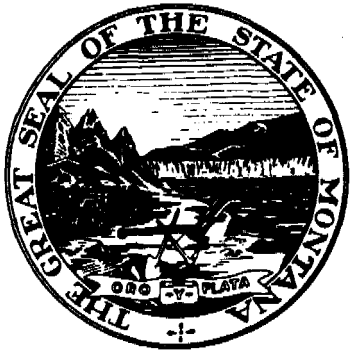
OF MONTANA

MONTANA ADMINISTRATIVE REGISTER

1990 ISSUE NO. 7
APRIL 12, 1990
PAGES 658-764



MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 7

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF COSMETOLOGISTS

In the matter of the proposed general amendment and repeal of rules pertaining to regulation of the practice of cosmetology and adoption of new rules pertaining to booth rentals	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL OF RULES PERTAINING TO THE PRACTICE OF COSMETOLOGY AND ADOPTION OF NEW RULES PERTAINING TO BOOTH RENTALS

TO: All Interested Persons:

1. On May 7, 1990, at 9:00 a.m., a public hearing will be held in the downstairs conference room of the Department of Commerce building, 1424 - 9th Avenue, Helena, Montana, to consider the amendment and adoption of rules pertaining to cosmetology and booth rentals.

2. The Board is proposing to amend ARM 8.14.401, 8.14.601 through 8.14.608, 8.14.801 through 8.14.803, 8.14.805 through 8.14.808, 8.14.812 through 8.14.816, 8.14.901, 8.14.902, 8.14.904, 8.14.909, 8.14.1003, 8.14.1010, 8.14.1101, 8.14.1103 through 8.14.1106, 8.14.1109, 8.14.1201, 8.14.1205, 8.14.1206, 8.14.1215, 8.14.1216; repeal of 8.14.610, 8.14.809 and 8.14.810; and to adopt new rules I through V, pertaining to booth rentals.

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

"8.14.401 GENERAL REQUIREMENTS ~~(1) No license shall be altered or changed in any manner except by the department.~~

(2) will remain the same but be renumbered as (1).

~~(3)~~ (2) All persons practicing cosmetology as defined, must provide a suitable place equipped to give adequate service to patrons, subject to inspection by the inspector or person authorized by the board or by the department with board approval.

(4) will remain the same, but will be renumbered (3)."

Auth: Sec. 37-31-203, MCA; IMP, Sec. 37-31-101, 37-31-302, 37-31-303, 37-31-304, 37-31-311, 37-31-331, MCA

REASON: Deletion of subsection (1) is needed because it addresses a subject already covered by statute. The proposed amendment to subsection (2) will conform the rule to current practices of the board.

"8.14.601 APPLICATION FOR SCHOOL LICENSE (1) The applicant must request the necessary application forms from the department in writing. The applicant shall state the names and addresses of the proposed owners. If a corporation, the names and addresses of the officers and principal stockholders must be included.

(2) A personal survey form will be mailed to the applicant requesting detailed information as to the applicant's education and training, previous experience in

conducting a school, or former teaching employment, ~~evidence of good moral character~~, and the ability to conduct a school.

(3) will remain the same.

(a) At the entrance of each school, a large legible sign with the words "School of Cosmetology" or "School of Manicuring" shall be displayed. Each classroom shall have similar signs with the words "Student Work Only" posted.

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

(b) a detailed floor plan showing compliance with sanitary requirements; ~~of a cosmetology school shall show adequate floor space of at least 1,500 square feet for the first 25 students and 60 square feet for each additional student which may include locker room and office space~~;

~~(i) a detailed floor plan of a manicuring school shall show adequate floor space of a minimum of 450 square feet for the first 10 students and 45 square feet for each additional student, which may include locker room and office space~~;

(c) through (5) will remain the same.

~~(6) The board reserves the right to deny a school license to any applicant who fails to present satisfactory evidence of his or her business and professional integrity and experience~~;"

Auth: Sec. 37-1-134, 37-31-203, MCA; IMP, Sec. 37-31-203, 37-31-204, MCA

REASON: These amendments are necessary because there have been several recent instances in which applicants have claimed that material has not been forwarded by the board or staff. It is felt that written requests will document the matter and do away with the problem.

Good moral character is not a statutory qualification for licensure. Therefore this qualification in subsection (2) could be in excess of statutory authority.

It is felt that the physical and sanitary requirements of schools is out of place in subsection (4) and more logically belongs under ARM 8.14.602.

Subsection (6) is in excess of statutory authority and unconstitutionally vague.

"8.14.602 INSPECTION, SPACE AND EQUIPMENT (1) ~~The location~~ Proposed schools shall be inspected by ~~either~~ a designated inspector and/or one or more members of the board before opening.

~~(2) The board shall approve the floor plan and equipment of the school~~;

(2) (a) Cosmetology schools shall have floor space of at least 1,500 square feet for the first 25 students and 60 square feet for each additional student, which may include locker room and office space.

(b) Manicuring schools shall have floor space of at least 450 square feet for the first 10 students and 45 square feet for each additional student, which may include locker room and office space.

(3) A separate classroom ~~is required and~~ must be provided, and must have sufficient charts, blackboards, chairs and up-to-date books on theory, medical dictionary, current

beauty magazines and a copy of the cosmetology laws and rules. This room may be used as a recitation, demonstration, study room and reference library.

(4) A practice workroom for cosmetology students ~~is required with the following equipment~~ must be provided for each anticipated group of 10 students. Each additional 6 students is considered an anticipated group of 10. Each practice room must be provided with the following:

(a) will remain the same;

(b) 5 3 stationary hair dryers;

(c) through (h) will remain the same;

(i) 5 ~~Gloria-type~~ mannequins;

(j) and (k) will remain the same;

(l) 1 shampoo dispensers per shampoo bowl;

(m) and (n) will remain the same;

(o) separate rest rooms for male and female persons, which shall include ~~lavatories with~~ hot and cold running water ~~and toilet facilities~~;

(p) will remain the same; and

(q) ~~equipment of~~ at least 10 hairbrushes, combs, capes, shears, razors, ~~wefts~~, textbooks and manicuring kits ~~shall be considered necessary to teach a minimum number of students~~.

(5) A practice workroom for manicuring students ~~is required~~ must be provided for each anticipated group of 5 students. Each additional 3 students is considered an anticipated group of 5. Each such practice room must be provided with the following:

(a) 1 cabinet for clean linens;

(b) 1 covered container for soiled linens;

(c) separate rest rooms for male and female persons which shall include hot and cold running water;

(d) the following equipment must be provided for each manicuring student:

~~(a)~~ (i) 5 1 manicuring nippers;

~~(b)~~ (ii) 5 1 nail files;

~~(c)~~ (iii) 5 1 cuticle pushers;

~~(d)~~ (iv) 50 10 emery boards;

~~(e)~~ (v) 5 1 orange wood sticks;

~~(f)~~ (vi) 5 1 manicuring sterilizers;

~~(g)~~ (vii) 5 1 manicure tables;

~~(h)~~ (viii) 5 1 container for accessories;

~~(i) 1 cabinet for clean linens;~~

~~(j)~~ (ix) 5 1 tray for manicuring supplies per student;

~~(k) 1 covered container for soiled linens;~~

~~(l)~~ (x) 1 locker for each student;

~~(m)~~ (xi) 1 waste container for each station;

~~(n) separate rest rooms for male and female persons which shall include lavatories with hot and cold running water and toilet facilities;~~

~~(o)~~ (xii) sufficient equipment, supplies, manicure textbooks and manicuring kits ~~necessary to teach the minimum number of students~~ for each student."

Auth: Sec. 37-31-203, MCA; IMP, Sec. 37-31-311, 37-31-312, MCA

REASON: These amendments are needed to relocate floor space requirements to be with other physical requirements of schools, to remove archaic language from the rules, and to clarify school equipment requirements and bring them into conformity with current school equipment requirements around the nation.

"8.14.603 SCHOOL REQUIREMENTS-OPERATING STANDARDS (1) will remain the same.

~~(2)--Schools-are-prohibited-from-advertising-in-the following-manner:~~

~~(a)--use-of-deceptive-statement-and-false-promises-to induce-student-to-enter-school;~~

(2) Schools may not use deceptive statements or false promises to induce students to enroll.

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

(5) Students shall be furnished with a statements showing the cost ~~that-each-student-is-required-to-pay-for~~ of tuition.

(6) Daily attendance records shall be submitted to the ~~office-of-the~~ department on or before the 15th of each month. These records shall be accurate and reflect attendance.

(7) Records must be signed by the school owner, a qualified instructor or someone designated by the owner.

(8) There shall be a qualified instructor supervising students on the school premises at all times. There may not be more than 25 cosmetology students to each teacher and there may not be more than 20 manicuring students to each teacher. ~~Any-school-found-violating-this-regulation-is-declared-to-be in-violation-of-Montana-law;~~

(9) will remain the same.

(10) Written, practical and oral tests must be given at intervals to determine the ~~status~~ progress of the student.

(11) through (13) will remain the same.

(14) ~~School-owners-may-discipline-students-on-school premises-during-school-hours;--(Any)-violation-of-a-school or-board-rule-may-be-taken-into-consideration;~~ Discipline of any student for any violation of school or board rules should be in writing. Students must be provided with a copy of disciplinary action file signed by both the student and the instructor. A copy of each disciplinary action file must be sent to the board office within 5 days of final decision.

(a) The prior successful completion of a course or hours therein may NOT be "docked" by the schools as a form of disciplinary sanction.

(15) Any student who has not been in attendance for 1 week and has not notified the school will be considered as having withdrawn, and the school must immediately submit ~~to-the-department;~~ a withdrawal notice to the department ~~immediately~~ indicating the last day of attendance.

(a) will remain the same.

~~(b)--In-case-of-illness-or-extreme-emergency-which causes-an-interruption-of-training;-the-student-is-required to-furnish-proof-immediately-of-a-valid-reason-or-nature-for the-interruption-by-filing-a-physician's-statement-or-other~~

~~certified-statement-setting-forth-the-cause-for-missing-such time-of-training;~~

(16) will remain the same.

(17) (a) The student's required training time stops on the last day of attendance.

~~(a)~~ (b) The cosmetology student's required training time resumes ~~continues~~ on the date of the re-enrollment. ~~unless more-than-60-calendar-days-have-lapsed-from-the-last-date-of attendance;--The-manicuring-student's-required-time-continues on-the-date-of-the-re-enrollment-unless-more-than-7-calendar days-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)--Schools-of-cosmetology-and-manicuring-may-have demonstrators-and-lecturers-other-than-their-licensed instructors-appear-for-class-upon-approval-of-the-board; Such-demonstrators-or-lecturers-may-or-may-not-hold-Montana cosmetologist-or-instructor-licenses;-but-must-confine-all demonstrations-and-lectures-to-explanation-of-cosmetics;-hair products;-procedures-of-cosmetology;-manicuring-pedicuring and-manicuring-products;-or-health-and-sanitation;--Such demonstrators-of-lecturers-shall-not-teach-or-give-any personal-assistance-to-students-and-must-use-students-as models-when-demonstrating-in-the-school;~~

(19) will remain the same, but will be renumbered (18).

~~(20)--At-the-entrance-of-each-school;-a-large-legible sign-with-the-words-"School-of-Cosmetology"-or-"School-of Manicuring"-shall-be-displayed;--Each-classroom-shall-have similar-signs-with-the-words-"Student-Work-Only";-posted;~~

~~(21)~~ (19) Credit for hours will be given for field trips only if students are accompanied by an instructor. ~~A-schedule of-all-field-trips-must-be-submitted-to-the-office-of-the department-for-approval;~~

(22) will remain the same, but will be renumbered (20).

~~(23)--No-schools-shall-be-allowed-to-permit-students-to instruct-or-teach-co-students;~~

~~(24)--The-board-shall;-in-its-discretion;-determine whether-beauty-salons;-manuring-salons-and-schools-of cosmetology-and-manicuring-are-operated-by-the-same-person; firm;-co-partnership-or-corporation-as-separate-and-distinct businesses-and-in-arriving-at-such-determination-shall-include such-factors-as;~~

~~(a)--whether-separate-books-of-accounts-are-kept;~~

~~(b)--whether-the-salon-and-school-have-separate-addresses and-telephone-listings;~~

~~(c)--whether-the-salon-and-school-are-physically separated;-and~~

~~(d)--whether-separate-orders-for-supplies-are-made;~~

~~(25)--Any-change-in-ownership-and/or-location-or-a-school of-cosmetology-requires-a-new-application-for-registration-fee to-be-paid;"~~

Auth: Sec. 37-1-131, 37-31-203, 37-31-311, MCA; IMP, Sec. 37-31-301, 37-31-304, 37-31-311, MCA

REASON: These amendments are needed because practical exams give a reliable measure of how the student is

progressing. The board has also received several complaints from students about disciplinary actions taken against them by schools but has been unable to establish, by a preponderance of evidence, what the facts of the disputes were. Documentation would help the board evaluate such complaints.

Subsection 15(b) is repetitious and is addressed by subsection (16).

Subsection 17(b) contains an unnecessary repetition of rules.

Subsection (18) is proposed for deletion because the board now encourages schools to have guest demonstrators and lecturers and because it is now felt that the practice enhances the quality of education.

The last sentence in subsection (19) is being deleted because it is archaic. Most schools no longer take field trips.

Subsections 23, 24 and 25 are felt to be unnecessary in that the subject matter is adequately addressed by statute.

"8.14.604 SUBSTITUTE INSTRUCTORS (1) ~~Instructors with inactive licenses may be engaged by those schools licensed under the provision 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: Sec. 37-1-131, 37-31-203, 37-31-322, MCA; IMP, Sec. 37-31-311, 37-31-322, MCA

REASON: The deletion of material from this rule is needed because the subject is covered by 37-31-322, MCA.

"8.14.605 CURRICULUM - COSMETOLOGY/MANICURING STUDENTS (1) The hours for training courses for cosmetologists shall be distributed as follows:

Manicuring	~~125~~ 200	hours
Shampooing	50	hours
Permanent Waving	~~350~~ 400	hours
Pin curls, finger waving, hair styling, etc.	~~275~~ 150	hours
Facials	75	hours
Scalp treatments	~~150~~ 75	hours
Dyes, tints, and bleaches	~~250~~ 325	hours
Hair cutting and shaping	~~125~~ 225	hours
Ethics, sales, personal grooming	100	hours
Shop management, business methods, state law, rules, appointment book, and shop etiquette	100	hours
Cosmetic chemistry, electricity	50	hours
Balance to be used at the discretion of the instructor	~~350~~ 250	hours

~~(2) All curriculum requirements set by the board shall be strictly complied with until rescinded or revised.~~

(3) will remain the same, but will be renumbered (2).

~~(4)~~ (3) When a student has completed 2,000 hours of training, the school must send ~~their~~ his or her final hours recorded to the department within 2 days.

(a) Students who have completed 2,000 hours of training from a school, but have not passed the state board examination, may, upon approval of the board, be remain in a school of cosmetology for further study and practice, but shall not be permitted to work on the public. ~~This brush-up course must be limited to not more than 4 months from the date of registration.~~

(5) and (6) will remain the same, but will be renumbered (4) and (5).

~~(7)~~ (6) No credit of any type shall be given for time spent ~~in laundering towels or~~ in washing or scrubbing floors, walls, woodwork, ~~toilets~~ rest rooms or windows.

(8) and (9) will remain the same, but will be renumbered (7) and (8)."

Auth: Sec. 37-31-203, MCA; IMP, Sec. 37-31-311, MCA

REASON: The revision of the curriculum for cosmetology students is needed to reflect new procedures in the practice and in teaching techniques.

Subsection (2) is redundant. It is obvious that the board intends that all of its rules should be complied with.

The deletion of the last sentence in subsection (3)(a) is necessary because the board does not have authority to limit the amount of time a person has to take a brush-up course.

The amendment to subsection (6) is necessary to make clear that students should not be required to do cleaning of schools for credit, but that credit should be allowed for duties that would have to be done by a licensee in a salon.

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

(a) cosmetology students must submit proof of ~~an eighth~~ tenth grade graduation (diploma or certification);

~~(i)~~ (b) manicuring students must submit proof copy of high school ~~diploma~~ graduation or equivalency.

~~(b)~~ (c) photostatic copy of birth certificate, or other evidence of birth date;

(c) (d) transfer students must submit a transcript of hours~~, and~~.

~~(d) each student enrolling in a registered school of cosmetology or manicuring shall pay a registration fee which will be made payable to the board of cosmetologists.~~

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

(4) A student enrolling in a school ~~for the first time~~ must pay the registration fee each enrollment.

~~(a) if a student withdraws and re-enrolls in another school, he is required to pay the registration fee again.~~

~~(b) Each time a student withdraws and re-enrolls in the same school, he is required to pay the registration fee again.~~

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

Auth: Sec. 37-1-131, 37-31-203, 37-31-311, MCA; IMP, Sec. 37-31-304, 37-31-311, 37-31-323, MCA

REASON: This amendment is needed to conform the rule to statutory amendments.

The amendment to subsection (1)(c) is needed to allow alternatives to birth certificates for proof of age.

The deletion of subsection (1)(d) removes a provision which is an unnecessary repetition of statutory language and requirements.

The amendment to subsection (4) is needed for purposes of clarification.

Deletion of subsections (4)(a) and (b) is needed because they unnecessarily repeat the intent of subsection (4).

"8.14.607 APPLICATIONS FOR AUTHORITY TO OFFER TEACHER-TRAINING ~~UNITS-COURSES~~ (1) ~~The~~ Applicants for authority to offer teaching training programs must ~~request the~~ make written request for the necessary application forms from the department. The ~~applicant~~ request shall state set forth the names and addresses of the proposed owners or the school. If a the applicant is a corporation, the names and addresses of the officers and principal stockholders must be included.

(a) Upon receipt of a written request, a teacher-training ~~unit~~ course application form will be mailed to the applicant.

(2) The application shall ~~show~~ include the name and address of the school of cosmetology proposing to offer teacher-training programs or courses, the identity of all licenses and/or including registration certificate numbers of the school, owners, all instructors, their names, addresses and their license numbers, Aa detailed floor plan of the teacher-training station, and a list of school equipment, visual aids and textbooks ~~shall be provided~~.

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

Auth: Sec. 37-31-203, MCA; IMP, Sec. 37-31-305, MCA

REASON: These amendments are needed for purposes of clarification.

"8.14.608 INSTRUCTOR REQUIREMENTS - TEACHER-TRAINING ~~UNITS~~ PROGRAMS (1) Each school, approved by the board as to offer a teacher-training ~~unit~~ program must ~~furnish proof to the board that~~ have at least 1 full-time active instructor who holds a current 4-C certificate issued by the Montana state department of public instruction.

(a) In the alternative Aat least 1 full-time active instructor shall have on filed with the department a ~~plan of intent for completion of a~~ program in adult education related to the curriculum of the teacher-training ~~units or must~~ program or have satisfactorily completed such a program.

(i) will remain the same.

(ii) ~~During the course of the plan~~ The instructor shall annually submit to the department proof of completion of such classes described in the plan.

(b) In the event any instructor has completeds 1 or more years of education in any one of the ~~units~~ programs of the Montana university system or any other duly accredited institution of higher learning, the board shall accept this proof of education in lieu of ~~this requirement~~ the alternate plan.

(2) All instructors in the approved school must wear an insignia or badge indicating that they are an instructors for

the teacher-training ~~unit~~ program. Cadet teachers must wear a badges or insignia indicating that they are cadet teachers.

(3) Cadet teachers must be under the direct supervision of a full time licensed instructor ~~during~~ while practice teaching and ~~will~~ shall not be allowed to work on the public during their practice teacher-training.

(4) Schools may, with prior approval of the board, establish a courses of instruction whereby enrolled cadet teachers may earn hours and credits for subjects in the curriculum for teacher training by studying in the Montana university system, community colleges or adult education classes taught in high schools.

~~(5)--All-teacher-training-units-in-schools-shall-follow all-rules-of-the-schools.~~

~~(6)~~ (5) All cadet teachers must register with the department, ~~naming-the-teacher-training-unit~~ and identify the schools in which they are enrolling, and Nno credit for time will be allowed until the office of the department has received ~~his-or-her~~ the enrollment ~~application~~ notice.

~~(7)~~ (6) Daily records of all subjects taught and practiced by the cadet teacher shall be kept and such records shall be signed by the cadet teacher and the instructor ~~then submitted-to-the-office-of-the-department-prior-to-the-10th-of each-month.~~ These records are to be maintained by the school on the school's premises, until the applicant has become a licensed instructor.

~~(8)~~ (7) Upon completion of 650 hours of teacher-training, cadet teachers must apply for and take the first available instructor examination."

Auth: Sec. 37-31-203, MCA; IMP, Sec. 37-31-305, MCA

REASON: Deletion of subsection (5) is necessary because it is redundant. All licensees are obliged by law to comply with rules of the board. It is incumbent upon schools to enforce their own rules.

Other amendments are needed to delete archaic language, to clarify the rule, and to reduce paper work for the board and the schools.

"8.14.801 APPLICATION FOR INSTRUCTOR'S LICENSE

(1) Applications ~~for~~ to take the examination for an instructor's license must be received at least 20 days prior to the examination date and will not be accepted unless accompanied with proper fees and credentials the board may require.

