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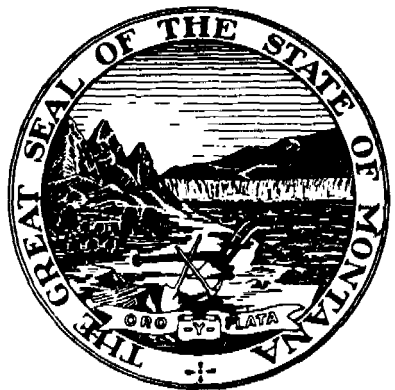
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MONTANA ADMINISTRATIVE REGISTER

STATE SEAL

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 10

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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

In the matter of the) NOTICE OF PUBLIC HEARING
adoption of new rules) ON THE PROPOSED ADOPTION OF
creating a Rural) NEW RULES CREATING A RURAL
Assistance Loan Program) ASSISTANCE LOAN PROGRAM

TO: All Interested Persons.

1. On June 25, 1985, at 11:00 a.m. in Room 225, Agriculture/Livestock Building, Sixth and Roberts, Helena, a public hearing will be held to consider the adoption of new rules relating to the establishment of a rural assistance loan program.

2. The proposed rules do not replace or modify any section currently found in the Administrative Rules of Montana.

3. The proposed rules provide as follows:

I OBJECTIVES (1) Objectives of the Rural Assistance Loan Program are to assist substandard income, rural persons in obtaining financing to continue in or develop agricultural enterprises; thereby furthering their continued interest in agriculture and assisting in the economic development and welfare of Montana agriculture.
AUTH: 80-2-106, MCA; IMP: 80-2-103, MCA.

II QUALIFICATIONS (1) Application must be made to the Montana Department of Agriculture. All application documents must be completed and presented to the department before the department loan committee will consider the request. Examples of required documents are financial statements, credit references and loan applications.

(2) Each applicant must be unable to obtain the needed funds from a private lender or other sources at reasonable rates or terms. Evidence shall consist of a statement, signed by a private lender, that financing was unavailable.

(3) Applicant(s) shall be at least 18 years of age.

(4) An applicant's net worth including that of spouse and minor children cannot exceed \$50,000 at the time of application as determined using standard accounting procedures. The total value of an applicant's assets including those of spouse and minor children cannot exceed \$150,000 including all real and personal property.

(a) Contingent assets or liabilities shall be included in the determination of net worth and total assets. Contingent assets or liabilities are those for which contracts or agreements have been or are in the process of being entered into but for which the asset or liability will be recognized in the future.

(5) Applicant(s) must demonstrate access to assets necessary to carry out the proposed agricultural enterprise.

(6) Applicant(s) must demonstrate the experience, knowledge and ability necessary to conduct the proposed agricultural enterprise.

(7) Applicant(s) must demonstrate repayment capacity

using proceeds from the agricultural enterprise or other acceptable income.

(8) A two-member local committee must be established by the applicant to review the loan request. The committee shall be composed of an officer from a bank in the borrower's home community or bank where the borrower normally conducts business, and an agricultural specialist. Examples of agricultural specialists are county extension agents, vocational agriculture education teachers, and Farmers Home Administration district supervisors. This committee will review eligibility of applicant(s) and make recommendations concerning making and servicing the loan. A bank official will assist the borrower and department in closing approved loans.

(9) A nonrefundable application fee of \$35 will be required with all applications.

AUTH: 80-2-106, MCA; IMP: 80-2-103, MCA.

III CLOSING REQUIREMENTS (1) Unless a specific exception is granted by the department, a joint bank account with the department shall be established at the time the loan funds are disbursed and the loan funds and the applicant's cash investment there deposited. A member of the local loan committee or other representative of the Montana Department of Agriculture may be designated to countersign checks drawn on this account by the borrower.

(2) The department may require insurance coverage on all mortgaged or otherwise secured property.

(3) The department may, if it deems necessary, require an appraisal from a qualified appraiser on property to be financed or used to secure a loan or to determine the value of the applicant's assets.

(4) The department may loan up to 80 percent of the value of secured property. The department may require collateral in addition to property being financed with loan funds. All collateral required by the department will be listed on the security agreement and the financing statement or mortgage.

(5) The department shall require a first mortgage position on any land being mortgaged.

(6) The applicant(s) shall provide title insurance in the name of the department for any land to be purchased with loan funds.

(7) The borrower(s) and guarantor(s) shall sign all necessary documents as required by the department and all documents requiring filing shall be properly filed by the department.

(8) The department may require the borrower to register a brand with the Montana Department of Livestock for the purpose of recording a lien on the brand and may require secured livestock to be branded.

(9) The borrower shall pay fees required to file, continue, or release financing statements, mortgages, and brand liens.

