988.

5. Jim Madden, Attorney, DNRC, Helena, will preside over and conduct the hearing.

BOARD OF NATURAL RESOURCES
AND CONSERVATION

BY: William A. Shields
WILLIAM A. SHIELDS, CHAIRMAN

Certified to the Secretary of State, December 14, 1987.

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

In the Matter of Proposed Adoption	)	NOTICE OF PROPOSED
of Rules on the Ratemaking Treat-	)	ADOPTION OF RULES ON
ment of Contributions in Aid of	)	RATEMAKING TREATMENT
Construction.	)	OF CONTRIBUTION IN AID
	)	OF CONSTRUCTION
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons

1. On January 25, 1988 the Department of Public Service Regulation proposes to adopt rules regarding ratemaking treatment of contribution in aid of construction.

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

RULE I PURPOSE (1) This sub-chapter's purpose is to provide guidelines for calculating the amount of contribution in aid of construction to be collected from a utility customer. Utilities with operating revenue of less than \$25,000 are not subject to this sub-chapter. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA.

RULE II DEFINITION (1) The term contribution in aid of construction includes money or other property received by a regulated public utility to pay for additional plant to serve a person or entity. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA.

RULE III CALCULATION OF CONTRIBUTION (1) The amount to be collected by a regulated utility from a customer to pay for additional plant must include:

(a) The contribution in aid of construction,

(b) The utility's increased income tax expense associated with including the contribution as income, less the present value of estimated future tax savings from depreciation of the additional plant.

(2) To calculate the present value of future tax benefits a utility must determine a reasonable discount rate using the following criteria:

(a) The discount rate may not exceed the overall rate of return established in the utility's last rate case.

(b) The discount rate must apply for no less than 12 months. All changes in the discount rate must be filed to be effective on January 1.

(c) The same discount rate must apply to all customers.

(3) A utility may be exempt from the requirement of Rule III (1)(b) that it collect the tax expense associated with the contribution from the customer if:

(a) The additional tax expense is treated as a below the line expense borne by the shareholder.

(b) All consumer's contributions are calculated in the same manner.

(c) The utility agrees to maintain its policy of treating the additional tax expense as shareholder expense until

authorized to change by the commission. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA.

RULE IV EFFECT ON RATES (1) Contributions in aid of construction are not included in income for ratemaking purposes. Ratepayers are not responsible for any effects associated with the inclusion of contribution in aid of construction in taxable income. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA.

3. Rationale: The Tax Reform Act of 1986 repealed IRS § 118(b) that had allowed certain utilities to exclude contributions in aid of construction from taxable income. These rules provide guidelines for the ratemaking treatment of the contributions and the associated tax expense.

4. Interested parties may submit their data, views or arguments concerning the proposed adoptions in writing to Geralyn Driscoll, Public Service Commission, 2701 Prospect Avenue, Helena, Montana 59620-2601, no later than January 25, 1988.


5. If a person who is directly affected by the proposed adoptions wishes to express his data, views and arguments orally, he must make written request for a public hearing and submit this request along with any written comments he has to Geralyn Driscoll, Public Service Commission, 2701 Prospect Avenue, Helena, Montana 59620-2601, no later than January 25, 1988.

6. If the agency receives requests for a public hearing on the proposed adoptions from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; 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 20 requests based on approximately 200 utilities.

7. The Montana Consumer Counsel, 34 West Sixth Avenue, Helena, MT 59620 (Telephone 444-2771) is available and may be contacted to represent consumer interests in this matter.


CLYDE JARVIS, Chairman

CERTIFIED TO THE SECRETARY OF STATE DECEMBER 14, 1987.


Reviewed By

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF PUBLIC HEARING
of rules regarding fees and) ON PROPOSED AMENDMENT OF
subscription charges) ARM 1.2.421 SUBSCRIPTION
) TO THE ARM--COST AND ARM
) 1.2.423 AGENCY FILING
) FEES

TO: All Interested Persons.

The notice of proposed agency action published in the Montana Administrative Register on October 29, 1987, is amended as follows because the Department of Labor and Industry, a governmental agency has requested a public hearing.

1. On January 14, 1988, at 10:00 a.m. a public hearing will be held in the conference room of the office of the Secretary of State to consider the rules regarding fees and subscription charges for the Montana Administrative Register and Administrative Rules of Montana, and agency filing fees.

2. The rules as proposed to be amended can be found on page 1956 of the Montana Administrative Register, Issue No. 20.

3. The Secretary of State proposes to amend these rules because House Bill 901 of the 1987 Legislative Session deleted the requirement of a general fund transfer to pay for certain copies of the Montana Administrative Register and the Administrative Rules of Montana which resulted in the need for increases.

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: Kathy Lubke, Bureau Chief, Administrative Rules Bureau, Secretary of State, Room 225, Capitol Building, Helena, MT 59620 no later than January 21, 1988.

5. David Good, from the Office of the Secretary of State has been designated to preside over and conduct the hearing.

Jim Waltermire
JIM WALTERMIRE
Secretary of State

Dated this 14th day of December, 1987.

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

In the matter of the repeal	)	NOTICE OF PUBLIC HEARING ON
of Rule 46.8.501 pertaining	)	THE PROPOSED REPEAL OF RULE
to quarterly reports	)	46.8.501 PERTAINING TO
required of the Develop-	)	QUARTERLY REPORTS REQUIRED
mental Disabilities Division	)	OF THE DEVELOPMENTAL DIS-
	)	ABILITIES DIVISION

TO: All Interested Persons

1. On January 13, 1988, at 9:30 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the proposed repeal of Rule 46.8.501 pertaining to quarterly reports required of the Developmental Disabilities Division.

2. Rule 46.8.501 as proposed to be repealed is on pages 46-601 and 46-607 of the Administrative Rules of Montana.

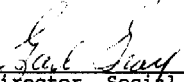
AUTH: Sec. 53-20-204 MCA; AUTH Extension, Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87; Sec. 1, Ch. 426, L. 1987, Eff. 10/1/87

IMP: Sec. 53-20-203 MCA

3. The proposed repeal of Rule 46.8.501 will remove the requirement for and specifications for a quarterly report to be submitted by the Department to the Developmental Disabilities Planning and Advisory Council. The Legislature in its 50th Legislative Session passed HB 614 (Chapter 426 of the Session Laws of 1987) which repealed the statutory requirement for quarterly reports.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than January 21, 1988.

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



Director, Social and Rehabilitation Services

Certified to the Secretary of State November 14, 1987.

24-12/24/87

MAR Notice No. 46-2-524

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

In the matter of the amend-	)	NOTICE OF PUBLIC HEARING ON
ment of Rules 46.12.602 and	)	THE PROPOSED AMENDMENT OF
46.12.605 pertaining to	)	RULES 46.12.602 AND
dental services	)	46.12.605 PERTAINING TO
	)	DENTAL SERVICES

TO: All Interested Persons

1. On January 14, 1988, at 9:30 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the proposed amendment of Rules 46.12.602 and 46.12.605 pertaining to dental services.

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

46.12.602 DENTAL SERVICES, REQUIREMENTS Subsection (1) remains the same.

(2) ~~Emergency dental care for covered services does not need prior authorization when an emergency exists.~~ Medicaid reimbursement for dental care is limited to services specified in this rule or as otherwise provided for under ARM 46.12.605 (13) (r).

(3) Emergency dental care may only be provided where there is trauma, infection, or severe pain. Prior authorization is not necessary for emergency dental care. For reimbursement to be made, emergency dental care that has been received must be:

(a) reviewed and approved by the designated review organization; and

(b) must be listed in this rule or as otherwise provided for under ARM 46.12.605 (13) (r).

Subsections (3) through (3) (d) remain the same in text but will be recategorized as (4) through (4) (d).

(e) single periapical radiograms x-rays when required to diagnose a condition other than dental caries. The need for x-rays must be indicated on the claim;

(f) intra-oral occlusal maxillary or mandibular x-rays when required to diagnose a condition other than dental caries. The need for x-rays must be indicated on the claim;

(g) extra-oral radiograms, maxillary or mandibular lateral films x-rays when required to diagnose a condition other than dental caries. The need for x-rays must be indicated on the claim;

(h) examinations at six twelve month intervals;

Subsections (3) (i) through (4) (d) remain the same in text but will be recategorized as (4) (i) through (5) (d).

(e) acrylic jacket for immediate treatment of fractured anterior permanent tooth, including pulp testing, pulp

capping, and use of metal band or crown form with sedative filling when authorized by the designated review organization;

- (f) treatment fillings;
- (g) recementing of inlays;

(h) pulpotomys - when authorized, by the designated review organization.

Subsection (5) remains the same in text but will be recategorized as (6).

(a) general anesthesia ~~in-a-dental-office~~, which must be prior authorized by the designated peer review organization;

Subsections (5)(b) through (5)(k) remain the same in text but will be recategorized as (6)(b) through (6)(k).

(l) excision of hyperplastic tissue, when caused by medication reaction;

Subsections (5)(m) through (5)(v) remain the same in text but will be recategorized as (6)(m) through (6)(v).

(w) oral surgery procedures not listed in this rule and performed by a dentist and specifically listed in ARM 46.12.2003-2008 are coverable when performed in a medical emergency due to trauma and authorized by the designated review organization.

Subsections (6) through (6)(b) remain the same in text but will be recategorized as (7) through (7)(b).

(c) emergency root canals, and apicoectomies must be justified by means of a finished x-ray's must-be attached to claims;

- (d) root canal and apicoectomy combined operation;
- (e) apicoectomy not in conjunction with root canal.

~~(78) All--full~~ The provision of dentures or the relining or jumping of dentures must be prior authorized by the designated review organization. Requests for full dentures must show the approximate date of the most recent extractions, and/or the age of the present dentures. Dentures less--than--ten--years--old--must--be--considered--for--relining or--jumping. Jumps or replacement may be done for dentures that are between 10 and 15 years old but full reimbursement will be as provided for in ARM 46.12.605(9)(d). Dentures over ten years old may be replaced when the treating dentist documents the need for replacement. Tissue conditioners are considered a part of treatment. The following full denture services are available only to EPSDT-referred recipients and must be provided by a dentist or prescribed by a dentist and provided by a licensed dentist:

Subsections (7)(a) through (7)(c) remain the same in text but will be recategorized as (8)(a) through (8)(c).

(d) duplicate (jump) upper and/or lower complete denture or partial dentures when prior authorized by the peer review organization;

Subsections (7)(e) through (8) remain the same in text but will be recategorized as (8)(e) through (9).

(a) acrylic upper or lower partial denture with two chrome or gold clasps and rests and adjustments, to replace a minimum of 4 posterior teeth or any number of anterior teeth;

Subsection (8)(b) remains the same.

(c) acrylic denture, without clasps, supplying 1 to 4 anterior teeth (flipper);

Subsections (8)(d) through (9)(b) remain the same in text but will be recategorized as (9)(d) through (10)(b).

(1011) The following services for crowns and fixed bridges are benefits of the medicaid program; and these services must be prior authorized by the designated review organization:

(a) ~~porcelain or acrylic~~ polycarbonate (ion type) with acrylic liner crowns ~~are limited to~~ for the upper and lower 6 anterior teeth;

(b) chrome, ~~gold, or semiprecious~~ crowns on posterior teeth not restorable by conventional filling material;

(c) fixed bridges on anterior teeth only;

(d) ceramic bridges replacing no more than 2 teeth;

~~(i) ceramic bridges replacing no more than 2 teeth;~~

~~(e) three-quarter cast crown;~~

~~(f) full cast crown;~~

~~(g) cured acrylic jacket crown, laboratory processed;~~

~~(h) porcelain jacket;~~

~~(i) porcelain veneer (microbond, ceramco, etc.);~~

~~(j) full cast crown with acrylic facing;~~

(ke) ponties, ceramic pontics only;

(lf) steele's facing type pontics;

(mg) cured acrylic, laboratory processed, veneer pontics.