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

(4) Applicants ~~may-not-appear-for~~ will not be given the instructor examination unless they have been notified to appear for examination.

(5) and (5)(a) will remain the same.

(b) ~~The-a~~Applicants must pass the written examination before ~~a-date-for~~ the practical examination will be scheduled administered.

~~(c)--The-written-examination-may-include-questions-on general-intelligence,-educational-alertness,-principles-of teaching-techniques-and-other-subjects-the-board-may-require.~~

~~(d)~~ (c) The practical examination will be given three times a year at a time~~s~~ and place~~s~~ specified by the board ~~when at least 5 applicants~~ to applicants who have ~~successfully~~ passed the written examination. ~~unless there are less than 5 applicants who have passed and there has not been a practical examination during the year.~~

(e) will remain the same, but will be renumbered (d).

(6) Instructor licenses will not be issued ~~unless the~~ except to applicants who achieves a grade of at least ~~75%~~ 85% on the written and at least 85% on the practical examination.

(7) will remain the same.

(8) Applicants will be notified of their grade ~~only of "Pass" or "Fail"~~ by mail by the board office.

(9) Applicants who have taken the examination and failed any part thereof, must notify the board office ~~of the department~~ of their desire to be re-examined at least 20 days before the next examination and pay the necessary examination fee.

(10) will remain the same."

Auth: Sec. 37-31-203, MCA; IMP, Sec. 37-31-301, 37-31-302, 37-31-303, 37-31-305, 37-31-308, MCA

REASON: The proposed deletion of subsection (5)(c) is needed because the subjects referred to in the subsection are not necessarily job-related and because the national written examination is now being administered.

Amendments to subsection (5)(c) are needed for the convenience of applicants. There is no longer any valid reason for administering the test to any particular number of applicants.

The amendment to subsection (6) is needed to raise the pass-fail point on written instructor examinations, to upgrade the qualifications of instructors and assure a higher level of competence of instructors.

The amendment to subsection (8) is needed to provide better information to applicants about their examination results.

Amendments to subsection (9) are needed to delete archaic language and clarify the rule.

"8.14.802 ~~EXAMINERS~~ LICENSE EXAMINATIONS

~~(1) 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 section 37-1-101(4), MCA.~~

~~(2) All examiners under the board shall have had at least 3 years practical experience, shall be a licensed cosmetologist of this state and shall not be connected with any school of cosmetology.~~

~~(3) Each applicant shall be examined as to his or her qualifications to be licensed as a cosmetologist.~~

~~(4) The examinations shall not be confined to any specified method or system and shall consist of written and oral questions and demonstrative tests.~~

(5) will remain the same, but will be renumbered (1).

(a) Practical examinations for manicurists shall consist of actual demonstrations in nail care of the hands ~~and feet~~ and the application and maintenance of artificial nails.

~~(6)~~ (2) Written examinations shall cover include a national exam covering each of the branches of cosmetology or manicuring and cosmetology law and rules ~~taught in this state~~.

~~(7)~~ (3) The board may, from time to time, ~~add additional subjects and practical tests~~ modify the written and practical exam.

~~(8)~~ (4) Applicants must appear for examination in clean ~~light colored~~ apparel and have with them all equipment necessary for performing the practical examination.

~~(9)~~ (5) Any applicants who have taken failed any part of the examination and ~~failed any part thereof~~ wish to retake the examination, must notify the office of the department of their desire to be re-examined at least 20 days before the next examination and pay the required re-examination fee.

~~(10) Any manicurist applicant, failing twice to pass the examination for a license to practice must take 35 hours of additional training at a registered school of manicuring approved by the board.~~

~~(11)~~ (6) In order to pass the examination given by the board to practice cosmetology or manicuring an applicant must obtain a grade of not less than ~~75%~~ 85% "overall" or "in each part" on the practical exam and not less than ~~75%~~ 85% on the written theory.

~~(12)~~ (7) Applicants will be notified of their examination results ~~grade they receive and whether they "Pass or "Fail"~~. Upon ~~receipt of a notarized letter~~ request unsuccessful applicants will be ~~notified~~ advised of those practical areas in which they were found deficient. Appointment must be made with the board office to review examinations.

(13) will remain the same, but will be renumbered (8)."

Auth: Sec. 37-1-131, 37-31-203, MCA; IMP, Sec. 37-31-303, 37-31-307, 37-31-308, 37-31-321, MCA

REASON: Deletion of subsection (1) is needed to avoid a conflict with statutory amendments.

Deletion of subsection (2) is needed to avoid a conflict with legislative amendments and avoid a possible extension of legislative authority.

Deletion of subsections (3) and (4) is needed because they are archaic and redundant.

The proposed amendment to subsection (5)(a) is necessary because current examination formats do not cover nail care of the feet.

Deletion of subsection (10) is necessary because the requirement of additional training is in excess of legislative authority.

The amendment of the pass/fail grade on license examinations in subsection (6) is necessary to assure a higher level of competence of licensees.

Proposed amendments to subsection (7) are needed to allow license candidates to better understand their areas of deficiency or weakness.

"8.14.803 ~~QUALIFICATIONS~~ APPLICATIONS FOR EXAMINATION - TEMPORARY LICENSES ~~--MONTANA STUDENTS (1)--Cosmetology students:~~

~~(a)--To be eligible to take the examination, the applicant must be 18 years of age, a graduate of the eighth grade and be of good moral character.~~

~~(b)--Applicants must have completed a continuous course of theoretical study and actual practice of at least 2,000 hours, be in good standing and have received a diploma from a registered school of cosmetology.~~

~~(c)~~ (1) With respect to cosmetology students Nno application for examination will be accepted unless accompanied by the proper fees, credentials, ~~final examination grades received in the school~~ the hours record showing that the 2,000 hours have been completed and records showing that the student has been enrolled for at least 10 months.

~~(d)--Temporary licenses must be returned to the office of the department immediately if the applicant is unable to take the examination and are not renewable.~~

~~(e)--No temporary licenses to practice as an operator shall be issued to any person who has taken the examination and failed to pass shall be issued to any person who has taken the examination and failed to pass.~~

~~(2)--Manicuring students:~~

~~(a)--To be eligible to take the examination, the applicant must be 18 years of age, a graduate of high school or equivalent and must be of good moral character.~~

~~(b)--Applicants must have completed a continuous course of theoretical study and actual practice of 350 hours, be in good standing and have received a diploma from a registered school of manicuring.~~

~~(c)~~ (2) With respect to manicuring students, Nno application for examination will be accepted unless accompanied by the proper fees, credentials, ~~final examination grades received in the school~~ the hours record showing that 350 hours have been completed and records showing that the student has been enrolled for at least 9 weeks.

~~(d)--No temporary license shall be issued to manicurists.~~

(3) All applications must be received by the department at least ~~25~~ 20 days prior to the examination date and incomplete applications will be returned to the applicant.

~~(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) Applications received after the closing date for registration will be held until the following examination.

(5) Applicants may not appear for examination unless they have been notified.

~~(6)--Subsections (1)(a) and (2)(a) are essentially repeats of statutory language placed here for the convenience of the user.--Subsections (2)(b), (c), (3)(b) and (c) are amplification of section 37-31-304, MCA.~~ Temporary licenses must be returned to the office of the department immediately if the applicant is unable to take the examination."

Auth: Sec. 37-3-131, 37-31-203, MCA; IMP, Sec. 37-31-304, 37-31-307, 37-31-311, MCA

REASON: The proposed deletion of former subsections (1)(a) and (b) is needed to remove unnecessary repetition of statutory language.

The amendment to former subsection (1)(c) is needed because it is now felt that exact examination grades provided by schools are irrelevant to administration of the program, as long as the student completes the course of study.

Subsection (2)(a) and (b) are proposed for deletion as they unnecessarily repeat statutory language.

It is necessary to delete subsection (2)(d) to conform to statutory amendments.

The board proposes to transfer subsections (1)(d) and (e) to the end of this rule in the interests of clarity.

The balance of the amendments are needed for clarification purposes and to delete archaic and redundant language.

"8.14.805 APPLICATION - OUT-OF-STATE COSMETOLOGISTS/MANICURISTS (1) Cosmetologists:

(a) To qualify for a license by examination, an out-of-state cosmetologist must submit an application supplied by the department, birth certificate, proof of completing the ~~eighth-grade~~ two years of high school, or the equivalent of a high school diploma recognized by the superintendent of public instruction, current out-of-state license and a board transcript. The applicant will be credited for the number of hours currently required in that state or the number of hours in the transcript.

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

Auth: Sec. 37-1-131, 37-31-203, MCA; IMP, Sec. 37-31-303, 37-31-304, 37-31-306, 37-31-307, 37-31-308, MCA

REASON: The amendment to subsection (1)(a) is being proposed to conform the rules to current statutory amendments.

"8.14.806 ~~LICENSEBURE WITHOUT EXAMINATION RE@*PR0@I*Y~~

(1) will remain the same.

(a) An ~~operator~~ applicant who submits proof of ~~with~~ 2,000 hours of training, plus a photostatic copy of ~~their~~ his or her current license, board transcript from the originating state, and application properly completed and notarized, is eligible for a license upon furnishing these credentials plus the proper fees.

(b) will remain the same."

Auth: Sec. 37-1-131, 37-31-203, MCA; IMP, Sec. 37-31-304, 37-31-306, MCA

REASON: These amendments are needed for clarification purposes and to remove archaic language.

"8.14.807 TRANSFER STUDENTS - OUT-OF-STATE - COSMETOLOGISTS/MANICURING (1) through (3) will remain the same.

(4) Cosmetology transfer students from other states completing the necessary hours of training in Montana are eligible to apply for a temporary license, upon graduation.

(5) will remain the same."

Auth: Sec. 37-31-203, MCA; IMP, Sec. 37-31-307, 37-31-311, MCA.

REASON: This amendment is needed to make clear that temporary licenses will be issued only to persons who have satisfactorily completed cosmetology training.

"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 board office ~~of the department~~ and shall be permitted to practice on the public. Hours of credit shall be given. ~~Schools must hold an advanced training license.~~"

Auth: Sec. 37-1-131, 37-31-203, MCA; IMP, Sec. 37-31-203, 37-31-303, 37-31-321, MCA

REASON: This amendment is being proposed because there is no provision for advanced training licenses in the practice act.

"8.14.812 DUPLICATE LICENSES ~~(1) A duplicate license may be issued to replace a lost license upon filing a verified statement by the applicant and each license so issued shall have the word "DUPLICATE" stamped across the face of the license and shall bear the number of the lost license.~~

~~(2)~~ (1) Any licensee may receive a duplicate of his or her license upon payment of a proper fee and verification stating why such a duplicate license is needed."

Auth: Sec. 37-31-203, MCA; IMP, Sec. 37-31-323, MCA

REASON: This amendment is needed to remove repetitious and archaic provisions from the board's rules.

"8.14.813 LAPSED-EXPIRED LICENSE ~~(1) A cosmetologist whose license has lapsed may be enrolled and registered with the office of the department for a 3 month brush up course and may work on the public.~~

~~(a)~~ (1) If a ~~manicurist~~ license has lapsed for a period of up to 3 years, but no longer than 3 years, the license may be renewed upon payment of license fees plus penalty fees for years due.

~~(b)~~ (a) In the event that a ~~manicurist~~ license has lapsed for over 3 years, for any reason, ~~it is required that such a person~~ the licensee must take a course of 60 hours of training in a properly licensed school ~~of cosmetology or manicuring~~ of his or her profession, providing certification thereof, make application, pay proper fees and take and pass the written and practical licensing examinations.

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

Auth: Sec. 37-1-131, 37-31-203, 37-31-322, MCA; IMP, 37-31-322, MCA.

REASON: These amendments are needed for clarification purposes and to remove repetitious language.

"8.14.814 FEES, - INITIAL, RENEWAL, PENALTY AND REFUND FEES (1) through (9) will remain the same.

(10) All salon license fees shall be ~~$25.00~~ $15.00.

(a) All booth rental license fees shall be $15.00.

(11) will remain the same.

(a) Mmanicuring school license fee shall be ~~$100.00~~ $50.00.

(12) and (13) will remain the same.

(14) All manager/operator and school licenses will expire on December 31 of each year. All salon and booth rental licenses will expire on July 1 of each year.

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

(18) When a license, examination, or inspection application, ~~or a license~~, registration or renewal has been withdrawn or denied, the department shall retain the fees.

(19) through (21) will remain the same."

Auth: Sec. 37-1-134, 37-31-203, 37-31-323, MCA; IMP, Sec. 37-31-302, 37-31-303, 37-31-304, 37-31-306, 37-31-307, 37-31-312, 37-31-321, 37-31-322, 37-31-323, 37-32-304, 37-32-305, 37-32-306, MCA

REASON: These amendments are being proposed to reduce fees to levels consistent with program area costs and remove archaic language.

"8.14.815 CONTINUING EDUCATION - INSTRUCTORS (1) ~~The board may approve any advance instructor or teacher training seminar or workshop, sponsored by the national hairdressers and cosmetologists association or affiliated with any college or university, credited by the department of public instruction.~~ In order to obtain continuing education credits, instructors must have prior approval from the board before attending any advance instructor or teacher training seminar or workshop affiliated with any college or university.

(2) will remain the same.

(3) Certified statement, certificate, or affidavit showing dates and hours must be submitted to the board office ~~of the department~~ as proof of attendance only ~~or before~~ on renewal of the instructor license.

(4) will remain the same.

~~(5) An instructor license will be renewed only if the cosmetologist renews a manager operator license.~~"

Auth: Sec. 37-1-131, 37-31-203, MCA; IMP, Sec. 37-31-322, MCA

REASON: This amendment is needed because it is not appropriate for the board to appear to endorse activities of any association.

The proposed deletion of subsection (5) is needed because the act does not tie an instructor's license to a shop license, and doing so is not considered good policy at this time.

"8.14.816 SALONS - COSMETOLOGICAL/MANICURING

~~(1) Definition. A cosmetology or manicurist salon is an establishment or area wherein any branch of cosmetology or manicuring is performed for compensation other than a school~~

~~of-cosmetology-or-manicuring-and-no-other-function-or-service shall-be-performed-other-than-those-described-in-section 37-31-301,-MCA.~~

(a) will remain the same but be renumbered (1).

(2) Salons and booths must be equipped with permanent facilities to give adequate service to patrons and they shall be subject to inspection and acceptance by the state board.

~~(3)--Cosmetology-or-manicuring-salons-either-classified as-residential-or-business-area-salons-must-have-a-separate entrance-closed-by-a-door.~~

~~(4)~~ (3) In order to guarantee adequate service to the public there shall be in every cosmetology salon a minimum of 120 square feet per operator or booth renter and there shall be in every manicuring salon a minimum of 30 square feet plus a supply area, per manicurist or booth renter. The applicant must furnish the board with a blueprint or scale drawing of the floor plan, when filing salon or booth rental application.

(5) will remain the same but be renumbered (4).

(a) All new residential cosmetology or manicuring salons shall have only outside entrances and no open entrances into the residences and shall have their own separate rest rooms.

~~(b)--Salons-having-their-own-facilities-which-shall include-toilet-facilities-that-are-entirely-separate-from-the living-quarters-of-a-permanent-residence.~~

~~(6)~~ (5) Business area salons must be physically separate and apart from any other residential areas or commercial enterprises housed in the same structure, and have their own private entrance, separate utilities and separate rest rooms.

~~(7)~~ (6) A salon or booth rental registration permits the operation of a beauty or manicurist salon or booth rental only in the premises which have been described on the salon or booth rental application required by the department.

~~(8)--Application.~~

~~(a)--All-applications-for-registrations-for-a-beauty-or manicuring-salon-must-be-completed-in-its-entirety,-notarized and-sent-into-the-office-of-the-department.~~

~~(9)~~ (7) All salons and booth rentals must be registered and licensed ~~received-or~~ before ~~any~~ commencing operations ~~may commence.~~

~~(10)~~ (8) Salon licenses are not transferable. Any change in ownership and/or location ~~requires-a~~ must be accompanied by a new application for registration and with a new registration fee ~~to-be-paid.~~

~~(11)~~ (9) Every ~~beauty~~ cosmetology salon ~~is-required-to~~ must have at least 1 licensed cosmetologist in attendance at all times that it is open for business.

~~(b)~~ (a) Every manicuring salon ~~is-required-to~~ must have at least 1 licensed manicurist in attendance at all times that it is open for business.

~~(12)--House-to-house-calls-are-prohibited-except-in-cases of-emergency-and-in-such-cases-the-operator-shall-be-sent-on calls-from-a-licensed-salon.~~

~~(13)~~ will remain the same but be renumbered (10).

~~(14)~~ (11) Salon and booth rental ~~registration and~~ licenses for personnel must be displayed in a conspicuous place in the salon."

Auth: Sec. 37-31-203, MCA; IMP, Sec. 37-31-301, 37-31-302, 37-31-312, MCA

REASON: It is necessary to delete subsection (1) because "cosmetological establishment" is now defined by statute.

Deletion of subsection (3) is needed because it is repetitious.

The amendment to subsection (5)(b) is needed as a style and drafting change.

Deletion of subsection (8) is needed because it is repetitious and redundant.

Deletion of subsection (12) is needed because it is too restrictive.

Other amendments to this rule are needed to remove archaic language.

"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 involved in the immediate supervision and control of the work of the school. There may not be more than 10 students per electrology teacher.

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

Auth: Sec. 37-1-131, 37-32-201, 37-32-304, 37-32-306, MCA; IMP, Sec. 37-32-302, 37-32-304, MCA.

REASON: The amendment is needed for the protection of students by assuring that a licensed teacher will at all times be in charge of their coursework.

"8.14.902 SCHOOL REQUIREMENTS (1) and (2) will remain the same.

(3) Written ~~and oral~~ tests must be given at intervals to determine the ~~status~~ progress of the student.

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

Auth: Sec. 37-32-201, 37-32-304, 37-32-306, MCA; IMP, Sec. 37-32-302, 37-32-304, MCA.

REASON: This proposed amendment reflects that fact that oral examinations are no longer being administered by electrology schools.

"8.14.904 ~~INSTRUCTOR REQUIREMENTS~~ QUALIFICATIONS (1) through (3) will remain the same."

Auth: Sec. 37-32-201, MCA; IMP, Sec. 37-32-302, MCA

"8.14.909 EXAMINERS - STUDENT EXAMINATIONS

(1) Examinations for licenses to practice electrology shall be administered by the department with approval of the board, with dates and locations established by the board and by examiners appointed by the board.

(2) will remain the same.

(3) to be eligible to take the examination, the applicants must be present evidence that they are 18 years of ~~age, a graduate of high school or equivalent and be of~~

~~good-moral-character-are-of-good-moral-character~~ and have graduated from high school or have the equivalent education as recognized by the superintendent of public instruction.

(4) will remain the same.

(5) No application for examination will be accepted unless accompanied with the proper fees, credentials and ~~final examination-grades-received-in-the-school~~ the final hours record of the electrology school 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) through (b) will remain the same.

(c) applications are not considered complete until all information and fees have been received by the board office.

(6) Applications not completed within 90 days will be considered withdrawn and new applications and fees will be required of applicants who again decide that they want to take the examination.

~~(6)~~ (7) An applicant must appear for examination in clean ~~light-colored~~ clothing and/or a lab coat, plus all equipment necessary for performing the practical examination.

(7) and (8) will remain the same, but will be renumbered (8) and (9).

(10) Applicants failing any portion of the written or practical examination will be notified of those their areas ~~causing-their-failure~~ of deficiency. Upon appointment, applicants may review their examinations.

~~(10)--Upon-written-request,-filed-with-the-board-not more-than-90-days-after-notice-of-the-result-has-been-mailed, an-applicant-who-has-failed-the-examination-may-inspect-his written-examination-papers-in-the-office-of-the-department,-at a-time-designated-by-the-board.~~

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

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

(13) through (15) will remain the same, but will be renumbered (12) through (14)."

Auth: Sec. 37-31-131, 37-32-201, 37-32-302, MCA; IMP, Sec. 37-32-302, MCA

REASON: Amendment of subsections (1) and (3) are needed to harmonize the board's examination practices for electrologists with those for cosmetologists.

Amendment of subsection (5) is needed to remove repetitious language from the rule and to reduce paper work for the schools and the board.

Amendment of subsection (5)(a) and (6) are needed to assure completeness of applications before licensing exams

are administered and to clarify how late and incomplete examinations will be dealt with. They are transposed from rule 8.14.1010(1).

Amendment to subsection (7) is needed because it is no longer necessary or constructive to limit the choice of clothing for the examination.

Amendments to subsection (9) (now (10)) and deletion of subsection (10) are needed to remove archaic language and repetitious provisions.

Deletion of subsection (12) is needed because it may be an improper extension of legislative authority.

"8.14.1003 EXAMINATION (1) Examinations for a license to practice electrology will be held three times a year ~~during the months of September, January and May~~ at a times and places specified by the board.

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

Auth: Sec. 37-1-131, 37-32-201, 37-32-302, MCA; IMP, Sec. 37-32-302, MCA

REASON: Amendment to this rule is needed to give the board more flexibility in testing new applicants for licensure. This will be a convenience to applicants and the board.

"8.14.1010 ~~FEES,~~ - INITIAL, RENEWAL, PENALTY AND REFUNDS (1) will remain the same.