(10) A representative of the Montana Department of Agriculture may at a reasonable time visit personally with applicant(s) for the purpose of inspecting facilities, machinery, collateral, assets, etc. and otherwise

investigating the applicant's qualifications and abilities to conduct the proposed agricultural enterprise.

(11) The borrower shall allow members of the local loan committee and the department to inspect collateral or loan-related records upon request at any reasonable time during the repayment period.

(12) The borrower shall care for collateral and conduct agricultural operations in accordance with good and recognized agricultural practices.

AUTH: 80-2-106, MCA; IMP: 80-2-103

IV LIMITATIONS

(1) Loan amounts shall not exceed \$25,000 for any one individual or household.

(2) Loans may be refinanced up to the maximum of \$25,000.

(3) Interest rates for loans shall be established yearly on July 1 by the director of the Montana Department of Agriculture. Loans will bear simple interest charged yearly on the unpaid balance. The interest rate on established loans may be reviewed and adjusted to correspond with the established rate at 3-year intervals.

(4) Loan funds shall be used for purposes approved by the department and applicant(s) shall provide the amount necessary for a down payment as required by the department and use that amount for only the approved purposes.

(5) Loans may be authorized to finance the following types of property or activities:

(a) Property and equipment suitable for use in agriculture. Examples are livestock used for breeding purposes, farm machinery, and trucks.

(b) Agricultural improvements suitable for farming which are located on agricultural land. Examples are confinement systems for livestock or poultry, barns and other buildings, grain storage facilities, and irrigation systems.

(c) Annual operating expenses involved in farming activities.

(d) Agricultural land.

(e) Other expenditures for agricultural equipment, property, facilities, or expenses as approved by the department.

(6) Loans shall not be eligible for financing personal residences, nonfarm vehicles, family-living expenses or other property used for household purposes.

(7) The repayment period shall be determined by the department prior to closing and shall not exceed the following schedules:

(a) Loans for agricultural property or equipment shall not exceed 7 years.

(b) Loans for agricultural improvements or agricultural land shall not exceed 10 years.

(c) Loans for operating expenses will be paid within 1 year unless first-year operating costs are included in a loan for agricultural property, equipment, improvements, or land in which case the amount for operating expense can be amortized over the repayment period.

(8) No more than one-half of rural development assets available for loans yearly shall be used for lending under this program.

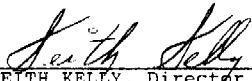
AUTH: 80-2-106, MCA; IMP: 80-2-103, MCA.

4. The Department of Agriculture is proposing these rules to establish guidelines upon which rural assistance loans will be granted. These rules will extend the eligibility of rural persons interested in obtaining loans in order to develop their agricultural enterprises. This, in turn, will aid in the economic development and welfare of Montana agriculture. In order to promote these objectives and goals for the state, the department finds it necessary to adopt the proposed rules.

5. Interested persons may submit their data, views or arguments concerning the proposed adoptions either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Steven F. Paril, Montana Department of Agriculture, Agriculture/Livestock Building, Capitol Station, Helena, Montana 59620, no later than June 30, 1985.

6. Garth B. Jacobson of the Montana Department of Agriculture, Agriculture/Livestock Building, Capitol Station, Helena, Montana 59620 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 80-2-106, MCA, and the rules implement section 80-2-103, MCA.


KEITH KELLY, Director
Department of Agriculture

Certified to the Secretary of State May 20, 1985.

BEFORE THE STATE AUDITOR
AND COMMISSIONER OF INSURANCE
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PROPOSED
adoption of rules pertaining	)	ADOPTION OF RULES
to Montana's Comprehensive	)	PERTAINING TO THE
Health Care Association and	)	IMPLEMENTATION OF THE
Plan	)	COMPREHENSIVE HEALTH
		CARE ACT

NO PUBLIC HEARING
CONTEMPLATED

TO: All Interested Persons

1. On July 11, 1985, the State Auditor and Commissioner of Insurance proposes to adopt rules pertaining to Montana's Comprehensive Health Care Association and Plan.

2. The proposed rules provide as follows:

RULE I INSURANCE ARRANGEMENT REPORTING REQUIREMENTS

(1) Each insurance arrangement, as defined at [Section 1, Chapter 595, L. 1985], shall file by March 1 of each year:

(a) Information regarding the number of Montana individuals covered thereunder, and the premium volume generated for the previous calendar year.

(b) Information regarding the type of coverage written to determine if it could be considered a qualified plan.

(c) If the coverage provided by the arrangement meets the requirements of a qualified plan, information regarding the premium rates shall also be provided.

(2) Any such required information may be provided by the insurance arrangement's third party administrator.

