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MONTANA ADMINISTRATIVE REGISTER

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1984 ISSUE NO. 11
JUNE 14, 1984
PAGES 905-947

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 11

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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

TABLE OF CONTENTS

NOTICE SECTION

Page Number

ADMINISTRATION, Department of, Title 2

2-2-136 Notice of Public Hearing on the Proposed Adoption, Amendment and Repeal - Performance Appraisal. 905-911

COMMERCE, Department of, Title 8

8-16-26 (Board of Dentistry) Notice of Proposed Adoption - Standards for Dentists Administering Anesthesia. No Public Hearing Contemplated. 912-917

HEALTH AND ENVIRONMENTAL SCIENCES, Department of, Title 16

16-2-273 Notice of Public Hearing on the Proposed Amendment and Adoption - Chemical Dependency Treatment Centers Licensure Standards. 918-920

RULE SECTION

COMMERCE, Department of, Title 8

AMD (Board of Dentistry) Allowable Functions for Dental Auxiliaries. 921-922

AMD (Board of Professional Engineers & Land Surveyors) Fee Schedule. 922

Page Number

COMMERCE, Department of, Continued

NEW (Financial Bureau) Fixing Dollar Amounts of Loans Made by Consumer Loan Licensees. 922

AMD (Montana Economic Development Board)
NEW Definitions - Rates, Service Charges and Fee Schedules - Board In-State Investment Policy Eligibility Criteria - Economic Development Linked Deposit Program - Loans - Montana Economic Development Bond Program 922-928

HEALTH AND ENVIRONMENTAL SCIENCES, Department of, Title 16

AMD Minimum Standards of Construction for Health Care Facilities. 929

INSTITUTIONS, Department of, Title 20

AMD Definitions - Certification System for Chemical Dependency Personnel. 930

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

AMD (Board of Oil and Gas Conservation) Forms and Reporting Requirements. 931

NEW EMERG (Board of Oil and Gas Conservation) Burning of Waste Gas and Ignitor Systems on Wells Producing Hydrogen Sulfide Gas. 932-933

INTERPRETATION SECTION

Opinions of the Attorney General

53 School Bus - School District - Schools - Whether a 14-Passenger Van is a School Bus. 934-936

SPECIAL NOTICE AND TABLE SECTION

Functions of the Administrative Code Committee 937

How to Use ARM and MAR 938

Accumulative Table 939-947

BEFORE THE DEPARTMENT OF ADMINISTRATION

OF THE STATE OF MONTANA

In the matter of the adoption of new rules, the amendment of rules and the repeal of 2.21.6412 relating to performance appraisal	))))))	NOTICE OF PUBLIC HEARING ON THE ADOPTION OF NEW RULES 2.21.6402, 2.21.6411, 2.21.6413 THROUGH 2.21.6415 AND THE REPEAL OF 2.21.6412 RELATING TO PERFORMANCE APPRAISAL

TO: All Interested Persons.

1. On July 10, 1984, at 7 p.m. in Room C-209, Cogswell Building, Helena, a public hearing will be held to consider the adoption of new rules, the amendment of rules 2.21.6402, 2.21.6411, 2.21.6413 through 2.21.6415 and the repeal of rule 2.21.6412, relating to performance appraisal.

2. The rule proposed to be repealed is on page 2-1466 of the Administrative Rules of Montana.

3. The proposed new rules provide as follows:

RULE I SHORT TITLE (1) This sub-chapter may be cited as the Performance Appraisal policy.

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

RULE II POLICY AND OBJECTIVES (1) It is the policy of the state of Montana that there be regular performance appraisal of all full-time and part-time employees in permanent positions.

(2) It is the objective of this policy to:

(a) establish minimum standards for performance appraisal, as directed by House Joint resolution 13 (1979 Leg.), and under the authority of 2-18-102, MCA; and

(b) establish performance appraisal which will maintain and encourage improved performance.

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

4. The rules proposed to be amended provide as follows:

2.21.6402 DEFINITIONS As used in this sub-chapter, the following definitions apply:

(1) "Appraiser" means an employee's immediate supervisor or person with the responsibility for assigning, directing, reviewing and evaluating the employee's work.

(2) "Performance standard" means ~~the level of performance considered acceptable against which an employee's actual performance can be measured.~~ an acceptable level of performance for a specific duty/responsibility; job-related criteria for measurement, specific to the duties and responsibilities of a position, such as a product to be produced (quantity or quality), result to be achieved or other consequence to be brought about or specific job behavior to be displayed. Standards may not be expressed as personal traits.

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

2.21.6411 APPRAISAL PROCESS (1) The performance of each ~~permanent~~ full-time and part-time employee in a permanent position as these terms are defined in 2-18-101, MCA, who has completed ~~probation~~ a probationary period shall be appraised during established appraisal periods of not more than 1-year's duration.

(2) The performance appraisal ~~of permanent probationary employees~~ of an employee in a permanent position who has not completed a probationary period shall be completed ~~at or~~ before the end of the probationary period. ~~The appraisal period should begin before the second month of employment.~~

~~(3) Seasonal employees who are scheduled to work at least six months in a year and who are expected to return in subsequent seasons shall be appraised at least once during the employment season.~~

~~(4) Temporary and intermittent employees need not be given performance appraisals.~~ (3) Performance appraisal is at the discretion of the agency for employees in positions designated as seasonal or temporary, as these terms are defined in 2-18-101, MCA, or for employees who work on an intermittent basis.

~~(5) When an employee is given a new appraiser, the appraiser shall either establish new performance standards and begin a new appraisal period or review preestablished standards with the employee to ensure mutual understanding. A new appraisal period should be established where inadequate assessment time remains in the former period.~~

~~(6)~~ (4) At the beginning of each appraisal period the appraiser shall inform the employee of the duties and responsibilities for which performance will be appraised, ~~their order of priority~~ and the performance standards for each. Identifying ~~and prioritizing~~ duties and responsibilities and developing performance standards may be done jointly with the employee or employees.

~~(7)~~ (5) During the appraisal period, the appraiser shall either directly observe ~~and note~~ the employee's performance of each specified duty and responsibility or ~~note performance from~~ review ~~of~~ reports, logs or other work samples. The appraiser should communicate with the employee on an ongoing basis both about observed superior and de-

ficient performance and may adjust the originally-selected performance standards, job duties and responsibilities. ~~for any significant changes in work assignment.~~

~~(8) When a supervisor plans to give an unacceptable rating, the supervisor shall give the employee written notice at least two months prior to issuing ratings in order to give the employee time to improve performance.~~

~~(9)~~ (6) At the end of the appraisal period the appraiser shall determine whether the employee's performance on each ~~specified duty/responsibility~~ performance standard was outstanding, above standard, standard (met the performance standard), needs improvement or was unacceptable. The appraiser may issue the determination using either:

(a) a five-level rating scale of outstanding, above standard, standard (met the performance standard), needs improvement or unacceptable. Ratings of at least outstanding or unacceptable must be accompanied by written comments from the appraiser; or

(b) an essay evaluation on each standard which must, at a minimum, communicate if performance on each standard met the standard.

(7) Individual agencies may establish policy regarding the method or methods used to issue determinations.

~~(10) These determinations and comments supporting them shall be stated in a written appraisal~~ The appraisal must be in writing and signed by the appraiser.

~~(5)~~ (8) The rating of performance shall take place no more than 60 calendar days after the close of the appraisal period, unless a new appraiser is appointed during the appraisal period. Where a new appraiser is appointed, management may extend the appraisal period. When an employee is given a new appraiser, the appraiser shall either establish new performance standards and begin a new appraisal period or review preestablished standards with the employee. ~~to ensure mutual understanding. A new appraisal period should be established where inadequate assessment time remains in the former period.~~

~~(11)~~ (9) A post-appraisal meeting shall be held privately with the employee to review the written appraisal. ~~The meeting should be as constructive as possible and concentrate on both superior and deficient performance, employee training needs and desires, employee career objectives and ways of improving agency operations. The post-appraisal meeting may be combined with a pre-appraisal planning session for the next appraisal period.~~

~~(12)~~ (10) The employee shall be asked to sign a statement on the appraisal document indicating that it was reviewed with the employee. Where the employee refuses to sign, ~~the appraiser shall note the refusal on the appraisal document~~ a witness, other than the appraiser, to that fact should sign and date the form.

(11) The employee must be given a copy of the completed appraisal.

~~(13)~~ (12) The employee shall be advised of the right to submit a written rebuttal to the appraisal.

(13) Informal or formal disciplinary actions initiated in accordance with the Discipline Handling Policy, 2.21.6501 et. seq. ARM., (also found at Policy 3-0130, Montana Operations Manual, Volume III, available from the Personnel Division, Department of Administration) are not dependent upon the performance appraisal process being completed.

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

2.21.6413 REVIEW (1) The performance standards, written appraisal and any employee rebuttal, may, at the agency's discretion, be reviewed by the supervisor's immediate supervisor or other appropriate agency authority for compliance with ~~procedural steps and/or application of performance standards~~ this policy.