Subsections (11) through (11)(e) remain the same in text but will be recategorized as (12) through (12)(e).

~~(f) chrome wire clasps, adams, T or ball;~~

~~(g) stainless steel band.~~

~~(12) All orthodontia must be prior authorized by the designated review organization. There shall be written documentation submitted with all prior authorization requests for orthodontia that the recipient and/or his family understands that once the treatment is started, it must be followed to completion and if medicaid eligibility ceases, the recipient and/or his family will be responsible for the payment for the balance of the treatment. The following orthodontic services are benefits of the medicaid program:~~

~~(a) orthodontia related to post maxillo-facial intervention when the injuries are caused by trauma; the treatment shall be limited to stabilization and movement to accommodate prosthesis;~~

~~(b) orthodontia for movement of teeth to accommodate post-cleft palate treatment; the treatment shall be limited to those procedures necessary for the retention of prosthesis for swallowing, breathing and mastication;~~

(c)--examination;
(d)--records-and-diagnosis;
(e)--full-treatment---initial--service;--the-prior-author-
ization-request-will-include-a-statement-on-the-maximum-length
of-treatment;
(f)--full-treatment-monthly-service;
(g)--full-treatment-retention-service;
(h)--serial-extractions;--supervision;
(i)--partial-treatment;--expansion-appliance;
(j)--partial-treatment---head-gear-appliance;
(k)--special-appliance;--bilateral-space--maintainer--(when
not-part-of-full-treatment);
(l)--special-appliance;--unilateral-space-maintainer;
(m)--special-appliance;--removable-space-maintainer;--upper
and-lower;
(n)--special-appliance;--expansion-appliance;
(o)--special-appliance;--retainer;
(p)--special-appliance;--habit-appliance;
(13)(14) X-rays are required with requests for the follow-
ing dental services:
(a) all crowns; ; stainless-steel;--gold;--others;
(b) endodontic cases;
(c) all extractions except simple extractions.
Original subsections (13)(c) through (14) remain the same
in text but will be recategorized as (14)(d) through (15).

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-101 and 53-6-141 MCA

46.12.605 DENTAL SERVICES, REIMBURSEMENT Subsections
(1) through (2)(a) remain the same.
(b) the amount allowable for the same service under
medicare as stated by a medicare explanation of benefits; or
(c) the department's fee schedule contained in this
rule.
(3) Preventive and diagnostic services include:
(a) 00120 - examination and execution of forms - 10.30;
(b) 00210 - complete intra-oral radiograms, minimum 14
films - 28.60;
(c) 00220 - single periapical radiograms, first film -
5.72;
(d) 00230 - each additional film, periapical - 2.86;
(e) 00272 - bite-wing radiograms, 2 films - 10.30;
(f) 00240 - intra-oral occlusal maxillary or mandibular
- 7.15;
(g) 00340 - cephalometric radiograms or panorex,
diagnostic only - 28.60;
(h) 00250 - extra-oral radiograms, maxillary or
mandibular lateral film - 21.45;
(i) allowable charges for x-rays in a single visit shall
not exceed the allowable charges for a full mouth x-ray;

(j) 09310 - consultation fee (necessity to be shown) per session - 14.30;

(k) 09420 - hospital calls - 21.45;

~~111--simple-operations-under-general-anesthesia-in-hospital--42.90;~~

(ml) 09410 - house calls and nursing home calls - 10.01;

(mm) 00460 - vitality tests one tooth or per quadrant - 8.54;

(en) 09110 - palliative (emergency treatment of dental pain; includes only minor procedures, i.e., temporary fillings, incision and drainage, topical medicaments, irrigation, pericoronitis, etc.) - 8.54;

(po) 01202 - stannous fluoride 8%, one treatment, including prophylaxis - 24.31;

~~111--fluoride---8.47;~~

(rp) prophylaxis, includes including routine scaling and polishing/adults (code 01110) and children (code 01120) - 18.59;

(4) Amalgam restorations include:

(a) 02110 - deciduous, one surface - 16.26;

(b) 02120 - deciduous, two surface - 26.61;

(c) 02130 - deciduous, three surface - 37.17;

(d) 02131 - each additional surface, deciduous - 3.63;

(e) 02140 - one surface, permanent - 16.26;

(f) 02150 - two surface, permanent - 26.61;

(g) 02160 - three surface, permanent - 37.17;

(h) 0634 - each additional surface (includes cusp restoration, veneer, groove extension, etc.) permanent - 6.34;

(i) 02190 - pins for retention (maximum 2) each pin - 4.29.

(5) Silicates and fiberglass restorations include:

(a) 02210 - silicate - 14.30 per surface;

(b) 02330 - ~~compost~~ composite resin (addent, dakor, adaptic, concise, prestige, etc.) - 25.34 per surface;

(c) composite fillings for posterior teeth will be paid at the rate of a similar amalgam restoration except for buccal surfaces.

(6) Additional operative procedures include:

(a) ~~20060 - acrylic-jacket~~, immediate treatment for fractured anterior permanent tooth including pulp testing, pulp capping and use of metal band or crown form with sedative filling - ~~28.60~~ 22.88;

(b) 02940 - treatment filling (emergency) - 7.15;

(c) 02910 - recent inlay - 7.15;

(d) 03220 - pulpotomy including pulp capping - when authorized - 25.34;

Subsections (6) (e) through (7) remain the same.

~~111--three-quarter-cast-crown---138.00;~~

~~111--full-cast-crown---138.00;~~

~~111--cured-acrylic-jacket-crown-laboratory-processed--114.40;~~ 02710 - polycarbonate (ion type) with polycarbonate

acrylic liner - 52.80;

~~(d) -- porcelain-jacket --- 157.30;~~
~~(e) -- porcelain--veneer--(microbond,--ceramco,--etc.)---~~
~~242.88;~~

~~(f) -- full-cast-crown-with-acrylic-facing --- 202.40;~~
~~(g) -- gold-and-semi-precious-crowns-will-be--reimbursed-at~~
~~the-same-rate;~~

(8) Pedodontics include--~~spacers~~, certain crowns, and amalgam restorations which are paid the same as permanent teeth. The covered services are:

- (a) 02930 - chrome crown - 52.80;
- (b) Z0091 - immediate treatment of fractured anterior permanent tooth, includes pulp testing, pulp capping and use of metal band or crown form with sedative filling - 22.88;
- (c) 01510 - chrome crown and loop spacer or other types (space maintainer) - 57.20;
- (d) 01515 - bilateral space maintainer or lingual arch - 90.75;

(e)* Z0092 - acrylic denture, without clasps, supplying 1 to 4 anterior teeth (flipper) - 71.50;

(f)* Z2093 - each additional tooth, permanent on acrylic denture (flipper) - 7.15;

~~(g) -- chrome-wire-clasps, adams, t-or-ball, each --- 7.15;~~

~~(hg) Z0095 - stainless steel band - 13.20.~~

(9) Prosthodontics include:

(a)* complete maxillary denture, acrylic, plus necessary adjustment - 369.60 when provided by a dentist (code 05110) or 184.80 when provided by a denturist (code Z0110);

(b)* complete mandibular denture, acrylic, plus necessary adjustment - 369.60 when provided by a dentist (code 05120) or 184.80 when provided by a denturist (code Z0111);

(c)* acrylic upper--or--lower maxillary partial denture with cast chrome clasps and rests replacing at least 4 posterior teeth plus adjustments - 286.00 when provided by a dentist (code 05211) or 146.00 when provided by a denturist (code Z0012);

(d) acrylic mandibular partial denture with cast chrome clasps and rests replacing at least 4 posterior teeth plus adjustments - 286.00 when provided by a dentist (code 05212) or 146.00 when provided by a denturist (code Z0013);

(de)* maxillary or--mandibular cast chrome partial denture, acrylic saddles, 2 clasps and rests, replacing missing posterior-teeth--and-one-or--more-anterior-teeth, at least one anterior tooth and any number of posterior teeth, plus adjustments - 357.50 when provided by a dentist (code 05213) or 178.75 when provided by a denturist; (code Z0114);

(f) mandibular cast chrome partial denture, acrylic saddles, clasps and rests replacing at least one anterior tooth and any number of posterior teeth plus adjustments - 357.50 when provided by a dentist (code 05711) or 60.78 when provided by a denturist (code Z0115);

(g) replacement for maxillary dentures of between 5 and 10 years old - 121.55 when provided by a dentist (code 05710) or 60.78 when provided by a denturist (code Z0125);

(h) replacement for mandibular dentures of between 5 and 10 years old - 121.55 when provided by a dentist (code 05711) or 60.78 when provided by a denturist (code Z0126);

(10) Relines and repairs include:

(a)* cured resin reline, lower - 95.10 when provided by a dentist (code 05751) or 47.55 when provided by a denturist (code Z0116);

(b)* cured resin reline, upper - 95.10 when provided by a dentist (code 05760) or 47.55 when provided by a denturist (code Z0117);

(c)* broken denture repair, no teeth, metal involved - 42.24 when provided by a dentist (code 05610) or 21.12 when provided by a denturist (code Z0118);

(d)* denture adjustment - only where dentist or denturist did not make dentures - 8.58 when provided by a dentist (code 05410) or 4.29 when provided by a denturist (code Z0119);

(e)* replacing broken tooth on denture, first tooth - 26.40 when provided by a dentist (code 05520) or 13.20 when provided by a denturist (code Z0120);

(f)* each additional tooth after procedure (e) and (g) - 7.15 when provided by a dentist (code 05640) or 3.58 when provided by a denturist (code Z0121);

(g)* adding teeth to partial to replace extracted natural teeth, first tooth - 35.75 when provided by a dentist (code 05650) or 17.88 when provided by a denturist (code Z0122);

(h)* replacing clasp, new clasp (dentists - code 05680; denturists - code Z0123) - 50.05;

(i)* repairing (welding or soldering) palatal bars, lingual bars, metal connectors, etc. on chrome partials - 92.95 when provided by a dentist (code 05620) or 46.48 when provided by a denturist (code Z0124);

(j)* ~~duplicate--(jump)--upper-complete~~ jumping of maxillary denture - 121.55 when provided by a dentist (code 05710) or 60.78 when provided by a denturist (code Z0125);

(k)* ~~lower-jump-or-duplicate~~ jumping of mandibular denture - 121.55 when provided by a dentist (code 05711) or 60.78 when provided by a denturist (code Z0126);

(l)* placing name on new, full or partial dentures - 11.00 when provided by a dentist (code Z0096) or 5.50 when provided by a denturist (code Z0127).

(11) Pontics and abutment teeth include:

(a) (code 06210) - steele's facing type - 357.50 for complete bridge and abutment teeth;

~~(b)---per-tooth-up-to-2-teeth---107.25;~~

(b) (code 06240) pontic - ceramic, only,--each-tooth pontic and abutment teeth - 357.50 for complete bridge and

abutment teeth - 162.25;

(c) (code 06250) - cured acrylic, laboratory processed, veneer, each tooth - 107.25; pontic and abutment teeth - 357.50 for complete bridge and abutment teeth.