~~(a) Applications are not considered complete until all information, including fees, have 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.~~

(c) and (d) will remain the same, but will be renumbered (a) and (b).

~~(e)~~ (c) Reciprocal license processing fee shall be $100.00 plus ~~$25.00~~ $10.00 license fee.

~~(f)~~ (d) Duplicate license fee shall be ~~$6.00~~ $5.00.

(g) and (h) will remain the same, but will be renumbered (e) and (f).

(2) will remain the same.

(a) Electrolysis operator license fee shall be ~~$25.00~~ $10.00.

(b) Electrology salon license fee shall be ~~$25.00~~ $15.00. Electrology salon inspection fee is $25.00.

(c) Electrolysis instructor license fee shall be ~~$25.00~~ $15.00.

(d) Electrology school license fee shall be ~~$100.00~~ $50.00.

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

Auth: Sec. 37-1-134, 37-32-201, MCA; IMP, Sec. 37-1-134, 37-32-304, 37-32-305, MCA

REASON: Fee reductions are needed to make fees commensurate with program area costs.

The transfer of substantive provisions dealing with application deadlines to the substantive rule dealing with

examinations is needed for purposes of clarification. See proposed amendments to 8.14.909.

"8.14.1101 FLOORS (1) will remain the same.

(2) Acceptable floor covering shall be composed of a material which is capable of being maintained in a sanitary condition. The floors in the ~~toilet~~ rest room area shall be of non-absorbent material."

Auth: Sec. 37-32-201, MCA; IMP, Sec. 37-32-201, 37-32-304, MCA

REASON: This amendment is needed to replace archaic language with the modern vernacular.

"8.14.1103 LIGHTING (1) All work rooms shall be ~~adequately~~ lighted with at least 20 foot candles of illumination.

(2) All ~~toilet~~ rest rooms shall be adequately lighted with 10 foot candles.

(3) will remain the same."

Auth: Sec. 37-32-201, MCA; IMP, Sec. 37-32-201, 37-32-304, MCA

REASON: This amendment is needed for clarification. The existing language is vague.

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

(2) will remain the same.

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

(4) will remain the same.

(5) No ~~toilet~~ rest room shall be used for storage."

Auth: Sec. 37-1-131, 37-32-201, MCA; IMP, Sec. 37-32-201, 37-32-304, 37-32-306, MCA

REASON: These amendments are needed to harmonize the language in sanitary standards for electrology salons with the language in sanitary standards for beauty salons and cosmetology schools.

"8.14.1105 HANDWASHING FACILITIES (1) Each salon shall provide adequate handwashing facilities, including hot and cold running water, located within and adjacent to the ~~toilet~~ rest room or rooms and in the work area.

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

Auth: Sec. 37-1-131, 37-32-201, 37-32-306, MCA; IMP, Sec. 37-32-201, 37-32-304, 37-32-306, MCA

REASON: These amendments are needed to harmonize the language in sanitary standards for electrology salons with the language in sanitary standards for beauty salons and cosmetology schools.

"8.14.1106 CONSTRUCTION, CLEANING AND SANITIZING TOOLS AND EQUIPMENT (1) through (6)(b) will remain the same.

~~(c)--glass-bead-sterilizer,-450F,-10-seconds;~~
~~(d)--quaternary-ammonium-compound,-2-to-3-minutes;~~
(7) through (11) will remain the same.
~~(12)--styptic-pencils-and-lump-alum-are-prohibited.~~
(13) and (14) will remain the same, but will be renumbered (12) and (13)."

Auth: Sec. 37-1-131, 37-32-201, 37-32-203, MCA; IMP, Sec. 37-32-201, 37-32-304, 37-34-306, MCA

REASON: Deletion of subsections (6)(c)(d) and (12) is needed because these provisions are no longer applicable to the practice of electrology.

"8.14.1109 PREMISES (1) through (4) will remain the same.

(5) Soiled linens, towels and ~~aprons~~ lab coats shall be kept in a suitable hamper provided for that purpose.

(6) and (7) will remain the same."

Auth: Sec. 37-1-131, 37-32-201, 37-32-206, MCA; IMP, Sec. 37-32-201, 37-32-304, 37-32-306, MCA

REASON: This proposed amendment is needed to reflect attire currently being worn in the field.

"8.14.1201 FLOORS (1) Floors in salons, booth rentals, and schools shall be constructed to be smooth, sound, easily cleanable and kept in good repair.

(2) through (3)(a) will remain the same."

Auth: Sec. 37-1-131, 37-31-203, 37-31-204, MCA; IMP, Sec. 37-31-204, 37-31-331, MCA

REASON: This proposed amendment is needed to expand the scope of the rule to booth rentals which were first recognized by the legislature in 1989.

"8.14.1205 VENTILATION (1) All work rooms and ~~toilet~~ rest rooms shall be well ventilated.

(2) ~~Toilet-and-work-rooms-will-by-properly-vented-when equipped-with-easily-opened-windows-to-the-outside-air-or with-an-effective-air-duct-to-the-outside.~~ All manicuring and artificial nail salons must have mechanical exhaust systems. All cosmetology salons doing artificial nails must have mechanical exhaust systems."

Auth: Sec. 37-31-203, MCA; IMP, Sec. 37-31-204, 37-31-331, MCA

REASON: This amendment is needed because the development of new chemicals for artificial nails has created health hazards requiring ventilation capability beyond simply opening windows.

"8.14.1206 REST ROOM FACILITIES (1) Every beauty salon or school shall provide adequate rest room facilities for its employees and patrons in a convenient location, with a self-closing door. The door is to remain closed.

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

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

Auth: Sec. 37-31-131, 37-31-203, 37-31-204, MCA; IMP, Sec. 37-31-204, 37-31-331, MCA

REASON: Amendment of this rule is needed to provide a clear sanitary standard while leaving it to the licensee to use its own means for meeting the standard.

"8.12.1215 PERSONAL HYGIENE OF PERSONNEL (1) All persons working in schools and beauty salons shall keep their hands and fingernails clean, and wear clean, ~~light-colored clothing~~ professional attire. Shoes and socks/nylons shall be worn at all times.

(2) will remain the same."

Auth: Sec. 37-1-131, 37-31-203, 37-31-204, MCA; IMP, Sec. 37-31-204, 37-31-311, MCA

REASON: These amendments are needed so that the rule applies to all professions, and because the color of clothing is no longer considered to be a significant factor in delivery of service.

4. The rules being proposed for repeal are as follows:

"8.14.610 BOND REQUIREMENTS - TEACHER-TRAINING UNITS Full text of the rule is located at page 8-417, Administrative Rules of Montana. The Board is proposing to repeal this rule because it does not have statutory authority to require bonds from schools which offer teacher-training programs."

Auth: Sec. 37-31-203, MCA; IMP, Sec. 37-31-305, 37-31-311, MCA

"8.14.809 ADVANCE TRAINING Full text of the rule is located at page 8-432, Administrative Rules of Montana. The Board is proposing to repeal the rule because there is no provision for advanced training licenses in the practice act, and requiring them may be an unlawful extension of authority."

Auth: Sec. 37-31-203, MCA; IMP, Sec. 37-31-303, 37-31-311, MCA

"8.14.810 ITINERANT COSMETOLOGISTS Full text of the rule is located at page 8-433, Administrative Rules of Montana. The Board is proposing to repeal the rule because it is no longer consistent with conditions and practices in the profession. Furthermore, the board now wishes to encourage and develop specialized training in the profession. Repeal of this rule is consistent with that philosophy."

Auth: Sec. 37-1-131, 37-31-203, MCA; IMP, Sec. 37-1-131, 37-31-101, 37-31-203, MCA

5. The proposed new rules will read as follows:

"I BOOTH RENTAL LICENSES (1) There will be two categories of booth rental licenses:

(a) Primary licenses will be issued to qualified salon owners.

(b) Secondary licenses will be issued to booth tenants. New secondary licenses must be obtained for each location a secondary booth rental licensee works in. Booth rental licenses are not transferrable."

Auth: Sec. 37-1-131, 37-31-203, MCA; IMP, Sec. 37-31-203, 37-31-302, MCA

"II RELATIONSHIP BETWEEN SALON OWNERS AND BOOTH TENANTS (1) The relationship between the salon owner (primary license) and the booth tenant (secondary license) must conform to the provisions of section 39-51-204(1)(1), MCA."

Auth: Sec. 37-1-131; 37-31-203, MCA; IMP, Sec. 37-31-101, 37-31-203, 37-31-302, MCA

"III SECONDARY BOOTH LICENSE APPLICATION SUPPLEMENTS (1) Applicants for secondary booth rental licenses must include with their applications correct copies of diagrams of the complete primary salon areas where the booth will be located, with the areas that are being proposed for booth rental shaded in and numbered."

Auth: Sec. 37-1-131, 37-31-203, MCA; IMP, Sec. 37-31-203, 37-31-302, MCA

"IV RESTRICTIONS OF TEMPORARY LICENSEES (1) Holders of temporary manager/operator licenses cannot have secondary booth rental licenses."

Auth: Sec. 37-1-131, 37-31-203, MCA; IMP, Sec. 37-31-203, 37-31-302, MCA

"V RESPONSIBILITY OF PRIMARY LICENSEE (1) The salon owner (primary license) is responsible for all conduct and conditions in his or her salon except that contemplated by the booth tenant (secondary licensee) or taking place within the rented booth area.

(a) Toward this purpose the primary licensee must post in a conspicuous place in the salon a diagram or floor plan of his/her entire salon premises showing all booth rental areas therein shaded in and numbered.

Auth: Sec. 37-1-131, 37-31-203, MCA; IMP, Sec. 37-31-203, 37-31-302, MCA

REASON: These rules were mandated by the legislature in Chapter 88 of the Laws of 1989.

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 the Board of Cosmetology, 1424 - 9th Avenue, Helena, Montana, no later than May 10, 1990.

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

BOARD OF COSMETOLOGISTS
MARLENE SORUM, CHAIRMAN

BY: _____
ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, April 2, 1990.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE LOCAL GOVERNMENT ASSISTANCE DIVISION

In the matter of the proposed adoption of a new rule for the administration of the 1990 Federal Community Development Block Grant Program	))))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF A NEW RULE PERTAINING TO THE ADMINISTRATION OF THE 1990 FEDERAL COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM

TO: All Interested Persons:

1. On May 3, 1990, at 1:30, p.m., a public hearing will be held in Room C-209, of the Cogswell Building, Helena, Montana, to consider the adoption by reference of rules governing the administration of the 1990 Federal Community Development Block Grant (CDBG) program.

2. The proposed new rule will read as follows:

"RULE I INCORPORATION BY REFERENCE OF RULES FOR ADMINISTERING THE 1990 CDBG PROGRAM (1) The department of commerce herein adopts and incorporates by this reference the Montana Community Development Block Grant Program 1990 Application Guidelines and the Montana Community Development Block Grant Program, February 1990 Grant Administration Manual published by it as rules for the administration of the 1990 CDBG program.

(2) The rules incorporated by reference in (1) above, relate to the following:

(a) the policies governing the program,
(b) requirements for applicants,
(c) procedures for evaluating applications,
(d) procedures for local project start up,
(e) environmental review of project activities,
(f) procurement of goods and services,
(g) financial management,
(h) protection of civil rights,
(i) fair labor standards,
(j) acquisition of property and relocation of persons displaced thereby,
(k) administrative considerations specific to public facilities, housing rehabilitation and neighborhood revitalization, and economic development projects,
(l) project audits,
(m) public relations, and
(n) project monitoring.

(3) Copies of the regulations adopted by reference in subsection (1) of this rule may be obtained from the Department of Commerce, Local Government Assistance Division, Capitol Station, Helena, Montana 59620."

Auth: Sec. 90-1-103, MCA; IMP, Sec. 90-1-103, MCA

3. It is reasonably necessary to adopt the rule because the federal regulations governing the state's administration of the 1990 CDBG program and section 90-1-103, MCA, require the Department to adopt rules to implement the program.

4. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Local Government Assistance Division, Department of Commerce, Capitol Station, Helena, Montana 59620, no later than May 10, 1990.

5. Richard M. Weddle will preside over and conduct the hearing.

DEPARTMENT OF COMMERCE
LOCAL GOVERNMENT ASSISTANCE
DIVISION

BY: _____
ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, April 2, 1990.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of State Aid Distribution Schedule and proposed adoption of new rules for reporting requirements, notice and opportunity for hearing, hearing in contested cases and after hearing	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF ARM 10.67.101, STATE AID DISTRIBUTION SCHEDULE AND PROPOSED ADOPTION ON NEW RULE I, REPORTING REQUIREMENTS, NEW RULE II, NOTICE AND OPPORTUNITY FOR HEARING, NEW RULE III, HEARING IN CONTESTED CASES AND NEW RULE IV, AFTER HEARING

TO: All Interested Persons

1. On May 7, 1990, at 10:00 A.M., or as soon thereafter as it may be heard, a public hearing will be held in the Large Conference Room, Lewis and Clark Public Library, 120 South Last Chance Gulch, Helena, Montana, in the matter of the amendment of ARM 10.67.101, State Aid Distribution Schedule and proposed adoption of New Rule I, Reporting Requirements, New Rule II, Notice and Opportunity for Hearing, New Rule III, Hearing in Contested Cases and New Rule IV, After Hearing.

2. The rule proposed to be amended and the new rules proposed to be adopted are as follows:

10.67.101 STATE AID DISTRIBUTION SCHEDULE (1) ~~It is the policy of the board of public education that state equalization aid will be distributed on a schedule of five equal payments of 20 percent each on the approximate dates of July 15, and such dates and in such manner that the county treasurers will make funds available to school districts on January 30, February 28, March 30 and May 30 unless the distribution dates fall on a weekend or holiday. If such payment dates fall on a weekend or holiday the funds shall be available on the previous business day. These payments will be made if sufficient funds are available. The distribution of these funds shall be ordered annually at the September meeting of the board of public education.~~ State equalization aid will be distributed pursuant to the provisions of section 20-9-344, MCA. The superintendent of public instruction shall distribute the state equalization aid on the basis of each district's entitlement of the aid as established by the superintendent of public instruction.

(2) The board of public education may not increase or decrease the state equalization aid distribution to any district on account of any difference that may occur during the school fiscal year between budgeted and actual receipts from any other source of school revenue.

(3) The first foundation program payment and guaranteed tax base aid payment must be based on an estimate of 20% of

the entitlement of each district or county and must be distributed by July 15 of the school fiscal year.

(4) Each subsequent monthly payment must be at least 7% of the entitlement of each district or county.

(5) If a district or county receives more state equalization aid than it is entitled to, the county treasurer shall return the overpayment to the state upon the request of the superintendent of public instruction in the manner prescribed by the department of commerce.

AUTH: Sec. 20-2-114, 20-2-121, 20-9-344, 20-9-346 MCA
IMP: Sec. 20-9-344, 20-9-246 MCA

RULE I REPORTING REQUIREMENTS (1) The board of public education has the authority to require any reports it considers necessary.

(2) The board of public education may order the superintendent of public instruction to withhold distribution of state equalization aid or order the county superintendent of schools to withhold county equalization money from a district when the district:

(a) fails to submit reports or budgets as required by statute or by these rules; or

(b) fails to maintain accredited status.

(3) The board of public education shall require the reports or budgets set forth in the following provisions to be submitted to the board in a timely manner:

(a) 20-9-213, MCA;

(b) 10.55.601, ARM.

(4) The board of public education shall require the reports or budgets set forth in the following provisions to be submitted to the superintendent of public instruction in a timely manner:

(a) 20-3-205, MCA;

(b) 20-3-209, MCA;

(c) 20-3-324, MCA;

(d) 20-4-110(3), MCA;

(e) 20-4-402, MCA;

(f) 20-9-211, MCA;

(g) 20-9-212, MCA;

(h) 20-9-213, MCA.

(5) Prior to any proposed order by the board of public education to withhold distribution of state equalization aid or county equalization money, the district is entitled to a contested case hearing before the board of public education as provided in these rules.

(6) School districts shall be notified by the superintendent of public instruction of the dates upon which financial reports and budget statements must be provided to the superintendent. If the superintendent does not receive the reports within 35 days after initial notice to the district, the superintendent shall give written notice of the violation to the board. Upon findings by the board of public education that the district was not able to justify the reason

for not meeting a reporting requirement, the board shall withhold funds pursuant to the following schedule:

(a) If the district has one report which is overdue, the board shall withhold up to 25 percent of the funds to which the district is entitled and shall give the district 90 days to cure the violation. If the violation has not been cured within 90 days, the board shall withhold up to 25 percent of the funds to which the district is entitled until the district cures the violation. At such time as the district cures the violation, the board shall release the withheld funds to the district.

(b) If the district has two reports which are overdue, the board shall withhold up to 50 percent of the funds to which the district is entitled and shall give the district 90 days to cure the violations. If the violation has not been cured within 90 days, the board shall withhold up to 50 percent of the funds to which the district is entitled until the district cures the violations. At such time as the district cures the violation, the board shall release the withheld funds to the district. Where the district has more than one pending violation, the board may release a proportionate amount of any withheld funds for each violation that is cured.

(c) If the district has three or more reports which are overdue, the board shall withhold up to 100 percent of the funds to which the district is entitled and shall give the district 90 days to cure the violation. If the violations have not been cured within 90 days, the board shall withhold 100 percent of the funds to which the district is entitled until the district cures the violation. At such time as the district cures the violations, the board shall release the withheld funds to the district. Where the district has more than one pending violation, the board may release a proportionate amount of any withheld funds for each violation that is cured.

(7) When a school district fails to maintain accreditation, the board of public education shall determine through a contested hearing that a substantial reason exists to withhold funds. The following schedule shall be utilized:

(a) If the district's accreditation has been designated as accreditation with advice status for a second year as defined in section 10.55.605(3), ARM, or for its deviation from accreditation standards, the board shall withhold up to 20 percent of the funds to which the district is entitled and shall give the district 90 days to cure the violation. If the violation is not cured within 90 days, the board shall withhold up to 25 percent of the funds to which the district is entitled until such time as the district cures the violation. At such time as the district cures the violation, the board shall release the withheld funds to the district. Where the district has more than one pending violation, the board may release a proportionate amount of any withheld funds for each violation that is cured.

(b) If the accreditation of a school in the district has been designated as on deficiency status as defined in section 10.55.605(4), ARM, for the first time, the board shall withhold up to 25 percent of the funds to which the district is entitled and shall give the district 90 days to cure the violation. If the violation has not been cured within 90 days, the board shall withhold up to 25 percent of the funds to which the district is entitled until the district cures the violation. At such time as the district cures the violation, the board shall release the withheld funds to the district. Where the district has more than one pending violation, the board may release a proportionate amount of any withheld funds for each violation that is cured.

(c) If the accreditation of a school in the district has been designated as deficiency status as defined in section 10.55.605(4), ARM, for the second consecutive year, the board shall withhold up to 50 percent of the funds to which the district is entitled and shall give the district 90 days to cure the violation. If the violation is not cured within 90 days, the board shall withhold up to 50 percent of the funds to which the district is entitled until the district cures the violation. At such time as the district cures the violation, the board shall release the withheld funds to the district. Where the district has more than one pending violation, the board may release a proportionate amount of any withheld funds for each violation which is cured.

(d) If the accreditation of a school in the district has been designated as deficiency status as defined in section 10.55.605(4), ARM, for the third consecutive year, the board shall withhold up to 100 percent of the funds to which the district is entitled until the district cures the violation and shall give the district 90 days to cure the violation. If the violation is not cured within 90 days, the board shall withhold up to 100 percent of the funds to which the district is entitled until the district cures the violation. At such time as the district cures the violation, the board shall release the withheld funds to the district. Where the district has more than one pending violation, the board may release a proportionate amount of any withheld funds for each violation which is cured.

(e) If the school has a deviation from accreditation standards which is so significant that there exists an imminent peril to public welfare, the board shall withhold up to 100 percent of the funds to which the district is entitled until the district cures the violation. At such time as the district cures the violation, the board shall release any withheld funds to the district.

AUTH: Sec. 20-2-114, 20-2-121, 20-9-344, 20-9-346, MCA
IMP: Sec. 20-9-344, 20-9-246, MCA.

RULE II NOTICE AND OPPORTUNITY FOR HEARING UPON DETERMINATION THAT DISTRICT HAS FAILED TO SUBMIT REPORTS OR BUDGETS (1) On the basis of a preliminary notification that

a district has failed to submit required reports or budgets, the board of public education shall determine whether or not a substantial reason exists to order the superintendent of public instruction to withhold distribution of state equalization aid or to order the county superintendent to withhold county equalization money from a district.

(a) If the board determines that no substantial reason exists to withhold funds, the matter is ended.

(b) If the board determines that there is substantial reason to withhold funds, the board shall provide notice by certified mail of the pending action to the district. Such notice shall include:

(i) a statement of the time, place and nature of the hearing;

(ii) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(iii) a reference to the particular sections of the statutes and the rules involved;

(iv) a statement of the matters asserted;

(v) a designation of who will hear the allegation;

(vi) a provision advising parties of their right to be represented by counsel at the hearing.

(c) The notice shall advise the district that it has the right to contest the proposed action of the board, and that it may do so by appearing at the hearing either through a representative of the school district or through counsel or by requesting the board to consider the matter on the basis of the available information without an appearance by a representative of the district.