(2) The reviewer may not change the ~~appraisal~~ ratings or written evaluation by substituting the reviewer's judgment for that of the appraiser.

(3) ~~When serious procedural errors or misapplication of performance standards are made which could significantly distort the written appraisal,~~ The reviewer may attach comments to the appraisal which must be made available to the employee and must be kept in the employee's personnel file.

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

2.21.6414 GRIEVANCE OR REBUTTAL (1) If the employee disagrees with the appraisal, the employee has the right to submit a written rebuttal to be attached to the document within 10 working days of receipt of the appraisal.

(2) The employee may grieve ~~the appraisal~~ adverse employment actions taken as a result of performance appraisal in accordance with ~~the rules ARM 2.21.8001 through 2.21.8009,~~ 2.21.8001 et. seq. ARM, ~~relating to~~ Grievances, (Also found at Policy 3-0125, Montana Operations Manual, Volume III available from the Personnel Division, Department of Administration).

~~(a) adverse employment actions are taken as a result of the appraisal;~~

~~(b) employee believes the appraisal was conducted in an unlawfully discriminatory manner; or~~

~~(c)~~ ~~(2)~~ If the employee believes the appraiser made ~~critical~~ procedural errors in evaluating the employee's performance;

~~(3)~~ ~~Grievable~~ the following procedural errors are grievable:

(a) failure of the appraiser to inform the employee of the duties and responsibilities to be assessed and the performance standards for each ~~at the beginning of the appraisal period,~~ as provided in 2.21.6411(4) and ~~(8)~~;

(b) failure of the appraiser to make written comments explaining unacceptable or outstanding ratings (~~supporting comments should be made for all ratings~~);

(c) failure of the appraiser to provide the employee with an opportunity to review ratings and supporting comments, when completed;

(d) failure of the appraiser to advise the employee of the right to submit a written rebuttal to be attached to the ~~original copy of the~~ written appraisal, (the notice of the right to file a rebuttal on ~~the second page of~~ the employee performance form is sufficient notice of the right to submit a rebuttal);

~~(e) failure of the appraiser to have written appraisal and rebuttal, if any, reviewed by a superior;~~

~~(f)~~ (e) failure ~~of the appraiser~~ to make a copy of the written appraisal and any reviewer's comments available to the employee, ~~for the employee's personal records; or~~

~~(g) failure of the appraiser to give an employee written notice at least two months prior to issuing ratings that the appraiser plans to give the employee an unacceptable rating.~~

(3) No employee may file a grievance based on the content of the duties, responsibilities, standards, ratings or comments of a performance appraisal.

~~(3)~~ (4) Employees who have not completed a probationary period may not grieve any aspect of the appraisal ~~unless alleging discrimination.~~ under 2.21.8001 et. seq. ARM, Grievances.

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

2.21.6415 RECORDS ~~(1) A copy of the written performance appraisal, attached documentation and rebuttal statement, if any, shall be given to the employee.~~

~~(2)~~ The ~~original~~ (1) A copy of the performance appraisal and rebuttal comments, if any, shall be retained in the employee's personnel file for a minimum of 3 years after the appraisal and ~~may be used for appropriate personnel decisions during that period~~ for a minimum of 2 years after the last date it was used in an employment decision. The appraisal may be retained for a longer period at the agency's discretion. ~~After the last date it was used in an employment decision, the form shall be retained as an inactive record for two years.~~

~~(3)~~ (2) Supervisors shall keep appraisal information confidential, except:

(a) in discussion with superiors;

(b) in discussion with prospective employers of the employee (when other than state agencies, this must be authorized by the employee); and

(c) when disclosure is required in administrative or court proceedings.

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

5. Changes in the rules are being proposed in response to requests from the Personnel Policy Network, a group made up of executive branch personnel officers and from managers who must implement the system for clarification in the areas mentioned in paragraph 6.

The proposed changes are intended to encourage executive branch agencies to use performance appraisal on an on-going basis and improve their ability to implement an effective system.

6. The rules are proposed to be adopted, amended and repealed to make minimum requirements for conducting effective performance appraisal more clear, to reorganize the rules so they are easier to follow and to reduce impediments to implementation. The changes also are proposed to create a clear distinction between the goals of performance appraisal, which are improved job performance and communication between supervisor and staff, and the goals and requirements of the discipline handling rules, which are found at 2.21.6501 et.seq. ARM.

Major specific changes include:

a. the 2-month notice provision prior to unacceptable ratings has been deleted. (2.21.6411 (8));

b. an alternative to the 5-level rating scale is provided; an essay evaluation. (2.21.6411 (6a and b));

c. a paragraph is added clarifying that the initiation of disciplinary action is not dependent upon completion of the performance appraisal process. (2.21.6411 (13));

d. language that states performance standards cannot be meaningfully compared was deleted (2.21.6412 (1 e));

e. Review of the performance appraisal by the appraiser's immediate supervisor or other appropriate person was placed at the agency's discretion, instead of being required (2.21.6413 (1)).

7. Interested parties may submit their data, views or arguments concerning the proposed adoption of new rules, amendment of 2.21.6401, 2.21.6411, 2.21.6413 through 2.21.6415 and the repeal of 2.21.6412 in writing to:

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

no later than July 12, 1984.

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

9. The authority of the agency to adopt these rules is based on 2-18-102, MCA, and the rules implement 2-18-102, MCA.

Morris L. brusett, Director
Department of Administration

Certified to the Secretary of State June 4, 1984.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF DENTISTRY

In the matter of the proposed adoption of new rules concerning anesthesia under a new subchapter 5.	))))	NOTICE OF PROPOSED ADOPTION OF NEW RULES UNDER SUB-CHAPTER 5, STANDARDS FOR DENTISTS ADMINISTERING ANESTHESIA

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On July 15, 1984, the Board of Dentistry proposes to adopt the above-stated rules.

2. The proposed rules will provide as follows:

"I. PROHIBITION (1) Dentists licensed in this state cannot use general anesthesia, conscious sedation, nitrous-oxide inhalation conscious sedation, or local anesthetic techniques, in the practice of dentistry, until they have met all of the requirements set forth in these rules.

(2) Violation of these rules shall constitute grounds for disciplinary action as provided in 37-4-321, MCA."

Auth: 37-1-131, 37-4-205, MCA Imp: 37-1-131, 37-4-101 (1) (i), MCA

"II. EXEMPTION (1) A dentist who can show evidence of competence and skill in administering general anesthesia or a form of conscious sedation by virtue of experience and/or comparable alternate training shall be presumed by the dental board to have appropriate credentials for the use of that category of anesthesia or consicious sedation. In applying for an exemption status, the dentist must have documented written evidence of his background for the board to evaluate and determine the appropriateness of training and experience. Consideration will be given to post graduate training and ADA accredited specialty programs."

Auth: 37-1-131, 37-4-205, MCA Imp: 37-1-131, 37-4-101 (1)(i), MCA

"III. DEFINITIONS (1) For the purpose of these rules the following definitions shall apply:

(a) General anesthesia is a controlled state of unconsciousness, accompanied by partial or complete loss of protective reflexes, including inability to independently maintain an airway and respond purposefully to physical stimulation or verbal command, produced by a pharmacologic or non-pharmacologic method, or a combination thereof.

(b) Anesthesia is the loss of feeling or sensation, especially loss of the sensation of pain.

(c) Local anesthesia is the loss of sensation of pain in a specific area of the body, generally produced by a topically applied agent or injected agent without causing the loss of consciousness.

(d) Analgesia is absence of sensibility to pain, designating particularly the relief of pain without loss of consciousness.

(e) Nitrous-oxide inhalation conscious sedation is a state of sedation in which the conscious patient has reduced fear, apprehension and anxiety through the inhalation of nitrous-oxide and oxygen and is maintained in a level of conscious sedation, capable of verbal communication, or other response to physical stimuli, but has not obtunded his protective autonomic reflexes.

(f) Conscious sedation consists of the use of any drug, element or other material administered IV or IM which results in relaxation, diminution or loss of sensation with the retention of intact protective reflexes, spontaneous respiration, the ability to maintain an airway, and the capability of giving rational responses to question on command. These rules do not apply to routine oral premedication."

Auth: 37-1-131, 37-4-205, MCA Imp: 37-1-131, 37-4-101 (1)(i), MCA

"IV. GENERAL ANESTHESIA TRAINING AND EDUCATION (1) A licensed dentist may employ or use general anesthesia for patients provided:

(a) He has a minimum of one year or its equivalent of training in anesthesiology and related subjects beyond the undergraduate dental school level which shall be completed prior to the use or administration of general anesthesia.

(b) The dentist and operatory staff must have a current cardiopulmonary resuscitation (CPR) certificate and update competence in other emergency procedures every three years."

