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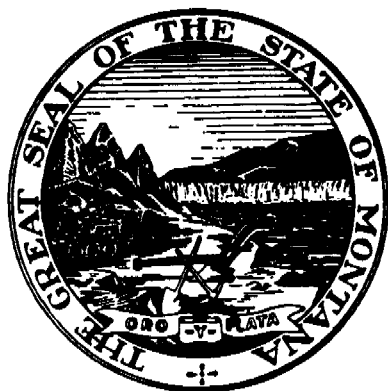
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**MONTANA
ADMINISTRATIVE
REGISTER**

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JUL 27 1984
OF MONTANA

1984 ISSUE NO. 14
JULY 26, 1984
PAGES 1082-1103



MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 14

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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

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BEFORE THE DEPARTMENT OF AGRICULTURE
STATE OF MONTANA

In the matter of the)	NOTICE OF PROPOSED AMENDMENT
amendment of Rule)	of Rule 4.3.204(2).
4.3.204(2) specifying)	NO PUBLIC HEARING
amounts of Junior)	CONTEMPLATED.
Agriculture Loans.)	

TO: All Interested Persons

1. On September 14, 1984, the Department of Agriculture proposes to amend rule 4.3.204(2) which limits the amounts for lending to individual borrowers or organizations through junior agriculture loans.

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

4.3.204 LIMITATIONS (1) remains the same

(2) No loan shall exceed ~~\$5,000~~\$7,000 for any one individual borrower or ~~\$10,000~~\$14,000 for any chapter or club. Loans may be renegotiated providing the borrower does not exceed the maximum loan limits at any time. (a) through (5) same


2. The rule is proposed to be amended to maintain the purchase power of loans. Since the original maximum amounts were established in 1977, the prices paid for agricultural goods and services have risen substantially.

4. Interested parties may submit their data, views, or arguments concerning the proposed amendment to Mr. Steven Baril, Montana Department of Agriculture, Agriculture/Livestock Building, Sixth and Roberts, Helena, Montana 59620, no later than August 27, 1984.

5. If a person directly affected wishes to express their data, views, or arguments orally or in writing at a public hearing they must make written request for a public hearing and submit their request along with any written comments to Mr. Steven Baril, no later than August 27, 1984.

6. If the department receives requests for a public hearing on the proposed amendments from either ten percent (10%) or 25, whichever is less, of those persons who are directly affected by the proposed rule amendment, from the Administrative Code Committee of the Legislature, from a governmental agency or subdivision, or from an association having not less than 25 members who will be directly affected, a 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 at least 25.

7. The authority of the agency to amend this rule is based on section 80-2-106, MCA, and the rule implements section 80-2-103, MCA.



 KEITH KELLY, DIRECTOR
 DEPARTMENT OF AGRICULTURE

Certified to the Secretary of State July 16, 1984.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF DENTISTRY

In the matter of adoption)
of new rules concerning) NOTICE OF VACATION OF
anesthesia under a new) MAR NOTICE NO. 8-16-26
sub-chapter 5)

TO: All Interested Persons.

1. On June 14, 1984, the Board of Dentistry published a notice of proposed adoption of new rules concerning standards for dentists administering anesthesia, at pages 912 through 917, 1984 Montana Administrative Register, issue number 11.
2. The above referenced notice is hereby vacated.

BOARD OF DENTISTRY
JAMES W. OLSON, D.D.S.
PRESIDENT

BY: 
GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, July 16, 1984.

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER OF THE)
AMENDMENT OF RULE 12.5.401) NOTICE OF PUBLIC HEARING ON THE
relating to oil and gas) PROPOSED AMENDMENT OF RULE 12.5.401 -
leasing policy for) OIL AND GAS LEASING POLICY FOR THE
department - controlled) DEPARTMENT - CONTROLLED LANDS
lands)

TO: All Interested Persons.

The notice of proposed agency action published in the Montana Administrative Register on May 17, 1984, at pages 762-764 is amended as follows because the required number of persons designated therein have requested a public hearing:

1. On August 28, 1984, at 7:30 P.M., a public hearing will be held in the Commission Room of the Montana Department of Fish, Wildlife and Parks Building to consider the amendment of Rule 12.5.401 - OIL AND GAS LEASING POLICY FOR DEPARTMENT - CONTROLLED LANDS.

2. The proposed amendments are the same as in the original notice published on May 17, 1984.

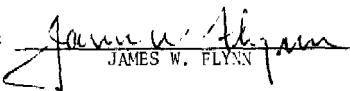
3. The amendments are proposed for the same purpose as listed in the original notice published on May 17, 1984.

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 Stan Bradshaw, 1420 East Sixth Avenue, Helena, Montana 59620, no later than August 28, 1984.