(d) The board shall enclose with the notice an election form on which the district shall be asked to indicate whether it intends to appear at the hearing and contest the board's proposed action, contest the board's proposed action without appearing at the hearing, or accept the proposed withholding of funds without contesting it. The notice shall require the district to return the election form within twenty (20) days of the date on which the notice was mailed, and shall inform the district that failure to return the form in a timely manner will result in the withholding of funds by default.

(e) If the district does not return the completed election form within twenty (20) days or elects to accept the proposed withholding of funds without contesting it, the board shall order the equalization funds withheld at its next meeting.

(f) If the district elects to contest the proposed withholding of funds and complies with subsection (1)(d) of this rule, the board shall conduct a hearing.

AUTH: Sec. 20-2-114, 20-2-121, 20-9-344, 20-9-346 MCA
IMP: Sec. 20-9-344, 20-9-246 MCA

RULE III HEARING IN CONTESTED CASES (1) The board shall select one of the following methods for providing a hearing:

(a) a hearing before the board of public education at a

special or regular meeting of the board;

(b) a hearing before board member(s) who will report to the board proposed findings of fact, proposed conclusions of law and a proposed order; or

(c) a hearing before a hearing examiner appointed by the board of public education who will report to the board proposed findings of fact, proposed conclusions of law and a proposed order.

(2) At the time and place set in the notice to the district, the chairperson of the board of public education or designated board member(s) or an appointed hearing examiner shall conduct the hearing in accordance with rules 9 through 21 of the attorney general's model rules for hearing contested cases, as found in the Administrative Rules of Montana.

AUTH: Sec. 20-2-114, 20-2-121, 20-9-344, 20-9-346 MCA
IMP: Sec. 20-9-344, 20-9-246 MCA

RULE IV AFTER HEARING BY MEMBER OF BOARD/HEARING EXAMINER/BOARD OF PUBLIC EDUCATION (1) After hearing by the board of public education, the board adopts findings of fact, conclusions of law and an order either withholding equalization funds or permitting the disbursement of equalization funds to the district. The board shall enter its decision on its minutes and shall serve a copy by certified mail on the party adversely affected and on any other involved party.

AUTH: Sec. 20-2-114, 20-2-121, 20-9-344, 20-9-346 MCA
IMP: Sec. 20-9-344, 20-9-246 MCA.

4. The board is proposing the amendment of ARM 10.67.101 and the proposed adoption of the new rules to comply with the mandates of HB 28 regarding state equalization aid distribution of school funds.

5. Interested persons may present their data, views or arguments either orally or in writing to Alan Nicholson, Chairperson of the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620, no later than May 7, 1990.

6. Alan Nicholson, Chairperson, and Claudette Morton, Executive Secretary to the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana, have been designated to preside over and conduct the hearings.

Alan Nicholson
ALAN NICHOLSON, CHAIRPERSON
BOARD OF PUBLIC EDUCATION

BY: Claudette Morton

Certified to the Secretary of State April 2, 1990.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of Request To Suspend Or Revoke A Teacher Or Special-ist Certificate: Pre-liminary Action	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF ARM 10.57.601, REQUEST TO SUSPEND OR REVOKE A TEACHER OR SPECIALIST CERTIFICATE: PRELIMINARY ACTION

TO: All Interested Persons

1. On May 7, 1990, at 1:00 P.M., or as soon thereafter as it may be heard, a public hearing will be held in the Large Conference Room, Lewis and Clark County Public Library, 120 South Last Chance Gulch, Helena, Montana, in the matter of the proposed amendment of ARM 10.57.601, Request To Suspend Or Revoke A Teacher Or Specialist Certificate: Preliminary Action.

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

10.57.601 REQUEST TO SUSPEND OR REVOKE A TEACHER OR SPECIALIST CERTIFICATE: PRELIMINARY ACTION (1) through (3) remain the same.

(4) "Substantial and material non-performance of the employment contract" referred to in 20-4-110(f), MCA:

(a) shall be defined as:

(i) a resignation by the teacher, specialist or administrator after the individual contract has been signed by the teacher, specialist or administrator.

(ii) the non-attendance of the teacher, specialist, or administrator for five consecutive work days without prior notification to the trustees. Exception: cases in which the teacher, specialist, or administrator was unable to give prior notice due to illness, natural disaster, or other cause beyond the control of the individual.

(b) In determining whether an act or omission constitutes "substantial or material non-performance of the employment contract" which constitutes adequate grounds for suspension or revocation of a teacher's, specialist's, or administrator's certification, the Board shall consider:

(i) whether the substantial and material non-performance caused the school district undue hardship in its attempts to replace the teacher, specialist, or administrator;

(ii) whether the substantial and material non-performance of the teacher, specialist, or administrator jeopardized the health or safety of students or school personnel;

(iii) whether the substantial and material non-performance of the teacher, specialist, or administrator has significantly impaired the school's ability to fulfill its responsibilities to its students;

(iv) whether the substantial and material non-performance threatened the accreditation of the school;

(v) whether the board of trustees has taken disciplinary action, including but not limited to discharge of the teacher, specialist, or administrator, based on the non-performance;

(vi) whether the board of trustees has taken legal action, including but not limited to a breach of contract action against the teacher, specialist, or administrator.

(c) The board of public education shall suspend or revoke the teacher's, specialist's or administrator's certificate only after it finds that:

(i) the substantial and material non-performance of the teacher, specialist, or administrator caused harm to the public which cannot be adequately remedied through the pursuit of a civil breach of contract action or through disciplinary proceedings; or

(ii) the substantial and material non-performance of the teacher, specialist, or administrator directly demonstrates his or her unfitness to teach or unfitness to act as an administrator.

(d) The burden shall be on the board of trustees to prove by a preponderance of the evidence any of the factors set forth in (2) above which are pertinent to a particular case.

(e) "Good cause" is an affirmative defense and the teacher, specialist, or administrator has the burden to prove by a preponderance of the evidence that the substantial and material non-performance was based upon good cause. A substantial and material non-performance based solely on the opportunity for the teacher, specialist or administrator to make a higher salary shall not constitute "good cause."

(f) The board of public education shall act on any request for suspension or revocation of a teacher's, specialist's, or administrator's certificate in an expedient manner. If a determination is made that there has been a substantial and material non-performance of the employment contract which establishes adequate grounds for suspension or revocation of a certificate, the board shall impose that penalty effective immediately.

~~(4)~~ (5) remains the same.

AUTH: Sec. 20-4-102 MCA
IMP: Sec. 20-4-110 MCA

3. The board is proposing this amendment to clarify the definition of "substantial and material non-performance of the employment contract" and to set guidelines to establish a process for recommending suspension of the teaching certificate where substantial and material non- performance of the employment contract is proven.

4. Interested persons may present their data, views or arguments either orally or in writing to Alan Nicholson, Chairperson of the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620, no later than May 7, 1990.

5. Alan Nicholson, Chairperson, and Claudette Morton, Executive Secretary to the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana, have been designated to preside over and conduct the hearings.

Alan N. Nicholson

ALAN NICHOLSON, CHAIRPERSON
BOARD OF PUBLIC EDUCATION

BY: Claudette Morton

Certified to the Secretary of State April 2, 1990.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the proposed repeal of Rule 11.5.605 pertaining to access to department records	)))))	NOTICE OF PROPOSED REPEAL OF RULE 11.5.605 PERTAINING TO ACCESS TO DEPARTMENT RECORDS. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On May 12, 1990, the Department of Family Services proposes to repeal Rule 11.5.605 which pertains to access to department records.

2. The rule as proposed to be repealed is on page 11-223 of the Administrative Rules of Montana.

AUTH: Sec. 41-3-208 MCA.
IMP: Sec. 41-3-205 MCA.

3. Rationale: Section 41-3-205, MCA, provides that case records regarding child abuse and neglect are confidential and may be disseminated only to specific professional people. The intent of this statute is to provide information to individuals who have a need to know the information for treatment purposes. The department proposes to repeal this rule that impacts that statute because the rule unnecessarily restricts the release of any report or evaluation created by someone outside the department, regardless of who the information is being released to, or for what purpose the information is being released. The statute adequately addresses the confidentiality issue regarding child abuse and neglect records. The department will make any other necessary restrictions or limitations regarding the dissemination of records in department policy.

4. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to the Office of Legal Affairs, Department of Family Services, 48 North Last Chance Gulch, P.O. Box 8005, Helena, Montana 59604, no later than May 10, 1990.

5. If a person who is directly affected by the proposed repeal wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request, along with any written comments he has, to the Office of Legal Affairs, Department of Family Services, P.O. Box 8005, Helena, Montana 59604, no later than May 10, 1990.

6. If the agency receives requests for a public hearing

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

Robert L. Mullen

Director, Department of Family Services

Certified to the Secretary of State April 2, 1990.

BEFORE THE DEPARTMENT OF INSTITUTIONS
OF THE STATE OF MONTANA

In the matter of the proposed amendment of Rule 20.7.1101 which sets forth conditions on probation or parole.	) NOTICE OF PROPOSED AMENDMENT) OF Rule 20.7.1101, Conditions) on Probation or Parole)) No Public Hearing Contemplated

TO: ALL INTERESTED PERSONS

1. On June 14, 1990, the Department of Institutions proposes to amend rule 20.7.1101 which sets forth conditions on probation or parole.

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

20.7.1101 CONDITIONS ON PROBATION OR PAROLE ~~(1) Release. The probationer/parolee is directed, when granted his release to supervision, to go directly to his approved program and shall report to his assigned probation/parole officer or other designated person.~~

(2) and (3) remain the same but will be renumbered.

(3)~~(4)~~ Employment and/or program. The probationer/parolee shall seek and maintain employment or maintain a program approved by the board of pardons and the supervising officer ~~probation and parole bureau~~. He shall not change such employment or program without first obtaining ~~written~~ permission from his supervising officer.

(5) Remains the same but will be renumbered.

~~(6) Intoxicants. At the time of his release on supervision, the probationer/parolee will be informed whether or not he may be allowed to drink alcoholic beverages and whether he will be allowed to frequent any place that such items are chiefly for sale.~~

~~(7) Narcotics. The probationer/parolee shall not use, purchase, possess, give, sell or administer any narcotic drug nor any dangerous drug unless prescribed by a physician. The probationer/parolee shall submit to narcotic or drug testing as may be required by the discretion of his supervising officer.~~

(5)~~(8)~~ Weapons. The probationer/parolee shall not own, possess or be in control of any firearm, including black powder, or deadly weapon as so defined by state or federal statute. ~~Further, the Federal Gun Control Act of 1968 (18 U.S.C. App. S 1202 (1)(a)) prohibits any person who is under indictment or who has been convicted of a felony to possess or carry a firearm while engaged in any act or sporting activities such as hunting.~~

(6)~~(9)~~ Financial. The probationer/parolee shall always consult with his supervising officer and shall obtain permission before ~~going into debt, engaging~~ in a business, purchasing real or personal property, or purchasing an automobile.

~~(10) Marital status. The probationer/parolee shall inform his supervising officer prior to any change in his marital status.~~

(7)~~(11)~~ Search ~~a~~ of person or property. The probationer/parolee while on probation or parole if so ordered by the sentencing court, shall submit to a search of his person, automobile, or place of residence by a probation or parole officer, at any time of the day or night, ~~with or~~ without a warrant upon reasonable cause as may be ascertained by a probation/parole officer.

~~(12) Restitution. A probationer/parolee may be required to make restitution in the amount as directed by the sentencing court.~~

(13) remains the same, but will be renumbered.

AUTH: Section 46-23-1011, MCA IMP: Section 46-23-1021, MCA
Section 53-1-203, MCA

3. The changes are actually a rearrangement of the conditions of supervision. Up to this point, all rules applied to everyone under supervision, often for no justifiable reason. The changes will continue some standard conditions, but fewer of them. Some of the former standard conditions will become "special" conditions to be imposed by the discretion of the district courts or the Board of Pardons.

4. Interested parties may submit their data, views, or arguments concerning the proposed amendments in writing to the Legal Unit, Department of Institutions, 1539 11th Avenue, Helena, Montana 59620, no later than May 14, 1990.

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 the Legal Unit, Department of Institutions, 1539 11th Avenue, Helena, Montana 59620, no later than May 14, 1990.

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

will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 121 persons based on 1,100 inmates at Montana State Prison, 52 inmates at Womens Correctional Center and 54 inmates at Swan River Forest Camp.

CURT CHISHOLM, Director
Department of Institutions

Certified to the Secretary of State
April 2nd, 1990.

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

In the Matter of Proposed Amendment of Rule 38.5.2202 and Adoption of a New Rule Regarding Investigation and Reports of Accidents	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT AND ADOPTION OF RULES REGARDING FEDERAL PIPELINE SAFETY REGULATIONS INCLUDING DRUG-TESTING REQUIREMENTS

TO: All Interested Persons

The Notice of Proposed agency action published in the Montana Administrative Register on February 8, 1990 at page 275 is amended as follows because two organizations have requested a public hearing:

1. On May 31, 1990 at 9:00 a.m. a public hearing will be held in the Montana Department of Highways Auditorium, 2701 Prospect Avenue, Helena, Montana, to consider the proposed amendment of Rule 38.5.2202 incorporating by reference the amendments to the Federal Pipeline Safety Regulations, a new Federal regulation requiring drug-testing of certain pipeline employees, and a proposed rule regarding the investigation and reports of intrastate pipeline accidents.

2. The text of the proposed rules may be found in the Notice of Proposed Rulemaking previously published in the MAR 1990 Issue No. 3, at page 275 (MAR NOTICE NO. 38-2-89), and Title 49 Code of Federal Regulations, Parts 191, 192 and 199. They may also be reviewed at the Public Service Commission offices, 2701 Prospect Avenue, Helena, Montana.

3. The issues to be considered at the hearing may include the following:

a. Would any proposed rule violate Article II, Sec. 10 (privacy clause) of the Montana Constitution?

b. Would any proposed rule violate § 39-2-304 of the Montana Code Annotated?

c. Would any proposed rule violate any other constitutional or statutory provision of Montana law?

d. Would Federal law pre-empt state law in this area, with respect to issues a through c above?

e. Would failure of the state to adopt these rules result in the loss of federal funds for state enforcement of the Natural Gas Pipeline Safety Act, in whole or in part?

f. Does the Public Service Commission have the authority and jurisdiction to adopt the proposed rules?

g. Are the U.S. Department of Transportation's regulations which are proposed for adoption by reference (49 C.F.R. Parts 191, 192 and 199) beyond the scope or authority of Article I, § 8 and Article II, §§ 2 and 3 of the U.S. Constitution.

h. As a matter of public policy, is the adoption of the proposed rules in the best interest of the citizens of Montana?

Other issues may also be raised by the presiding officer or the parties participating at the hearing.

4. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Ivan C. Evilsizer, 2701 Prospect Avenue, Helena, Montana 59620-2601 no later than May 20, 1990.

5. A hearing officer will be designated to preside over and conduct the hearing.

6. The authority of the agency to make the proposed rules is based on § 69-3-207(4), MCA, and the rule implements § 69-3-207, MCA.

CLYDE JARVIS, Chairman

CERTIFIED TO THE SECRETARY OF STATE APRIL 2, 1990.

Reviewed By

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.20.438 relating to the Sales Assessment Ratio Study.	NOTICE OF PROPOSED AMENDMENT of ARM 42.20.438 relating to the Sales Assessment Ratio Study.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On May 31, 1990, the Department of Revenue proposes to amend ARM 42.20.438 relating to the designated areas for residential property for the sales assessment ratio study.

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

42.20.438 DESIGNATED AREAS - RESIDENTIAL (1) through (4) remain the same.

(5) Area 2.3:

(a) Great Falls South - Area Legal Description.

(i) Township 20 North, Range 3 East.

(A) All of sections 13, and 24, ~~and 25~~.

(B) That portion of sections 14 and 23 lying east of the Missouri River.

(ii) Township 20 North, Range 4 East.

(A) All of sections 16, 17, 18, and 19 ~~and 30~~.

(b) Great Falls South - Area General Description.

(i) Beginning at 10th Avenue South and 52nd Street then south to southeast corner of section 16, then west to 26th Street and 24th Avenue South, then south to southeast corner of Section 30, then west to southwest corner of section 25, then north to northwest corner of section 25, then west to east bank of the Missouri River, then north along the Missouri River to 10th Avenue South, then east along 10th Avenue South to the point of beginning.

(6) through (47) remain the same.

3. The authority of the Department to amend this rule is found at 15-1-201, MCA and implements 15-7-111, MCA.

4. Amendments to ARM 42.20.438 are proposed to remove sections 25 and 30 from Area 2.3, Great Falls South and include them in Area 2.0 which is the remainder of the county not designated elsewhere in the rule.

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

Cleo Anderson
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620

no later than May 11, 1990.

6. 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 Cleo Anderson at the above address no later than May 11, 1990.

7. If the agency receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the Administrative Code Committee of the Legislature; from a governmental subdivision, or agency; or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 25.

DENIS ADAMS, Director
Department of Revenue

Certified to Secretary of State April 2, 1990

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

In the matter of the amendment of Rule 46.12.2003 pertaining to reimbursement for obstetrical services	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULE 46.12.2003 PERTAINING TO REIMBURSEMENT FOR OBSTETRICAL SERVICES

TO: All Interested Persons

1. On May 4, 1990, at 9:00, 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 Rule 46.12.2003 pertaining to reimbursement for obstetrical services.

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

46.12.2003 PHYSICIAN SERVICES, REIMBURSEMENT/GENERAL REQUIREMENTS AND MODIFIERS (1) The department hereby adopts and incorporates by reference the procedure code report (PCR) as amended through ~~July 1, 1989~~ March 1, 1990. The PCR is published by the Montana department of social and rehabilitation services and lists medicaid-payable physician procedure codes and descriptions as delineated in the CPT4 and/or the Health Care Financing Administration's common procedure coding system (HCPCS), fees assigned to relevant procedures and effective dates of fees assigned. A copy of the PCR may be obtained from the ~~Economic Assistance~~ Medicaid Division, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604.

Subsections (1)(a) through (4) remain the same.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-113 and 53-6-101 MCA

3. The proposed rule change will implement the fee increase authorized by the 1989 legislature for two obstetrical procedures. The fee increases were authorized to enhance the availability of obstetrical care services in rural Montana.

ARM 46.12.2003 incorporates the Physicians Procedure Code Report (PCR), which describes and lists procedure codes for physician services reimbursable by Medicaid. The PRC is developed by the department from the Physicians' Current Procedural Terminology, Fourth Edition (CPT4) and the Health Care Financing Administration's procedure coding system (HCPCS). Revising the PCR and updating the incorporation by reference date will implement the legislative changes.

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 59604-4210, no later than May 11, 1990.

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

6. The HCPCS code updates contained in the March 1, 1990 PCR will be applied retroactively to March 1, 1990. The obstetrical procedure fee increases will be applied retroactively to April 1, 1990.

Julia E. Robinson

Director, Social and Rehabilitation Services

Certified to the Secretary of State April 2, 1990.

BEFORE THE DEPARTMENT OF AGRICULTURE

OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 4.12.1221, 4.12.1224 through 4.12.1230 and the repeal of ARM 4.12.1202, 4.12.1222 and 4.12.1223	)))))	CORRECTED NOTICE OF AN AMENDMENT AND REPEAL OF RULES PERTAINING TO ALFALFA LEAFCUTTING BEES

TO: All Interested Persons:

1. On February 22, 1990 the Department of Agriculture filed a notice of amendment and repeal of the above-stated rules which was published in issue no. 4, at page 378.

2. Subsection 1(e) "and sex ratio", in the original notice was not deleted and should have been. The amendment was shown as follows:

"4.12.1224 OFFICIAL CERTIFICATION PROCEDURES AND FEES

(1) (e) The certification fee shall provide laboratory services for the determination of pathogens, parasites, ~~percent of emergence,~~ predators, nest destroyers, and live larvae count~~,~~ . and sex ratio . Additional laboratory services may be provided upon request based on appropriate fee schedules."

3. The amendment of subsection 1(e) should have appeared as follows:

"4.12.1224 OFFICIAL CERTIFICATION PROCEDURES AND FEES

(1) (e) The certification fee shall provide laboratory services for the determination of pathogens, parasites, ~~percent of emergence,~~ predators, nest destroyers, and live larvae count~~,~~ . ~~and sex ratio .~~ Additional laboratory services may be provided upon request based on appropriate fee schedules."

4. The reason for the deletion was stated in the original notice. Replacement pages are being submitted to the Secretary of State for the March 31, 1990 deadline.

Gil Sorg, Chairman
Alfalfa Leafcutting Bee Committee

Oran Roy Bjornson, Administrator
Plant Industry Division

Certified to the Secretary of State March 29, 1990

BEFORE THE BOARD OF MILK CONTROL
OF THE STATE OF MONTANA

In the matter of amendment of quota rules and the adoption of pooling rules as a method of payment of milk producer prices	)	NOTICE OF AMENDMENT OF RULES 8.86.501 THROUGH 8.86.506 QUOTA RULES
	)	AND THE ADOPTION OF RULES 8.86.511 THROUGH 8.86.515 POOLING RULES
	)	DOCKET #98-89

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

1. On December 21, 1989, the Montana Board of Milk Control published notice of proposed amendment of rules 8.86.501, 8.86.502, 8.86.503, 8.86.504, 8.86.505 and 8.86.506; and adoption of rules 8.86.511, 8.86.512, 8.86.513, 8.86.514, and 8.86.515 as a method of payment of milk producer prices. Notice was published at page 2109 of the 1989 Montana Administrative Register, issue no. 24, as MAR Notice No. 8-86-36.