Auth: 37-1-131, 37-4-205, MCA Imp: 37-1-131, 37-4-101 (1)(i), MCA

"V. GENERAL ANESTHESIA FACILITY (1) A licensed dentist administering general anesthesia shall have a facility that is properly equipped for the administration of general anesthesia and staffed with a supervised team of auxiliary personnel capable of reasonably handling procedures, problems, and emergencies incident to the use and administration of general anesthesia. The staff shall be under close supervision of the licensed dentist. The dentist must be in the operatory at all times when anesthesia of this nature is being used."

Auth: 37-1-131, 37-4-205, MCA Imp: 37-1-131, 37-4-101 (1)(i), MCA

"VI. CONSCIOUS SEDATION TRAINING AND EDUCATION (1) A licensed dentist may employ or use conscious sedation IV technique on an outpatient basis for dental patients provided:

(a) He has received formal training in the use of conscious sedation techniques.

(b) He is certified by the institution where the training was received to be competent in the administration of conscious sedation techniques. Such certification shall specify the type and number of hours and the length of training. The minimum of didactic hours shall be 40 and the minimum of patient contact hours shall be 20. A formal training program shall be sponsored by or affiliated with a university, teaching hospital or other facility approved by the board of dentistry or part of the undergraduate curriculum of an accredited dental school.

(c) The dentist and operatory staff must have a current cardiopulmonary resuscitation (CPR) certificate and update competence in other emergency procedures every three years."

"VII. CONSCIOUS SEDATION FACILITY (1) When using conscious sedation with oral or injected drugs, the dentist shall have a facility that is properly equipped for the administration of conscious sedation and staffed with a supervised team of auxiliary personnel capable of reasonably handling procedures, problems, and emergencies incident to the use and administration of conscious sedation agents. The staff shall be under the close supervision of a licensed dentist, and he shall be in the operatory at all times while this type of anesthesia is being used."

"VIII. NITROUS-OXIDE INHALATION CONSCIOUS SEDATION TRAINING AND EDUCATION (1) A licensed dentist may employ or use nitrous-oxide inhalation conscious sedation only, or in conjunction with local anesthetic agents, on an outpatient basis for dental patients provided:

(a) He has a minimum of 20 hours of technique instruction sponsored by an accredited hospital, accredited dental school, or dental society including instruction in safety and management of emergencies, which shall be completed prior to the use or administration of conscious nitrous-oxide sedation for dental patients.

(b) The dentist and operatory staff must have a current cardiopulmonary resuscitation (CPR) certificate and update competence in other emergency procedures every three years."

Auth: 37-1-131, 37-4-205, MCA Imp: 37-1-131, 37-4-101 (1)(i), MCA

"IX. NITROUS-OXIDE INHALATION CONSCIOUS SEDATION FACILITY (1) When using nitrous-oxide conscious sedation for dental patients, the dentist shall have a facility that is properly equipped for the administration of nitrous-oxide conscious sedation and staffed with a supervised team of auxiliary personnel capable of reasonably handling procedures, problems, and emergencies incident to the use and administration of conscious sedation. The staff shall be under the supervision of a licensed dentist.

(2) The following shall be present in any facility where nitrous-oxide inhalation conscious sedation is utilized other than in a hospital or oral surgery suite wherein those machines may provide 100% nitrous-oxide:

(a) an analgesia delivery machine which provides not less than 30% oxygen.

(b) equipment capable of delivering positive pressure oxygen.

(c) equipment for adequate suction.

(d) a portable backup oxygen unit."

Auth: 37-1-131, 37-4-205, MCA Imp: 37-1-131, 37-4-101 (1)(i), MCA

"X. LOCAL ANESTHETIC TRAINING AND EDUCATION

(1) Dentists licensed to practice in the state of Montana may use local anesthesia as is indicated in their practice.

(2) The dentist and operatory staff must have a current cardiopulmonary resuscitation (CPR) certificate."

Auth: 37-1-131, 37-4-205, MCA Imp: 37-1-131, 37-4-101 (1)(i), MCA

"XI. LOCAL ANESTHETIC FACILITY (1) When using local or regional anesthetic agents for dental patients the dentist shall have a facility that is properly equipped for the administration of local anesthesia and be capable of reasonably handling procedure problems and emergencies incident to the use and administration of local anesthetic agents.

(2) The following shall be present in an office utilizing local anesthesia:

(a) portable backup oxygen unit.

(b) equipment capable of delivering positive pressure oxygen.

(c) equipment for adequate suction."

Auth: 37-1-131, 37-4-205, MCA Imp: 37-1-131, 37-4-101 (1)(i), MCA

"XII. LIMITATION ON ADMINISTRATION OF ANESTHESIA (1) Nothing in these rules shall be construed to allow a dentist, dental hygienist, or auxiliary to administer to himself/herself or to any other person, other than in the course of the practice of dentistry, any drug or agent used for anesthesia."

Auth: 37-1-131, 37-4-205, MCA Imp: 37-1-131, 37-4-101 (1)(i), MCA

3. The board is proposing these rules to establish guidelines upon which the safety of administration of anesthetic agents can be measured. The dental laws of the state of Montana permit any licensed dentist to administer such agents. Morbidity and mortality can be associated therewith. In 1982 the board received a complaint wherein a 24 year old female patient, during the extraction of three wisdom teeth under local anesthesia with intravenous sedation, suffered what was acknowledged to be a respiratory arrest, leading rapidly to proven ventricular fibrillation, and despite resuscitative efforts, lead to a deep coma. Training, experience, adequate equipment and competent staff can minimize such risk. ABC News magazine, 20/20, broadcasted a story on the use of anesthesia and sedation techniques in dentistry, and it was reported by the American Dental Association that the control of anesthesia must be at a state level and cannot be performed at a national level. The board is empowered and directed to identify unsafe practices, equipment, and conditions and direct corrective action. These guidelines represent the basis upon which unsafe dental anesthesia practices would be judged. The board therefore, in order to promote the welfare of the state and to protect the health and well-being of the people of this state, finds it necessary to adopt the definitions and standards.

4. Interested persons may submit their data, views or arguments concerning the proposed adoptions in writing to the Board of Dentistry, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than July 13, 1984.

5. If a person who is directly affected by the proposed adoptions wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Dentistry, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than July 13, 1984.

6. If the board receives requests for a public hearing on the proposed adoptions from either 10% or 25, whichever is

less, of those persons who are directly affected by the proposed adoptions, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 116 based on the 1160 licensees in Montana.

BOARD OF DENTISTRY
DAVID B. TAWNEY, D.D.S.
PRESIDENT

BY: _____
GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, June 4, 1984.

BEFORE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES
OF THE STATE OF MONTANA

In the matter of the amendment of rules 16.32.302 and and 16.32.346, and the adoption of a rule establishing standards for licensure of chemical dependency treatment centers	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION OF RULES (Chemical Dependency Treatment Centers)

TO: All Interested Persons

1. On July 12, 1984, at 1:30 p.m., a public hearing will be held in Room A110 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of rules 16.32.302 and 16.32.346, and the adoption of a rule which establish standards for licensure of chemical dependency treatment centers.

2. Rule 16.2.306, which is proposed to be amended, is found at page 558 of the 1984 Montana Administrative Register. Rule 16.32.346, which is proposed to be amended is found at page 16-1489 of the Administrative Rules of Montana. The proposed new rule repiaces that language proposed to be deleted from 16.32.346.

3. The rules proposed for amendment and adoption provide as follows:

ARM 16.32.302 is amended to read as follows:

16.32.302 MINIMUM STANDARDS OF CONSTRUCTION FOR A LICENSED HEALTH CARE FACILITY -- ADDITION, ALTERATION, OR NEW CONSTRUCTION -- GENERAL REQUIREMENTS

(1) Same as previously amended.

(2) A personal care facility , chemical dependency treatment center, or a free-standing adult day care center:

(a) must meet all applicable building and fire codes and be approved by the officer having jurisdiction to determine if the building codes are met by the facility and by the state fire marshal or his designee;

(b) meet the water and sewer system requirements in (1)(b) and (c) above.

(3) and (4) Same as previously amended.

ARM 16.32.346 is amended to read as follows:

16.32.346 MINIMUM STANDARDS FOR A MENTAL HEALTH AND RETARDATION FACILITY, LICENSING AND CERTIFICATION

(1) Same as existing rule.

(2)(a) Same as existing rule.

~~(b) "Alcoholism treatment center" means a facility especially staffed and equipped to provide the following: diagnosis; detoxification; treatment; prevention and rehabilitation of individuals suffering from alcoholism.~~

(c) - (j) Same as existing rule except for re-lettering.

~~(k) "Narcotic treatment center" means a facility especially staffed and equipped to provide the following: diagnosis, treatment, detoxification, prevention and rehabilitation of individuals suffering from narcotic or drug addiction.~~

(3) - (6) Same as existing rule.