(12) Repairs include:

(a) 06930 - recement bridge - 14.30;

(b) 02920 - recement crown - 7.15;

(c) 06890 - porcelain facing - 28.60;

(d) 20070 - replace broken steele's facing, post intact

- 24.20;

~~(e) ---gold post---60.50;~~

~~(#e) 029560 - steel post or dowel with amalgam buildup - 28.60;~~

~~(#f) 20072 - replace broken steele's facing, post broken - 35.75.~~

(13) Oral surgery includes:

(a) 07520 - I and D of abcess extra-oral - 55.00;

(b) 07110 - removal of tooth (includes shaping of ridge bone) - 19.64;

(c) 07220 - surgical removal of tooth, soft tissue impaction - 35.75;

(d) 07230 - surgical removal of tooth, partial bone impaction - 64.35 35.70;

(e) 07240 - surgical removal of tooth, complete bone impaction - 107.25 35.70;

(f) 07320 - alveolectomy, not in conjection with extractions, per quadrant - 35.75;

(g) 07970 - excision of hyperplastic tissue/each quad - 35.75;

(h) 07250 - removal of retained, residual roots, foreign bodies in bony tissue - 35.75;

(i) 07451 - removal of cyst - 55.00;

(j) 07260 - removal of retained, residual roots, foreign bodies in maxillary sinus - 107.25;

(k) 07960 - frenectomy - 50.05;

(l) 07470 - removal of exostosis torus, maxillary or mandibular - 71.50;

(m) 07285 - biopsy, including pathology lab charges - 28.60;

(n) 07610 - maxilla, open reduction - 358.93;

(o) 07620 - fracture, simple, maxilla, treatment and care - 278.85;

(p) 07630 - mandible, open reduction - 480.48;

(q) 07640 - fracture, simple, mandible, treatment and care - 278.85;

(r) emergency oral surgery procedures not listed in this rule will be reimbursed in accordance with ARM 46.12.2008, when authorized by the designated review organization.

(14) Endodontics include:

- (a) 03310 - root canal chemotherapy and mechanical preparation, scaling and filing - 123.20;
- (b) 03320 - root canal, each additional root up to two - 33.00;
- (c) 20097 - root canal and apicoectomy combined operation - 128.70;
- (d) 03410 - apicoectomy not in conjunction with root canal - 64.35.
- (15) 09220 - Anesthesia includes:
 - (a) general anesthesia administered in office - 42.90 per hour;
 - (b) 29230 - nitrous oxide - 4.40;
 - (c) 20098 - oral premedication - 11.00;
 - (d) 09240 - parenteral premedication - 42.90
- (16) Periodontal services includes:
 - (a) 04910 - periodontal prophylaxis per quadrant hour - 18.59;
 - (b) 04210 - gingival resection - 35.75 per quadrant;
 - (17) Dentist examining more than one medicaid recipient in a long-term care facility on the same day shall be allowed payment for one nursing home call over the examination fees. Examination is considered a recorded evaluation.
 - ~~(18)---Reimbursement---for-orthodontia---includes+~~
 - ~~(a)---examination---10.30,~~
 - ~~(b)---full-treatment---records-and-diagnosis---60.06,~~
 - ~~(c)---full-treatment, initial-fee---includes-appliances---346.50,~~
 - ~~(d)---full-treatment, monthly-fee---(prior-authorization will-state-maximum-number-at-months)---34.65,~~
 - ~~(e)---full-treatment, retention-service---3.85,~~
 - ~~(f)---serial-extractions, supervision---3.85,~~
 - ~~(g)---partial-treatment, expansion-appliance---192.50,~~
 - ~~(h)---partial-treatment---head-gear-appliance---192.50,~~
 - ~~(i)---special-appliance, bilateral-space---maintainer, upper-and-lower---90.75,~~
 - ~~(j)---special-appliance, unilateral-space-maintainer---57.20,~~
 - ~~(k)---special-appliance, expansion-appliance---192.50,~~
 - ~~(l)---special-appliance, retainer---96.25,~~
 - ~~(m)---special-appliance, habit-appliance---96.25,~~

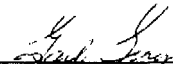
AUTH: Sec. 53-6-113 MCA; AUTH Extension, Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85; Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87
 IMP: Sec. 53-6-101 and 53-6-141 MCA

3. The proposed rule changes are necessary to adjust service levels to fit existing appropriations while maintaining those services considered essential by the dental association. The proposed rule changes would reduce coverage of dental services and eliminate coverage of other dental services. The reductions would be made to a level that would be

considered adequate to meet recipients' needs as opposed to the current level which is closer to the ideal level of routine coverage. The excluded services are those identified after consultation with the Montana Dental Association's Advisory Committee to SRS as not absolutely essential to meet recipient needs in light of other alternatives available under the dental program.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than January 21, 1988.

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



Director, Social and Rehabilitation Services

Certified to the Secretary of State December 14, 1987.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the repeal of	) NOTICE OF THE REPEAL OF ARM
ARM 2.21.605 through 2.21.610	) 2.21.605 THROUGH 2.21.610
and 2.21.616, and the adoption	) AND 2.21.616, AND THE
of rules relating to the	) ADOPTION OF RULES RELATING TO
administration of holidays	) THE ADMINISTRATION OF
for state employees	) HOLIDAYS FOR STATE EMPLOYEES

To: All Interested Persons.

1. On October 29, 1987, the department of administration published notice of the proposed repeal and the adoption of new rules relating to the administration of holidays for state employees on page 1848 of the 1987 Montana Administrative Register, issue number 20.

2. The rules have been adopted with the following changes. Rule VIII will not be adopted. ARM 2.21.605-610 have been repealed.

2.21.619 DEFINITIONS 1-3 same as proposed rule.

(4) ~~"Holiday benefits" means compensation--paid--to--an eligible employee when the state observes a legal state holiday. Compensation is pay at the regular rate up to eight hours or equivalent paid time off up to eight hours; pay at the regular rate up to eight hours or equivalent paid time off up to eight hours paid to an eligible employee when the state observes a legal state holiday.~~

~~(5) "Intermittent employee" means an employee who does not work a regular schedule. An intermittent employee works on an as-needed basis or occasional basis, and has no expectation to work unless the agency has a specific need.~~

~~(6) (5) Same as proposed rule.~~

~~(7) (6) Same as proposed rule.~~

~~(8) (7) Same as proposed rule.~~

2.21.620 HOLIDAYS (1) Same as proposed rule.

(2) "If any holiday . . . falls upon a Sunday, the Monday following is a holiday," as provided in 1-1-216, MCA. When a holiday falls on a Saturday, the holiday shall be observed on the preceding Friday-, except as provided for in ARM 2.21.620(3).

~~(3)-(5) Same as proposed rule.~~

2.21.626 HOLIDAY BENEFITS AND ELIGIBILITY REQUIREMENTS

(1) An eligible employee shall receive holiday benefits for legal state holidays. This benefit is paid time off or ~~compensation-paid~~ pay at the regular rate. Holiday benefits shall not exceed eight hours per holiday.

(2) Holiday benefits are calculated based on an employee's regular schedule. For purposes of this policy, changes to an employee's schedule which extend beyond one pay period are

changes to the regular schedule. An employee's regular schedule may be changed in ways including, ~~but not limited to:~~

(a) a change initiated by management, or
(b) a change initiated by an employee and approved by management, ~~such as,~~ including, but not limited to, requests to work fewer hours on an ongoing basis, or requests to use leave without pay by itself or in combination with accrued paid leave.

(3) Same as proposed rule.

(4) An employee shall not be eligible to receive holiday benefits if:

(a) the employee is a new employee to state government and begins work on the day after a holiday is observed; or

(b) the employee is reinstated or re-employed following a reduction in force, returns to work following a leave of absence without pay of more than one pay period, or is called back to a seasonal position on the day after a holiday is observed.

2.21.628 HOLIDAY BENEFITS FOR PART-TIME AND JOB SHARE EMPLOYEES (1) Same as proposed rule.

(2) Holiday benefits shall be an average of the employee's hours regularly scheduled to work in the pay period. To find the average, the number of hours regularly scheduled to work in a pay period in which the holiday falls shall be divided by 10 (the number of working days in a pay period). Holiday benefits shall not exceed 8 hours.

(3)-(4) Same as proposed rule.

(5) If the agency can not determine an employee's regular schedule the number of hours in a pay status divided by 10 may be used to determine the holiday benefit.

2.21.636 PAY FOR WORK PERFORMED ON A HOLIDAY (1) Same as proposed rule.

(2) If an employee does not work a regular schedule and is called in to work on the holiday, the employee shall receive pay at the regular rate for every hour worked on the holiday.

~~(2) (3)~~ Same as proposed rule.

~~(3) (4)~~ An employee who is exempt from the FLSA, and who receives approval to work on the holiday will receive ~~compensatory-time paid time off~~ equivalent to the number of hours worked. ~~The employee will not receive cash compensation.~~

~~(4) (5)~~ Equivalent paid time off for work performed on a holiday may be taken at a later date upon request by the non-exempt employee and approval of the supervisor. When an employee requests to take the hours off, and where the interest of the state requires the employee's attendance, the state's interest overrides the employee's.

2.21.641 SPECIAL SITUATIONS (1) The method used to calculate holiday pay for an employee who works four, 10-hour days, part-time, or in a job share situation may result in the employee's total earnings for the pay period being more or less than normal. Holiday benefits shall not exceed eight hours per holiday.

(a) - (b) and (2) Same as proposed rule.

3. A public hearing was conducted, on November 19, 1987, to receive comments on these proposed rules. The comments received during the comment period are summarized below.

COMMENT: One comment suggests defining exempt and non-exempt employees and clarifying which employees are covered by the Fair Labor Standards Act.

RESPONSE: The department disagrees. The terms, "exempt employee" and "non-exempt or covered employee" are currently defined in ARM 2.21.1703 and 2.21.8103. The Fair Labor Standards Act of 1938 (FLSA, Title 29, Part 541) explains which employees are considered to be exempt. Due to the length of these publications, it would be too cumbersome to duplicate these guidelines and definitions in the Holiday rules.

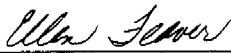
COMMENT: One comment suggests modifying ARM 2.21.636(1) so all employees receive the same pay for work performed on a holiday, regardless of whether the holiday benefit is to be pay or a paid day off.

RESPONSE: The department disagrees. ARM 2.21.636 represents current practice. Historically, the greater benefit has been to provide a day off with pay when an employee works on a holiday. If the holiday benefit is to be pay but no day off, the employee is compensated for the loss of a paid day off by receiving premium pay for every hour worked on the holiday.

COMMENT: Rule VIII states that intermittent employees are not eligible for holiday benefits. All those commenting viewed this as a change to the current practice and requested that Rule VIII not be adopted.

RESPONSE: The new rules were proposed to provide a reliable procedure for consistent calculation of holiday benefits and to reflect current practice. After review of comments received the department agrees that this provision as noticed would result in a change in current practice. Therefore, Rule VIII will not be adopted and ARM 2.21.628(5) will be modified.

BY:


Ellen Feaver, Director
Department of Administration

Certified to Secretary of State December 14, 1987.

BEFORE THE STATE AUDITOR
AND COMMISSIONER OF INSURANCE
OF THE STATE OF MONTANA

In the matter of the)
adoption of rules pertaining) NOTICE OF ADOPTION
to independent liability)
funds)

TO: All Interested Persons

1. On November 30, 1987, at 9:00 a.m., a public hearing was held in Room 204, Mitchell Building, Helena, Montana, to consider the adoption of rules pertaining to independent liability funds, published on page 1864, MAR Issue number 20.

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

~~RULE/16.6.2601~~ PURPOSE AND APPLICABILITY same as proposed rules.

~~RULE/16.6.2602~~ DEFINITIONS same as proposed rules.

~~RULE/16.6.2603~~ REGISTRATION OF INDEPENDENT LIABILITY FUNDS same as proposed rules.

~~RULE/16.6.2604~~ ADMINISTRATION OF INDEPENDENT LIABILITY FUNDS same as proposed rules.

~~RULE/16.6.2605~~ OVERSIGHT OF INDEPENDENT LIABILITY FUNDS same as proposed rules.

RULE VI DISCLAIMER OF LIABILITY deleted in its entirety.

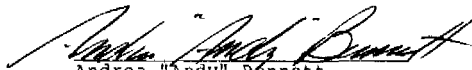
~~RULE/16.6.2606~~ same as proposed rules.

3. The commissioner received oral comments regarding the proposed rules. The comments and the commissioner's responses are as follows:

(a) Valencia Lane, Legislative Council, noted that Rule VII exceeds the commissioner's authority, adds requirements not envisioned by the Legislature, conflicts with the Montana Constitution since immunity can be granted only by two-thirds vote of the Legislature, and goes against Pfost.