AUTH: Ch.595, L.1985

IMP: Ch.595, L. 1985

RULE II APPLICABILITY OF INSURANCE CODE

(1) The provisions of Title 33 apply to [Sections 1-13, Chapter 595, L. 1985]

AUTH: Ch.595, L.1985

IMP: Ch.595, L.1985

RULE III GENERAL REQUIREMENTS OF THE MONTANA
COMPREHENSIVE HEALTH CARE ASSOCIATION

(1) Meetings of the Association

(a) The organizational meeting of the Association shall meet be no later than June 1, 1986 for purposes of adopting the articles, by-laws and operating rules of the Association, establishing committees, and taking whatever action is necessary by the Association to initiate the Montana Comprehensive Health Care Act. The time and place shall be set jointly by the commissioner and the board of directors. A majority of the members of the Association must be present or appear by proxy at that meeting. For the organizational meeting, proxy procedures will be adopted by the board of directors, approved

by the commissioner, and mailed to all members with the meeting notification.

(b) An annual meeting of the Association shall be held no later than the third week of May each year for the purpose of transacting the business of the Association membership, including the duties authorized under [Chapter 595, L. 1985]. The meeting shall occur at such date, time, and place as the board determines.

(c) Notice and quorum requirements shall be as provided in the articles or by-laws of the Association.

(d) Special meetings of the Association shall be held at the request of the commissioner and may otherwise be held as provided for by the articles or by-laws of the Association at a time and place designated by the commissioner or board. Notice and quorum requirements shall be as provided for in the articles or by-laws for the purpose of conducting appropriate business of the Association.

(2) The Association shall present the adopted articles, by-laws, and operating rules, and any amendments thereof to the commissioner for review and approval.

(3) The Association shall establish the legal entity known as the Montana Comprehensive Health Care Association by July 1, 1986.

(4) The Association shall make available for the commissioner's information all contracts of reinsurance before they are finalized. The commissioner may disapprove for cause any reinsurance contract which would be harmful (disadvantageous) to the Association plan.

(5) The Association shall make available to eligible Senior Citizens a medicare supplement policy which provides, together with medicare, at least the minimum benefits set forth in [Section 6, Chapter 595, L. 1985].

AUTH: Ch.595, L.1985

IMP: Ch.595, L.1985

RULE IV GENERAL REGULATIONS FOR THE BOARD OF DIRECTORS

(1) Initial Board:

(a) The commissioner shall examine the 1984 annual statements and any other available records to determine the seven seats on the board of directors, and shall notify the insurers, health service corporations, societies, and insurance arrangements who make up the board by July 15, 1985. The insurers, health service corporations, societies, and insurance arrangements shall notify the commissioner of their board representative by July 30, 1985.

(2) Member at Large:

(a) The commissioner shall appoint and notify the first member at large by July 15, 1985.

(b) The member at large shall serve a two year term, beginning each July 1 of odd-numbered years. The member at large will be notified of appointment to the board by June 1 of each odd-numbered year.

(3) The formational meeting for the initial board of directors will be held at a time and place to be announced by the commissioner.

10-5/30/85

MAR Notice No. 6-7

(4) Board membership is determined annually by premium volume written in Montana. The commissioner shall notify all current members and any new members of changes in the board by June 1 of each year based on the previous years premium's volume. Members shall notify the commissioner of their board representatives by June 15 of each year.

(5) If a board representative leaves his/her job with the member insurer, health service corporation, society or insurance arrangement during the course of his/her term or the board of directors, the member shall immediately appoint a new representative, and inform the commissioner of the change within 5 working days.

(6) Board membership shall run on a fiscal year basis, July 1 of each year thru June 30 of the next calendar year.

(7) Duties of the board of directors shall include management of the Association in furtherance of its purposes as provided in the Montana Comprehensive Health Insurance Act, and as authorized in the articles and by-laws of the Association.

(8) The board may elect officers and establish committees as provided in the by-laws of the Association. These officers and committees shall be charged with such duties as authorized by the board in accordance with the by-laws of the Association.

(9) Voting Procedures

(a) Each member is entitled to a weighted average vote under [Section 4, Chapter 595, L. 1985]. The commissioner through the chief insurance examiner will provide the basic data from which a weighted average for each board can be calculated by their first meeting of each fiscal year.

(b) Members are entitled to vote in person, by proxy, or by mail as provided herein:

(i) When a member elects to vote in person at a board meeting, the representative casting the vote shall present credentials as required pursuant to the by-laws or operating rules of the Association.

(ii) When a member elects to vote by proxy, the proxy statement, as approved by the board and by the commissioner, shall be returned on or before the date indicated in the meeting notice sent to the members.

(iii) Voting by mail may be permitted as authorized by the by-laws or operating rules of the Association, and the meeting notice to members shall so indicate.

AUTH: Ch.595, L.1985

IMP: Ch.595, L.1985

RULE V ASSESSMENTS - ASSOCIATION AND BOARD EXPENSES

(1) Association members attending the annual meeting or any special meeting called by the board or commissioner will bear their own expenses.