~~(7) An alcohol or narcotic treatment facility must offer the following:~~

~~(a) Inpatient service.~~

~~(b) Outpatient service.~~

~~(c) Partial hospitalization services such as day care, night care, weekend care.~~

~~(d) Emergency services 24 hours per day must be made available within at least one of the first 3 services listed above.~~

~~(e) Consultation and education services available to community agencies and professional personnel.~~

~~(f) In addition to the above, the following are recommended:~~

~~(i) Diagnostic services.~~

~~(ii) Rehabilitative services including vocational and educational programs.~~

~~(iii) Pre-care and after-care services in the community including foster-home placement, home visiting and half-way house.~~

~~(iv) Research and evaluation.~~

~~(g) The above services may be offered by one agency in one building, or by several agencies in several buildings, and by contract or written agreement with local hospitals, clinics, educational institutions, and like agencies.~~

(8) - (12) Same as existing rule except for renumbering.

RULE I MINIMUM STANDARDS FOR CHEMICAL DEPENDENCY FACILITIES (1) A "chemical dependency treatment center" means a facility especially staffed and equipped to provide diagnosis, detoxification, treatment, prevention or rehabilitation services for individuals suffering from alcoholism or chemical dependency.

(2) An inpatient chemical dependency treatment center which is established in a general acute-care hospital does not require separate licensure. However, the certificate of need requirements of Title 50, Chapter 5, subchapter 3, MCA, may apply.

(3) Detoxification and freestanding inpatient chemical dependency treatment centers shall be licensed separately as chemical dependency treatment centers.

(4) A chemical dependency treatment center must satisfy the program requirements set forth in ARM Title 20, Chapter 3, sub-chapter 2.

(5) The department hereby adopts and incorporates by reference ARM Title 20, Chapter 3, sub-chapter 2, with the exception of the following sections: 20.3.201, 20.3.203, 20.3.212(6)(a), 20.3.213(5)(a), 20.3.214(5)(a), and 20.3.215 (5)(a). ARM Title 20, Chapter 3, sub-chapter 2 are rules which have been adopted by the Department of Institutions setting forth program requirements for alcohol and drug abuse facilities to receive approval from the Department of Institutions. Copies of these rules are available from the Licensing and Certification Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana, 59620.

4. The department is proposing these rule changes in order to fulfill the legislative mandate set forth in Title 50, Chapter 8, requiring integration and coordination of the review and licensure of health care facilities which are subject to jurisdiction of more than one agency. The proposed rules incorporate by reference the standards for chemical dependency programs which have been adopted by the Department of Institutions. This will facilitate consistency and efficiency in review of such facilities by the two agencies.

5. 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 Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana, 59620, no later than July 12, 1984.

6. Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana, has been designated to preside over and conduct the hearing.

7. The authority of the department to make the proposed rules is based on section 50-5-103, MCA, and the rules implement sections 50-5-201, et seq., MCA.

John J. Drynan, M.D., Director

Certified to the Secretary of State June 4, 1984

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF DENTISTRY

In the matter of the amendment of 8.16.602 concerning allowable functions for dental auxiliaries.	))))	NOTICE OF AMENDMENT OF ARM 8.16.602 ALLOWABLE FUNCTIONS FOR DENTAL AUXILIARIES

TO: All Interested Persons.

1. On April 12, 1984, the Board of Dentistry published a notice of public hearing on the amendment of 8.16.602 concerning allowable functions for dental auxiliaries at pages 552, 1984 Montana Administrative Register, issue number 7.

2. The hearing was held on May 9, 1984 in the Skytop Room of the Sheraton Hotel, 27 North 27th, Billings, Montana. In addition to board members and staff, seven persons attended the hearing. Eleven letters were received. Two individuals spoke in support of the amendment at the hearing. Two individuals spoke in opposition to the amendment. Their objections were that the public perceives coronal polishing of teeth as a prophylaxis, there is a lack of training to perform the function, there is potential for abuse, and the duty could not be delegated to an auxiliary.

In response the board felt the duty is not prohibited to a hygienist and cannot be classified as only an orthodontic procedure. The board therefore, notices the adoption with the changes shown below based on their majority opinion that "coronal polishing" is a reversible procedure . Coronal polishing of teeth only in preparation for placement of orthodontic brackets and bands does not impinge on hygienist functions and cannot be misconstrued as a prophylaxis. The procedure, which is performed under supervision by the dentist, is a simple procedure and can be taught and learned easily.

3. The board has amended the rule with the following changes: (new matter underlined, deleted matter interlined)

8.16.602 ALLOWABLE FUNCTIONS FOR DENTAL AUXILIARIES

(1)...

(5) In addition to the above listed allowable functions for dental assistants, below listed are allowable functions for orthodontic auxiliaries under the direct supervision of a dentist. All patients must be seen by a dentist at each regular visit to the ~~orthodentist~~ dentist.

(a) ...

(l) ~~r~~replacing ~~lost~~ and removing ligature ties ~~and removing broken archwires~~,

(m) ...

(n) performing ~~i~~extraoral finishing of fractured edges on removable appliances~~.~~, and

(o) coronal polishing of teeth only in preparation for placement of orthodontic brackets and bands.

(6) To qualify...[former subsection (5)]"

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

In the matter of the amendment of rule 8.48.1105 concerning the fees.	)))	NOTICE OF AMENDMENT OF ARM 8.48.1105 FEE SCHEDULE

TO: All Interested Persons:

1. On April 26, 1984, the Board of Professional Engineers and Land Surveyors published a notice of amendment of the above-stated rule at pages 630 and 631, 1984 Montana Administrative Register, issue number 8.

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

3. No comments or testimony were received.

DEPARTMENT OF COMMERCE
BEFORE THE FINANCIAL BUREAU

In the matter of the adoption of a new rule fixing dollar amounts for loan amounts of consumer loan licensees.	))))	NOTICE OF ADOPTION OF A NEW RULE AMENDING THE DOLLAR AMOUNTS OF LOANS MADE BY CONSUMER LOAN LICENSEES, 8.80.307

TO: All Interested Persons:

1. On April 26, 1984, the financial bureau of the Department of Commerce published a notice of adoption of the above-stated rule at pages 665 and 666, 1984 Montana Administrative Register, issue number 8.

2. The bureau has adopted the rule exactly as proposed.

3. No comments or testimony were received.

DEPARTMENT OF COMMERCE
BEFORE THE MONTANA ECONOMIC DEVELOPMENT BOARD

In the matter of the amendments of 8.97.301 concerning definitions, 8.97.308 concerning rates, service changes, and fee schedules, 8.97.401	))))	NOTICE OF AMENDMENTS OF 8.97.301 DEFINITIONS, 8.97.308 RATES, SERVICE CHARGES AND FEE SCHEDULES, 8.97.401 BOARD IN-STATE INVESTMENT

concerning board in-state investment policy, 8.97.406 concerning economic development linked deposit program, 8.97.409 concerning loan participations, and 8.97.410 concerning guaranteed loan program, and adoption of new rules under sub-chapter 5 concerning the Montana economic development bond program.	) POLICY, 8.97.402 CRITERIA) FOR DETERMINING ELIGIBILITY,) 8.97.406 ECONOMIC DEVELOP-) MENT LINKED DEPOSIT PROGRAM,) 8.97.409 LOAN PARTICIPATION,) 8.97.410 GUARANTEED LOAN PRO-) GRAM and ADOPTION OF NEW RULES) 8.97.501 through 8.97.512) UNDER SUB-CHAPTER 5, RULES) GOVERNING THE MONTANA ECONOMIC) DEVELOPMENT BOND PROGRAM

TO: All Interested Persons:

1. On April 26, 1984, the Montana Economic Development Board published a notice of public hearing on the amendments and adoptions of the above-stated rules at pages 667 through 679, 1984 Montana Administrative Register, issue number 8.

2. The hearing was held on May 18, 1984 at 10:00 a.m. in the downstairs conference room, Department of Commerce, 1424 9th Avenue, Helena, Montana. One individual, in addition to staff and Steve Brown, board member, attended the hearing. The individual attended for informational purposes only and did not offer testimony. Two letters were received, one from the board's bond counsel, Dorsey and Whitney, which contained recommendations for revisions to the rules proposed in sub-chapter 5. Also received was a letter from Gregory J. Petesch, Staff Attorney for the Administrative Code Committee expressing opposition to the adoption of rule 8.97.507 subsection (5). The board is referring this matter to the office of the Attorney General for his response. No other comments or testimony were received. Based on the recommendations of the bond counsel, the rules are being amended as proposed and adopted with the following changes.

3. Rules 8.97.301, 8.97.308, 8.97.401, 8.97.402, 8.97.406, 8.97.409, and 8.97.410 are amended as proposed. New rule I now 8.97.501 is adopted with the addition of two new definitions (a) and (b), the current (a) and all subsections following are renumbered. A typographical correction is also being made to the statutory cite under subsection (2)(f): (new matter underlined, deleted matter interlined)

8.97.501 DEFINITIONS (1) The definitions contained herein are supplemental to the definitions contained in rule 8.97.301 A.R.M. and shall govern with respect to Sub-Chapter 5 in the event of conflict.