Rule VII is deleted.

(b) Mary Westwood, Montana Sulphur and Chemical, expressed satisfaction with the rules as proposed.


Andrea "Andy" Bennett
State Auditor and
Commissioner of Insurance

Certified to the Secretary of State December 14, 1987.

BEFORE THE STATE AUDITOR
AND COMMISSIONER OF INSURANCE
OF THE STATE OF MONTANA

In the matter of the proposed) NOTICE OF
adoption of rules pertaining) ADOPTION OF RULES
to the periodic payment of)
premium taxes)

To: All Interested Persons

1. On October 29, 1987, the State Auditor and Commissioner of Insurance (commissioner) published notice of public hearing in the proposed adoption of Rules I through IX (subchapter 27, 6.6.2701 through 6.6.2709) pertaining to the periodic payment of premium taxes, at page 1868 of the 1987 Montana Administrative Register, issue no. 20.

2. The commissioner has adopted the following rules as proposed.

Rule I	6.6.2701	PURPOSE
Rule II	6.6.2702	APPLICABILITY AND SCOPE
Rule III	6.6.2703	EFFECTIVE DATE
Rule IV	6.6.2704	METHODS OF CALCULATION
Rule VI	6.6.2706	ADJUSTMENTS
Rule VII	6.6.2707	CESSATION OF BUSINESS
Rule VIII	6.6.2708	APPLICATION FOR REFUND
Rule IX	6.6.2709	Penalty

3. The commissioner has adopted the following rules as proposed with the following changes:

6.6.2705 [Rule V] PAYMENT DATES (1) The payment dates of the equal quarterly premium tax payments are as follows: first payment due April 15; second payment due June 15; third payment due September 15; and fourth payment due December 15.

(2) An insurer, subject to the provisions of these rules, who by virtue of the pattern of its sale of insurance, receives more than 75% of its premium within the final calendar quarter of a year, may request from the commissioner permission to pay its tax obligation for the current year under these rules in one full payment on December 15 of the year in which the obligation accrues.

AUTH: 33-2-705(7), MCA; IMP: 33-2-705(7), MCA.

4. A public hearing was held November 30, 1987. Mr. James Borchardt, Chief Examiner, conducted the hearing. Three people testified in addition to the comments received by the commissioner during the comment period. The commissioner has thoroughly considered all commentary received:

COMMENT: An attorney for the Administrative Code Committee raised a question as to the clarity of Rule IV. She questioned if it was clear as to which year the quarterly tax obligation applied.

RESPONSE: The Department reviewed this comment and determined

that when all the rules are read as a whole, it is clear the quarterly tax payment of the premium tax is to occur during the year in which the tax liability is accrued.

COMMENT: An insurer that writes predominately crop insurance commented that the payment schedule would cause an undue burden on it. Because of the nature of the crop insurance business, it is sold in the last two months of the calendar year and the accruing of the premium occurs during this time period. During the preceding months, the company is not actively selling insurance.

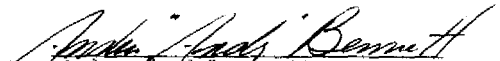
RESPONSE: The Department reviewed this comment and determined that it raised a legitimate question about the fairness of the payment scheme. In response, the Department amended Rule V as is included in the Notice of Adoption.

COMMENT: Two trade associations, representing life and health insurance companies, commented on the two methods of calculating the quarterly premium tax obligation. They did not believe that the methods allowed an insurer to reflect changes in its volume of business nor for enough time to close its books to provide for an accurate calculation.

RESPONSE: The Department reviewed these comments and did not deem them sufficient to amend the rules as proposed. The Legislature authorized the commissioner to implement a system to collect the premium tax throughout the year in which the tax liability accrued. The rules establish a system of pre-payment of taxes with a final accounting to fix the tax for the year after the books of an insurer are closed. The rules anticipate changes in the level of an insurer's premium tax and allow for payment of an estimated tax with a 10% cushion. No pre-payment scheme can take into account all the possible variations that companies may experience in a year. To do so would unduly complicate the rules and create a burden on companies paying the tax and on the Department in enforcing the rules. The Department will monitor the rules as the quarterly premium tax payments are made and modify them if warranted.

COMMENT: The Department received a letter from an insurer commending it on proposing clear and practical rules to implement the quarterly payment law.

RESPONSE: The Department accepts this comment as it believes that once insurers gain experience with the rules, they all will view them as this insurer does.


Andrea "Andy" Bennett
State Auditor and
Commissioner of Insurance

Certified to the Secretary of State December 14, 1987.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the adoption	) NOTICE OF ADOPTION OF
of Rules for the Establishment	) RULES FOR ESTABLISHMENT
of Clearing Accounts in School	) OF CLEARING ACCOUNTS FOR
Districts	) USE IN SCHOOL DISTRICTS

TO: All Interested Persons

1. On October 15, 1987 the Superintendent of Public Instruction published notice of proposed adoption of rules for establishment of clearing accounts for use in school districts at page 1745 of the 1987 Montana Administrative Register, Issue Number 19.

2. The Superintendent has adopted 10.10.201 through 10.10.205, 10.10.207 and 10.10.208 as proposed.

3. Based on comment received, the Superintendent has made changes in the following rules:

10.10.206 INSUFFICIENT CASH AVAILABLE If the sum of the cash available in all budgeted funds of the district is insufficient to finance the transfers to the clearing accounts, a warrant must be issued from the depleted budgeted fund(s) for transfer to the clearing accounts. This transfer warrant must be registered by the county treasurer as outlined in 20-9-212+0+ (9), MCA. As an alternative, the district may issue revenue anticipation notes through the economic development board of the department of commerce. In addition, section 7-6-2701, MCA allows counties to invest in the registered warrants of school districts.

10.10.209 INTEREST EARNED As warrants are written at the same time the monies are transferred, there will be very little, if any, money in the clearing accounts. However, interest earned on the investment of money in the payroll and claims clearing accounts cannot be deposited to the accounts. Agency Clearing accounts such as these cannot earn revenue. The interest earned is distributed back to the funds from which the money is drawn.

4. The Superintendent also considered other comments received:

COMMENT: The staff of the Legislative Council commented that the rules were not written in language easily understood by lay people.

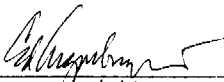
RESPONSE: These rules will be used strictly by county treasurers and school district budget officials, not by lay people. The professionals using these rules will understand the technical language used.

COMMENT: Staff of the Legislative Council commented that these rules did not include use by nonunified districts. They questioned whether the rules should be intended and clarified to include nonunified school districts.

RESPONSE: The rules were not intended for nonunified school districts as per legislative mandate.

5. These rules will be effective December 25, 1987.

BY


Ed Argersbright
State Superintendent

Dated this 14th day of December, 1987.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the repeal of	) NOTICE OF REPEAL OF RULES
rules for the operation of	) 10.43.101, 10.43.201 THRU
postsecondary vocational-	) 10.43.204, 10.43.301 AND
technical centers	) 10.43.302, AND 10.43.401

TO: All Interested Persons

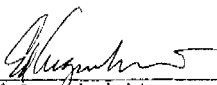
1. On October 15, 1987, the Superintendent of Public Instruction published notice of the proposed repeal of rules for the operation of postsecondary vocational-technical centers at page 1743 of the 1987 Montana Administrative Register, Issue Number 19.

2. The Superintendent of Public Instruction has repealed the rules as proposed.

3. No comments or testimony were received.

4. These rules will be effective December 25, 1987.

BY


Ed Argenbright
State Superintendent

Dated this 14th day of December, 1987.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the	)	CORRECTED NOTICE OF AMENDMENT
amendment of rule numbers	)	OF RULE NUMBERS FOR RULES
for rules pertaining to the	)	PERTAINING TO THE PROCEDURE
procedure for rule making	)	FOR RULE MAKING AND
and confidentiality	)	CONFIDENTIALITY

TO: All Interested Persons

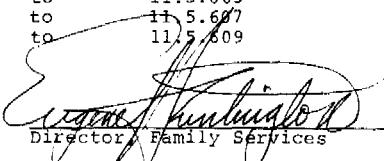
1. On October 5, 1987, the Department of Family Services adopted rules pertaining to the procedures for rule making, declaratory rulings and contested case hearings which had been published at page 1782 of the 1987 Montana Administrative Register, issue number 19. The numbering of two of the rules duplicated numbers already assigned to rules.

2. On October 19, 1987, the Department of Family Services adopted rules pertaining to the confidentiality of case records containing reports of child abuse and neglect which had been published at page 1980 of the 1987 Montana Administrative Register, issue number 20. The rule numbers assigned to these rules erroneously duplicated numbers already assigned to rules.

3. The Office of the Secretary of State has requested that a public notice of the rule number corrections be published.

4. The Department of Family Services administrative rule number amendments will be as indicated below. These numbers amendments will be reflected in the Administrative Rules of Montana (ARM) replacement pages dated 12/31/87.

Old Numbers		New Numbers
11.1.101	to	11.2.101
11.1.102	to	11.2.102
11.6.101	to	11.5.601
11.6.102	to	11.5.602
11.6.105	to	11.5.605
11.6.107	to	11.5.607
11.6.109	to	11.5.609



Director, Family Services

Certified to the Secretary of State December 14, 1987.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the	)	NOTICE OF THE ADOPTION OF
adoption of rules pertaining	)	RULES PERTAINING TO LICENS-
to licensing requirements	)	ING REQUIREMENTS FOR YOUTH
for youth detention	)	DETENTION FACILITIES
facilities)	

TO: All Interested Persons

1. On November 12, 1987, the Department of Family Services published notice of the proposed adoption of rules pertaining to licensing requirements for youth detention facilities at page 2037 of the 1987 Montana Administrative Register, issue number 21.

2. The Department has adopted the following rules as proposed:

RULE I	11.17.101	<u>YOUTH DETENTION FACILITY, PURPOSE</u>
RULE II	11.17.102	<u>YOUTH DETENTION FACILITY, DEFINITIONS</u>
RULE III	11.17.103	<u>YOUTH DETENTION FACILITY, LICENSES</u>
RULE IV	11.17.105	<u>YOUTH DETENTION FACILITY,</u> <u>LICENSING PROCEDURES</u>
RULE V	11.17.106	<u>YOUTH DETENTION FACILITY, LICENSE</u> <u>REVOCAION AND DENIAL</u>
RULE VII	11.17.110	<u>YOUTH DETENTION FACILITY,</u> <u>CONFIDENTIALITY OF RECORDS AND</u> <u>INFORMATION</u>
RULE VIII	11.17.111	<u>YOUTH DETENTION FACILITY, REPORTS</u>
RULE XII	11.17.117	<u>YOUTH DETENTION FACILITY, ENVIRONMENT</u>
RULE XIII	11.17.118	<u>YOUTH DETENTION FACILITY, FIRE SAFETY</u>
RULE XIV	11.17.124	<u>YOUTH DETENTION FACILITY, ADMISSION</u>
RULE XV	11.17.129	<u>YOUTH DETENTION FACILITY, SUPERVISION</u> <u>OF MEDICATION</u>
RULE XVI	11.17.127	<u>YOUTH DETENTION FACILITY,</u> <u>COMMUNICATION</u>
RULE XVII	11.17.122	<u>YOUTH DETENTION FACILITY, SECURITY</u>
RULE XVIII	11.17.125	<u>YOUTH DETENTION FACILITY, RIGHTS OF</u> <u>YOUTH</u>
RULE XIX	11.17.134	<u>YOUTH DETENTION FACILITY, DISCIPLINE</u>
RULE XXI	11.17.121	<u>YOUTH DETENTION FACILITY,</u> <u>HOUSEKEEPING</u>
RULE XXII	11.17.131	<u>YOUTH DETENTION FACILITY, SERVICES</u> <u>AND PROGRAM</u>
RULE XXIII	11.17.135	<u>YOUTH DETENTION FACILITY, PASSIVE</u> <u>PHYSICAL RESTRAINT</u>
RULE XXIV	11.17.137	<u>YOUTH DETENTION FACILITY, TEMPORARY</u> <u>LOCKUP/SECURE OBSERVATION</u>
RULE XXV	11.17.138	<u>YOUTH DETENTION FACILITY, MECHANICAL</u> <u>RESTRAINT</u>

RULE XXVI 11.17.146 YOUTH DETENTION FACILITY, RELEASE,
TRANSFER AND TRANSPORTATION

3. The Department has adopted the following rules as proposed with the following changes:

11.17.108 [RULE VI] YOUTH DETENTION FACILITY, HEARING

(1) ~~Any--person~~ ANY APPLICANT OR LICENSEE WHO IS dissatisfied because of the department's action refusing to grant a license, suspending a license, reducing to provisional license or revoking a license may request a hearing as provided in ARM 11.2.203.