(2) Costs of conducting the Association annual meeting, any special association meeting, and any meeting of the board of directors will be borne by the Association.

(3) Members of the board of directors will be entitled to compensation for expenses incurred as a result of their service on the board under [Section 4, Chapter 595, L. 1985].

(4) The commissioner's office may bill staff time and expenses to the Association.

(5) A separate account shall be set up by the Association for purposes of paying costs of the Association, and reimbursing board member expenses.

(a) Following the first board meeting, members shall within 5 business days submit all expenses to the commissioner for purposes of initiating the assessment process under [Section 9, Chapter 595, L. 1985].

(b) The board shall establish at their first meeting a mechanism for assessment and payment of costs and expenses with the approval of the commissioner.

(c) Any Association member who fails to remit an assessment within 30 calendar days may be subject to administrative action under [Section 9, Chapter 595, L. 1985] and Section 33-1-701, MCA.

(6) For purposes of an Association member's annual liability assessment, the board of directors shall have a financial picture of the Plan's position for the first three quarters of the fiscal year at the May annual meeting. Annual assessment notices will be mailed out after the year end books are closed.

(7) Procedures for levying interim assessments, as provided for in [Section 9, Chapter 595, L. 1985] will be established by the board of directors and approved by the commissioner.

AUTH: Ch.595, L. 1985

IMP: Ch.595, L.1985

3. These rules are proposed to implement the Montana Comprehensive Health Care Act by setting in place the framework for the Association and board of directors.

4. Interested parties may submit their data, views, or arguments concerning the proposed rules in writing no later than June 27, 1985 to:

Robert R. Throssell

State Auditor &

Insurance Commissioner's Office

Room 270, Mitchell Building or P. O. Box 4009

Helena, MT 59620

Helena, MT 59604

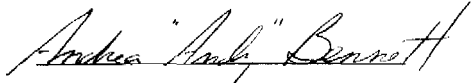
5. If a party who is directly affected by the proposed rules wishes to express data, views and arguments orally or in writing at a public hearing; he must make a written request for a hearing and submit this request along with any written comments he has to Robert R. Throssell at the above address no later than June 28, 1985.

6. If the agency receives requests for a public hearing on the proposed rules from either 10% or 25, whichever is less, of the persons who are 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 affected would be greater than 25 since there are approximately 600 entities that are potential members of the Association plus an undeterminable number of potential insurers.

10-5/30/85

MAR Notice No. 6-7

7. The authority of the agency to adopt the proposed rules is based on Chapter 595, Laws of 1983, and the rules implement the same.

A handwritten signature in cursive script that reads "Andrea 'Andy' Bennett". The signature is written in dark ink and is positioned above a horizontal line.

Andrea "Andy" Bennett
State Auditor and
Commissioner of Insurance

STATE OF MONTANA
BEFORE THE DEPARTMENT OF COMMERCE

In the matter of the proposed	)	NOTICE OF PROPOSED ADOPTION
adoption of new rules con-	)	OF RULES, APPLICATION FOR
cerning fireworks whole-	)	FIREWORKS WHOLESALER PERMIT
saler permit and the contents	)	AND CONTENTS OF FIREWORKS
of fireworks wholesaler per-	)	WHOLESALER PERMIT
mit)	

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On June 29, 1985, the Department of Commerce proposes to adopt the above-stated rules.

2. The proposed rules will read as follows:

"I. APPLICATION FOR FIREWORKS WHOLESALER PERMIT (1)
Applicants for fireworks wholesaler permits must submit an application form, prescribed by the department, along with a \$110.00 application fee.

(2) The application form must contain the applicant's name, permanent address, business name, if any, principal place of business, and a statement that the applicant has not been convicted of a crime involving the use, possession or sale of fireworks. The application must be notarized and accompanied by a certified copy of the applicant's birth certificate and 3 notarized letters attesting to the applicant's good moral character."

Auth: 50-37-104, MCA Imp: 50-37-104, MCA

"II. CONTENTS OF FIREWORKS WHOLESALE PERMIT (1)
Information contained on the face of the permit shall include the name of the wholesaler, business name, if any, principal place of business and permanent address."

Auth: 50-37-104, MCA Imp: 50-37-104, MCA

3. The department is proposing the adoption of the two rules to implement the requirements of section 50-37-104, MCA, as amended by the 1985 legislature. The amendments to 50-37-104, require that the Department of Commerce issue a fireworks wholesaler's permit to an applicant who furnishes proof under oath that he is at least 18 years of age, is of good moral character and has not been convicted of a crime involving the use, possession or sale of fireworks. The above rules will provide the required information.

4. Interested persons may submit their data, views or arguments concerning the proposed adoptions in writing to Lisa Johnson, Department of Commerce, Capitol Station, Helena, Montana, 59620, no later than June 27, 1985.