(2) As used in Sub-Chapter 5, and unless the context clearly requires another meaning:

(a) 'minor project' means a project the cost or appraised value of which is less than $1,000,000.

(b) 'major project' means a project the cost or appraised value of which exceeds $1,000,000, but is less than $10,000,000.

~~(a)~~ (c) 'notice' means ...

~~(d)~~ (f) 'public hearing' means the hearing conducted by the board or local government for the purpose of ascertaining public interest as required by sections 17-5-1526 and 17-5-1527 and section 103 (k) of the Internal Revenue Code.

~~(e)~~ (g) 'resolution of intention' means..."

Rule II now 8.97.502 is adopted as proposed.

Rule III now 8.97.503 is adopted with the following change.(new matter underlined, deleted matter interlined)

"8.97.503 DESCRIPTION OF ECONOMIC DEVELOPMENT BOND PROGRAM

(1) ...

(2) For projects the cost or appraised value of which is less than $1,000,000, ~~the small IDB program~~ minor projects, the originator or another approved financial institution must participate in financing the project, either directly or through a letter of credit, to the extent of at least 10% of the financing to be provided by the board. For projects the cost or appraised value of which exceeds $1,000,000 but is less than $10,000,000, ~~the IDB loan program~~ major projects, the originator shall participate in the financing of the project at the discretion of the board. In determining whether to require such participation the board shall consider:

(a) ...

(3) ~~Under either program t~~The financing by the board is limited to 90% of the cost or appraised value of the project or $10,000,000, respectively, whichever is less.

~~(4) The bonds or notes of the board may be sold at public or private offering, may be sold to finance projects on an individual basis, with or without the board's guarantee, or may be sold to finance multiple projects.~~

~~(5) Where multiple projects are financed by a single bond issue, a portion of the proceeds may be placed in a reserve fund to secure the bonds. The board may establish other funds to secure its bonds as provided in section 17-5-1515 (7), MCA.~~

(4) The board will issue its industrial development revenue bonds under one of its two programs, the Pooled IDB Program or the Stand Alone Program.

(a) under the Pooled IDB Program, the board will issue one or more series of bonds to finance loans for minor projects only. The bonds will be secured by the loan repayments and other forms of common security as the board

deems appropriate and as allowed pursuant to sections 17-5-1515 and 17-5-1520, MCA.

(b) under the Stand Alone Program, both major and minor projects may be financed by the issue of a single bond for each project. Bonds issued pursuant to this program will not be secured by any common reserves and may be sold to a purchaser selected by the borrower."

Rule IV now 8.97.504 is adopted as proposed. Rule V now 8.97.505 is adopted with the following changes to subsection (2):(new matter underlined, deleted matter interlined)

'8.97.505 ELIGIBILITY REQUIREMENTS (1) ...

(2) With respect to projects the costs or appraised value of which is less than $1,000,000, in addition to meeting the above criteria the financing must be participated in by the originator or another approved financingal institution, in a form acceptable to the board, to an extent of at least 10% of the financing to be provided by the board. An approved financial institution wishing to participate in a board financing under the pooled IDB program must certify at the time an application for such financing is submitted that the institution's participation in, including the letter of credit proposed to be issued for the financing being requested, together with its participation in, including the amounts of letters of credit outstanding for other financings under the board's Pooled IDB Program, does not exceed (15%) of its asset base.

(3) ..."

Rule VI now 8.97.506 is adopted with the addition of a new subsection (e), renumbers the current subsection (e) as (f), and adds a new subsection (2) and will read as follows: (new matter underlined, deleted matter interlined)

"8.97.506 CRITERIA FOR EVALUATING APPLICATIONS (1) In evaluating applications for financing under this program and determining whether rule V (1)(d), A.R.M. has been satisfied, the administrator and the board shall consider the following factors:

(a) ...

(e) the financial condition of the originator or other financial institutions issuing a letter of credit for the proposed financing;

~~(e)~~ (f) other information deemed relevant to protect the board's investment.

(2) The board reserves the right to require a borrower or a financial institution to provide such additional security as the board deems appropriate, including but not limited to a pledge of tangible or intangible assets."

Rule VII now 8.97.507 is adopted with the following changes: (new matter underlined, deleted matter interlined)

"8.97.507 APPLICATION PROCEDURE (1) A business enterprise may apply for financing under the economic development bond program by submitting a loan application to an originator who will review the proposed use of the money, borrower eligibility and borrower credit-worthiness. Based on ~~the~~ that application, the originator shall submit part I of the board's application form ~~a pre-application letter to the board which shall contain sufficient information to allow the board to determine that the proposed project and the applicant appear to be eligible for financing under the program.~~

(2) The administrator shall review ~~the pre-application letter~~ Part I of the application to determine whether the project is eligible for financing under the program. If the project appears eligible, the administrator shall notify the governing body of the local government in which the project is located of the pending application for financing and of its right to conduct a public hearing on the project for the purpose of determining whether the project is in the public interest. The local government shall notify the administrator within fourteen days after receipt of notification of the pending application of whether it intends to conduct the public hearing. If the local government declines to conduct the public hearing, the administrator shall forward the application to the board for consideration at its next meeting. If the board determines that the project and borrower are eligible for financing and the financing is in the public interest, it may issue a resolution of its present intention to issue bonds, sometimes referred to as an 'Inducement Resolution'. This resolution of intention shall only constitute an expression of present intention of the board with respect to the project and shall not constitute a binding commitment on the part of the board that its bonds or notes will be issued for the project.

(3) ~~The administrator and local government shall agree on the date of a public hearing if it is to be held by the local government. If the local government does not notify the administrator within fourteen days after receipt of notification of the pending application, the board will conduct the public hearing in the jurisdiction in which the project is located or in Helena, Montana. The administrator will cause notice of the public hearing to be published.~~ If the local government elects to conduct the public hearing, the administrator and local government shall determine the date for the public hearing and the administrator shall cause notice of the public hearing to be published in a newspaper in the locality in which the project is located. If after the public hearing, the local government determines the project to be in the public interest it shall adopt a resolution

approving the project and making appropriate findings of public interest with respect thereto. The local government shall notify the board of its findings and provide it with a copy of the resolution ~~if one is adopted,~~ within fourteen days of the public hearing. Upon notification that the local government has determined the project to be in the public interest, the board may issue a resolution of intention as herein described.

(4) If the local government declines to conduct the public hearing, fails to notify the board of its intention to conduct the hearing within fourteen days, fails to notify the board to its determination of public interest within fourteen days of hearing, or determines the project is not in the public interest, the board 'shall' in the first two instances or 'may' under the other instances, hold a public hearing on the project for the purpose of a determining whether the project is in the public interest. At the conclusion of the public hearing, the board may issue its inducement resolution for the project if one has not been previously adopted or make other necessary findings with respect thereto.

~~(4)~~ (5) In determining whether a project is in the public interest, the local government or the board shall consider whether the proposed project:

(a) ...

(d) is consistent with section 17-5-1502, MCA, and

(e) complies with the local government's ordinances, resolutions, or regulations pertaining to the issuance of industrial development revenue bonds, if any.

~~(5)~~ (6) Upon receipt ..."

Rule VIII now 8.97.508 is adopted as proposed. Rule IX now 8.97.509 is deleted in its entirety and replaced with the following material.

"8.97.509 APPLICATION AND FINANCING FEES, COSTS AND OTHER CHARGES

(1) Applicants for participation in either the Pooled or the Stand Alone IDB Program shall submit a non-refundable application fee of $500 at the time the application is submitted.

(2) (a) At the time revenue bonds are issued by the board under either the Pooled or Stand Alone IDB Program to provide financing for a project, the borrower shall pay to the board a financing fee based on the principal amount of revenue bonds issued on behalf of that borrower calculated as follows:

(i) one percent of the first $1,000,000, plus

(ii) one-half percent of the next $4,000,000, plus

(iii) one-quarter percent of any amount over $5,000,000.

(b) The financing fee is designed to reimburse the board for a proportionate share of its administrative costs associated with the making and servicing of its financial

undertakings and its general operative and administrative expenses.

(3) Borrowers under either the Pooled or Stand Alone IDB Program shall pay the costs of issuance of the bonds. The immediate costs of the bond issue may include, but are not limited to fees of the underwriter, financial advisor, and bond counsel, the cost of printing, advertising, executing, and delivering the bonds, and all other costs that may, under federal arbitrage regulations, be recovered in addition to permissible yield differential. Such costs are incurred on behalf of one or more projects and a pro rata participation in those costs would be unfair to other project borrower(s) on whose behalf such costs were incurred to pay the actual costs.

(4) Borrowers under the Pooled IDB Program shall remit to the board monthly an administrative and loan loss reserve fee equal to .50% per annum of the outstanding loan balance.

(5) (a) Financial institutions participating in the board's bond programs shall be entitled to charge borrowers for services provided to borrower as set forth herein. The amount of such fees shall be approved by the board at the time it issues its commitment to finance the project.