AUTH: Sec. 41-5-809, MCA

IMP: Sec. 41-5-802 and 41-5-809, MCA

11.17.113 [RULE IX] YOUTH DETENTION FACILITY,
ADMINISTRATION (1) Each facility shall be purchased, ~~or~~ leased, ~~by or under contract with~~ OTHERWISE PROVIDED BY one or more counties.

Subsections (1)(a) through (3)(c) remain as proposed.

AUTH: Sec. 41-5-809, MCA

IMP: Sec. 41-5-802 and 41-5-809, MCA

11.17.114 [RULE X] YOUTH DETENTION FACILITY, FISCAL
MANAGEMENT

Subsection (1) remains as proposed.

(2) All financial records shall be retained for three years and subject to audit in accordance with accepted auditing procedures.

~~(a) -- A copy of any audit of the facility performed shall be forwarded to the department.~~

Subsection (3) remains as proposed.

AUTH: Sec. 41-5-809, MCA

IMP: Sec. 41-5-802 and 41-5-809, MCA

11.17.115 [RULE XI] YOUTH DETENTION FACILITY, PERSONNEL

Subsections (1) through (2)(a)(iii) remain as proposed.

(iv) have OR ATTAIN WITHIN THREE MONTHS OF BEGINNING EMPLOYMENT a thorough working knowledge of the youth court act and related laws of Montana regarding law enforcement, apprehension and detention of youth and the youth's rights under the law.

Subsections (3) through (3)(e)(vi) remain as proposed.

(f) Each youth care staff member must complete ~~an initial~~ AT LEAST 16 hours of orientation WITHIN THE FIRST WEEK OF EMPLOYMENT and at least ~~40~~ 15 hours of in-service training each year, in an area directly related to the staff member's duties.

Subsections (3)(f)(i) and (3)(f)(ii) remain as proposed.

AUTH: Sec. 41-5-809, MCA

IMP: Sec. 41-5-802 and 41-5-809, MCA

11.17.120 [RULE XX] YOUTH DETENTION FACILITY, NUTRITION

Subsections (1) through (6) remain as proposed.

4. A public hearing was held December 2, 1987, and two people representing the Billings Youth Services Center made the following comments:

COMMENT: Rule VI(1) use of the word "person" is too broad. It should be limited to only those who are licensed.

RESPONSE: The Department agrees and has made the change.

COMMENT: Rule VIII(4) requires the facility to notify the parent within the next working day if the child is involved in a serious incident. What if the parent cannot be located?

RESPONSE: The rule also requires that the probation officer and licensing worker be notified. While it is true that the facility might not be able to contact the parent, probation officer or licensing worker "within the next working day" following an incident, reasonable efforts should be made to do so. The rule remains unchanged.

COMMENT: Rule IX(1) should allow for private ownership or lease rather than county ownership.

RESPONSE: Section 41-5-802(1)(a) MCA reads, "in all counties the county commissioners may provide, by purchase, lease, or otherwise, a place to be known as the youth detention facility..." Therefore, the proposed Rule IX(1) has been changed to conform to the statute.

COMMENT: Rule X(2)(a) requires the facility to forward to the department copies of any audits performed. Since the department does not pay for services in detention the department should not be able to request a copy of the audit.

RESPONSE: The department has deleted the requirement.

COMMENT: Rule (XI)(2)(a) requirement that a director be qualified both in professional child care and law enforcement is unrealistic. The facility should have the flexibility to train a director or otherwise enable the director to obtain necessary experience and knowledge in one area or another.

RESPONSE: The department agrees and has made the necessary changes.

COMMENT: Rule XI(3)(f) requires that each staff member must complete 16 hours of orientation and 40 hours of in-service training each year. The counties are in a bind financially and to require that much training will place an additional financial burden on the county.

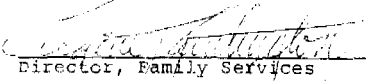
RESPONSE: Since the child care agency and youth foster home licensing rules require 15 hours of training annually for foster parents and child care agency staff, the department has changed the training requirement to conform but since this rule pertains to the most restrictive of child care, the initial orientation will be required to be completed within the first week of employment.

COMMENT: Rule XII may duplicate health department requirements.

RESPONSE: It may duplicate some health department requirements, but it is important to the applicant for a license to include it in these rules. This avoids the need to send the applicant to yet another agency. Some rural areas do not have easy access to a health department official, so for the assistance of the applicant the rule remains as proposed.

COMMENT: Rule XXII requires a "range of services to meet the needs of youth" be provided by the youth detention facility. Who pays for these services?

RESPONSE: Those counties who choose to provide youth detention facilities, will have to fund the necessary services for detainees. The procedure for obtaining the services may vary from county to county with some counties requiring that services be ordered by the court. The department has elected not to change the proposed rule which leaves the procedural options open to the counties.


Director, Family Services

Certified to the Secretary of State December 14, 1987.

24-12/24/87

Montana Administrative Register

BEFORE THE DEPARTMENT OF INSTITUTIONS
OF THE STATE OF MONTANA

In the matter of the adoption of)	NOTICE OF ADOPTION OF AMEND-
amendments to rules 20.3.202,)	MENTS TO RULES 20.3.202,
20.3.203, 20.3.208, 20.3.209,)	20.3.203, 20.3.208, 20.3.209,
20.3.212, 20.3.213, 20.3.214,)	20.3.212, 20.3.213, 20.3.214,
20.3.215, 20.3.216, 20.3.401,)	20.3.215, 20.3.216, 20.3.401,
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20.3.406, 20.3.408, 20.3.409,)	20.3.406, 20.3.408, 20.3.409,
20.3.410, 20.3.411, 20.3.412,)	20.3.410, 20.3.411, 20.3.412,
20.3.413, 20.3.414, 20.3.501,)	20.3.413, 20.3.414, 20.3.501,
20.3.503, 20.3.504.)	20.3.503, 20.3.504.
)	
)	
Certification and evaluation)	Certification and evaluation
of alcohol programs)	of alcohol programs

T0: All Interested Persons

1. On October 29, 1987, the Department of Institutions published notice to adopt amendments to the existing rules relative to evaluation of alcohol programs, and certification of chemical dependency counselors. The notice was published on October 29, 1987, in the Montana Administrative Register, No. 20 at pages 1906 through 1917.

2. On November 30, 1987, the Department conducted a public hearing concerning the adoption of the above mentioned amendments. From the date of the agency's proposed action up through November 30, 1987, the Department also allowed written comments to be made concerning the proposed amendments.

3. The principal reasons for the adoption of these rules are to enhance the quality, professional competency, time and cost efficiency of the system, and to reflect administrative changes. All comments that were received urged the adoption of these rules. Comment was received from John MacMaster, Staff Attorney of the Legislative Council regarding 20.3.405(6). Mr. MacMaster indicated that the reference to "ADAD: should be changed to "the department" to be consistent with the rule. Mr. MacMaster also recommended that the statutory authority supporting the Administrative Rules should be cited as 53-24-204 and 53-24-208, MCA, in place of 53-24-105 MCA.

Comment:

The agency agrees with the recommendation of the staff attorney of the council and will incorporate these changes into the rules where appropriate.

4. Based upon the foregoing findings with no adverse written or oral testimony, the department hereby adopts the proposed rules with the minor modifications as recommended by Mr. MacMaster of the Legislative Council.

CARROLL SOUTH, Director
Department of Institutions

Certified to the Secretary of State December 10, 1987.

BEFORE THE WORKERS' COMPENSATION DIVISION
OF THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the Amendment)	NOTICE OF AMENDMENT AND
and Adoption of Rules)	ADOPTION OF RULES
regarding Self-insurers)	REGARDING SELF-INSURERS

TO ALL INTERESTED PERSONS:

1. On October 29, 1987, the Division of Workers' Compensation published Notice of the Proposed Amendment of and Adoption of Rules regarding self-insurers at pages 1920 to 1929 of 1987 Montana Administrative Register Issue No. 20.

2. The hearing was held on the proposed rules on November 20, 1987 at 9:45 a.m. in Room 303 of the Workers' Compensation Building, 5 South Last Chance Gulch, Helena, Montana, to receive comments on the proposed rules.

3. The division of Workers' Compensation adopts the rules as proposed effective January 1, 1988.

4. The rationale for adopting and amending the above-referenced rules is to clarify requirements for certification and review of self-insurers in order to assure that workers' compensation benefits will be properly paid to injured workers. The rules 24.29.702B and 24.29.702C are also being amended to conform with the mandatory deposit requirements established in the amendment of 39-71-2106, MCA, by Sec. 51, Ch. 464, L. 1987.

5. The adoption of these rules is authorized by Section 39-71-203, MCA, as amended by Sec. 5, Ch. 464, L. 1987, and extended by Sec. 69, Ch. 464, L. 1987. These rules implement Sections 39-71-403, 39-71-2101 through 39-71-2107, and 39-71-2109, MCA, as amended by Sec. 25, Ch. 464, L. 1987.

6. The following comments were received on the proposed rules and considered by the division:

COMMENT: Rule 702A should also include as factors for consideration of solvency, permission to self-insure in other states and determinations of financial solvency by other state agencies.

RESPONSE: Determinations of solvency by other states and state agencies may be of little value because of their considerations of different factors and requirements but they may be considered as appropriate.

COMMENT: Rule 702B(1)(a) should indicate that an employer or group "may be" required to provide a deposit.

RESPONSE: The amendment to 39-71-2106(1) states a deposit "may be" required. The rule clarifies a deposit will be requested, in the Division's discretion and "may be" waived upon substantive evidence from the employer that the deposit is not needed.

COMMENT: Rule 702E requires excess insurance although the decision to obtain excess insurance should be left to the discretion of the employer.

RESPONSE: Excess coverage is one factor in consideration of financial ability to pay benefits. It is very necessary as insurers may reach a point where their financial burdens are too great to manage alone.

COMMENT: Rule 702F(1)(f) requiring a loss run of individual claims is unnecessary and only a loss summary should be required.

RESPONSE: A loss run with individual reserve estimates allows the division to monitor an employer's liabilities for frequency and severity of claims. It provides specific factors in determining security requirements and allows cross checks with division records to ensure compliance with reporting requirements.

COMMENT: Rule 702F(1)(h) should indicate that the employer has an "active" rather than "effective" safety program.

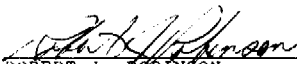
RESPONSE: An "effective" safety program may be measured by a decrease in the number and severity of claims since the date of implementation. An "effective" safety program will result in a better than average safety record when compared to accident statistics for the same industry. Only an "effective" safety program can help an employer maintain a financially viable self-insurance program.

COMMENT: New rule 1 requiring notification of changes is too vague and impractical to implement.

RESPONSE: The new rule requires employers to notify the division of pending changes or changes that have occurred which may affect their self-insurance program. More specific guidelines are impractical because of the diverse size and industries involved.