2. A hearing was held January 30, 1990, at 11:00 a.m., at the SRS auditorium, 111 N. Sanders Avenue, Helena, Montana. Nineteen persons appeared at the hearing to offer data, views and arguments on the proposed amendments and on the proposed new rules. Sixteen people spoke in favor of the proposed amendments and new rules. Two people spoke in opposition and one other person participated. Two people speaking in favor of the proposed amendments offered an alternative to one of those amendments.

3. After thoroughly considering all of the testimony, the board has adopted the proposal exactly as noticed except for the changes that were made as follows: (new matter underlined, deleted matter interlined)

"8.86.501 QUOTA DEFINITIONS

(1)-(a) remains the same.

(i) is actively producing and selling milk to a Montana POOL plant at the time this plan becomes effective; or

(ii) is approved by the POOL plant and acquires quota pursuant to ~~ARM 8.86.505(1)(d)~~ ADDITIONAL ASSIGNMENTS TO QUOTA MILK; or

(iii) remains the same.

(b)-(c) remains the same.

(d)-(e) remains as proposed.

(f)-(h) remains the same.

AUTH: 81-23-302, MCA IMP: 81-23-302, MCA

"8.86.502 INITIAL DETERMINATION AND/OR LOSS OF QUOTA (1) MEADOW GOLD AND BLACK HILLS PRODUCERS SHALL RETAIN THEIR QUOTA EXISTING AT THE TIME OF THE ADOPTION OF THESE REGULATIONS. ALL OTHER INITIAL QUOTA FOR ELIGIBLE PRODUCERS WILL BE DETERMINED AS SET FORTH IN SUBPARAGRAPHS (2) AND (3) BELOW.

~~(1)~~(2) Each eligible producer's initial quota, EXCEPT FOR MEADOW GOLD AND BLACK HILLS PRODUCERS, will be based upon his highest total production ~~from~~ for the one-year period immediately preceding the effective date of this plan, divided by 365. The quota for eligible producers who are participating in the quota plan for Meadow Gold and Black Hills producers contained in ARM 8.86.501 through 8.86.506 on the effective date of this plan shall be the quota ~~in effect~~ computed for those producers as of that date.

~~(2)~~(3) On or before the 20th day after the effective date of this plan, the administrator shall compute a quota assignable to each eligible producer. The figure computed shall be rounded to the nearest whole number and assigned to each eligible producer as quota.

~~(a) In the case of Black Hills milk producers, the above calculations will become their highest option for calculating their initial daily average quota. The Black Hills total quota to be assigned will be the Billings Meadow Gold plant total daily average quota divided by .77, minus the Billings Meadow Gold daily average quota. Each producer's daily average quota will then be determined by multiplying the above result by the percentage that result is of the highest option qualifying for quota.~~

(4) EACH PRODUCER'S QUOTA FOR EACH POOL PLANT, EXCEPT MEADOW GOLD AND BLACK HILLS PRODUCERS, SHALL BE BASED ON HIS TOTAL PRODUCTION HISTORY FOR THE ONE YEAR PERIOD IMMEDIATELY PRECEDING THE EFFECTIVE DATE OF THIS PLAN, EXCEPT THAT THE AMOUNT OF CLASS III BUILT INTO EACH PRODUCER'S QUOTA WILL BE LIMITED TO A MAXIMUM PERCENTAGE OF CLASS III THAT EXISTS IN THE MEADOW GOLD PLANTS FOR THE ONE (1) YEAR PERIOD IMMEDIATELY PRECEDING THE EFFECTIVE DATE OF THIS PLAN. ALL POOL PLANTS WITH A LOWER CLASS III PERCENTAGE THAN MEADOW GOLD'S WILL RECEIVE QUOTA FOR ALL THEIR PRODUCTION POUNDS. ALL POOL PLANTS WITH A HIGHER PERCENTAGE OF CLASS III POUNDS THAN MEADOW GOLD SHALL ALLOW THEIR PRODUCERS TO RECEIVE QUOTA FOR THEIR PRODUCTION UP TO THE SAME PERCENTAGE CLASS III AS MEADOW GOLD.

~~(3)~~(5) The administrator will promptly notify each eligible producer in writing of his computed quota, enter such information on the official records of the milk control bureau and thereafter continue to maintain a current and up-to-date record of each eligible producer's quota pounds whether the quota was received pursuant to paragraph 1 and 2 hereof or

another paragraph hereof or through transfer. The Montana POOL plant will be notified of the production history and quota assignment for each eligible producer. Upon request of such notice, each Montana POOL plant shall promptly post in a conspicuous place in its facility a list showing each eligible producer's quota.

~~(4)~~(6) In computing initial quota, an eligible producer who has acquired a previous producer's production history through bona fide sale or transfer will receive such production history as credit.

~~(5)~~(7) No such assignment shall be made to any eligible producer who elects within twenty-one (21) days after receiving notice pursuant to paragraph ~~3~~ 5 hereof to refuse quota assignment.

~~(6)~~(8) An eligible producer who discontinues the delivery of milk must forfeit his entire quota effective at the end of the sixty-first (61st) day after his last delivery unless such quota is transferred prior to that time."

AUTH: 81-23-302, MCA IMP: 81-23-302, MCA

"8.86.503 ADDITIONAL ASSIGNMENT TO QUOTA MILK (1) A producer who does not hold quota and has not transferred quota to another person during the preceding year but now has been accepted by a Montana POOL plant as a producer shall have a portion of his marketing of milk assigned to quota milk each month in accordance with the following schedule of percentages for the respective months of the year is an eligible producer.

MONTHS	PERCENTAGE TO BE ASSIGNED TO QUOTA MILK
April through August	20%
All other months	35% "

AUTH: 81-23-302, MCA IMP: 81-23-302, MCA

"8.86.504 TRANSFER OF QUOTA

(1)-(a) remains the same.

(b) The producer committee, the Montana POOL plants, and the administrator must be notified in writing by the proposed quota transferor at least ten (10) days prior to the first day of the month during which the transfer is contemplated. Such notice must include the name of the prospective transferee, the effective date of the proposed transfer, and the amount of quota to be transferred.

(c)-(d) remains the same.

(e) A quota transfer may be made only to an eligible producer, or one who has been accepted by a Montana POOL plant as a producer, not later than the last day of the month during which the transfer is contemplated.

(f)-(i) remains the same."

AUTH: 81-23-302, MCA IMP: 81-23-302, MCA

8.86.505 READJUSTMENT AND MISCELLANEOUS QUOTA RULES

(1)-(a)(iv) remains the same.

(b) No quota will be readjusted before January 1990. Provided that Montana POOL plants have sufficient milk during September, October, November and December of 1989 and 1990, no quota will be readjusted before January 1991.

(c)-(d) remains the same.

(i) compute the total pounds of class I and class II milk of all Montana POOL plants during the twelve (12) month period ending February 28 immediately preceding;

(ii)-(f) remains the same."

AUTH: 81-23-302, MCA IMP: 81-23-302, MCA

"8.86.506 PRODUCER COMMITTEE

(1) remains the same.

(2) The producer committee shall consist of ~~eight (8)~~ ONE eligible producers~~.~~ FOR EACH TEN PERCENTAGE (10%) POINTS OF THE TOTAL POOL RAW MILK REPRESENTED BY EACH POOL PLANT WITH A MINIMUM OF AT LEAST ONE COMMITTEE REPRESENTATIVE PER POOL PLANT. ~~One (1) producer will be selected by the eligible producers supplying each of the seven (7) plants located in Montana and approved by the board of milk control. The remaining producer member will be selected by the seven above designated quota committee members.~~

(3) remains the same.

(4) The producer committee will invite each POOL plant manager or his designated representative to attend its meetings. ~~Each~~ NO POOL PLANT manager or ~~his~~ designated representative will ~~not~~ have a vote in any decision of the producer committee.

(5) remains the same.

(6) The producer committee members will serve terms of two (2) years each, but not more than two (2) consecutive terms. Vacancies on the committee will be filled in the same manner as the original appointment. Successors will complete the term of the original committee member. ~~Upon the inception of the plan, one member from each plant will serve only a one year term.~~ EACH COMMITTEE MEMBER WILL BE SELECTED BY ALL ELIGIBLE POOL PRODUCER REPRESENTATIVES OF EACH POOLED PLANT.

(7) ~~Five (5)~~ SEVEN (7) voting members of the producer committee shall constitute a quorum for the transaction of business. A majority vote shall be sufficient to make an official decision.

(8)-(14) remains the same."

AUTH: 81-23-302, MCA IMP: 81-23-302, MCA

4. After thoroughly considering all of the testimony and comments received, the board adopts the new rules as follows,

contingent upon passage of the referendum on these rules required by 81-23-302(14)(a), MCA. If the issues on the referendum pass, then rules will be effective June 1, 1990.

"8.86.511 POOLING PLAN DEFINITIONS (1) the following definitions apply in ARM 8.86.511 unless the context otherwise requires:

(a) "Pool area" includes all territory within the borders of the state of Montana.

(b) "Pool plant" means any milk plant located within the pool area which is approved by the Montana department of livestock and licensed by the milk control bureau for the receipt and disposition of grade 'A' milk at which grade 'A' milk is received and/or processed during the month.

(c) "Nonpool plant" means any milk processing, packaging, or receiving plant which is not a pool plant.

(d) "Pool dairyman" means any dairy farmer, except a producer handler who produces milk, within the state of Montana, which is marketed to or through a pool handler.

(e) "Pool handler" means any person who operates one or more pool plants, or an association of milk producers which is incorporated as a cooperative association and which has been approved by the milk control bureau for the marketing of milk produced by pool dairymen.

(f) "Producer handler" means any person who operates a dairy farm, and produces milk on such farm, which milk is received and processed and/or packaged in a milk plant operated by such person, and disposed of to retail or wholesale outlets in the pool area during the month, provided that the producer handler receives no dairy products in fluid form during the month from another person, except for milk and/or fluid milk products of 2500 pounds, or five percent of the producer handler's class I milk dispositions, whichever is less.

(g) "Pool milk" means all of the milk produced by pool dairymen, under licenses issued by the milk control bureau, which is received at pool plants or marketed to a nonpool plant by a pool handler.

(h) "Nonpool milk" means any milk received or marketed by a pool handler, other than pool milk.

(i) "Utilization value" means a sum of money computed for each pool handler with respect to the butterfat and skim milk contained in pool milk received from pool dairymen and disposed of or utilized during the month, such sum to be computed, using the class prices therefor and the classification thereof, as established pursuant to ARM 8.79.101, and subject to any interplant hauling, reclassification, or other charges or credits which are established under rules of the milk control bureau.

(j) "Pool settlement reserve" means a reserve fund of money belonging to pool dairymen which the pool administrator

shall retain on a revolving basis for the purpose of receiving monies from or in paying monies to pool handlers, as provided in 81-23-302(14), MCA.

(k) "Quota price" means the weighted average price for all quota milk testing 3.5% butterfat as computed for the month by the pool administrator in accordance with the procedures specified in ARM 8.86.513."

AUTH: 81-23-302, MCA IMP: 81-23-302, MCA

"8.86.512 REPORTS AND RECORDS (1) On or before the eighth business day after the end of each month, each pool handler shall report for such months, to the administrator with respect to the pool plant(s) operated by such handler, and/or for all pool milk marketed to nonpool plants, on forms provided by the administrator, the following:

(a) the quantities and butterfat content of milk received or marketed from the farms of pool dairymen during the month, the location of the pool plant where the milk was first received, and the pounds thereof which qualified as quota milk;

(b) the quantities and butterfat contents of milk and fluid milk products received from other pool plants during the month together with the classification of such products as agreed upon with the operator of the pool plant from which received, provided that if a classification is not agreed upon, such milk shall be assigned to class III, to the extent such use is available, and thereafter in sequence to class II and class I;

(c) the quantities and butterfat content of any other receipts of nonpool milk, the pounds and butterfat and skim milk content of all other dairy products received during the month (except non-fluid milk products disposed of in the form in which received without further processing);

(d) the quantities and butterfat and skim milk content of all inventories of milk and other dairy products on hand in the pool plant at the beginning of the month;

(e) the quantities and butterfat and skim milk content of all milk and milk products disposed of from the pool plant during the month, and in the case of any such products transferred in fluid form to the pool plants of other pool handlers, the classification of such products as agreed upon with the operator of the other pool plants, provided that if no agreement is reached, a classification shall be assigned in accordance with paragraph (1)(a)(ii) hereof;

(f) the quantities and butterfat and skim milk content of all milk and other dairy products utilized in the processing or manufacturing of dairy products in the pool plant during the month, together with the same information for the products produced;

(g) the disposition made of any pool milk marketed by the pool handler during the month which was not received at his pool plant(s), and the utilization made of such milk;

(h) the quantities together with the butterfat and skim milk content of inventories of all milk and dairy products on hand in the pool plant at the end of the month.

(2) Each producer handler shall report to the administrator complete information with respect to his receipt or purchase of milk and dairy products during the month, and the disposition of use thereof. Such report shall be made at the times and in such manner as may be required by the administrator, and the producer handler shall maintain records of his operations as required under the rules of the milk control bureau, and present them for audit by the pool administrator when so requested by him.

(3) Each pool handler shall maintain complete records and accounts of all pool milk received or marketed, and all other milk and dairy products received at each of his pool plants, and the use or disposition of such milk and dairy products for each month together with payments received or made therefor, and shall retain records of the foregoing transactions and other records as required under the rules of the milk control bureau and present them for audit by the administrator as required by him."

AUTH: 81-23-302, MCA IMP: 81-23-302, MCA

"8.86.513 COMPUTATION OF PRICE FOR QUOTA MILK AND EXCESS MILK (1) On or before the 12th day of each month, or the first business day thereafter, the administrator shall compute a quota price and an excess price for the preceding month as follows:

(a) Combine into one figure the utilization values for all pool handlers for the month, as computed under ARM 8.86.301 and 8.79.101 and add thereto one-half of the remaining balance in the pool settlement reserve.

(b) Add or subtract a value computed by multiplying the weighted average value of butterfat in pool milk times the pounds by which the total butterfat in all pool milk is less, or more respectively, than the pounds obtained by multiplying the total pounds of pool milk by .035.

(c) Subtract an amount arrived at by assigning the total quantity of excess milk to the classes of utilization in series, beginning with the total pool milk assigned to class III, and then as necessary to the remaining pool milk in sequence beginning with class II and then class I, and multiplying the quantities so assigned to classes by the appropriate class prices, combining the resulting values, and subtracting any hauling or other cost with respect to pool milk that was deducted in computing pool handlers obligations for such milk. The sum so arrived at shall be divided by the total pounds of excess milk and the resulting figure, rounded to the nearest whole cent, shall be the excess price for milk testing 3.5%.

(d) Subtract an amount of money equal to five-cents per

hundredweight of quota milk, and adjust this figure downward (after making the computations under paragraph (2)(e) hereof) as necessary to offset the fractional balance resulting from rounding their quota price. The amount so computed shall be deposited into the pool settlement reserve.

(e) Compute a quota price by dividing the remaining balance by the total hundredweight of quota milk for the month, and rounding the resultant price to the nearest whole cent.

(f) Announce to all interested persons on or before the 13th day of each month, or the first business day thereafter, the quota and excess prices for milk testing 3.5% butterfat as computed pursuant to paragraphs (2)(c) and (2)(e) hereof, and a butterfat differential for quota and excess milk as provided for producer milk under ARM 8.86.301 to adjust for differences in butterfat content of the milk."

AUTH: 81-23-302, MCA IMP: 81-23-302, MCA

"8.86.514 PROCEDURES FOR POOLING OF RETURNS FROM POOL MILK (1) As soon as possible after completing the computation of the quota and excess prices the administrator shall:

(a) compute the net pool obligation of each pool handler by subtracting from his utilization value the amount of money due pool dairymen from such pool handler, based on the quota and excess prices for milk as adjusted for the butterfat test thereof, and other charges as required or permitted under the rules of the milk control bureau;

(b) on or before the 13th day of the month provide written notice to each pool handler of the price and butterfat differential for quota and excess milk for the preceding month, the pool handler's utilization value, and the minimum amount owed pool dairymen for pool milk received or marketed;

(c) on or before the 13th day of the month, notify each pool handler of the amount if any by which his utilization value for the preceding month exceeds the amount due pool dairymen with respect to the pool handler's pool milk, based on the appropriate quota and excess prices. The amount of such difference must then be paid by such pool handler to the administrator on or before the 15th day of the month, or the first business day thereafter, for deposit into the pool settlement reserve;

(d) pay to each pool handler on or before the 14th day of the month or as soon as funds are available, any sum by which the pool handler's utilization value for the preceding month is less than the amount due those from whom he received pool milk during the preceding month, based on the quota and excess prices as adjusted for the butterfat content of such pool milk."

AUTH: 81-23-302, MCA IMP: 81-23-302, MCA

"8.86.515 PAYMENTS TO POOL DAIRYMEN AND ADJUSTMENT OF ACCOUNTS (1) Each pool dairyman must be paid twice each month by the appropriate pool handler(s) for the pool milk received or marketed from such pool dairyman during the month as follows:

(a) A partial or advance payment approximately equal to the value of the pool milk marketed during the first two weeks of the month, less one-half of the approximate monthly deductions herein sanctioned, must be paid to the pool dairyman, or his authorized agent, not later than 30 days after the first day of each month. Such payment need not be accompanied by an itemized statement.

(b) Payments must be made to each pool dairyman, or his authorized agent, not later than 15 days after the end of the month for the pool milk of such pool dairyman for such month. This payment must be at the appropriate quota and/or excess price as adjusted for butterfat content (the rate of such adjustment to be based on the weighted average value of butterfat in the different classes of utilization), and subject to deductions for partial payments under paragraph (4)(a) hereof, administrative assessments, hauling and other deductions authorized under ARM 8.79.101(4), and it must be accompanied by a statement to each pool dairyman setting forth the information required in ARM 8.79.101(11).

(c) As soon as possible after each monthly computation of quota and excess prices is completed, the administrator must audit the books and records of each pool handler, and determine whether there have been proper accounting for and payment of the amount owed the administrator and/or individual pool dairyman, or cooperative associations from whom the pool handler has received pool milk. If errors are found in the accounting or payments of the pool handler, the administrator must notify him thereof promptly, and if there were underpayments by the pool handler, the additional amounts due must be paid within 10 days after notice thereof is given. Money paid to adjust for underpayments to the administrator must be deposited into the pool settlement reserve. In the case of overpayments by a pool handler to the administrator, the administrator must promptly remit the amount due to such pool handler."

AUTH: 81-23-302, MCA IMP: 81-23-302, MCA

(5) Principle reasons for the adoption of the rules are as follows:

A. An overwhelming number of witnesses supported the compromise pool and quota plan.

B. Under the pool and quota plan participating producers acquire property rights which makes alternative markets more accessible to each of them.

C. The plan will help maintain a market for producers in the event that any of their distributors go out-of-business.

D. An available outlet for milk enhances the economic attractiveness of a dairy farm.

E. The pooling plan treats all producers fairly by assigning all of them the same blend price for their milk.

F. The adoption of the pooling and quota plan will enhance stability in the marketplace by relieving marketing pressures on processors, thereby reducing pressure to get more market share through cannibalistic pricing and service tactics.

G. The plan would give producers a franchise or property interest in the marketing system of milk. This interest carries with it a responsibility of producers to control their production.

H. The plan enhances the likelihood that large processors would be willing to acquire smaller processor plants. Conversely the plan increases the likelihood that a small processor could sell his business as an alternative to quitting business.

I. A pool and quota plan encourages an even flow of milk and production of milk when it is most needed.

(6) Principle reasons submitted against adoption of the proposed rules were as follows:

A. The pooling issue has already been voted on and defeated in an earlier referendum.

B. Evidence supporting a statewide pool was shallow and failed to provide any empirical support for a statewide milk pool other than conjecture.

C. Competition between producers would be eliminated. This would destroy incentives to produce a quality product.

D. Many producers will suffer a reduction in blend prices. Those price reductions will cause substantial losses of net income.

E. The proposed statewide pool does not provide security. It just alters paychecks. If a processor goes broke, there is nothing in the rules that requires another processor to assume that processor's producers.

F. Currently Meadow Gold and Equity Supply are managing their own milk supplies and taking care of their own production needs without affecting anyone else. Other plants are free to implement their own plans without affecting anyone else.

(7) The principle reasons for rejecting the arguments against the pool were as follows:

A. The board rejects the contention that, because a pooling and quota plan had previously been defeated in a referendum, another plan should not be considered at a later date. The plan in this docket is substantially different from the defeated plan and considerable evidence and arguments have been offered to show that this plan might be approved in a referendum.

B. The board rejects the contention that the reasons given for adopting a statewide pool are shallow. As indicated above, the reasons are substantial.