(b) Allowable fees shall include:

Loan origination fee
Loan servicing fee
Letter of credit fee."

Rules X, XI, and XII, now 8.97.510, 511, 512 are adopted as proposed.

BY: _____
GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, June 4, 1984.

BEFORE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES
OF THE STATE OF MONTANA

In the matter of the amendment of rule 16.32.302, setting minimum construction standards for health care facilities	NOTICE OF THE AMENDMENT OF RULE 16.32.302 (Health Care Facilities)

TO: All Interested Persons

1. On April 12, 1984, the department published notice of a proposed amendment of rule 16.32.302 concerning minimum standards of construction for health care facilities at page 558 of the 1984 Montana Administrative Register, issue number 7.

2. The department has amended the rule as proposed.

3. No comments or testimony were received.

JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State June 4, 1984

BEFORE THE DEPARTMENT OF INSTITUTIONS
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 20.3.415 concerning definitions of terms relating to the certification system for chemical dependency personnel	)))))	NOTICE OF THE AMENDMENT OF RULE 20.3.415 DEFINITIONS - CERTIFICATION SYSTEM FOR CHEMICAL DEPENDENCY PERSONNEL

TO: All Interested Persons.

1. On April 26, 1984, the Department of Institutions published notice of a proposed amendment to rule 20.3.415 concerning definitions which relate to the certification system for chemical dependency personnel at page 681 of the Montana Administrative Register, issue number 8.

2. The Department has amended the rule as proposed.

3. No comments or testimony were received.

4. The authority for the rule is based on Section 53-24-204 MCA, and the rule implements Section 53-24-204 MCA.

CURT CHISHOLM, Deputy Director
Department of Institutions

Certified to the Secretary of State June 4, 1984.

BEFORE THE BOARD OF OIL
AND GAS CONSERVATION

In the matter of the amendment of Rules 36.22.307, 36.22.1217, 36.22.1243, 36.22.502(5) and 36.22.1305 pertaining to Board of Oil & Gas Conservation reporting requirements.	NOTICE OF AMENDMENT OF RULES 36.22.307, 36.22.1217, 36.22.1243, 36.22.502(5) and 36.22.1305

TO: All Interested Persons

1. On April 26, 1984, the Board of Oil and Gas Conservation published Notice of a proposed amendment to Administrative Rules 36.22.307, 36.22.1217, 36.22.1243, 36.22.502(5) and 36.22.1305 concerning Board approved forms and reporting requirements. The notice was published at page 683 of the 1984 Montana Administrative Register, issue number 8.

2. The Board has adopted the rules as proposed.

3. No comments or testimony were received.

Richard A. Campbell, Chairman
Board of Oil and Gas Conservation

BY: Dee Rickman
Dee Rickman
Assistant Administrator
Oil and Gas Conservation Division

Certified to the Secretary of State June 4, 1984.

BEFORE THE BOARD OF OIL AND GAS CONSERVATION
OF THE STATE OF MONTANA

In the matter of the adoption of an emergency rule requiring burning of waste gas and workable ignitor systems on wells producing H_2S gas.	NOTICE OF ADOPTION OF AN EMERGENCY RULE REQUIRING BURNING OF WASTE GAS AND IGNITOR SYSTEMS ON WELLS PRODUCING HYDROGEN SULFIDE GAS

TO: All Interested Persons.

1. The Board finds that several producing wells in this state are producing hydrogen sulfide in potentially lethal quantities. Unless those wells are equipped with a workable ignitor system to insure that said lethal gas is continually burned, their existence poses an imminent peril to the public health and safety. The Board also finds that a number of producing wells in this state are also venting explosive gas which, if not burned, could pose a danger to the public health and safety.

2. The text of the rule is as follows:

NEW RULE I (36.22.1221) BURNING OF WASTE GAS REQUIRED

(1) All gas vented to the atmosphere at a rate exceeding 20 MCF per day shall be burned. All operators of wells venting any quantity of gas containing 20 parts per million or more of H_2S shall insure that workable ignitor systems are installed on such wells and take whatever other steps that may be necessary to insure that all such waste gas is burned and not vented to the atmosphere. No variance from this rule is allowed without written authorization of the Board.

(2) Any operator seeking a variance from this rule must submit a production test and a statement justifying the need for a variance. The statement should include such information as potential human exposure; relative isolation of location; restriction of access to location such as fence, warning signs, etc.; low gas volume; and low BTU content.

(3) The Board staff will review the justification statement with the Board at its next regularly scheduled hearing. The Board may elect to grant or deny the application or schedule a hearing thereon. An operator whose application for variance is denied without a hearing may request a hearing.

3. The authority of the Board to adopt said rule is based on Section 82-11-111, MCA, and the rule implements Section 82-11-123, MCA.

The emergency action is effective June 4, 1984.

Richard A. Campbell, Chairman
Board of Oil and GasConservation

BY: Dee Rickman
Dee Rickman
Assistant Administrator
Oil and Gas Conservation Division

Certified to the Secretary of State June 4, 1984.

VOLUME NO. 40 OPINION NO. 53

SCHOOL BUS - Whether a 14-passenger van is a "school bus;"
SCHOOL DISTRICT - Whether a 14-passenger van is a "school bus;"
SCHOOLS - Whether a 14-passenger van is a "school bus;"
MONTANA CODE ANNOTATED - Section 20-10-101(3).

HELD: A 14-passenger van owned by two school districts and used to transport students to and from activity events is a school bus under section 20-10-101(3)(a), MCA.

1 June 1984

John P. Connor, Esq.
Jefferson County Attorney
Jefferson County Courthouse
Boulder MT 59632

Dear Mr. Connor:

You have requested my opinion concerning this question:

> Is a 14-passenger van owned by two school districts and used to transport students to and from school activities a "school bus" within the meaning of section 20-10-101(3)(a), MCA?

Determination of your question must be made with reference to section 20-10-101(3)(a) and (b), MCA.

The definition of "school bus" in section 20-10-101(3), MCA, was substantially modified during the 1983 legislative session. See 1983 Mont. Laws, ch. 525. Section 20-10-101(3)(a) and (b), MCA, now reads:

> (3)(a) A "school bus" means, except as provided in subsection (3)(b), any motor vehicle that:
>
> (i) complies with the bus standards established by the board of public education as verified by the Montana division of motor vehicles' semiannual inspection of school buses and the superintendent of public instruction; and

(ii) is owned by a district or other public agency and operated for the transportation of pupils to or from school or owned by a carrier under contract with a district or public agency to provide transportation of pupils to or from school.

(b) A school bus does not include a vehicle that is:

(i) privately owned and not operated for compensation under this title;

(ii) privately owned and operated for reimbursement under 20-10-142;

(iii) either district-owned or privately owned, designed to carry not more than nine passengers, and used to transport pupils to or from activity events or to transport pupils to their homes in case of illness or other emergency situations; or

(iv) an over-the-road passenger coach used only to transport pupils to activity events.

It is clear that, unless excepted under section 20-10-101(3)(b)(iv), MCA, the 14-passenger van at issue is a "school bus."

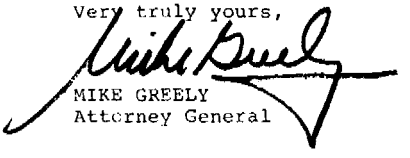
The term "over-the-road passenger coach" is not specifically defined. Nonetheless, "[t]he terms [of a statute] must be given the natural and popular meaning with which they are usually understood...." Jones v. Judge, 176 Mont. 251, 254, 577 P.2d 846, 848 (1978). The term "over-the-road" is commonly associated with long-distance highway transportation, while the term "passenger coach" normally refers to a large common carrier type of bus. Moreover, even if the phrase "over-the-road passenger coach" were ambiguous, legislative history clearly indicates that subsection (3)(b)(iv) is inapplicable to a small passenger van such as that involved here. In written analysis before the House Committee on Education and Cultural Resources, that portion of House Bill 794 later enacted as section 20-10-101(3)(b)(iv), MCA, was explained as exempting only "the greyhound-type buses used by many school districts for various activity events." February 16, 1983 Minutes of House Committee on Education and Cultural Resources, Exhibit 2 at p. 2. A 14-passenger van does not fall within this exception. Instead, the van here is the general type of vehicle contemplated by

the subsection (3)(b)(iii) exclusion but, because its passenger capacity exceeds nine, is not excepted thereunder.

THEREFORE, IT IS MY OPINION:

A 14-passenger van owned by two school districts and used to transport students to and from activity events is a school bus under section 20-10-101(3)(a), MCA.

Very truly yours,



MIKE GREELY
Attorney General

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules or amendment or repeal of existing rules filed with the Secretary of State. Proposals of the Department of Revenue are reviewed only in regard to the procedural requirements of the Montana Administrative Procedure Act. The Committee has the authority to make recommendations to an agency regarding the adoption, amendment or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. In addition, the Committee may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt or amend a rule.