COMMENT: Rule 702E discriminates against group self-insurers by not allowing waiver of excess insurance as for individual self-insurers.

RESPONSE: Groups are more volatile in consideration of their stability and amenability to regulation than an individual employer which can stand on its own merit. The requirement of aggregate excess coverage for groups provides an additional layer of protection for the potential unexpected large number of claims and catastrophic losses.


ROBERT J. ROBINSON
Administrator

CERTIFIED TO THE SECRETARY OF STATE: December 14, 1987.

BEFORE THE WORKERS' COMPENSATION DIVISION
OF THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF ADOPTION
Adoption of a Rule	)	OF RULE
regarding Hospital Rates	)	(24.29.1425)

TO ALL INTERESTED PERSONS:

1. On October 29, 1987, the Division of Workers' Compensation published Notice of the Proposed Adoption of a rule regarding hospital rates at pages 1918 to 1919 of 1987 Montana Administrative Register Issue No. 20.

2. The hearing was held on the proposed rule on November 20, 1987 at 9:30 a.m. in Room 303 of the Workers' Compensation Building, 5 South Last Chance Gulch, Helena, Montana, to receive comments on the proposed rule.

3. The Division of Workers' Compensation adopts the rule as proposed effective January 1, 1988.

4. The rationale for adopting this rule is to establish rates for hospital services for injured workers as required by Section 39-71-704(3), MCA, as amended by Section 25 of Chapter 464 of Laws of 1987.

5. The adoption of this rule is authorized by Section 39-71-203, MCA, as amended by Section 5 of Chapter 464 of Laws of 1987, and extended by Section 69 of Chapter 464 of Laws of 1987. This rule implements Section 39-71-704, MCA, as amended by Section 25 of Chapter 464 of Laws of 1987.

6. The following comments were received on the proposed rule and considered by the division:

COMMENT: A report of rates by the Montana Hospital Rate Review System should be accepted for member hospitals in lieu of a report directly from those hospitals.

RESPONSE: A report of rates from MHRRS or other agents of hospitals will be accepted but each hospital will still have the actual responsibility for assuring such rates are reported.

COMMENT: Rates should be reported in summary form rather than in detail which can become unduly burdensome.

RESPONSE: A reporting form will be provided which will provide sufficient summary data on which to base rate regulation.

COMMENT: The provision for Division approval of rates

should be dropped and a provision substituted for acceptance of rates submitted not exceeding those charged to other than workers' compensation patients.

RESPONSE: Section 39-71-704, MCA, requires the division to approve maximum hospital rates.

COMMENT: Pharmacy and medical supplies should not be included in the rate report because of their large volume, price fluctuation and small proportion to total charges.

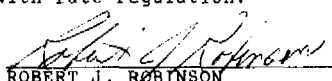
RESPONSE: Although pharmacy and medical supplies may be a small portion of total hospital services, they are significant medical expenses which have not been excluded from regulation under 39-71-704, MCA.

COMMENT: Rates for new services below the certificate of need threshold in Section 50-5-301, MCA, should not be limited by the Division's rule.

RESPONSE: Such an exclusion would avoid the regulation of a substantial quantity of services required by Section 39-71-704, MCA. The division will establish its own criteria for regulation of new services.

COMMENT: The provision for audit of hospital financial records by the Division is unnecessary.

RESPONSE: An audit is a necessary tool which must be available to assure compliance with rate regulation.


ROBERT J. ROBINSON
Administrator

CERTIFIED TO THE SECRETARY OF STATE: December 14, 1987.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION)	NOTICE OF THE ADOPTION of
of Rule I (42.2.401) relating)	Rule I (42.2.401) relating
to Small Business Liability)	to Small Business Liability
Funds.)	Funds.

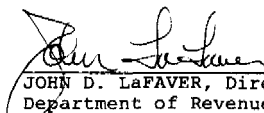
TO: All Interested Persons:

1. On October 15, 1987, the Department published notice of the proposed adoption of Rule I (42.2.401) relating to Small Business Liability Funds at pages 1750 and 1751 of the 1987 Montana Administrative Register, issue no. 19.

2. The Department conducted a public hearing on November 24, 1987. No one appeared at this hearing to testify and no written comments were received by the close of the comment period. However, John MacMaster, Legislative Code Committee contacted the Department and pointed out the need to include in our authority section rulemaking authority for the corporation tax area as well as the income tax area. The additional citation is 15-31-501, MCA. Since this rule deals with multiple areas of revenue, it will be placed in Chapter 2, general rules for the Department.

3. The Department has adopted rule I (42.2.401) as proposed with the addition of 15-31-501, MCA to the authority.

4. The authority for the rules is 15-30-305, and 15-31-501, MCA, with an authority extension at Sec. 20, Ch. 564, L. 1987. The rules implement 15-30-107, 15-30-127, 15-31-117, and 15-31-118, MCA.


JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 12/14/87.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

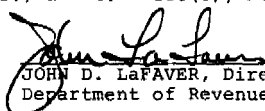
IN THE MATTER OF THE REPEAL of	) NOTICE OF REPEAL of ARM
ARM 42.6.101 through 42.6.108	) 42.6.101 through 42.6.108
and ADOPTION of Rule I (42.6.109)	) and ADOPTION of Rule I
relating to the Child Support.	) (42.6.109) relating to
	) Child Support.

TO: All Interested Persons:

1. On October 29, 1987, the Department published notice of a public hearing to consider the repeal of ARM 42.6.101 through 42.6.108 and the proposed adoption of Rule I (42.6.109) relating to the Scale of Suggested Minimum Contributions for Child Support at pages 1941 and 1942 of the 1987 Montana Administrative Register, issue no. 20.

2. The Department conducted a public hearing on December 2, 1987. No one appeared at this hearing to testify and no written comments were received by the close of the comment period. Therefore, the Department has repealed ARM 42.6.101 through 42.6.108 and adopted rule I (42.6.109) as proposed.

4. The authority for the rules is 40-5-202, MCA, and the rules implement 40-5-214, 40-5-226, and 40-5-226(8), MCA.


JOHN D. LAFAVER, Director
Department of Revenue

Certified to Secretary of State December 14, 1987.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment	)	NOTICE OF AMENDMENT OF ARM
of ARM 1.2.419 regarding	)	1.2.419 - FILING, COM-
scheduled dates for the Montana	)	PILING, PRINTER PICKUP AND
Administrative Register	)	PUBLICATION FOR THE MAR

TO: All Interested Persons.

1. On November 12, 1987, the office of the Secretary of State published a notice of proposed amendment of the rule regarding the scheduled dates for the Montana Administrative Register on page 2080 of the Montana Administrative Register, Issue No. 21.

2. The Secretary of State has amended the rule as proposed.

3. No comments or testimony were received.


JIM WALTERMIRE
Secretary of State

Dated this 14th day of December, 1987

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption	)	AMENDED NOTICE OF
of rules pertaining to fees	)	ADOPTION OF RULE I
for filing notice of agricul-	)	44.6.107 FEES FOR FILING
tural lien and certificate of	)	NOTICE OF AGRICULTURAL
information obtained by public	)	LIEN
access.)	

TO: All Interested Persons.

1. The office of the Secretary of State's notice of adoption published on page 2163, issue number 22, Montana Administrative Register, adopted several rules. One correction to that adoption is necessary.

2. The final notice regarding RULE (I) 44.6.107 is corrected as follows:

44.6.107 FEES FOR FILING NOTICE OF AGRICULTURAL LIEN

(1) ~~Effective November~~ December 1, 1987, the secretary of state shall charge and collect for:

(a) and (b) remain the same.

3. This change is necessary because the notice of adoption stated the effective date of December 1, 1987.


JIM WALTERMIRE
Secretary of State

Dated this 14th day of December, 1987

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

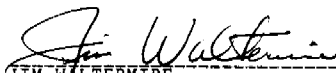
In the matter of the amendment	)	NOTICE OF ADOPTION OF AMEND-
of rules pertaining to the	)	MENTS TO RULES NUMBERED
conduct of certain specific	)	44.9.202, 44.9.203, 44.9.309,
elections by mail ballot	)	44.9.312 RELATING TO PROCE-
		DURES FOR CONDUCTING ELEC-
		TIONS BY MAIL BALLOT

TO: All Interested Persons

1. On October 14, 1987, the Secretary of State published notice of amendments to rules numbered 44.9.202, 44.9.203, 44.9.309 and 44.9.312 to add specific requirements for school districts using the mail ballot option for their elections at page 1753, Montana Administrative Register, Issue No. 19.

2. The Secretary of State has adopted the amendments as proposed.

3. No comments or testimony were received.


JIM WALTERMIRE
Secretary of State

Dated this 14th day of December 1987.

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

In the matter of the amend-	)	NOTICE OF THE AMENDMENT OF
ment of Rules 46.2.210 and	)	RULES 46.2.210 AND 46.2.212
46.2.212 pertaining to	)	PERTAINING TO ADMINISTRA-
administrative fair hearings	)	TIVE FAIR HEARINGS

TO: All Interested Persons

1. On November 12, 1987, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.2.210 and 46.2.212 pertaining to administrative fair hearings at page 2082 of the 1987 Montana Administrative Register, issue number 21.

2. The Department has amended Rule 46.2.210 as proposed.

3. The Department has amended Rule 46.2.212 as proposed with the following changes:

46.2.212 JUDICIAL REVIEW Subsection (1) remains as proposed.

Original subsections (2) and (3) remain deleted as proposed.

(2) A BOARD OF COUNTY COMMISSIONERS MAY SEEK JUDICIAL REVIEW OF A FINAL DECISION INVOLVING A PROGRAM FUNDED ENTIRELY WITH COUNTY FUNDS.

(3) THE DEPARTMENT, BUT NOT THE BOARD OF COUNTY COMMISSIONERS, MAY SEEK JUDICIAL REVIEW OF A FINAL DECISION INVOLVING A PROGRAM FUNDED IN WHOLE OR IN PART WITH FEDERAL OR STATE FUNDS.

(424) If a provider seeks judicial review, venue shall be in the First Judicial District in and for the County of Lewis and Clark, State of Montana.

AUTH: Sec. 53-2-201, 53-2-606, 53-4-212, 53-6-113 and 53-7-107 MCA; AUTH Extension, Sec. 113, Ch. 609, L. 1987, Eff. 7/1/87

IMP: Sec. 53-2-201 and 53-3-113 MCA

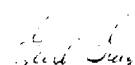
4. The Department has thoroughly considered all commentary received:

COMMENT: Federal law and regulations prohibit local agencies from changing or disapproving the determinations of the "single state agency" responsible for the administration of the state's Medicaid plan. Will the county offices be allowed to appeal Medicaid determinations without the approval of the department?

RESPONSE: The change in the proposed rule was never meant to give local county offices the authority to appeal decisions concerning programs funded in whole or in part with federal funds. This would conflict with federal law.

Title 42, Section 1396a(a)(5) of the United States Code provides that a state's Medicaid plan must designate "a single State agency to administer or to supervise the administration of the plan." This requirement is further defined by the Code of Federal Regulations. The regulations require that this single State agency, "[m]ake rules and regulations... that are binding upon local agencies that administer the plan." 42 CFR § 431.10(b)(2)(ii) (1985). When this agency is charged with determining eligibility, other State or local agencies that perform services for it "must not have the authority to change or disapprove any administrative decision of that agency, or otherwise substitute their judgment for that of the Medicaid agency with respect to the application of policies, rules, and regulations issued by the Medicaid agency." 42 CFR § 431.10(e)(3) (1985).

In Montana, the Department of Social and Rehabilitation Services is the "single state agency". The rules as proposed have been modified to clarify this issue. The counties, however, will still be given authority to appeal issues involving the county general assistance or county medical assistance programs which are funded entirely with county funds.



Director, Social and Rehabilitation Services

Certified to the Secretary of State November 19, 1987.