5. Stan Bradshaw has been designated to preside over and conduct the hearing.

6. The authority of the Department to amend the Rule is based upon Section 87-1-301 and 23-1-106, MCA, and the Rule implements Sections 87-1-303 and 23-1-102, MCA.

SPENCER S. HEGSTAD, CHAIRMAN
MONTANA FISH AND GAME COMMISSION

BY: 
JAMES W. FLYNN

Certified to the Secretary of State on July 16, 1984.

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

In the matter of the adoption) NOTICE OF ADOPTION OF AN
of an amendment to a federal) AMENDMENT TO A FEDERAL
agency rule pertaining to the) AGENCY RULE INCORPORATED BY
food stamp program, Rule) REFERENCE IN RULE 46.11.101,
46.11.101) FOOD STAMP PROGRAM. NO
) PUBLIC HEARING CONTEMPLATED

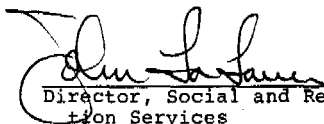
TO: All Interested Persons

1. The Department of Social and Rehabilitation Services hereby gives notice to the adoption and incorporation by reference of later amendments to 7 CFR 272, 273, and 274 published in 49 Fed. Reg. 21388, Monday, May 21, 1984. 7 CFR 272, 273, and 274 are presently incorporated by reference in Rule 46.11.101, Food Stamp Program. These amendments provide a general notice to the public concerning adjustments to the limits on gross and net income which a household may have and still be eligible for food stamps. This adjustment takes into account changes in the cost of living. A copy of this general notice published in 49 Fed. Reg. 21388, Monday, May 21, 1984, may be obtained from the Department of Social and Rehabilitation Services, Economic Assistance Division, Box 4210, 111 Sanders, Helena, Montana 59604.

2. The effective date for the adoption of the later amendment is July 26, 1984. This amendment will be implemented retroactive to July 1, 1984. This exception from the standard effective date of 30 days following publication is taken in order to comply with federal law requiring that the new gross and net income limits shall be effective for all eligible cases as of July 1, 1984.

3. If the department receives requests for a public hearing under 2-4-315, MCA, on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendments; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 6,084 persons based on 60,848 food stamp recipients.

4. The authority of the department to amend the rule is based on Section 53-2-201, MCA and the rule implements 53-2-306, MCA.



Director, Social and Rehabilitation Services

Certified to the Secretary of State July 16, 1984.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the)
adoption of new rules, the) NOTICE OF ADOPTION OF NEW
amendment of rules and the) RULES 2.21.6401 AND 2.21.6403,
repeal of rule 2.21.6412) AMENDMENT OF RULES 2.21.6402,
relating to performance) 2.21.6411, 2.21.6413 THROUGH
appraisal) 2.21.6415 AND REPEAL OF RULE
) 2.21.6412 RELATING TO
) PERFORMANCE APPRAISAL
)

TO: All Interested Persons.

1. On June 14, 1984, the department of administration published notice of the proposed adoption of new rules, the amendments 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 at page 905 of the 1984 Montana Administrative Register, issue Number 11.

2. The rules have been adopted, repealed and amended with the following changes:

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

(2) - (4) Same as proposed rules.

2.21.6415 RECORDS (1) Same as proposed rule.

(2) Supervisors shall keep appraisal information confidential, except: where necessary:

(a) in work-related discussions with superiors;
(b) in work-related discussions 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.

3. The department received the following comments during the comment period.

COMMENT: Insert the phrase "within 10 working days of receipt of the appraisal" in rule 2.21.6414(1) before the phrase "a written rebuttal..." because it improves the sentence structure.

RESPONSE: The department has amended the rule as suggested.

COMMENT: Additional explanation regarding when it is appropriate for a supervisor to discuss appraisal information with superiors and prospective employees.

RESPONSE: The department amended rule 2.21.6415(2) (a) and (b) explaining that discussions regarding appraisal information should be work-related and only be discussed where necessary.

COMMENT: Rule 2.21.6414(3) does not allow a grievance to be filed based on the content of the duties, responsibilities, standards, ratings or comments of the performance appraisal. One comment suggested that the right to file a grievance on the content of an appraisal should be allowed.

RESPONSE: The department believes it would be very difficult for a third party (hearings panel) to substitute their judgement for the supervisor's judgement regarding the content of a performance appraisal. The third party would not be able to observe the particular employees job performance during the appraisal period. The department also believes that communication between an employee and his supervisor regarding performance would be hindered if the content of an appraisal was grievable. Rule 2.21.6414(2) does allow an employee to grieve adverse employment actions taken as a result of an appraisal and procedural errors made in the evaluation of an employee's performance. This rule is consistent with what is grievable in the current rule.