The Committee welcomes comments from the public and invites members of the public to appear before it or to send it written statements in order to bring to the Committee's attention any difficulties with existing or proposed rules. The address is Room 138, Montana State Capitol, Helena, Montana 59620.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions: Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statute and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM) :

Known Subject Matter	1. Consult ARM topical index, volume 16. Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued.
Statute Number and Department	2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 1984. This table includes those rules adopted during the period April 1, 1984 through June 30, 1984, and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 1984, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1983 and 1984 Montana Administrative Registers.

ADMINISTRATION, Department of, Title 2

I	State Plan of Operation for Distribution of Federal Surplus Property, p. 746
I-IV	and other rules - Moving and Relocation Expenses, p. 735
I-VII	Discipline Handling Policy, p. 740
I-XIX	Veteran's and Handicapped Person's Employment Preference, p. 93, 425
I-XXII	Purchasing Rules, p. 1564, 1918
2.23.101	and other rules - Operation of a Merit System, p. 858
2.31.101	ANSI Standards for Aerial Passenger Tramways, p. 350, 409, 811
2.32.101	Uniform Building Code - Doors - Health Care Facilities, p. 622, 744
2.32.210	Review of School Plans in Areas Where There is a Local Government Code Enforcement Program, p. 624
2.32.401	National Electrical Code - Minimum Standards and Requirements for Electrical Installations, p. 626
2.32.501	Standard for Recreational Vehicles - Construction, p. 628

AGRICULTURE, Department of, Title 4

I	Restricting the Sale and Use of Endrin, p. 468, 812

I-XXI Montana Agricultural Loan Authority Rules - Sale of Tax-exempt Bonds to Provide Agricultural Loans to Beginning Farmers/Ranchers, p. 1683, 363
4.12.3402 Seed Laboratory Reports - Enforcement, p. 1489, 1920

STATE AUDITOR, Title 6

I Exemption from the Registration Provisions of the Securities Act of Montana - The Montana Venture Capital Exemption, p. 352, 588
I-IV Registration Exemption for Regulation D Securities Offerings and Creating Examination, Reporting and Record Keeping Requirements for Investment Advisors, 1582, 19

COMMERCE, Department of, Title 8

I Incorporation By Reference of Rules for the Implementation of the Montana Environmental Policy Act, p. 859
(Board of Athletics)
I-XL Professional or Semiprofessional Wrestling or Boxing Matches or Exhibitions Which Involve a Prize or Purse, p. 108, 437
(Board of Architects)
8.6.410 Renewals, p. 355
8.6.413 Fee Schedule, p. 283, 499
(Board of Barbers)
I-II Public Participation - Qualifications for Examination for Out-of-State Applicants, p. 475
8.10.405 and other rules - Fee Schedule - Qualifications - Teaching Staff - Curriculum - Course Completion Procedures, p. 471, 813
(Board of Chiropractors)
8.12.601 and other rules - Applications, Educational Requirements - Renewals - Continuing Education Requirements, p. 285, 499
(Board of Cosmetologists)
8.14.814 and other rules - General, Initial, Renewal and Late Fees - Fee Schedule p. 548, 861
8.14.816 and other rules - Salons - Examination - Fee Schedule - Electrology Schools - Sanitary Rules, p. 1225, 1815
8.14.1002 Applications for Electroloysis - Examiners - Student Examinations, p. 1766, 245
(Board of Dentistry)
I-XIX Standards for Dentists Administering Anesthesia, p. 1768, 1861
8.16.602 Allowable Functions for Dental Auxiliaries, p. 1693, 552

(Board of Horse Racing)
8.22.303 and other rules - Petition Proceedings - Filming of Pari-mutuel Events and Financial Obligations of Pari-Mutuel Licensees - Fines Levied by Stewards - Unclaimed Tickets, p. 1775, 320
8.22.502 Licenses Issued for Conducting Pari-Mutuel Wagering on Horse Race Meetings, p. 287, 813
8.22.612 Veterinarian: Official or Track, p. 287
8.22.801 General Requirements Concerning Preference, p. 290, 499
(Board of Landscape Architects)
8.24.405 and other rules - Examinations - Fee Schedules, p. 1695, 24
(Board of Morticians)
8.30.402 and other rules - Applications - Fee Schedule, p. 477, 815
(Board of Optometrists)
I Disciplinary Actions, p. 2, 369
8.36.407 Unprofessional Conduct - Violations, p. 1, 369
(Pharmacy)
8.40.405 and other rules - Explosive Chemicals - Additions, Deletions & Rescheduling of Dangerous Drugs, p. 357, 589
(Plumbers)
8.44.403 and other rules - Applications - Examinations - Renewals - Duplicate and Lost Licenses - Fee Schedule, p. 748
(Polygraph Examiners)
I-VI Licensure, p. 1589, 1921
(Professional Engineers and Land Surveyors)
8.48.1105 Fee Schedule, p. 630
(Private Investigators and Patrolmen)
I-XXVI Public Participation - Definitions - Employment - Applications - Experience Requirements - Examinations - Identification - Insurance - Uniforms License Renewal - Code of Ethics - Complaint Procedures, p. 1863, 589
8.50.101 Organization, p. 1862, 589
8.50.201 Procedural Rules, p. 1863, 589
8.50.401 and other rules- Rules Governing the Board of Private Security Patrolmen and Investigators, p. 1863, 589
8.50.431 Insurance Requirements, p. 1862, 815
(Board of Psychologists)
8.52.616 Fee Schedule, p. 1497, 1816
(Board of Public Accountants)
8.54.401 and other rules - Definitions - Professional Conduct - Positive Enforcement - Examinations - Licenses - Fees - Records, p. 632
(Radiologic Technologists)
8.56.402 and other Rule - Applications - Fee Schedule, p. 1284, 1923
8.56.407 Renewals, p. 1588, 1922
8.56.409 Fee Schedule, p. 1592, 1923

(Renewals)
I Renewal Date for All Barber Licenses, p. 1764, 245
8.44.405 and other rules - License Renewal Dates for Plumbers, Professional Engineers and Land Surveyors, Optometrists, p. 1412, 1717
(Board of Social Work Examiners)
I-VI Board Organization - Procedural Rules - Definitions - Licensure Requirements - Application Procedure - Fee Schedule, p. 131, 440
(Board of Weights and Measures)
8.77.102 Fees for Testing and Certification, p. 1698, 24
(Milk Control Bureau)
8.79.101 Transactions Involving the Purchase and Resale of Milk Within the State, Rule Definitions, p. 752
8.79.101 and other rule - Transactions Involving the Purchase and Resale of Milk Within the State, p. 1140, 1817
8.79.301 License Assessments, p. 292, 501
(Financial Bureau)
I Retention of Bank Records, p. 1458
I Semi-Annual Assessment for State Banks, Trusts and Investment Companies, p. 1783, 134, 440
I Amount to Which Finance Charges are Applied by a Licensed Consumer Loan Company, p. 665
(Board of Milk Control)
8.86.301 Pricing Rules, Class I Price Formula, p. 411
(County Printing)
8.91.303 and other rule - Official Publications and Legal Advertising - Schedule of Prices, p. 795, 1924
(Montana Economic Development Board)
I-IX General Provisions and Application Procedures - Approval of Financial Institutions - Confidentiality - False or Misleading Statements - Service Charge - Fee Schedule - Non-Discrimination, p. 1880, 370
X-XXIII Montana In-State Investment Fund - Policy - Eligibility Criteria - Preferences - Application Procedures - Fees - Loans - Commitment of Funds, p. 1888, 379
I-X Rules Pertaining to Montana Economic Development Board, p. 1509, 1820
I-XII Municipal Finance Consolidation Act Program, p. 862
8.97.301 and other rules - Definitions - Rates, Service Charges and Fee Schedules - Board In-State Investment Policy - Eligibility Criteria - Economic Development Linked Deposit Program - Loan Participation - Montana Economic Development Bond Program, p. 667, 869
(Coal Board)
8.101.301 and other rules - Policy Statement - Preapplication Form - Agreement Form - Submittal Deadlines - Water and/or Sewer Systems Provided by Districts, p. 1416, 1826

(Health Facility Authority)
I-VIII Montana Health Facility Authority Rules, p. 1288, 1719
8.120.206 Fees - Initial and Annual Planning Service, p. 418, 696

EDUCATION, Title 10

(Superintendent of Public Instruction)
I State Special Education Complaint Procedures, p. 479, 817
I Obligation of Debts Incurred for the Purchase of Property, p. 754
10.41.101 and other rules - Vocational Education - General Rules - Postsecondary Vocational Education - Vocational Education in Secondary Schools, p. 135, 818
(Board of Public Education)
I Gifted and Talented Children, p. 756
I-IV School for Deaf and Blind Foundation, p. 1517, 1926
10.55.101 and other rules - Accreditation Standards of the Board of Education, p. 5, 827
10.55.210 School Morale, p. 4
10.55.302 Certificates - First Aid Training for Personnel Coaching Athletics, p. 871
10.55.402 Minimum Units Required for Graduation, p. 758
10.58.101 and other rules - Standards for State Approval of Teacher Education Programs Leading to Interstate Reciprocity of Teacher Certification, p. 176, 831
10.62.101 and other rules - Certification of Fire Services Training Schools, p. 760
(Montana Arts Council and Montana Historical Society)
I Cultural and Aesthetic Project Grant Evaluation, p. 553
(Montana Historical Society)
10.121.801 and other rules - Criteria for Grants Evaluations, p. 680