C. The board rejects the suggestion that the plan will destroy competition among producers and does not feel it is a valid concern for the following reasons:

1. The state sets standards for milk quality and milk must be rejected unless it meets those standards.

2. Milk is commingled during on farm pick up and therefore is no more superior in quality than that of the next farm.

3. Presently no distributor pays a premium for higher quality milk.

D. The board rejects the contention that producers will suffer substantial losses if the plan is adopted. The board recognizes that some producers will receive a lower blend price for their milk but, as testimony demonstrated, the benefits overall to the industry will far outweigh any detrimental aspects. The board recognizes certain producers presently receive a higher blend price because they are not providing an adequate reserve supply. Taking that into consideration, their prospective losses are less substantial. The board is charged with considering the interests of all segments of the industry, as well as those of the public. Submitting the plan to a referendum of the industry will be the truest and most democratic method of measuring industry attitudes.

E. The board rejects the contention that the pool and quota plan do not provide security. There was substantial testimony that alternative markets for producers would be greatly enhanced if a statewide pool and quota plan were implemented.

F. The board rejects the contention that milk supplies are better managed on an individual plant basis. The board was persuaded by testimony that milk supplies can be better managed on a statewide level than on an individual plant basis. Most milk marketed in this nation is marketed under some sort of pooling and quota plan.

MONTANA BOARD OF MILK CONTROL
MILTON J. OLSEN, Chairman

BY: _____
Charles A. Brooke, Director
Department of Commerce

Certified to the Secretary of State April 2, 1990.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BOARD OF INVESTMENTS

In the matter of the amendment of rules pertaining to the Montana Capital Company Act and investments by the Montana Board of Investments	))))	NOTICE OF CORRECTION OF ARM 8.97.802

TO: All Interested Persons:

1. On November 13, 1989, the Board of Investments published a notice of proposed amendment of the above-stated rule at page 1881, 1989 Montana Administrative Register, issue number 22. The adoption notice was published at page 503, 1990 Montana Administrative Register, issue number 5. The adoption notice should have noted the amendments as shown below. Replacement pages have been submitted with the correct amendments and are dated March 31, 1990.

"8.97.802 DEFINITIONS (1)(a) through (b) will remain the same as proposed.

(c) "affiliate" or "affiliated group" means:

(i) any corporation that directly or indirectly owns, controls, or holds with THE power to vote, ~~50%-or-more-of-the-outstanding-voting-securities-of-such~~ ANY STOCK OF ANY OTHER specified corporation, AS DEFINED IN SECTION 1563 OF THE INTERNAL REVENUE SERVICE CODE AND THE RELATED REGULATIONS THEREON;

(ii) any corporation ~~50%-or-more-of-whose-outstanding-voting-securities-are~~ WHO IS DIRECTLY OR INDIRECTLY owned, controlled, or held with the power to vote ~~directly-or-indirectly~~ by ANY OTHER such specified corporation AS DEFINED BY SECTION 1563 OF THE INTERNAL REVENUE SERVICE CODE AND THE RELATED REGULATIONS THEREON; AND

(iii) any corporation that is directly or indirectly under common control with such specified corporation, through the ownership, control, or holding with THE power to vote ~~directly-or-indirectly-of-50%-or-more-of-such-corporation's-and-such-specified-corporations-outstanding-voting-securities~~ AS DEFINED IN SECTION 1563 OF THE INTERNAL REVENUE SERVICE CODE AND THE RELATED REGULATIONS THEREON.

(d) through (2) will remain the same as proposed."

Auth: Sec. 90-8-105, MCA; IMP, Sec. 90-8-101, 90-8-104, 90-8-201, 90-8-202, MCA

BOARD OF INVESTMENTS
WARREN VAUGHAN, CHAIRMAN

BY: _____
ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, April 2, 1990.

BEFORE THE OFFICE OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the adoption) new rules I through XXVII and) amendment of rules 10.10.101-) 10.10.209, 10.16.1314) regarding accounting) practices and tuition)))	NOTICE OF THE ADOPTION OF RULES 10.10.301-10.10.309, 10.10.401-10.10.407, 10.10.501-10.10.504; AMENDMENT OF RULES 10.10.101-209 and 10.16.1314; REPEAL OF 10.10.203 and 10.10.204

TO: All Interested Persons:

1. On February 22, 1990, the Office of Public Instruction published notice of proposed adoption and amendment of rules concerning accounting practices and tuition at page 330 of the 1990 Montana Administrative Register, issue number 4.

2. A public hearing was held on March 15, 1990. Comments were presented and the office responded. The hearing was tape recorded and the tapes are included in the file on this matter together with the report of the hearing officer. Three written comments were received. In addition, the Legislative Council commented prior to the hearing. The specific comments are discussed below in reference to each rule where amendments were suggested.

3. Based upon the comments received, the rules are being adopted as proposed with those changes given below.

RULE I (10.10.301) FORMULA FOR CALCULATING REGULAR EDUCATION TUITION RATES is adopted as proposed with addition of authority.

AUTH: 20-9-102, MCA IMP: 20-5-305, 20-5-307, 20-5-311, 20-5-312, MCA

COMMENT: Legislative Council suggested clarification of the rule authority and implementation.

RESPONSE: Sections 20-5-305, 307, 311, 312, MCA, require tuition to be budgeted. In order to properly supervise the budgeting procedures as required by 20-9-102, rules for tuition calculation are necessary.

10.10.101 VALID OBLIGATION CRITERIA FOR ENCUMBRANCES received no comments and is amended as proposed.

AUTH: 20-9-102 and 20-9-201, MCA
IMP: 20-9-102, 20-9-201 and 20-9-209, MCA

RULE II (10.10.302) PAYMENT AND CLOSING OF PRIOR YEAR ACCRUED EXPENDITURES AND ENCUMBRANCES received no comments and is adopted as proposed.

AUTH: 20-9-102 and 20-9-201, MCA
IMP: 20-9-102, 20-9-201, 20-9-209, MCA

10.10.202 MONTHLY TRANSFERS TO EQUAL WARRANTS ISSUED PLUS UNREMITTED PAYROLL LIABILITIES received no comments and is adopted as proposed.

AUTH: 20-9-102, 20-9-201, 20-9-220, MCA
IMP: 20-9-102, 20-9-201, 20-9-220, MCA

10.10.203 REPORTS received no comments and is repealed as proposed.

10.10.204 WARRANTS received no comments and is repealed as proposed.

10.10.205 RECONCILIATION received no comments and is amended as proposed.

AUTH: 20-9-102, 201 and 220, MCA
IMP: 20-9-102, 201 and 220, MCA

10.10.206 INSUFFICIENT CASH AVAILABLE received no comments and is amended as proposed.

AUTH: 20-9-102, 201 and 220, MCA
IMP: 20-9-102, 201 and 220, MCA

10.10.207 TRANSFERS-NONBUDGETED FUNDS received no comments and is amended as proposed.

AUTH: 20-9-102, 201 and 220, MCA
IMP: 20-9-102, 201, 210 and 220, MCA

10.10.208 VOIDED WARRANTS received no comments and is amended as proposed.

AUTH: 20-9-102, 201, 220, MCA
IMP: 20-9-102, 201 and 220, MCA

10.10.209 INTEREST EARNED received no comments and is amended as proposed.

AUTH: 20-9-102, 201, and 220, MCA
IMP: 20-9-102, 201, and 220, MCA

RULE III (10.10.303) COST ALLOCATIONS BETWEEN DISTRICTS is adopted as proposed.

AUTH: 20-9-102 and 201 and 20-3-209, MCA

IMP: 20-9-102 and 201, MCA

COMMENT: Comment was received by Legislative Council that there is unnecessary repeat of statutory language.

RESPONSE: For many years schools have had no guidance concerning distribution of costs between districts. This rule gives clear direction to consistently distribute costs between districts while preserving local control. It also provides legislative guidance extant in separate chapters of the laws and consistency for GAAP implementation, and distinguishes (1) and (2) which are not in statute.

RULE IV (10.10.304) STUDENT EXTRACURRICULAR ACTIVITY FUNDS is adopted as proposed.

AUTH: 20-9-102 and 201, MCA
IMP: 20-9-102, 201 and 20-3-209, MCA

COMMENT: Legislative Council questioned the authority for this rule.

RESPONSE: According to GAAP, student extracurricular activity funds are a required part of each school district's financial reporting entity. This rule clarifies that the district may use a depository other than the county treasurer for such monies, but the financial activity must still be reported to the Office of Public Instruction.

RULE V EQUITY TRANSFERS BETWEEN FUNDS is not adopted.
AUTH: 20-9-102 and 201, MCA
IMP: 20-9-102 and 201, MCA

COMMENT: MASBO and MSBA suggested elimination of the language in (3) leaving the determination to transfer with the local board. Legislative Council made comment that the rule is an unnecessary repeat of statutory language.

RESPONSE: Rule not adopted in response to comments.

RULE VI (10.10.305) BUDGET AUTHORITY FOR CORRECTION OF PRIOR PERIOD EXPENDITURE ERRORS Section (1) is adopted as proposed.

(2) As provided in section 20-9-208(1), MCA, a budget transfer ~~shall~~ may be made from other appropriation item(s) to provide budget authority for corrections of prior period expenditure errors which result in a net reduction to beginning fund balance. Prior period adjustment must be within the total budget limit imposed by 20-9-133, MCA.

AUTH: 20-9-102 and 201, MCA
IMP: 20-9-102 and 20-9-201, MCA

COMMENT: It was pointed out by the Legislative Council

that the statute reads "may".

RESPONSE: The proposed amendment is adopted with clarifying language added.

RULE VII (10.10.306) BANK ACCOUNTS OR OTHER DEPOSITORIES received no comments and is adopted as proposed.

AUTH: 20-9-102 and 201, MCA
IMP: 20-9-212 and 504, MCA

RULE VIII (10.10.307) REPLACEMENT WARRANTS received no comments and is adopted as proposed.

AUTH: 20-9-102 and 201, MCA
IMP: 20-9-102 and 201, MCA

RULE IX (10.10.308) COUNTY INVESTMENT OF SCHOOL DISTRICT FUNDS-PENALTY received no comments and is adopted as proposed.

AUTH: 20-9-102, MCA IMP: 20-9-213, MCA

RULE X (10.10.309) DISTRIBUTION OF COUNTY WIDE RETIREMENT FUNDS received no comments and is adopted as proposed.

AUTH: 20-9-102, MCA IMP: 20-9-213, MCA

RULE XI INTRODUCTION is not adopted

COMMENT: Legislative Council suggested that this rule was unnecessarily reiterative of statute.

RESPONSE: Rule not adopted in response to comment.

RULE XII (10.10.401) DEFINITION received no comments and is adopted as proposed.

AUTH: 20-9-102 and 201, MCA IMP: 20-9-201, MCA

RULE XIII (10.10.402) FOCUS OF GENERALLY ACCEPTED ACCOUNTING received no comments and is adopted as proposed.

AUTH: 20-9-102 and 201, MCA IMP: 20-9-201(2), MCA

RULE XIV (10.10.403) SCHOOL ACCOUNTING MANUAL received no comments and is adopted as proposed.

AUTH: 20-9-102 and 201, MCA IMP: 20-9-201(2), MCA

RULE XV (10.10.404) BASIS OF ACCOUNTING received no comments and is adopted as proposed.

AUTH: 20-9-102 and 201, MCA IMP: 20-9-201(2), MCA

RULE XVI (10.10.405) CLOSING PERIOD received no comments and is adopted as proposed.

AUTH: 20-9-102 and 201, MCA IMP: 20-9-201(2), MCA

RULE XVII (10.10.406) STANDARD CHART OF ACCOUNTS received no comments and is adopted as proposed.

AUTH: 20-9-102 and 201, MCA IMP: 20-9-201(2), MCA

RULE XVIII (10.10.407) FIXED ASSET INVENTORY received no comments and is adopted as proposed.

AUTH: 20-9-102 and 201, MCA IMP: 20-9-201(2), MCA

RULE XIX (10.10.501) COUNTY TREASURER'S FINANCIAL REPORTS received no comments and is adopted as proposed.

AUTH: 20-9-102 and 201, MCA IMP: 20-9-121, 212 and 442, MCA

RULE XX (10.10.502) FINANCIAL REPORTS FILED WITH THE SUPERINTENDENT OF PUBLIC INSTRUCTION received no comments and is adopted as proposed.

AUTH: 20-9-102 and 201, MCA IMP: 20-9-102 and 201, MCA

RULE XXI (10.10.503) ~~WITHHOLDING OF STATE EQUALIZATION AID~~ REPORTS - NOTIFICATION TO BOARD OF PUBLIC EDUCATION With the exception of (8), all sections are adopted as proposed.

(8) Upon discovery that a report of budget has not been submitted or has not been prepared properly, the office of public instruction will notify the district clerk, the board of trustees, the district superintendent and the county superintendent of the specific violation(s). If the report is a county report, the county treasurer and county commissioners will also be notified.

COMMENTS: Comment was received from MASBO, MSBA and SAM requesting inclusion of the district superintendent in the notification of violation. Comment was also received from MSBA and SAM questioning the inclusion of examples regarding reasonable cause. MSBA, SAM and BPE commented on the determination to report failure to submit timely and/or accurate reports and authority to withhold funds. Legislative Council made comment as to the effective date of the rule.

RESPONSE: Section (8) has been amended as proposed. OPI considered the comments regarding inclusion of examples and has determined that these will be helpful as guidance to the districts. Reasonable cause is defined in section (3). The rule clearly reflects that OPI is required to report deficiencies to the BPE and will make that determination based on reasonable cause and has no authority to unilaterally

withhold funds. Legislative Council is correct in pointing out that the statute has a July 1, 1990, effective date. As no reports affected by this rule are due until after July 1, no report to BPE is possible.

AUTH: 20-9-102 and 201, MCA IMP: 20-9-344

RULE XXII (10.10.504) FUNDING ADJUSTMENTS FOR PRIOR/CURRENT YEAR REPORTING ERRORS received no comments and is adopted as proposed.

AUTH: 20-9-102 and 201, MCA IMP: 20-9-344(5), MCA

10.16.1314 FORMULA FOR SPECIAL EDUCATION TUITION RATES received no comments and is amended as proposed.

AUTH: 20-5-305 and 312, MCA IMP: 20-5-305 and 312, MCA

4. Rules I through XXVII will be codified under three new subchapters of Title 10, Chapter 10, as indicated.

Nancy Keenan
Superintendent of Public Instruction

Certified to the Secretary of State April 2, 1990.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the amendment of rules pertaining to permissive and retirement levies, and amended references to additional school funding rules	)))))	CORRECTED NOTICE OF AMENDMENT OF 10.23.102 PERMISSIVE AMOUNT AND PERMISSIVE LEVY AND OF 10.23.104 RETIREMENT LEVIES, AND AMENDED REFERENCES TO ADDITIONAL SCHOOL FUNDING RULES

To: All Interested Persons.

1. On January 11, 1990, the Office of Public Instruction published notice of proposed adoption of the new rules above at pages 30 and 32 of the 1990 Montana Administrative Register, issue number 1. Full text of the proposed new school funding rules is found at pages 15 through 34 of issue number 1 and pages 184 through 191 of issue number 2 (published on January 25, 1990). The Office adopted the new rules, as proposed, on pages 511 and 512 of the 1990 Montana Administrative Register, issue number 5. Full text of the adopted new rules is found at pages 505 through 513 of issue number 5.

2. The proposal in Rule II (ARM 10.23.102) is incorrect. The formula of subsection (4)(a)(ii) was shown as follows:

Rule II (10.23.102) VOTED AMOUNT AND VOTED LEVY

(4)(a)(ii) . . . . Formula:

{net levy requirement/~~{statewide mill value/ANB X district ANB } - permissive mills~~ (district taxable value/1000] + {(statewide mill value per ANB - district mill value per ANB) X ANB]).

3. The proposal in Rule II (ARM 10.23.102) subsection (4)(a)(ii) should have appeared as follows:

. . . . Formula:

net levy requirement/{[district taxable value/1000] + [(statewide mill value per ANB - district mill value per ANB) X ANB]}

4. Rule IV (ARM 10.23.104) should not have been adopted as proposed. The notice of adoption should have appeared as follows (new material underlined; deleted material underlined):

Rule IV RETIREMENT LEVIES (1) Same as adopted rule.

~~(2) Because the following revenue has been taken into account in the GTB calculation as provided in 10.21.102, it may not be subtracted from the final retirement budget amount in determining the retirement net levy requirement for those counties eligible for GTB subsidy:~~

~~(a) light vehicle and motorcycle fees (sections 61-3-504 and 61-3-357, MCA);~~

~~(b) recreational vehicle fees, including motorhomes (section 61-3-522, MCA), travel trailers (61-3-523, MCA),~~

~~campers (61-3-523, MCA), off-road vehicles (23-2-803, MCA), snowmobiles (23-2-615, MCA), boats (23-2-527, MCA), and airplanes (67-3-205, MCA);~~

~~(c) forest reserve funds (section 17-3-213, MCA);~~

~~(d) personal property tax reimbursement, in accordance with section 15-1-111, MCA;~~

~~(e) local government severance tax (section 15-36-101, MCA); and~~

~~(f) coal gross proceeds tax (section 15-23-701, MCA).~~

(2) To determine the retirement mills needed, the retirement net levy requirement is divided by:

(a) for districts eligible for GTB aid, the sum of:

(i) the county's taxable valuation as defined in ARM 10.21.101(2)(c) divided by 1000 plus

(ii) the difference between the statewide mill value per ANB as defined in ARM 10.21.101(1)(e) or (f) and the county mill value per ANB as defined in ARM 10.21.101(3)(g) or (h) multiplied by the district's ANB as defined in ARM 10.21.101(2)(c).

Formula:

net levy requirement/{[county taxable value/1000] + [(statewide mill value per ANB - county mill value per ANB) X ANB]}

~~(3) To determine the retirement mills needed for each county's elementary and high school retirement fund, the retirement net levy requirement for each county retirement fund is divided by:~~

~~(a) for counties eligible for GTB aid, the product of the statewide mill value per ANB, as defined in Chapter 45, Rule I (3)(e) or (f). Formula:~~

~~{net levy requirement/[statewide mill value/ANB X county ANB]} = retirement mills~~

(2)(b) through (4)(b) (Same as adopted rule in (3)(b) through (5)(b) except for the numbering, which changed as subsections (2) and (3) have been deleted, and only the amended subsection (2) has been added.

6. In reference to the full text of rules given in paragraph number 1 above, any reference to Chapter 45 is Chapter 21, to Chapter 46 is Chapter 22, and to Chapter 47 is Chapter 23 of Title 10, Administrative Rules of Montana, and are cited accordingly, i.e. Chapter 45, Rule II is ARM 10.21.102.

Nancy Keenan

NANCY KEENAN
SUPERINTENDENT OF PUBLIC INSTRUCTION

Certified to the Secretary of State March 31, 1990.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the adoption of Class 1 Professional Teaching Certificate	NOTICE OF AMENDMENT OF ARM 10.57.401 CLASS 1 PROFESSIONAL TEACHING CERTIFICATE

TO: All Interested Persons

1. On October 26, 1989, the Board of Public Education published notice of the proposed amendment concerning Class 1 Professional Teaching Certificate, on page 1640 of the 1989 Montana Administrative Register, issue number 20.

2. The Board has amended the rule as proposed with the following change:

10.57.401 CLASS 1 PROFESSIONAL TEACHING CERTIFICATE (1) through (3) remain the same.

(4) Renewal: Verification of one year of successful teaching experience or the equivalent. Beginning with those certificates expiring in ~~1994~~ 1995, six credits will also be required for renewal. Renewal credits consist of college credit including extension course credits and continuing education credits. Also acceptable are staff development credits, inservice training credit, and local school district professional development credit, as approved by the office of public instruction.

(5) through (7) remain the same.

3. At the public hearing which was held on December 5, 1989, one person testified as a proponent and two testified with general comments. The Board received one written comment as an opponent prior to November 30, 1989, the date on which the Board closed the hearing record. The Board considered all comments and made a change in the proposed rule which awarded the five year grace given to certificate holders, which is consistent with prior Board policy.

In the matter of the adoption of Policy Governing Pupil Instruction-Related Days Approved For Foundation Program Calculations and Program Of Approved Pupil Instruction-Related Days	NOTICE OF AMENDMENT OF ARM 10.65.101, POLICY GOVERNING PUPIL INSTRUCTION-RELATED DAYS APPROVED FOR FOUNDATION PROGRAM CALCULATIONS, AND ARM 10.65.103, PROGRAM OF APPROVED PUPIL INSTRUCTION-RELATED DAYS

TO: All Interested Persons

1. On December 21, 1989, the Board of Public Education published notice of the proposed amendment concerning Policy Governing Pupil Instruction-Related Days Approved For

Foundation Program Calculations and Program of Approved Pupil Instruction-Related Days, on page 2118 of the 1989 Montana Administrative Register, issue number 24.

2. The Board has amended the rules as proposed, with the following additions and changes:

10.65.101 POLICY GOVERNING PUPIL INSTRUCTION-RELATED DAYS APPROVED FOR FOUNDATION PROGRAM CALCULATIONS (1) A school which in any year was in session for at least 180 pupil instruction days may count for the year's foundation program a maximum of seven PIR days with a minimum of three of the days for instructional and professional development meetings or for instructional and professional development meetings or other appropriate in-service training. These seven PIR days in addition to the required 180 pupil instruction days may be counted provided that such additional days did not include any time counted for pupil instruction as provided in Section 20-1-302 MCA and were used for one or more of the following purposes in accordance with the regulations hereby established:

(a) remains the same

(b) Staff professional development programs scheduled during the year for the purpose of improving instruction (ARM 10.55.714) ~~which~~ may shall include annual instructional and professional development meetings. ~~If the district includes annual instructional and professional development (IPD) meetings as part of its professional development requirement referred to in ARM 10.55.714, the participation of the entire professional staff is required.~~ Staff may attend either the instructional and professional development meetings or attend the equivalent number of hours of other appropriate inservice training as prescribed by the board of trustees. The board of trustees shall not prescribe equivalent hours during time approved for PI funding.