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 Lisa Johnson, Department of Commerce,

Capitol Station, Helena, Montana, 59620, no later than June 27, 1985.

6. If the department 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.

DEPARTMENT OF COMMERCE

BY: 

ROBERT WOOD, ATTORNEY

Certified to the Secretary of State, May 20, 1985.

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

In the matter of the amendment) NOTICE OF PUBLIC HEARING
of rules 16.10.203, 16.10.204,) ON PROPOSED AMENDMENT
16.10.206, 16.10.213, 16.10.214,) OF RULES
16.10.217, 16.10.218, 16.10.219,)
16.10.220, 16.10.221, 16.10.229,)
16.10.232, 16.10.236, 16.10.238,)
and 16.10.241, regarding minimum)
requirements for the design,)
construction, operation, and)
equipment of food service)
establishments) (Food Service Establishments)

TO: All Interested Persons

1. On June 21, 1985, at 10:00 a.m., a public hearing will be held in Room C209 of the Cogswell Building, Helena, Montana, to consider the amendment of rules 16.10.203, 16.10.204, 16.10.206, 16.10.213, 16.10.214, 16.10.217, 16.10.218, 16.10.219, 16.10.220, 16.10.221, 16.10.229, 16.10.232, 16.10.236, 16.10.238, and 16.10.241, regarding minimum requirements for the design, construction, operation, and equipment of food service establishments.

2. The proposed amendments replace the present rules of the same numbers found in the Administrative Rules of Montana. The proposed amendments would clarify the definition of "regulatory authority", would add several specific citations to statutes and administrative rules, and would make several other minor changes.

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

16.10.203 DEFINITIONS

(1) - (26) Same as existing rule.

(27) "Regulatory authority" ~~usually~~ means the Montana State Department of Health and Environmental Sciences and its employees unless a written agreement has been entered into between the department and the local health officials; in which case "regulatory authority" shall include the county health officials, the local health officer or the local sanitarian or other authorized representative. The Department's Food and Consumer Safety Bureau in Helena may be contacted at 449-2408 to determine if a particular local health department has primary enforcement authority under this sub-chapter or the local health authority, established in accordance with Title 50, Chapter 2, MCA, and their employees, or the local health officer and/or the local sanitarian.

(28) - (36) Same as existing rule.

AUTHORITY: Sec. 50-50-103 MCA

IMPLEMENTING: Sec. 50-50-103 MCA

10-5/30/85

MAR Notice No. 16-2-292

16.10.204 FOOD SUPPLIES (1) Food shall be in sound condition, free from spoilage, filth, or other contamination and shall be safe for human consumption. Food shall be obtained from sources that comply with all laws relating to feed and feed labeling the applicable requirements of the Montana Food, Drug and Cosmetic Act, Title 50, Chapter 31, MCA. The use of food in hermetically sealed containers that was not prepared in a licensed food processing establishment is prohibited.

(2) Fluid milk and fluid milk products used or served shall be pasteurized and shall meet the grade A quality standards. as established by law. Dry milk and dry milk products shall be made from pasteurized milk and milk products.

(3) Fresh and frozen shucked shellfish (oysters, clams or mussels), shall be packed in non-returnable packages identified with the name and address of the original shell stock processor, shucker-packer, or repacker, and the interstate certification number. issued according to law. Shell stock and shucked shellfish shall be kept in the container in which they were received until they are used. Each container of unshucked shell stock (oysters, clams or mussels) shall be identified by an attached tag which states the name and address of the original shell stock processor, the kind and quantity of shell stock, and the interstate certification number issued by the state or foreign shellfish control agency.

(4) Same as existing rule.

AUTHORITY: Sec. 50-50-103 MCA

IMPLEMENTING: Sec. 50-50-103 MCA

16.10.206 FOOD STORAGE

(1), (2) Same as existing rule.

(3) Food and containers of food shall not be stored under exposed or unprotected sewer lines or water lines, except for automatic fire protection sprinkler heads that may be required by law the Montana state fire marshal or his authorized agent.

(4) - (12) Same as existing rule.

AUTHORITY: Sec. 50-50-103 MCA

IMPLEMENTING: Sec. 50-50-103 MCA

16.10.213 EQUIPMENT AND UTENSIL DESIGN AND FABRICATION

(1) - (14) Same as existing rule.

(15) Construction requirements for hood systems are available from the Building Codes Division, Department of Administration. Hood systems shall be designed and constructed in accordance with the Uniform Mechanical Code as adopted by the Building Codes Division, Department of Administration, State of Montana.

(16) Same as existing rule.

(17) The department hereby adopts and incorporates by reference Chapter 20 of the Uniform Mechanical Code, 1982 edition, which sets forth minimum requirements for construction of hood systems. A copy of Chapter 20 of the Uniform Mechanical Code may be obtained from the Food and Consumer Safety Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana, 59620.