FISH, WILDLIFE AND PARKS, Department of, Title 12

I Outfitters and Professional Guides, p. 1785, 246
I Disabled Persons, p. 236, 441
I Acceptable License Agent Security, p. 237, 441
I-IV Game Bird Farms, p. 1428, 247
I-IV Fur Farms, p. 1426, 247
I-VIII Game Farms, p. 1422, 247
I-IX Captive Breeding of Raptors, p. 1430, 1829
12.3.202 Classes of License Agents, p. 236, 441
12.5.401 Oil and Gas Leasing Policy for Department-Controlled Lands, p. 1594, 762
12.6.801 Boating Closures, p. 1597, 502
12.6.901 Water Safety Regulations, p. 1597, 502
12.7.101 Commercial Fishing Permits, p. 1420, 1927

12.9.202 Brinkman Game Preserve, p. 1602, 256

HEALTH AND ENVIRONMENTAL SCIENCES, Department of, Title 16

I Certificate of Need - Psychiatric Hospital Services, p. 1895
I-VII Standards for Intermediate Developmental Disability Care Facilities - Adult Day Care Centers, General Services/Administration and Food Service Requirements - Personal Care Homes, Residency Application Procedures, Screening Requirements and Appeal Procedures, p. 556
I-VIII Cesspool, Septic Tank and Privy Cleaners, p. 1611, 258
I-XIV End-Stage Renal Disease Program, p. 1603, 41
16.8.1102 Air Quality Permit Requirements, p. 239, 503
16.10.305 Sale of Milk and Milk Products in Food Processing Establishments, p. 1701, 26
16.14.801 and other rules - Clèaning of Cesspools, Septic Tanks and Privies, p. 241, 504
16.16.101 and other rules - Sanitation in Subdivisions, p. 765
16.32.103 and other rules - Certificate of Need Application Forms and Annual Reporting Forms for Health Care Facilities, p. 1610, 27
16.32.301 and other rules - Health Care Facilities - Adult Day Care Centers - Personal Care Facilities, p.556
16.32.373 Standards for Licensure of Hospice Programs, p. 570, 879
16.38.301 and other rules - Fees Charged by the Department's Chemical Laboratory for the Performance of Laboratory Analyses, p. 873
16.44.104 and other rules - Hazardous Waste Management - Permitting Requirements - Applications - Conditions - Financial Test, p. 1703, 265

HIGHWAYS, Department of, Title 18

18.5.106 Design Requirements for Access Driveways, p. 1618, 47
18.7.241 Forms for Utility Occupancy of Highway Right-of-Way, p. 1897
18.8.502 and other rules - Trip Permits - Insurance Requirements - Regulations Covering Movement of Oversize Homes and Buildings, p. 11, 389
18.8.516 Haystack Movers - Commercial Self-Propelled, p. 11, 389
18.8.1001 Mobile Home - Oversize Permits, p. 11

INSTITUTIONS, Department of, Title 20

20.3.415 Definitions - Certification System for Chemical Dependency Personnel, p. 681

20.7.102 Emergency Rule - Prisoner Application Procedure, General Statute Requirements, p. 1084, 1899, 390
20.11.108 and other rules - Reimbursement Policies, p. 790

JUSTICE, Department of, Title 23

I Instructor Certification Requirements, p. 582
I-III Child Safety Restraint System Standards and Exemptions, p. 571
(Board of Crime Control)
23.14.401 and other rules - Peace Officer Standards and Training, Employment and Requirements, p. 573, 880
23.14.412 and other rules - Qualifications for Certification of Academy and Training Courses - Certification Requirements for Trainee Attendance and Performance, p. 576, 881

LABOR AND INDUSTRY, Department of, Title 24

(Human Rights Commission)
I-VII Maternity Leave, p. 482
24.9.226 Prehearing; Conciliation, p. 1014, 1833
(Board of Personnel Appeals)
I-II Disqualification of Hearing Examiners - Dismissal of Complaint, p. 1708, 599
24.26.102 and other rules - Freedom from Interference, Restraint, Coercion, Retaliation - Employer Counter Petition - Petition for Decertification - Complaint - Answer - Exceptions - Petitions, p. 1708, 599
(Workers' Compensation Division)
I-VIII Employer's Insurance Requirements - Independent Contractor Exemption Procedures, p. 486
24.29.3201 Corporate Officers - Election Not to be Bound, p. 488

STATE LANDS, Department of, Title 26

I-II Assessment and Waiver of Civil Penalties, p. 1905, 442
I-IV Certification of Coal or Uranium Mine Blasters, p. 1901, 420
26.4.1206 Notices and Cessation Orders: Service, p. 1908
26.4.1207 and other rules - Notices of Noncompliance and Cessation Orders: Informal Hearings - Effect of Inability to Comply - Continuation of Health and Safety Related Activities, p. 1908

LIVESTOCK, Department of, Title 32

I-VI Brucellosis Testing of Animals, p. 1790, 268
32.3.203 and other rules - Importation of Animals and Biologics, p. 1787, 267

32.2.401 Livestock License, Permit and Miscellaneous Fees, p. 1795, 266
32.3.406 Emergency Rule - Testing of Animals, p. 1540

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

(Board of Oil and Gas Conservation)
I Emergency Rule - Workable Ignitor Systems on Wells Producing Hydrogen Sulfide Gas, p. 324
I Burning of Waste Gas and Ignitor Systems on Wells Producing Hydrogen Sulfide Gas, p. 877
I-XXXIII Procedural Rules, p. 1620, 697
36.12.102 and other rules - Forms - Application and Special Fees, p. 494, 882
36.22.307 and other rules - Forms - Submittal Date of Reports, p. 683

PUBLIC SERVICE REGULATION, Department of, Title 38

I-V Electric and Gas Line Extensions, p. 1309, 1910
I-VII Charges Related to Utility Line Moves Associated with Movement of Structures, p. 360

REVENUE, Department of, Title 42

I Determination of License Quota Areas, p. 1655, 1928
I Deduction of Windfall Profits Tax From Net Proceeds, p. 1326, 242, 243, 505
I Deduction from Corporation License Tax for Sale of Land to Beginning Farmers, p. 1796, 392
I Deduction from Individual Income Tax for Sale of Land to Beginning Farmers, p. 1798, 391
I Imputed Value of Coal, p. 1329, 1834
I Deduction for Insurance, Welfare, Retirement, Mineral Testing, Security and Engineering, p. 1039, 1835
I-III Wholesale Distributors, Obligations, Collection of Annual License Fee, p, 1521, 1929
42.11.111 State Liquor Identification Stamp, p. 1649, 1928
42.12.129 Determination of Proximity to a Place of Worship or School, p. 1653, 1914, 325
42.12.203 Inter-Quota Area Transfers of All-Beverage Licenses, p. 1650, 1915, 326
42.12.321 and other rule - Special Permits, p. 1657, 1913, 325
42.13.302 Brewer Storage Depots, p. 1648, 1928
42.22.101 and other rule - Assessment of Centrally Assessed Property, p. 1658, 1930

SECRETARY OF STATE, Title 44

I-VI Absentee Ballot Envelopes, p. 1660, 1802, 18, 394
1.2.217 Rule History Notes, p. 586, 883

1.2.419 Filing, Compiling, Printer Pickup and Publication Schedule for the Montana Administrative Register, p. 1523, 1837

SOCIAL AND REHABILITATION SERVICES, Department of, Title 46

I-IV Participation of Rural Hospitals in the Medicaid Program as Swing-Bed Facilities, p. 798
I-IV Child Care Agency Treatment Program, p. 1804
46.5.116 Protective Services, Information System Operator, p. 1525, 1838
46.5.612 and other rules - Licensing of Child Care Agencies, p. 1804, 327
46.5.801 and other rules - Licensing of Community Homes for Persons who are Developmentally Disabled, p. 1442, 1839
46.6.102 and other rules - Rehabilitative and Visual Services, p. 296, 511
46.6.2510 and other rules - Blind Vendors Program - Certification - Transfer and Termination - Vendor Responsibilities - Set Aside Funds - Contracts with Vending Companies - Vendor Rights and Responsibilities, p. 691
46.11.101 Food Stamp Program, p. 1713, 294
46.11.111 and other rules - Food Stamps, Determining Eligibility For the Food Stamp Program - Reporting Requirements - Determining Benefits - Certification Periods, p. 687
46.12.3803 Medically Needy Income Standards, p. 1916, 1933, 328
46.25.712 and other rules - State General and Medical Relief Assistance, p. 1810, 802