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

In the matter of the amend-	)	NOTICE OF THE AMENDMENT OF
ment of Rule 46.12.3803	)	RULE 46.12.3803 PERTAINING
pertaining to medically	)	TO MEDICALLY NEEDY INCOME
needy income standards	)	STANDARDS

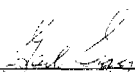
TO: All Interested Persons

1. On November 12, 1987, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rule 46.12.3803 pertaining to medically needy income standards at page 2084 of the 1987 Montana Administrative Register, issue number 21.

2. The Department has amended Rule 46.12.3803 as proposed.

3. No written comments or testimony were received.

4. These rule changes will be effective January 1, 1988.



Director, Social and Rehabilitation Services

Certified to the Secretary of State November 14, 1987.

VOLUME NO. 42

OPINION NO. 42

CORPORATIONS - Application of open meeting law to private corporation that has contract with state to operate and maintain state property;
HISTORICAL SOCIETY - Duty to maintain and preserve property which it owns;
HISTORICAL SOCIETY - Power to contract with private party;
OPEN MEETINGS - Application of open meeting law to private corporation that has contract with state to operate and maintain state property;
PROPERTY, PUBLIC - Application of open meeting law to private corporation that has contract with state to operate and maintain state property;
PROPERTY, STATE - Application of open meeting law to private corporation that has contract with state to operate and maintain state property;
MONTANA CODE ANNOTATED - Sections 2-3-201, 2-3-203, 22-2-305, 22-3-101, 72-16-445 to 72-16-450;
MONTANA CONSTITUTION - Article II, section 9;
OPINIONS OF THE ATTORNEY GENERAL - 37 Op. Att'y Gen. No. 170 (1978).

HELD: The Daly Mansion Preservation Trust is a public body within the meaning of the open meeting law as it is performing a public function and is receiving funds generated by public property.

3 December 1987

John W. Robinson
Ravalli County Attorney
Ravalli County Courthouse
Hamilton MT 59840

Dear Mr. Robinson:

You requested my opinion regarding the following question:

Is a private corporation that has contracted with the state to restore and preserve state-owned property subject to the open

meeting law standards set forth in section 2-3-203, MCA?

The Marcus Daly mansion and the 40 acres on which it is located near Hamilton, Montana, were deeded to the Montana Historical Society on December 31, 1986. The property was transferred pursuant to sections 72-16-445 to 450, MCA, which allow transfers in kind to the Historical Society. On that same date, an agreement was entered into by the Historical Society, the Valley Community Arts Council of Hamilton (hereinafter Arts Council), and the Daly Mansion Preservation Trust, Incorporated (hereinafter Trust). The agreement provides for the restoration and preservation of the Mansion by the Arts Council and the Trust. It states in part:

The Council through the Trust as well as in its own right, does hereby accept responsibility for the operation, stabilization and restoration of the property known as the Daly Mansion located in Ravalli County, Montana.

....

The Council through the Trust, and the Trust itself when formed in accepting this responsibility, does agree to:

- 1) Raise funds by:
 - a) conducting tours
 - b) organizing special events and other promotions
 - c) planning commercial activities in keeping with the special covenants applicable to the building and its grounds
 - d) applying for local, state and national grants, donations and other traditional channels of funding.
- 2) Maintain daily operational procedures and provide:
 - a) security
 - b) insurance
 - c) advertising
 - d) staffing

- e) maintenance
 - f) financial reports on a quarterly basis which shall be provided to the Society
 - g) generally accepted commercial procedures
 - h) Notwithstanding anything contained herein to the contrary, no work including maintenance, shall be done which alters the fabric of any structure on the real property without the written concurrence of the Society and provided further that all work when authorized shall be done in accordance with Secretary of Interior Standard for Historic Structures.
- 3) Stabilization procedures for all of the buildings and grounds by:
- a) seeking professional architectural, engineering and contracting help
 - b) funding all material and labor costs
 - c) seeking in-kind and donated labor where ever possible.
- 4) Establishing long term goals for the restoration of the buildings, grounds and gardens.
-
- 8) The Council through the Trust and the Trust itself when formed agrees to work closely with and accept direction from the Montana Historical Society.

The agreement provides that the "Trust shall be formally organized and qualified under all state and federal laws to perform the obligations herein outlined." After the agreement was entered into the Trust was organized as a private nonprofit corporation.

Montana's open meeting statute is coextensive with the constitutional right to know. Both must be considered where there is a question of the right to attend a meeting wherein matters of public interest are allegedly

being discussed. 37 Op. Att'y Gen. No. 170 at 718 (1978).

Article II, section 9 of the Montana Constitution provides:

No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.

Relevant Montana statutes also strongly favor open meetings of governmental bodies. Section 2-3-201, MCA, states that it "is the intent of this part that actions and deliberations of all public agencies shall be conducted openly." Section 2-3-203, MCA, provides:

(1) All meetings of public or governmental bodies, boards, bureaus, commissions, agencies of the state, or any political subdivision of the state or organizations or agencies supported in whole or in part by public funds or expending public funds must be open to the public.

The corporation involved here was not created by or as a governmental body. However, given the circumstances under which it was formed, the nature of the Trust must be examined.

The State of Montana has the power to contract with private parties for the performance of some activities. In this case a state agency, the Historical Society, contracted with two private parties. The Historical Society, according to section 22-3-101, MCA, was created for, among other things, "the acquisition, preservation, and protection of ... historical places ... and the custody, maintenance, and operation of ... historical places." Here the Historical Society contracted with the Trust for the restoration, preservation, and general operation of property which it now owns. The agreement provides that in doing so, the Trust must maintain a working relationship with the Historical Society; the Trust is to accept direction from the Historical Society.

The nature of the contract in this case is unique. The Historical Society arguably has the duty to maintain and preserve property which it owns. It also has the power to contract with private parties for the performance of those activities. But in so doing, it does not lose all power and responsibility with regard to the property. Conversely, the Trust, as a private entity, has not gained all power over the property.

One of the duties stated in the agreement is to conduct tours of the Daly Mansion property. The Trust collects a fee for such tours. According to the agreement, the Trust is also to plan "commercial activities" regarding the property and to apply for grants, donations, and other funding. Finally, it is to keep all funds "generated or received by the Valley Community Arts Council or the Daly Mansion Preservation Trust" and use them for the "perpetuation of the Daly Mansion and related grounds." Thus, in performing duties pursuant to the agreement, the Trust is allowed to keep moneys generated by the promotion, viewing, and enjoyment of state property.

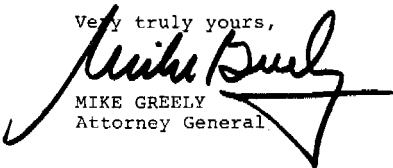
This interplay of private and public functions leads me to the conclusion that the Trust is acting as a public body within the intentment of Article II, section 9 of the Montana Constitution and section 2-3-203, MCA. Although this issue has not arisen in Montana, courts in other states have determined the applicability of open meeting laws based on such factors as the funding, membership, and public or nonpublic nature of an association's functions and activities. See Hunerjager v. Dixie Electric Membership Corporation, 434 So. 2d 590 (La. Ct. App. 1983) (corporation that receives no public funds and that is not involved in a direct governmental function is not a public body within open meeting law definition); Seghers v. Community Advancement, Inc., 357 So. 2d 626 (La. Ct. App. 1978) (corporation organized to perform governmental function, supported by tax-derived funds, is subject to open meeting law); Perlongo v. Iron River Cooperative TV Antenna Corporation, 332 N.W.2d 502 (Mich. Ct. App. 1983) (corporation given a nonexclusive franchise to operate within a city is not subject to open meeting law); Courier-Journal and Louisville Times Company v. University of Louisville Board of Trustees, 596 S.W.2d 374 (Ky. Ct. App. 1979) (university foundation must hold open meetings as long as bylaws require quorum of the members of a public agency).

My conclusion that the meetings of the private corporation involved here are subject to the open meeting law of Montana does not preclude a different conclusion where a corporation is involved in nongovernmental activities. Here the Trust's functions and activities involve state-owned property and therefore its operations are permeated with state concerns. The public's right to know requires that the Trust's meetings be subject to the open meeting law.

THEREFORE, IT IS MY OPINION:

The Daly Mansion Preservation Trust is a public body within the meaning of the open meeting law as it is performing a public function and is receiving funds generated by public property.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 42

OPINION NO. 43

HIGHWAYS - Department of Revenue not a zoning authority which may designate an area commercial for outdoor advertising purposes;

LAND USE - Acreage in a zoning district must be one contiguous 40-acre parcel;

REVENUE, DEPARTMENT OF - No zoning authority to designate an area commercial for outdoor advertising purposes;

MONTANA CODE ANNOTATED - Title 15; sections 15-1-101, 15-1-201(1)(b), 15-1-201(6)(a), 15-8-101, 75-15-101 to 75-15-223, 75-15-103(2), 75-15-111, 76-2-101 to 76-2-412, 76-2-101(3).

HELD: 1. A "commercial" designation given by the Department of Revenue for assessment purposes is not applicable to section 75-15-111, MCA, because the Department of Revenue is not a bona fide zoning authority which may designate an area commercial for outdoor advertising purposes.

2. Section 76-2-101(3), MCA, requires that the acreage in a zoning district be one contiguous 40-acre parcel.

7 December 1987

M. Shaun Donovan
Mineral County Attorney
Mineral County Courthouse
Superior MT 59872

Dear Mr. Donovan:

You have asked my opinion on two questions which I have rephrased as follows:

1. Whether the "commercial" designation given by the Department of Revenue for assessment purposes is applicable to section 75-15-111, MCA, which permits outdoor advertising in areas zoned

commercial by a bona fide state, county, or local zoning authority.

2. Whether section 76-2-101(3), MCA, requires that the acreage in the zoning district be one contiguous 40-acre parcel.

The statute in issue in the first question is section 75-15-111, MCA, which states in pertinent part:

(1) Outdoor advertising may not be erected or maintained which is within 660 feet of the nearest edge of the right-of-way and which is visible from any place on the main-traveled way of an interstate or primary system except:

....

(d) signs, displays, and devices located in areas which are zoned industrial or commercial by a bona fide state, county, or local zoning authority;

(e) signs, displays, and devices located in unzoned commercial or industrial areas, which areas shall be determined from actual land uses and by agreement between the department of highways and the secretary [of the United States Department of Transportation] and defined by rules adopted by the [state highway] commission. The exception granted by this subsection shall not apply to signs, displays, and devices located within an unzoned area in which the commercial or industrial activity used in defining the area has ceased for a period of 9 months. [Emphasis added.]

While the exception defined in subsection (e) might come into play depending upon facts not available in this opinion request, the central issue raised by the first question is whether the Department of Revenue is a bona fide zoning authority. Although the phrase "bona fide zoning authority" is not defined in the code, careful review of the planning and zoning statutes, §§ 76-2-101 to 412, MCA, and Title 15, MCA, pertaining to taxation,

suggests that the Department of Revenue is not a state zoning authority.

The Department of Revenue is charged with the responsibility of supervising "the administration of the assessment and tax laws of the state." §§ 15-1-201(6)(a), 15-8-101, MCA. The Department of Revenue classifies property because it is charged to "adopt rules specifying which types of property within the several classes are considered 'comparable property' as described in 15-1-101." § 15-1-201(1)(b), MCA.

The "commercial" designation assigned by the Department of Revenue is intended to assist in the implementation of the Department's classification system. Section 15-6-101, MCA, is most clear in limiting the applicability of the Department's labels:

- (1) All property in this state is subject to taxation, except as provided otherwise.
- (2) For the purpose of taxation, the taxable property in the state shall be classified in accordance with this part. [Emphasis added.]

In short, the taxation statutes directly state that the assessment classifications are made only for tax purposes. To extend the applicability of the tax assessment scheme to zoning restrictions would be an improper reading of the intent of taxation statutes.