AUTHORITY: Sec. 50-50-103 MCA

IMPLEMENTING: Sec. 50-50-103 MCA

16.10.214 EQUIPMENT INSTALLATION AND LOCATION

(1) Equipment, including ice makers and ice storage equipment, shall not be located under exposed or unprotected sewer lines or water lines, open stairwells or other sources of contamination. This requirement does not apply to automatic fire protection sprinkler heads that may be required by law the Montana state fire marshal or his authorized agent.

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

AUTHORITY: Sec. 50-50-103 MCA

IMPLEMENTING: Sec. 50-50-103 MCA

16.10.217 WATER SUPPLY (1) Enough potable water for the needs of the food service establishment shall be provided from a source constructed and operated ~~according to law~~ in accordance with Title 75, Chapter 6, MCA, and ARM Title 16, Chapter 20, sub-chapters 2 and 4, applicable to public water and wastewater systems.

(2) All potable water not provided directly by pipe to the food service establishment from the source shall be transported in a bulk water transport system and ~~shall be delivered to a closed water system. Both of these systems shall be constructed and operated according to law, in accordance with ARM Title 16, chapter 2, sub-chapter 3, Water Hauled for Cisterns.~~

(3) Bottled and packaged potable water shall be obtained from a source that complies with all laws subsection (1) above and shall be handled and stored in a way that protects it from contamination. Bottled and packaged potable water shall be dispensed from the original container.

(4) - (5) Same as existing rule.

(6) The department hereby adopts and incorporates by reference ARM Title 16, Chapter 20, sub-chapters 2, 3, and 4, which are department rules setting forth, respectively, maximum contaminant levels allowed in public drinking water supplies, requirements for the equipment and operation of systems for hauling water for cisterns, and plan review requirements for public water and wastewater systems. Copies of ARM Title 16, Chapter 20, sub-chapters 2, 3, and 4 may be obtained from the Food and Consumer Safety Bureau, Department

of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana, 59620.

AUTHORITY: Sec. 50-50-103 MCA

IMPLEMENTING: Sec. 50-50-103 MCA

16.10.218 SEWAGE (1) All sewage, including liquid waste, shall be disposed of by a public sewerage system or by a sewage treatment and disposal system constructed and operated according to law in accordance with Title 75, chapter 6, MCA, and ARM Title 16, chapter 20, sub-chapter 4, plans for public water and wastewater systems. Non-water-carried sewage disposal facilities are prohibited, except as permitted by ARM 16.10.236(10) of this sub-chapter pertaining to temporary food service establishments or as permitted by the regulatory authority in remote areas or because of special situations.

(2) The department hereby adopts and incorporates by reference ARM Title 16, Chapter 20, sub-chapter 4 which is a set of department rules setting forth plan review requirements for public water and wastewater systems. A copy of ARM Title 16, Chapter 20, sub-chapter 4 may be obtained from the Food and Consumer Safety Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

AUTHORITY: Sec. 50-50-103 MCA

IMPLEMENTING: Sec. 50-50-103 MCA

16.10.219 PLUMBING (1) Plumbing shall be sized, installed, and maintained according to law the Uniform Plumbing Code as adopted by the Building Codes Division, Department of Administration, State of Montana. There shall be no cross-connection between the potable water supply and any nonpotable or questionable water supply nor any source of pollution through which the potable water supply might become contaminated.

(2) - (4) Same as existing rule.

(5) If used, garbage grinders shall be installed and maintained according to law the Uniform Plumbing Code as adopted by the Building Codes Division, Department of Administration, State of Montana.

(6) Except for properly trapped open sinks, there shall be no direct connection between the sewerage system and any drains originating from equipment in which food, portable equipment, or utensils are placed. When a dishwashing machine is located within five feet of a trapped floor drain, the dishwasher waste outlet may be connected directly on the inlet side of a properly vented floor drain trap if permitted by law.

(7) The department hereby adopts and incorporates by reference the Uniform Plumbing Code (UPC), 1982 edition, which

is a nationally recognized set of minimum specifications for plumbing equipment and installation for new buildings. A copy of the UPC may be obtained from the Food and Consumer Safety Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana, 59620.

AUTHORITY: Sec. 50-50-103 MCA

IMPLEMENTING: Sec. 50-50-103 MCA

16.10.220 TOILET FACILITIES (1) Toilet facilities shall be installed according to ~~law~~, the minimum required plumbing fixture schedule, as adopted by the Building Codes Division, Department of Administration, State of Montana, shall be the number required, shall be conveniently located, and shall be accessible to employees and customers, unless provided for in subsection ~~(5)~~ (2) of this rule, during all times the establishment is in operation.

(2) Separate toilet facilities shall be required for each sex in establishments with an occupancy load of fifteen or more or where alcoholic beverages are sold.