(c), (d) and (e) remain the same as noticed.

10.65.103 PROGRAM OF APPROVED PUPIL INSTRUCTION RELATED DAYS (1) remains the same as noticed.

(2) The program(s) for each approved day referred to in ARM 10.65.101 (1)(a)-(d) shall be planned and executed so as to require the participation of ~~the entire~~ each professional staff member for a total of ~~at least~~ six hours for each approved PIR day. Professional development time may be divided into no less than two hour increments to facilitate delivery of professional development programs. ~~, unless noted otherwise.~~

(3) remains the same.

3. At the public hearing which was held February 2, 1990, eight persons testified as opponents to the wording of the original notice but were proponents of amended language presented by Deputy Superintendent of Public Instruction. Two written comments stating general concerns were received prior to February 2, 1990, the date on which the Board closed the

hearing record. The Board discussed written comments and comments of the hearing and made additions and changes to the rule consistent with comments and concerns received.

Alan Nicholson
ALAN NICHOLSON, CHAIRPERSON
BOARD OF PUBLIC EDUCATION

BY: Claudette J. Morton

Certified to the Secretary of State April 2, 1990.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of Rules 11.7.409 and 11.7.501 pertaining to the criteria for approving recommendations of youth placement committees and composition of foster care review committees	)))))))	NOTICE OF THE AMENDMENT OF RULES 11.7.409 AND 11.7.501 PERTAINING TO THE CRITERIA FOR APPROVING RECOMMENDATIONS OF YOUTH PLACEMENT COMMITTEES AND COMPOSITION OF FOSTER CARE REVIEW COMMITTEES

TO: All Interested Persons

1. On February 8, 1990, the Department of Family Services published notice of the proposed amendment to Rules 11.7.402, 11.7.409 and 11.7.501 pertaining to the composition of and criteria for approving recommendations of youth placement committees and the composition of foster care review committees at page 265 of the 1990 Montana Administrative Register, issue number 3.

2. The Department has amended Rules 11.7.409 and 11.7.501 as proposed.

3. The Department has thoroughly considered all commentary received:

COMMENT: The Department does not have rule making authority to amend Rule 11.7.402.

RESPONSE: The Department is not amending Rule 11.7.402, relating to the composition of youth placement committees.

COMMENT: Interpretation of the proposed changes is confusing and any amendments should be delayed.

RESPONSE: The department does not consider the rule amendments to be confusing at all, unpopular perhaps, but not confusing.

The amendment to Rule 11.7.501 merely includes an Indian person on the foster care review committee when the child being reviewed is an Indian child.

The amendment to Rule 11.7.409 authorizes regional administrators to take into consideration the region's financial limitations before approving any recommendation for placement made by the youth placement committee. This is already the practice in the field. Furthermore, the department was not appropriated adequate funding to place all youths who may benefit from residential treatment. Until the department either receives more funding or is allowed to overspend its budget, the

department has no choice but to consider its budget when approving the expenditure of funds.

COMMENT: The amendment to Rule 11.7.409 fails to provide equal access to all youths who may need care, simply by virtue of their residence being in a region that has depleted its budget.

RESPONSE: The department, statewide, is presently projected to overspend its appropriated budget by the end of this fiscal year, (July 1, 1990) by approximately $200,000. There is no surplus in any region that can be passed to another region to help offset placement costs.

COMMENT: Youth placement committees should not have the responsibility of making placement decisions based on budget constraints.

RESPONSE: The youth placement committees will not operate any differently due to the amendment to Rule 11.7.409, and will not be required to determine budget constraints. That job remains with the regional administrators. The amendment will simply give regional administrators the authority to consider his or her region's budget when approving or disapproving a placement recommendation. Even if there is not funding available for the most highly recommended placement, the committee can and should meet to determine the best alternative placements available for a youth.

COMMENT: The child's best welfare should be more important than financial problems.

RESPONSE: The department is legally obligated to not overspend its appropriated budget. Until there is more money made available to the department, or the department is allowed to overspend its budget, there is no option other than considering finances when determining placement costs. The department's goal remains to serve <u>all</u> Montana youth as effectively, efficiently and equally as possible.

COMMENT: The department should explore other alternatives to amending Rule 11.7.409. Some options might be:
--A revolving fund to help regions without finances to make placements.
--Each region places a percentage of its budget into a reserve for placement purposes.

RESPONSE: There is not enough money appropriated statewide to cover all placement costs in all five regions. A revolving fund or similar idea would not help increase the total appropriation, nor would it solve the lack of funding crisis.

COMMENT: Statutes (sections 41-5-602 and 603, MCA), already permit review of placement recommendation. Why duplicate that

authority in the rules?

RESPONSE: Rule 11.7.409 delineates the criteria for approval of a youth placement committee recommendation. This rule is not permissive, but is mandatory. This Rule does not presently allow regional administrators to consider funding as a criteria for disapproval of a recommended placement.

Robert L. Mullen

Director, Department of
Family Services

Certified to the Secretary of State April 2, 1990.

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

In the matter of the adoption of rules I through VIII, relating to the licensing of underground tank installers and the permitting of underground tank installations and closures	NOTICE OF EMERGENCY ADOPTION OF RULES I THROUGH VIII (Underground Storage Tanks)

To: All Interested Persons

1. Leaking underground storage tanks have been identified as a significant source of underground contamination and as a potential hazard for fires and explosion. Government and industry studies show that a major cause of leaking underground storage tanks is improper installation or closure. Proper installation or closure requires specialized knowledge, training and experience.

To protect the health of Montana citizens and the quality of state waters and other natural resources from leaking underground storage tanks, the Montana Legislature passed HB 552 (75-11-201 to 75-11-227 MCA). Effective April 1, 1990, this statute requires licensure of tank installers upon their demonstration of competence, training and experience with installations and closures. It also requires permits for the installation or closure of underground storage tanks, a procedure that will help the department track tank installations and closures, and ensure that proper methods are followed. Final rules will not be ready for adoption by the April 1 date. Because the April 1 time frame coincides with the beginning of the Montana construction season, it is essential that rules authorizing procedures for installer licensure and permit issuance be in effect at that time. Delaying implementation of the licensure and permit requirements beyond April 1, could result in numerous improper underground storage tank installations or closures. The consequences of these improper installations or closures in the form of groundwater contamination, or fire hazards will be an imminent peril to the public health, safety and welfare of Montana citizens. Adoption of rules by emergency procedure is necessary to have rules effective by April 1, 1990.

2. The department adopts the emergency rules effective April 1, 1990. A standard rulemaking procedure with a full public hearing will be undertaken prior to the expiration of these emergency rules.

3. The text of the proposed rules is as follows:

RULE I PURPOSE, APPLICABILITY, DEFINITIONS (1) The purpose of Rules I through VIII is to implement sections 75-11-201 to 75-11-227, MCA.

(2) Rules I through VIII shall be applied in conjunction with the statutes.

(3) "Department" means the department of health and environmental sciences.

AUTH: 75-11-203, MCA; IMP: 75-11-204, 75-11-209, 75-11-210, MCA

RULE II ELIGIBILITY FOR INTERIM INSTALLER LICENSE (1) No person may be granted an interim installer's license by the department unless that person:

(a) is an individual at least 18 years old;

(b) submits a completed license application to the department in accordance with Rule III;

(c) pays the interim license fee provided in Rule IV to the department; and

(d) the department determines that the applicant meets the requirements of Rules II to IV and section 75-11-210, MCA, for an interim installer's license.

AUTH: 75-11-204, MCA; IMP: 75-11-204, 75-11-210, MCA

RULE III APPLICATION FOR INTERIM INSTALLER LICENSE (1) Application for an interim installer's license will be made on a form provided by the department. On the form the applicant will state:

(a) the applicant's full name, residence and place of business, and business phone number;

(b) the applicant's age;

(c) the state(s) where the applicant has received a similar license, if any;

(d) whether the applicant has ever had a similar license suspended or revoked;

(e) a summary of the applicant's experience installing, closing, repairing or modifying underground storage tanks.

(2) The application shall be subscribed and sworn to under oath before a notary public, stating that the information provided in the application is true.

(3) The application shall be accompanied by at least three references from other persons attesting to the experience and competency of the applicant in the installation and closure of underground tanks. The references must be written on reference forms provided by the department, and must show that the applicant actively participated in at least three underground storage tank installations and closures, two of which must be installations. If an applicant will only be conducting closures, the references shall only address closures.

(4) Applications and attachments shall be examined by the department for conformity with this rule and applicable statutes. Applications failing to provide information required for licensure may either be returned to the applicant with a notice to the applicant of the reasons for return or may be held by the department pending receipt of the omitted information.

(5) No license shall be granted unless the department determines, on the basis of the application and attachments, that

the applicant possesses the competency and experience to understand and comply with the rules governing tank installations, closures, repairs, and modifications, and understands the techniques of underground storage tank installations and closures, as will protect public health, welfare, safety and the environment.

AUTH: 75-11-204, MCA; IMP: 75-11-204, 75-11-210, MCA

RULE IV INTERIM INSTALLER LICENSING FEES (1) An individual applying for an underground storage tank installer's license shall pay to the department the applicable fee(s) provided in subsection (2) of this rule. All fees are non-refundable.

(2) Applicable fees are as follows:

(a) interim license fee ..... $ 25

(b) duplicate interim license fee ..... $ 10

AUTH: 75-11-204, MCA; IMP: 75-11-204, 75-11-210, MCA

RULE V ISSUANCE OF INTERIM INSTALLER LICENSE, TERM, CONDITIONS (1) The department shall issue an interim installer's license upon the applicant's satisfaction of Rules II through IV and any statutory prerequisites. The license shall set forth the name and address of the licensed installer, a license identification number and the dates of issuance and expiration of the license. Licenses for applicants who will only be conducting closures shall be clearly designated as restricted for tank closures only.

(2) Interim installer licenses expire September 30, 1990. Licenses may be revoked, suspended, modified or conditioned prior to expiration.

(3) The department may add conditions to an interim license limiting or restricting the licensee in the time, type, or manner of work to be performed pursuant to the license if the department determines the conditions are necessary to protect the public's or licensee's health, safety, or welfare, or the environment.

(4) Interim installer licenses issued under this rule are non-transferable.

AUTH: 75-11-204, MCA; IMP: 75-11-204, 75-11-210, MCA

RULE VI INTERIM LICENSED INSTALLER RECORD KEEPING (1) Within 10 days of completion of an underground storage tank installation or closure, a licensed installer shall submit to the department:

(a) one copy of the completed manufacturer's installation checklist, or one copy of the completed department inspection checklist, and

(b) one copy of the installation permit signed by the installer certifying that the work was completed according to the applicable state statutes and rules and permit conditions.

(2) Within the same time, the licensed installer shall also give the owner or operator of the tank copies of the completed checklist and signed permit. The owner or operator shall keep a copy of the documents required by subsection (1) at the location of the installation or closure, for as long as the tanks

are used to store a regulated substance in the location at which the inspection took place.
AUTH: 75-11-204, MCA; IMP: 75-11-204, MCA

RULE VII INSTALLATION AND CLOSURE PERMIT REQUIREMENT -- APPLICATION (1) No person may install or close an underground storage tank without a permit to do so issued by the department.

(2) A completed application for a permit shall be filed by the permit applicant on a form provided by the department at least 30 days prior to the proposed date of installation or closure. The department may return to the applicant any application form that is incomplete or otherwise does not contain sufficient information for issuance of the permit. Resubmitted applications shall also be submitted to the department at least 30 days prior to the proposed date of installation or closure.

(3) The application form shall request and the applicant shall provide the following information:

(a) the name, address and business telephone number of the applicant;

(b) the name, address, and business telephone number of the owner and operator if different from those provided under subsection (a);

(c) the street address, or if no street address, the legal description of the installation or closure site;

(d) the name, address, business telephone number and license number of the licensed installer who will install or close the underground storage tank(s), or the proposed date of inspection and the name and address of the inspector;

(e) a detailed description of the work to be accomplished at the installation or closure site;

(f) the estimated date of the proposed installation or closure;

(g) a site plan of the proposed installation or closure site, on a scale of 1"=10' or other scale agreed upon by the applicant and the department, showing all utility corridors within 50 feet of the proposed installation or closure;

(h) the distances in feet to all public drinking water supplies, domestic and stockwater wells, surface waters including irrigation ditches, and springs within 1/4 mile of the proposed installation or closure, and estimated depth to groundwater at the proposed site.

(i) the size and contents of the tank(s) to be installed or closed, and the pipe diameter and length;

(j) a detailed description of the construction of the tank(s), including any manufacturer's identification such as make, model and serial number;

(k) a description of any permit or approval required by any local governmental unit; and

(l) the proposed method of disposing of tanks, piping and tank contents from a closure site.

(4) In the event of an emergency requiring immediate installation or closure of an underground storage tank, the appli-

cant shall telephone the department and provide the information required by subsection (3) and shall explain the nature of the emergency and the consequences of non-issuance. An emergency permit may be telephonically approved by the department. If an emergency permit is approved under Rule VIII(3), the applicant shall make application to the department, within 5 days of issuance of the emergency permit, for a non emergency permit under this rule. For the purposes of this subsection, an emergency is an imminent and substantial threat to the public health or safety or to the environment.

(5) Permits issued under this rule and Rule VIII are non-transferable.

AUTH: 75-11-204, MCA; IMP: 75-11-204, 75-11-209, 75-11-212, MCA

RULE VIII PERMIT ISSUANCE, TERMS, CONDITIONS (1) Upon receipt of a completed permit application, the department shall review the application and determine whether the proposed installation or closure meets the criteria for approval in subsection (2).

(2) A permit shall be issued by the department upon its determination that:

(a) any tank to be installed or closed complies with the rules of the department and the state fire marshal;

(b) the installation or closure will be conducted by a licensed installer unless exempted by section 75-11-217, MCA, or the installation or closure will be inspected by the department or a designated local inspector;

(c) the installation or closure will comply with:

(i) the rules of the department;

(ii) the rules of the state fire marshal;

(iii) any manufacturer's instructions;

(iv) the requirements of any local unit of government which are no less stringent than the requirements of subsection (2)(a) to (2)(c)(iii); and

(v) any state or local requirements for disposal of the tank and tank contents.

(d) the installation or closure will be conducted in such a place and manner as to protect the installer's and the public's health, welfare and safety and the environment.

(3) If the department determines that an emergency exists under Rule VII(4) and that the requirements of subsection (2) have been satisfied, it shall issue the permit in the manner provided by Rule VII(4) and subject to any conditions imposed pursuant to this rule.

(4) A permit issued to an applicant under this rule shall state on its face the address or location of the site at which the installation or closure may be conducted, the date(s) when the installation or closure is to be conducted, whether the installation or closure will be conducted by a licensed installer, and if so the name and license number of the installer. The permit shall include a signature line for the licensed installer to sign, certifying that the installation or closure

was conducted in accordance with applicable statutes and rules and any conditions of the permit. The permit must be kept at the installation or closure site during all phases of the installation or closure.

(5) Each permit issued by the department is subject to the condition that the permittee comply with all statutes, all rules of the department, rules of the state fire marshal, and any applicable requirements of a local governmental unit which are no less stringent than the requirements of subsection (2)(a) to (2)(c)(iii), and the permittee shall comply therewith.

(6) A permit issued by the department under this rule is issued subject to the accuracy of the information provided by the permit applicant in the permit application, subject to the information stated or referenced on the face of the permit pursuant to subsection (3), subject to compliance with all applicable statutes and rules, and subject to any conditions applied by the department. If the installation or closure is not conducted in accordance with any information or condition as provided in this subsection, the permit is void and of no effect and the installation or closure is considered to be conducted without a permit, and in violation of the law.

(7) The department may also issue the permit upon any other condition necessary to insure compliance with subsection (2). Any such conditions shall be stated or referenced upon the face of the permit.

(8) Permits are valid for one year from the date of issuance, or for the time period specified on the permit.

AUTH: 75-11-204, MCA; IMP: 75-11-204, 75-11-212, MCA

4. The rationale for the emergency rules is set forth in the statement of emergency in paragraph 1.

DONALD E. PIZZINI, Director

Certified to the Secretary of State March 30, 1990.

BEFORE THE DEPARTMENT OF INSTITUTIONS
OF THE STATE OF MONTANA

In the matter of the amendments of Rules 20.3.202, 20.3.207, 20.3.216, 20.3.402, 20.3.405, 20.3.409, 20.3.503, pertaining to definitions, clients rights, outpatient component requirements, and certification system for chemical dependency personnel, chemical dependency education course requirements - (ACT PROGRAM).	NOTICE OF AMENDMENTS OF RULES 20.3.202, 20.3.207, 20.3.216, 20.3.402, 20.3.405, 20.3.409, 20.3.503, PERTAINING TO DEFINITIONS, CLIENTS RIGHTS, OUTPATIENT COMPONENT REQUIREMENTS, CERTIFICATION SYSTEM FOR CHEMICAL DEPENDENCY PERSONNEL, CHEMICAL DEPENDENCY EDUCATION COURSE REQUIREMENTS - (ACT PROGRAM).

TO: ALL INTERESTED PERSONS

1. On December 21, 1989, the Department of Institutions published a Notice of Proposed Amendments of Rules 20.3.202, 20.3.207, 20.3.216, 20.3.402, 20.3.405, 20.3.409, 20.3.503 on pages 2121 through 2126, of the 1989 Montana Administrative Register, Issue number 24.

2. The Department has amended Rules 20.3.202, 20.3.207, 20.3.216, 20.3.402, and 20.3.409 as proposed, and 20.3.405 and 20.3.503 as modified.

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

20.3.405 STRUCTURED WORKSHOP TRAINING

(1) and (2) remain the same.

(3) Structured workshop training qualifies for points (or hours) only when it is:

(a) through (f) remain the same.

~~(g) experiential group training must ensure confidentiality to the participants.~~

(g) assured that experiential group participants are guaranteed confidentiality.

AUTH: 53-24-204 MCA IMP. 53-24-204 MCA

20.3.503 EDUCATIONAL COURSE REQUIREMENTS FOR DUI OFFENDERS (ACT PROGRAM)

(1) and (2) remain the same.

(3) The ACT program will notify the sentencing court ~~and driver improvement~~ if the offender does not enroll ~~(make contact)~~ with the program within ten days or start the course process within thirty days of the program's receipt of the court referral notice. Level I and II of the ACT program will take not less than thirty days and not longer

than ninety days to complete. An exception to the ~~10~~ 30-day minimum may be granted by the department based only on justified geographical considerations. The ACT program will notify the sentencing courts in all cases of failure to comply and the sentencing court will notify drivers improvement. Length of stay for level III (treatment) will be based on ~~the individual offender's treatment needs.~~ the recommendation of the certified chemical dependency counselor as approved or modified by the order of the sentencing court. ~~The sentencing court and driver improvement must be notified of~~ The approved chemical dependency program accepting the treatment referral must notify the sentencing court upon completion of Level III for second and subsequent offenders.

(4) through (7) remain the same.

AUTHORITY: 53-24-204, MCA. IMP. 53-24-204, MCA

4. The Department received no written comments to the proposed changes. The Department did receive an oral comment on December 15, 1989, from Valencia Lane, staff attorney, for the Legislative Council who had two concerns.

The first concern was that the reference to Section 53-24-105, MCA, as authority to adopt rules was questionable since the statute was not a clear grant of rule-making authority. While the department is aware of this view, the agency was never sure of what statute should be cited as authority. The agency will use Section 53-24-204, MCA.

The second concern was that the proposed changes to 20.3.405(3)(g), ARM, were unclear. The department agrees with this comment and has made the necessary grammatical changes.

CURT CHISHOLM, Director
Department of Institutions

Certified to the Secretary of State March 22, 1990.

STATE OF MONTANA
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
BEFORE THE BOARD OF WATER WELL CONTRACTORS

In the matter of the adoption of ARM 36.21.810 concerning abandonment of monitoring wells	NOTICE OF ADOPTION OF 36.21.810 ABANDONMENT

TO: ALL INTERESTED PERSONS:

1. On February 8, 1990, the Board of Water Well Contractors published a notice of proposed adoption of the above-stated rule at page 273, 1990 Montana Administrative Register, issue number 3.
2. The rule is being adopted exactly as proposed.
3. No written comments or testimony was received.

BOARD OF WATER WELL CONTRACTORS
WESLEY LINDSAY, CHAIRMAN

BY: Karen Barclay
KAREN BARCLAY, DIRECTOR
DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

Certified to the Secretary of State, April 2, 1990.

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

In the matter of the amendment of Rule(s) 46.12.571, 46.12.581 and 46.12.588 pertaining to coverage requirements and reimbursement for clinic services, psychological services and clinical social work services	))))))))	CORRECTED NOTICE OF AMENDMENT

TO: All Interested Persons

1. On March 15, 1990, the Department of Social and Rehabilitation Services published notice of the amendment of Rules 46.12.571, 46.12.581 and 46.12.588 pertaining to coverage requirements and reimbursement for clinic services, psychological services and clinical social work services at page 534 of the 1990 Montana Administrative Register, issue number 5.