The statutes on landscape management, which include the outdoor advertising laws, also support this conclusion. Section 75-15-103(2), MCA, a definitional statute, states:

"Commercial or industrial zone" means an area which is used or reserved for business, commerce, or trade pursuant to comprehensive local zoning ordinances or regulations or enabling state legislation or state legislation itself, including highway service areas lawfully zoned as highway service zones, where the primary use of the land is or is reserved for commercial and roadside services, other than outdoor advertising, to serve the traveling public. [Emphasis added.]

Nowhere in the sections on landscape management, §§ 75-15-101 to 223, MCA, or anywhere else in the code, is mention made of any zoning authority given to the Department of Revenue.

Therefore, it is my opinion that the Department of Revenue is not a bona fide zoning authority. A "commercial" designation given by the Department is for assessment purposes only, and, hence, the designation cannot be applied to section 75-15-111, MCA.

The second issue raised is whether section 76-2-101(3), MCA, requires that the acreage in the zoning district be one contiguous parcel. The answer is found in a direct reading of the language of the statute:

(1) Whenever the public interest or convenience may require and upon petition of 60% of the freeholders affected thereby, the board of county commissioners is hereby authorized and empowered to order and create a planning and zoning district and to appoint a commission consisting of five members.

(2) No such planning or zoning district may be created in an area which has been zoned by an incorporated city pursuant to 76-2-310 and 76-2-311.

(3) For the purposes of this part, the word "district" shall mean any area that consists of not less than 40 acres. [Emphasis added.]

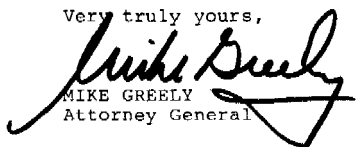
The statute requires that the area in the zoning district consist of not less than 40 acres. The clear conclusion to be drawn from this language is that the 40 acres be contiguous. The suggestion that the district can be cobbled together from separate and detached blocks of property directly contradicts the intention of a zoning scheme, which is to provide for an area's organized development. The planning and zoning chapter, §§ 76-2-101 to 412, MCA, neither contemplates nor sanctions such a palpable evasion of its statutory purposes. See Montana Wildlife Federation v. Sager, 37 St. Rptr. 1897, 1907, 620 P.2d 1189, 1199 (1980) ("[a] statute will not be interpreted to defeat its evident object or purpose; the objects sought to be achieved by the legislation are prime consideration in interpreting

statutes"); State ex rel. Florence-Carlton School District No. 15-6 v. Board of County Commissioners, 180 Mont. 285, 291, 590 p.2d 602, 605 (1978) ("[l]egislation enacted for the promotion of public health, safety, and general welfare, is entitled to 'liberal construction with a view towards the accomplishment of its highly beneficent objectives'."). In light of these parameters, it is my opinion that a direct reading of section 76-2-101(3), MCA, requires that the acreage in a zoning district be one contiguous 40-acre parcel.

THEREFORE, IT IS MY OPINION:

1. A "commercial" designation given by the Department of Revenue for assessment purposes is not applicable to section 75-15-111, MCA, because the Department of Revenue is not a bona fide zoning authority which may designate an area commercial for outdoor advertising purposes.
2. Section 76-2-101(3), MCA, requires that the acreage in a zoning district be one contiguous 40-acre parcel.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 42

OPINION NO. 44

CONFLICT OF INTEREST - No inherent conflict when school board trustee is employed by private school;
PUBLIC OFFICERS - No inherent conflict of interest when school board trustee is employed by private school;
SCHOOL BOARDS - No inherent conflict of interest when trustee is employed by private school;
MONTANA CODE ANNOTATED - Sections 2-2-101, 2-2-103 to 2-2-105, 20-9-204, 45-7-401.

HELD: A member of the board of trustees of a public school district may serve in a position of employment at a private school located within the public school district.

8 December 1987

Robert M. McCarthy
Butte-Silver Bow County Attorney
Butte-Silver Bow County Courthouse
Butte MT 59701

Dear Mr. McCarthy:

You have requested my opinion on the following question:

May a member of the board of trustees of a public school district serve in a position of employment at a private school located within the boundaries of the public school district?

Your question concerns a potential conflict of interest where a school board trustee also works for a private school. Section 20-9-204, MCA, specifically concerns conflicts of interest of trustees and provides in part:

(1) It is unlawful for any trustee to:

(a) have any pecuniary interest, either directly or indirectly, in any contract made by him in his official capacity or by the board of trustees of which he is a member; or

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(b) be employed in any capacity by the school district of which he is trustee.

This statute does not prohibit a school board trustee from being employed by a private school. Thus, I conclude that the situation you have presented does not constitute a conflict of interest under section 20-9-204, MCA.

I also find no violation of the relevant statutory guidelines found in Title 2, chapter 2, part 1, MCA, regarding standards of conduct. These statutes "set forth a code of ethics prohibiting conflict between public duty and private interest as required by the constitution of Montana." § 2-2-101, MCA.

Section 2-2-103, MCA, sets forth a public official's responsibility to act in the public trust and for the benefit of the people of the state. Section 2-2-104, MCA, provides rules of conduct for public officers and lists acts which constitute a breach of fiduciary duty. A public officer breaches his fiduciary duty if he discloses or uses confidential information acquired in the course of his official duties in order to further substantially his personal economic interests. § 2-2-104(1)(a), MCA. A breach also occurs if he accepts a gift which would tend to improperly influence a reasonable person in his position to depart from the faithful discharge of his duties, or which he knows or should know under the circumstances is primarily for the purpose of rewarding him for official action he has taken. § 2-2-104(1)(b), MCA.

Section 2-2-105, MCA, sets forth ethical principles which are intended as guides to conduct and do not constitute violations as such of the public trust. It provides in part:

(2) A public officer or employee should not acquire an interest in any business or undertaking which he has reason to believe may be directly and substantially affected to its economic benefit by official action to be taken by his agency.

(3) A public officer or employee should not, within the months following the voluntary termination of his office or employment,

obtain employment in which he will take direct advantage, unavailable to others, of matters with which he was directly involved during his term or employment. These matters are rules, other than rules of general application, which he actively helped to formulate and applications, claims, or contested cases in the consideration of which he was an active participant.

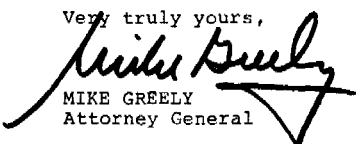
(4) A public officer or employee should not perform an official act directly and substantially affecting a business or other undertaking to its economic detriment when he has a substantial financial interest in a competing firm or undertaking.

There is no direct link between being employed by a private school and acting as a school trustee for a public school district. I conclude that the mere fact that a school trustee is employed by a private school results in no inherent conflict of interest, ethical problem, or breach of fiduciary duty under the pertinent statutes. If a breach of duty by a member of the board of trustees should occur, remedies are provided in the statutes. §§ 2-2-103, 45-7-401, MCA.

THEREFORE, IT IS MY OPINION:

A member of the board of trustees of a public school district may serve in a position of employment at a private school located within the public school district.

Very truly yours,


MIKE GREELY
Attorney General

VOLUME NO. 42

OPINION NO. 45

CHILD ABUSE - Duty of county attorney to represent Department of Family Services in child abuse proceedings;

COUNTY ATTORNEYS - Responsibilities in child abuse, neglect, and dependency proceedings;

FAMILY SERVICES, DEPARTMENT OF - Duty of county attorney to represent department in child abuse, neglect, and dependency proceedings;

STATE AGENCIES - Duty of county attorney to represent Department of Family Services in child abuse, neglect, and dependency proceedings;

MONTANA CODE ANNOTATED - Title 41, chapter 3; sections 7-4-2716, 7-4-2717, 41-3-401, 53-2-303;

OPINIONS OF THE ATTORNEY GENERAL - 41 Op. Att'y Gen. No. 34 (1985).

HELD: It is the duty of the county attorney to represent the Department of Family Services in child abuse, neglect, and dependency proceedings under the provisions of Title 41, chapter 3, MCA.

14 December 1987

Gene Huntington, Director
Department of Family Services
P.O. Box 8005
Helena MT 59604

Dear Mr. Huntington:

You have asked me to clarify the role of the county attorney in child abuse and neglect proceedings following the enactment of House Bill 325 by the 1987 Legislature.

HB 325 (1987 Mont. Laws, ch. 609) reorganized the executive branch of state government by creating the Department of Family Services (the department) and transferring the responsibility for providing child protective services from the Department of Social and Rehabilitation Services and the county welfare

departments to the new department, effective July 1, 1987. Your inquiry arises from the fact that HB 325 did not amend section 53-2-303, MCA, which requires the county attorney to be the legal advisor to the county welfare board and to render legal services to the county welfare department. You ask whether the Legislature's failure to include a reference to the new Department of Family Services in section 53-2-303, MCA, means that the county attorney is not required to represent the department in child abuse and neglect proceedings.

The duties of county attorneys are set forth in sections 7-4-2711 to 2717, MCA. Section 7-4-2716(1), MCA, provides that the county attorney must "represent the state in all matters and proceedings to which it is a party or in which it may be beneficially interested, at all times and in all places within the limits of his county." Section 7-4-2717, MCA, requires the county attorney to perform "such other duties as are prescribed by law."

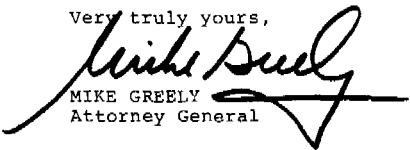
To make effective the transfer of authority in child protection matters to the new department, the Legislature considered and amended numerous statutes, including section 41-3-401, MCA. However, the Legislature retained subsection (1) of section 41-3-401, MCA, which provides that the "county attorney, attorney general, or an attorney hired by the county welfare department or office of human services shall be responsible for filing all petitions alleging abuse, neglect, or dependency." In 1985 the Legislature amended this statute by giving authority to file such petitions to the attorney general and to specially retained attorneys in addition to the county attorney. 1985 Mont. Laws, ch. 659. But, importantly, the Legislature did not relieve the county attorney from his responsibility for filing abuse, neglect, or dependency petitions. I agree with your view that the county attorney remains primarily responsible for filing the petitions and that the attorney general or specially retained attorney would act under section 41-3-401(1), MCA, only when the county attorney does not act because of absence, illness, differences in policy, personal conflicts, pressure of official business, or similar reason. See, e.g., 41 Op. Att'y Gen. No. 34 (1985). This responsibility continues irrespective of the transfer of child protective services to the Department of Family Services under HB 325.

The Legislature has also made clear its intention that county attorneys have a major role in child abuse, neglect, and dependency matters through other statutory provisions. The Department of Family Services is required to notify the county attorney of all reports of suspected child abuse or neglect. § 41-3-201, MCA. The county attorney may convene an interdisciplinary child protective team and is a member of the team. § 41-3-108, MCA. If the evidence indicates violation of the criminal code, the county attorney is responsible for filing appropriate charges against the alleged offender. § 41-3-106, MCA. The county attorney has authority to remove a youth believed to be in immediate or apparent danger and to place the youth in a protective facility. § 41-3-301, MCA. The county attorney may direct law enforcement agencies to conduct investigations and furnish reports concerning the alleged abuse or neglect. § 41-3-401(1), MCA. The county attorney may file a petition for temporary investigative authority and protective services. § 41-3-402, MCA. These statutes lead me to conclude that HB 325 did not change the role of the county attorney in child abuse, neglect, and dependency proceedings. The county attorney must represent the new department in such proceedings.

THEREFORE, IT IS MY OPINION:

It is the duty of the county attorney to represent the Department of Family Services in child abuse, neglect, and dependency proceedings under the provisions of Title 41, chapter 3, MCA.

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 the 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 statutes 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 list 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 June 30, 1987. This table includes those rules adopted during the period June 30, 1987 through September 30, 1987 and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 1987, 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 1987 Montana Administrative Register.

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