(3) In all new or extensively remodeled establishments, toilet facilities shall be installed to comply with Table 1, which follows this rule and by this reference is made a part of this rule. The number of fixtures for each sex shall be determined by dividing the total occupancy load by two, assuming an equal population of males and females.

(4) Toilets for use by both sexes shall be designed as single occupancy and be equipped with a door that can be secured from the inside.

(5) (2) Establishments with no space on the premises for consumption of food by consumers are required to must provide toilet facilities only for employees.

(6) Toilet facilities shall be available where parking is provided primarily for the consumption of food on the premises or where tables, benches or similar eating areas are provided.

(7) In all new or extensively remodeled food service establishments where parking or eating benches or tables are provided primarily for consumption of food on the premises, the number of facilities and fixtures shall be determined by an occupancy of two individuals per parking space and actual bench or table count.

(8) (3) Employees and customers may use the same toilet facilities provided that patrons may use them without entering the food storage, food preparation, or food service areas or the dishwashing or utensil storage areas of the establishment.

(9) (4) In a multiple activity area with available public toilets, such as sports centers, etc., these toilets may suffice for the use of food service patrons and employees, provided they shall be of adequate number and conveniently

located to the food service establishment and shall be available at all times the food service establishment is in operation.

(+10) (5) Conveniently located, as related to toilet facilities, shall mean located in the same building as the food service establishment, within 200 feet by a normal pedestrian route of all locations of the food service operation and not more than one floor-to-floor flight of stairs.

(+11) (6) Food service operations which must use privy type toilets shall be evaluated on an installation-by-installation basis.

(+12) (7) Toilet fixtures shall be of elongated bowl design and kept clean. Toilet seats shall be of open front construction.

(+13) (8) Toilet rooms shall be completely enclosed, and shall have tight-fitting, self-closing doors. Such doors shall not be left open except during cleaning or maintenance. If vestibules are provided, they shall be kept in a clean condition and good repair.

(a) The lack of doors on toilets serving large numbers of people such as sports arenas shall be evaluated ~~separately, on a case-by-case basis.~~

(+14) (9) A supply of toilet tissue in a wall-hung or protected container shall be provided at each toilet at all times. Easily cleanable receptacles shall be provided for waste materials, and such receptacles in toilet rooms for women shall be covered. Such receptacles shall be emptied at least once a day, and more frequently when necessary to prevent excessive accumulation of waste material.

(+15) (10) In all new or ~~extensively~~ remodeled toilet rooms, mechanical ventilation shall be provided as required by the Uniform Building Code and Uniform Mechanical Code as adopted by the Building Codes Division, Department of Administration, State of Montana, and shall be capable of delivering one complete air change every 15 minutes, shall be vented to the outside, and the vent shall be at least 5 feet from an openable window.

(+16) (11) Keyed toilets under management control are permitted when unusual conditions exist. Approval for keyed toilet facilities must be specifically given by the regulatory authority.

(12) The department hereby adopts and incorporates by reference ARM 2.32.303 and 2.32.105 which are department of administration rules setting forth, respectively, minimum required plumbing fixture requirements for new buildings and the Uniform Mechanical Code, 1982 edition, including the Code's requirements for installation of ventilation systems. A copy of ARM 2.32.303, 2.32.105, or the Uniform Mechanical Code, 1982 edition, may be obtained from the Food and Consumer Safety Bureau, Department of Health and Environmental

Sciences, Cogswell Building, Capitol Station, Helena,
Montana, 59620.

(17) Proper sex identification and location signs must
be conspicuously posted as required.

AUTHORITY: Sec. 50-50-103 MCA

IMPLEMENTING: Sec. 50-50-103 MCA

TABLE I
MINIMUM FIXTURES REQUIRED FOR CUSTOMER SERVICE

Occupant Load	Water Closet	<u>MALES</u>		*Additional Urinals where Alcoholic Beverages Are Served
		Lav	Urinal	
1- 50.....	1.....	1.....	0.....	1
51-100.....	1.....	1.....	1.....	1
101-150.....	1.....	1.....	1.....	2
151-200.....	2.....	1.....	1.....	2
201-300.....	3.....	2.....	2.....	2
301-400.....	3.....	2.....	2.....	3
400-.....	A.....	A.....	A.....	AA

A - Add one fixture per 250 occupancy load increase

AA - Add one fixture per 150 occupancy load increase

Occupant Load	Water Closet	<u>FEMALES</u>		*Additional Water Closet
		Lav		
1- 50.....	1.....	1.....		0
51-100.....	1.....	1.....		1
101-150.....	2.....	1.....		3
151-200.....	3.....	2.....		3
201-300.....	3.....	2.....		3
301-400.....	3.....	2.....		3
401-.....	B.....	B.....		BB

B - Add one fixture per 200 occupancy load increase

BB - Add one fixture per 100 occupancy load increase

*Applies where alcoholic beverages are sold for on-site consumption. The fixtures are to be in addition to those otherwise required.