COMMENT: Delete the proposed addition of an essay alternative to the 5-level rating scale because a pass-fail system seems to work against the exceptional employee by reinforcing average and marginal performance and is useless when making personnel decisions which are based on an appraisal done under this type of system.

RESPONSE: The department believes that rules should provide as much flexibility to state agencies as possible, while providing consistent guidance and minimum standards for agencies to follow. The department believes the essay alternative is an option that

should be available for use by state agencies at their discretion. Rule 2.21.6411(7) suggests that individual agencies should establish a policy regarding the method or methods used to issue performance appraisals.

By Morris L. Brusett
Morris L. Brusett, Director
Department of Administration

Certified to the Secretary of State, July 16, 1984.

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

In the matter of the amendment)	NOTICE OF
of rules 16.32.302 and)	AMENDMENT AND
and 16.32.346, and the)	ADOPTION OF RULES
adoption of rule 16.32.347)	
establishing standards for)	
licensure of chemical)	(Chemical Dependency
dependency treatment centers)	Treatment Centers)

TO: All Interested Persons

1. On June 14, 1984, the department published notice of amendment of rules 16.32.302 and 16.32.346, and the adoption of rule 16.32.347, concerning standards for licensure of chemical dependency treatment centers, at page 918 of the 1984 Montana Administrative Register, issue number 11.

2. The department has adopted the rules with the following changes:

16.32.302 MINIMUM STANDARDS OF CONSTRUCTION FOR A LICENSED HEALTH CARE FACILITY -- ADDITION, ALTERATION, OR NEW CONSTRUCTION -- GENERAL REQUIREMENTS Text same as proposed; add T. 50, Ch. 8., MCA, to IMPLEMENTING section of history notes.

16.32.346 MINIMUM STANDARDS FOR A MENTAL HEALTH AND RETARDATION FACILITY, LICENSING AND CERTIFICATION Text same as proposed; add T. 50, Ch. 8., MCA, to IMPLEMENTING section of history notes.

16.32.347 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) Same as proposed.

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

(4) and (5) Same as proposed.

[Add T. 50, Ch. 8., MCA, to IMPLEMENTING section of history notes.]

3. The following comments were received:

Comment: (from Legislative Council) It is not clear whether all detoxification centers, or only freestanding ones require separate licensure.

Response: See change in Rule I(3) (16.32.347(3)).

Comment: (from Department of Institutions) "Alcoholism is redundant in Rule I(1), since chemical dependency includes alcoholism.

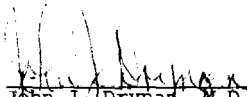
Response: See change in Rule I(1) (16.32.347(1)).

Comment: (from RimRock Foundation) Rule I(1) should say that the provisions of Title 50, Chapter 5, Part 3 (the certificate of need law) shall apply.

Response: CON requirements may not always be applicable, e.g., when minimum expenditure thresholds for review are not exceeded. The use of "may" simply indicates that the department will apply CON requirements whenever applicable.

Comment: (from RimRock Foundation) The specific provisions of the building code which will apply should be set out in 16.32.302.

Response: The state fire marshal's office and the building codes division have expressed their intent in the record to apply institutional standards to detoxification centers, and residential standards to other freestanding chemical dependency treatment centers. More specific designations must be made on a case-by-case basis by the building inspectors, depending on the degree to which residents are ambulatory.



John J. Drynan, M.D., Director

By: 

John W. Bartlett, Deputy Director

Certified to the Secretary of State July 16, 1984

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

In the matter of the amendment)	NOTICE OF
of rules 16.38.301 and 16.38.302.)	THE ADOPTION
and the adoption of new rules,)	AND AMENDMENT
16.38.304 and 16.38.305, setting)	OF RULES
forth fees for laboratory analyses)	
by the department's laboratory)	(Laboratory Fees)

TO: All Interested Persons

1. On May 31, 1984, the board and department published notice of proposed amendment of rules 16.38.301 and 16.38.302, and the adoption of new rules 16.38.304 and 16.38.305, setting fees which are charged by the department's chemical laboratory for the performance of laboratory analyses, at page 873 of the 1984 Montana Administrative Register, issue number 10.

- 2. The rules have been adopted and amended as proposed.
- 3. No comments or testimony were received.

FOR THE BOARD:

JOHN F. MCGREGOR, M.D., Chairman

By

JOHN W. BARTLETT, Deputy Director
Department of Health and
Environmental Sciences

FOR THE DEPARTMENT:

JOHN J. DRYNAN, M.D., Director

By

JOHN W. BARTLETT, Deputy Director
Department of Health and
Environmental Sciences

Certified to the Secretary of State July 16, 1984

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.

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