2. The notice of amendment for 46.12.571 "clinic services requirements" incorrectly numbered subsections (8) through (11). Subsections (8) through (11) are hereby renumbered as subsections (10), (11), (12) and (13).

Julia E. Robinson
Director, Social and Rehabilitation Services

Certified to the Secretary of State April 2, 1990.

VOLUME NO. 43 OPINION NO. 59

ELECTIONS - Effect on election results of election officer's failure to follow statutory requirement for preparation of ballots; ELECTIONS - Rotation of candidates' names on ballot; PUBLIC OFFICERS - Effect on election results of election officer's failure to follow statutory requirement for preparation of ballots;
MONTANA CODE ANNOTATED - Sections 13-12-205, 13-12-205(2);
OPINIONS OF THE ATTORNEY GENERAL - 35 Op. Att'y Gen. No. 75 (1974), 18 Op. Att'y Gen. No. 252 (1940), 15 Op. Att'y Gen. No. 618 (1934), 10 Op. Att'y Gen. at 276 (1924).

HELD: Failure of an election administrator to rotate the names of candidates on the ballot so that each candidate's name appears at the top of the list on substantially an equal number of ballots does not render the results of the election invalid.

March 23, 1990

Hon. Mike Cooney
Secretary of State
State Capitol
Helena MT 59620

Dear Mr. Cooney:

You have requested my opinion on the following questions:

1. How should candidates' names be rotated on the ballot when it is mathematically impossible to place each name at the top of the ballot a substantially equal number of times?

2. Does the failure to rotate the list so that each candidate's name appears at the top of the ballot in substantially equal numbers render the election invalid?

Your request arises out of the primary election conducted in Flathead County in 1988. There were six candidates in the Democratic Party for the office of Governor and four Democratic Party candidates for the office of County Commissioner. The ballots were rotated so that the name of each gubernatorial candidate appeared at the top of the ballot an equal number of times. As a result, the names of two of the county commissioner candidates appeared at the top of the ballots twice as many times as the names of the other two. One of the two candidates whose names appeared at the top less frequently has objected to the method of name placement on the ballots.

Arrangement of candidates' names on the ballot is governed by section 13-12-205, MCA, which requires that the names be arranged alphabetically by surnames under the title of the respective offices. That section further provides in pertinent part:

> (2)(a) ... [I]f two or more individuals are candidates for nomination or election to the same office, the election administrator shall divide the ballot forms into sets equal in number to the greatest number of candidates for any office. The candidates for nomination to an office by each political party shall be considered separately in determining the number of sets necessary for a primary election.
>
> (b) The election administrator shall begin with a form arranged alphabetically and rotate so that each candidate's name will be at the top of the list for each office on substantially an equal number of ballots. If it is not numerically possible to place each candidate's name at the top of the list, the names shall be rotated in groups so that each candidate's name is as near the top of the list as possible on substantially an equal number of ballots.

The purpose of rotation of names on the ballots is "undoubtedly to give all candidates as fair a chance as possible by the placement of names and positions on the ballot." 18 Op. Att'y Gen. No. 252 at 252 (1940). See also 35 Op. Att'y Gen. No. 75 at 187, 189 (1974). Rotation of names on the ballot in some manner has long been required by Montana law. See, e.g., 10 Op. Att'y Gen. at 276 (1924). By its terms, the statute does not require mathematical precision where impossible, but simply requires that each candidate's name appear at the top on "substantially an equal number of ballots." § 13-12-205(2)(b), MCA.

It appears from your inquiry that the election administrator in this case did not assure that each candidate's name was as near the top as possible on substantially an equal number of ballots. The statute clearly requires that if it is impossible to place each candidate's name at the top an equal number of times, the names must be rotated so that each is "as near the top of the list as possible on substantially an equal number of ballots." (Emphasis added.) It appears, therefore, that the requirements of section 13-12-205(2)(b), MCA, were not satisfied. The critical inquiry is whether a failure by the election administrator to abide strictly by the rotation requirements invalidates the election. The answer to this question depends upon whether the statute is mandatory or directory in nature. Generally, acts taken in violation of a mandatory provision are void, whereas acts taken in violation of a directory provision, while improper, may nevertheless be valid. 29 C.J.S. Elections § 214(2), at 606 (1965); State ex rel. Stabler v. Whittington,

290 A.2d 659, 661 (Del. Super. Ct. 1972); In re Chairman in Town of Worcester, 29 Wis. 2d 674, 139 N.W.2d 557, 561 (1966).

Factors to be considered in determining whether a statute is mandatory or directory include the subject matter, the importance of the provision that allegedly has been disregarded, and the relation of the provision to the general object intended to be secured by the statute. Martin v. Porter, 47 Ohio Misc. 37, 353 N.E.2d 919, 923 (1976).

> "Whether a statute is mandatory or directory depends on whether the thing directed to be done is of the essence of the thing required, or is a mere matter of form. Accordingly, when a particular provision of a statute relates to some immaterial matter, as to which compliance with the statute is a matter of convenience rather than substance, or where the directions of a statute are given merely with a view to the proper, orderly and prompt conduct of business, it is generally regarded as directory, unless followed by words of absolute prohibition; and the same is true where no substantial rights depend on the statute, no injury can result from ignoring it, and the purpose of the legislature can be accomplished in a manner other than that prescribed, with substantially the same results."

Chicago, M.,St.P.& P.R.Co. v. Fallon County, 95 Mont. 568, 574-75, 28 P.2d 462, 463 (1933) (citation omitted).

A previous Attorney General's Opinion concluded that statutory provisions relating to the arrangement of names on the ballots are mandatory and must be substantially complied with, but cautioned that any error in the preparation of the ballots "must be corrected, if at all, before the election is held." 15 Op. Att'y Gen. No. 618 at 423, 424 (1934). This admonition is consistent with the principle to which the Supreme Court of Montana historically has adhered, to-wit, that all provisions of the election law are mandatory if enforcement is sought before election, but after election they will be held directory only. State ex rel. Wolff v. Geurkind, 111 Mont. 417, 433, 109 P.2d 1094, 1102 (1941). Thus, if an election procedure is challenged after an election, the election will not be invalidated unless the challenged law is "of a character to effect an obstruction to the free and intelligent casting of the vote, or to the ascertainment of the result, or unless the provisions affect an essential element of the election, or unless it is expressly declared by the statute that the particular act is essential to the validity of an election, or that its omission shall render it void." Id., (quoting Weber v. City of Helena, 89 Mont. 109, 125, 297 P.2d 455, 462 (1931)).

In the few reported cases relevant to this issue, the Supreme Court of Montana consistently has found that an error which does

not affect the results of an election cannot subsequently be used to invalidate the election. See Chicago, M.,St.P.& P.R.Co., 95 Mont. at 580, 28 P.2d at 465 (election held after date prescribed by statute valid notwithstanding noncompliance with statutory directive); Atkinson v. Roosevelt County, 71 Mont. 165, 181-82, 227 P. 811, 816 (1924) (votes cast at improper polling place not void where election otherwise honestly and fairly held); State ex rel. Brooks v. Fransham, 19 Mont. 273, 290, 48 P. 1, 7 (1897) (election not invalidated by error of election administrator in placing candidate's name under wrong party designation); Geurkind, 111 Mont. at 431, 109 P.2d at 1101 (election of write-in candidate valid notwithstanding election administrator's failure to remove name of deceased candidate from ballot, even where deceased candidate received more votes).

Decisions of other courts reflect the same interpretation of the mandatory/directory distinction. In pre-election challenges, it has been held that a statutory provision governing the arrangement of names on the ballot is mandatory. Resnick v. Board of Supervisors of Elections of Baltimore, 244 Md. 55, 222 A.2d 385, 389 (1966); Nugent ex rel. Manning v. La France, 91 R.I. 398, 164 A.2d 230, 232 (1960); City of St. Louis v. Crowe, 376 S.W.2d 185, 190 (Mo. 1964); Harder v. Denton, 9 Cal. App. 2d 607, 51 P.2d 199 (1935). Where the challenge is raised after the election, however, the courts have held that failure of the election administrator to place candidates' names on the ballots as required by statute is not ground for invalidating the election results. Nelson v. Robinson, 301 So. 2d 508, 511-12 (Fla. Ct. App. 1974); Roberts v. Byrd, 344 S.W.2d 378, 381 (Ky. 1961); Schell v. Studebaker, 15 Ohio Op. 2d 314, 174 N.E.2d 637, 639-40 (1960); Bees v. Gilronan, 66 Ohio L. Abs. 130, 116 N.E.2d 317, 321 (1953). See also Tsongas v. Secretary of Commonwealth, 362 Mass. 708, 291 N.E.2d 149, 152-53 (1972) (failure to rotate names, even if required by state constitution, did not lessen opportunity of voters to cast vote for candidate of choice and therefore did not invalidate election results); Pellegrino v. State Board of Elections, 100 R.I. 71, 211 A.2d 655, 658-59 (1965) (printing of name "Josephine" rather than candidate's true name of "Joseph," being mere technical noncompliance with statutory provision relating to form and content of ballot, did not vitiate election); Mochary v. Caputo, 100 N.J. 119, 494 A.2d 1028 (1985) (issue involving choice of ballot positions for candidates moot where general election already occurred). As stated by the court in Nelson, 301 So. 2d at 512:

> Keeping in mind that we are talking about a claim made after an election, and not one which may have been enforceable before, if a candidate appears on the ballot in such a position that he can be found by the voters upon a responsible study of the ballot, then such voters have been afforded a full, free and open opportunity to make their choice for or against that particular candidate; and the candidate himself has

> no constitutional right to a particular spot on the ballot which might make the voters' choice easier. [Emphasis in original.]

Similar reasoning was applied in Bees, 116 N.E.2d at 321, in which the court stated:

> Where the honesty of the ballots cast is not in question, where all the voters have an opportunity to give a free and fair expression of their will, and where the actual result thereof is clearly ascertained, a procedural neglect by election officials will not justify the rejection of such votes.

This principle has been established in Montana law since State ex rel. Brooks v. Fransham, supra, 19 Mont. at 290, 48 P. at 7, in which the Court observed that "where the will of the people is supreme, when clearly expressed it cannot be defeated by a claim that an official neglected to properly make up the ballot published and voted." See also Thirty Voters of County of Kauai v. Doi, 61 Haw. 179, 599 P.2d 286, 290 (1979) (election not invalidated for failure of election officials to comply strictly with election statute where there is substantial compliance and no showing of fraud).

In view of the history of Montana law, and in accordance with the weight of authority from courts of other states, it is my opinion that section 13-12-205(2), MCA, is not a mandatory provision of law when challenged after an election, because an error in the rotation of names on the ballot does not obstruct a free and intelligent casting of the vote and is not essential to the validity of the election. Therefore, failure to arrange candidates' names on the ballots as required by section 13-12-205(2), MCA, does not give rise to a challenge to the election results.

THEREFORE, IT IS MY OPINION:

> Failure of an election administrator to rotate the names of candidates on the ballot so that each candidate's name appears at the top of the list on substantially an equal number of ballots does not render the results of the election invalid.

Sincerely,

Marc Racicot

MARC RACICOT
Attorney General

VOLUME NO. 43 OPINION NO. 60

LEGISLATURE - Power of standing committees to investigate matters during a special session;
MONTANA CODE ANNOTATED - Sections 5-3-101, 5-5-101 to 5-5-105, 5-5-202;
MONTANA CONSTITUTION - Article V, sections 1, 10(4).

HELD: A standing committee of the Legislature not formally discharged prior to the final adjournment of the preceding session may meet during a special session for the purpose of gathering information and taking testimony on a matter not within the call of the special session.

March 26, 1990

John Vincent, Speaker
House of Representatives
State Capitol
Helena MT 59620

Dear Representative Vincent:

You have requested my opinion on the following question:

> May a standing committee of the Legislature meet for the purpose of gathering information and taking testimony on a matter not within the call of a special session?

The factual background to this request is that the Natural Resources Committee of the House of Representatives attempted to convene during the 1989 special session for the purpose of gathering information related to the cleanup of the hazardous waste contamination of the groundwater at Livingston, Montana. Hazardous waste cleanup was not within any of the subjects specified in the call of the special session. For the future guidance of the Legislature, you inquire as to the general information-gathering authority of standing committees during special sessions.

The legislative power in Montana is vested in the Legislature which consists of two chambers: the Senate and the House of Representatives. Mont. Const. Art. V, § 1. The Constitution provides that the Legislature may make rules for its proceedings. Mont. Const. Art. V, § 10(1). Under this rulemaking authority, the House Natural Resources Committee was designated a standing committee of the Fifty-first Legislature in rules adopted in January 1989. See Rule H30-10, Rules of the Montana Legislature (1989).

The authority to obtain information is an inherent attribute of legislative authority. A legislature cannot be expected to execute its lawmaking function wisely in the absence of companion authority to educate itself through fact-finding. The first clear judicial recognition of this principle was enunciated by the United States Supreme Court in McGrain v. Daugherty, 273 U.S. 135, 165 (1927):

> The state courts quite generally have held that the power to legislate carries with it by necessary implication ample authority to obtain information needed in the rightful exercise of that power, and to employ compulsory process for the purpose.

The Court concluded with regard to the federal constitution and Congress:

> A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change; and where the legislative body does not itself possess the requisite information--which not infrequently is true--recourse must be had to others who do possess it. Experience has taught that mere requests for such information often are unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion are essential to obtain what is needed. All this was true before and when the Constitution was framed and adopted. In that period the power of inquiry, with enforcing process, was regarded and employed as a necessary and appropriate attribute of the power to legislate--indeed, was treated as inhering. Thus there is ample warrant for thinking, as we do, that the constitutional provisions which commit the legislative function to the two houses are intended to include this attribute to the end that the function may be effectively exercised.

273 U.S. at 175. See also Watkins v. United States, 354 U.S. 178, 187 (1957). ("The power ... to conduct investigations is inherent in the legislative process. That power is broad.") I have found no Montana authority that recognizes an investigatory or information-gathering function within our Legislature that is narrower than that recognized in McGrain or the decisional law of other states. The legislative power described by Article V, section 1 of the Montana Constitution contains the inherent power of investigation. Statutory provision for legislative subpoena and for punishment through contempt for a witness's failure to comply with the subpoena reflects this power of investigation. See §§ 5-5-101 to 105, MCA.

Given the inherent authority of the Legislature to obtain information, a determination must be made whether that investigatory power is somehow limited during such times as the Legislature sits in special session. No express limitation exists in the state constitution. In fact, the constitution recognizes the need for information-gathering during the interim between regular legislative sessions. "The legislature may establish a legislative council and other interim committees." Mont. Const. Art. V, § 10(4). The foregoing provision was adopted in response to two concerns of the drafters of the 1972 Constitution: (1) that the legislative council be immune from judicial challenges to its interim activities, and (2) that the Legislature be allowed to exercise its investigative function through interim committees in the future. IV Mont. Const. Conv. 625, 626, 636 (1972). To a certain extent these goals reflect the same concern; they originate from several judicial challenges in the 1950's to the interim activity of the newly created legislative council.

In State v. Aronson, 132 Mont. 120, 314 P.2d 849 (1957), the Montana Supreme Court upheld the Legislature's attempt to create a legislative council which would serve during the interim, with the power to investigate and recommend legislation. Of significance to the present inquiry is that the Supreme Court recognized the power of the Legislature to create a committee to serve in the interim:

> [A]ll courts have uniformly held that investigative power exists in the legislative branch which may be exercised after final adjournment as well as during the session.

Id. 132 Mont. at 138, 314 P.2d at 859. See also In re Petition of the Finance Committee of the Legislature of the Virgin Islands, 242 F.2d 902, 904 (3d Cir. 1957); State v. Fluent, 191 P.2d 241, 245 (Wash. 1948). This principle is reflected in the 1972 Constitutional Convention transcripts: Article V, section 10(4) was drafted to protect the future interim work of the Legislature and in particular its investigative function. IV Mont. Const. Conv. 625, 626, 636 (1972).

Under the clear constitutional authority of Article V, section 10(4), the Legislature in 1973 vested its regularly-appointed standing and select committees with the power to sit during the interim. 1973 Mont. Laws, ch. 431, § 10. Section 5-5-202, MCA, presently states:

> **Interim activities of committees.** During an interim when the legislature is not in session, all regularly appointed standing or select committees of either house not formally discharged prior to the final adjournment of the preceding session shall continue as such committees. They are empowered to continue

to sit as such committees and may act through their joint subcommittees.

Section 5-5-202, MCA, makes clear that the authority of regularly appointed standing or select committees that have not been formally discharged is not lessened during the interim when the Legislature is not in session. The question arises whether the calling of a special session during an interim in which the subjects to be considered for lawmaking are limited somehow diminishes the power that the standing committee would have to investigate during the interim itself. Section 5-3-101, MCA, provides in full:

> **Convening of special session -- limiting subjects.** The legislature may be convened in special session by the governor or at the written request of a majority of the members. The governor or the legislature may limit the special session to the subjects specified in the call.

It is relevant to point out here that the 1972 Constitutional Convention delegates expressly eliminated the Governor's authority to limit the subjects the Legislature may consider at a special session, which authority had existed in the former state constitution. However, an Attorney General's Opinion is not an appropriate vehicle for determining the constitutionality of a state statute, and thus for purposes of this discussion, the validity of section 5-3-101, MCA, is presumed.

Presuming that section 5-3-101, MCA, means that during a special session the Legislature's power to legislate, or pass laws, is limited to subjects specified in the call, it can be argued that the "derived" or "inferred" powers to investigate are similarly limited. See 1 Sutherland Statutory Construction § 12.04 (4th ed. 1985). I reject this reasoning, however, because the power to investigate during the interim is a constitutionally-recognized function of the Montana Legislature and because section 5-3-101, MCA, does not by its terms limit the investigatory function of the Legislature. The investigatory function may be auxiliary to the lawmaking function, but it is a distinct and inherent power. The purported authority of section 5-3-101, MCA, to limit the subject matter of lawmaking during a special session does not diminish the inherent legislative power to investigate that exists during a regular session of the Legislature or during an interim period between sessions.

It is true that there exists a split of authority on this issue among the appellate courts of this country. Those opinions that have recognized an inherent legislative power are the most persuasive and well-reasoned. Hagaman v. Andrews, 232 So. 2d 1 (Fla. 1970); McGinley v. Scott, 164 A.2d 424 (Pa. 1960). The Hagaman decision of the Supreme Court of Florida is particularly instructive because at issue was the power of a standing

committee with interim investigatory authority to investigate a matter not within the call of a special session. The Committee on Elections of the Florida House of Representatives issued a subpoena duces tecum to a bank officer for the purpose of procuring records of an organization known as "The Governors' Club." The bank sought a declaratory judgment on its duty to respond, and several intervenors, on behalf of the Governors' Club, argued that the election investigation was outside the scope of a contemporaneous special session called specifically by Florida's governor to fund a road building program and set dates for the following year's primary election. The Florida Supreme Court rejected this argument and ordered that the bank respond to the subpoena, noting: "The calling of the special session did not diminish the powers or duties of the Committee." Haqaman v. Andrews, 232 So. 2d at 4.

In McGinley v. Scott, supra, the Supreme Court of Pennsylvania addressed a state senate resolution that created a committee to investigate election fraud. The resolution was adopted at a session of the General Assembly that was dedicated to enacting laws "raising revenue and laws making appropriations." 164 A.2d at 429. The Supreme Court interpreted the measure as a resolution rather than a law and addressed the power of the legislature to investigate during the budget sessions:

> The right to investigate in order to acquire factual knowledge concerning particular subjects which will, or may, aid the legislators in their efforts to determine if, or in what manner, they should exercise their powers, is an inherent right of a legislative body, ancillary to, but distinct from, such powers. It is immaterial that laws drafted as a result of the legislative investigation can not be passed at the session at which the committee was constituted.

Id. Several jurisdictions have held that the legislative investigatory authority is limited during the pendency of a special legislative session called for other purposes. Swing v. Riley, 90 P.2d 313 (Cal. 1939); State v. Anderson, 299 P.2d 1078 (Kan. 1956); Ex parte Wolters, 144 S.W. 531 (Tex. Crim. App. 1912). However, each of these cases involved a legislative investigatory committee created during a special session that was expressly limited under the authority of the state's constitution. By contrast, as already noted, the Montana House Natural Resources Committee is a standing committee vested with interim authority. There is no express or implied limitation in the Montana Constitution or the applicable statutes circumscribing the interim investigative activity of the Legislature's standing committees, including such activity during special sessions. The continuing power of legislative committees to investigate in order to obtain information is an inherent attribute of the legislative power recognized by the framers of the 1972 Constitution.

THEREFORE, IT IS MY OPINION:

A standing committee of the Legislature not formally discharged prior to the final adjournment of the preceding session may meet during a special session for the purpose of gathering information and taking testimony on a matter not within the call of the special session.

Sincerely,

Marc Racicot

MARC RACICOT
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. 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 December 31, 1989. This table includes those rules adopted during the period January 1, 1990 through March 31, 1990 and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through December 31, 1989, 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 1989 and 1990 Montana Administrative Registers.

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