Employee use of customer facilities must be approved by the health authority and then the number of employees shall be added to the occupancy load for fixture requirements.

Occupant load is determined by dividing the floor area assigned to that use by the square feet per occupant as set forth in the State Building Code, ARM -2-32-101. Dining rooms and drinking establishments are calculated at 15 square feet per occupant. This may be modified if other building use is sharing the toilet facilities.

16.10.221 LAVATORY FACILITIES (1) Lavatories shall be installed according to law- the Uniform Plumbing Code and Minimum Required Fixture Schedule as adopted by the Building Codes Division, Department of Administration, State of Montana.

~~(2)~~ In all new or extensively remodeled establishments, customer lavatory facilities shall be located in or immediately adjacent to toilet rooms.

~~(3)~~ Lavatory facilities shall be in compliance with the number required in ARM 16-10-220~~(3)~~ and Table 1, which by this reference is made a part of this rule.

~~(4)~~ (2) Customers are prohibited from entering the food preparation, food service, food storage or utensil washing areas to use lavatories.

~~(5)~~ (3) Lavatories for employees shall be located within the area or areas where food is prepared or served and in utensil washing areas.

(a) The number and location of lavatories in the areas will be determined by the convenience of the lavatory to the employees.

~~(6)~~ (4) Lavatories located outside and immediately adjacent to toilet rooms may also serve the food preparation, food service or utensil washing areas if convenient.

~~(7)~~ (5) Utility sinks may be used as lavatories if properly located, equipped, maintained, and continuously available for hand wash.

~~(8)~~ (6) Sinks used for food preparation or for equipment or utensil washing shall not be used for hand washing.

~~(9)~~ (7) Each lavatory shall be provided with hot and cold water tempered by means of a mixing valve or combination faucet. Any self-dispensing, slow-closing, or metering faucet used shall be designed to provide a flow of water for at least fifteen seconds without the need to reactivate the faucet. Steam mixing valves are prohibited.

(a) The Montana Energy Code specifies hot water conservation design features.

~~(10)~~ (8) A supply of hand-cleansing soap or detergent shall be available at each lavatory.

~~(11)~~ (9) A supply of sanitary towels in a wall-hung or protected container or a hand-drying device providing heated air shall be conveniently located near each lavatory. Common towels are prohibited.

~~(12)~~ (10) If disposable towels are used, easily cleanable waste receptacles shall be conveniently located near the hand washing facilities.

~~(13)~~ (11) Lavatories, soap dispensers, hand drying devices and all related fixtures shall be kept clean and in good repair.

(12) The department hereby adopts and incorporates by reference ARM 2.32.302 and 2.32.303 which are department of

administration rules setting forth, respectively, the Uniform Plumbing Code and minimum required plumbing fixture requirements for new buildings. Copies of the Uniform Plumbing Code or ARM 2.32.303 may be obtained from the Food and Consumer Safety Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana, 59620.

AUTHORITY: Sec. 50-50-103 MCA

IMPLEMENTING: Sec. 50-50-103 MCA

16.10.229 VENTILATION (1) All rooms shall have sufficient ventilation to keep them free of excessive heat, steam, condensation, vapors, obnoxious odors, smoke and fumes. Ventilation systems shall be installed and operated according to ~~law~~ the Uniform Building Code and Uniform Mechanical Code, as adopted by the Building Codes Division, Department of Administration, State of Montana and, when vented to the outside, shall not create an unsightly, harmful or unlawful discharge.

(2) Intake and exhaust air ducts shall be maintained to prevent the entrance of dust, dirt, and other contaminating materials.

(3) In new or extensively remodeled establishments, all rooms from which obnoxious odors, vapors or fumes originate shall be mechanically vented to the outside.

(4) The department hereby adopts and incorporates by reference Section 605 of the Uniform Building Code, 1982 edition, which is a nationally recognized set of minimum specifications for ventilation systems. A copy of Section 605 of the Uniform Building Code, 1982 edition, may be obtained from the Food and Consumer Safety Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana, 59620.

AUTHORITY: Sec. 50-50-103 MCA

IMPLEMENTING: Sec. 50-50-103 MCA

16.10.232 PREMISES

(1) - (10) Same as existing rule.

(11) Live animals, including birds and turtles, shall be excluded from within the food service operational premises and from adjacent areas under the control of the license holder. This exclusion does not apply to edible fish, crustacea, shellfish, or to fish in aquariums. Patrol dogs accompanying security or policy officers, or guide dogs accompanying blind or deaf persons shall be permitted in dining areas.

AUTHORITY: Sec. 50-50-103 MCA

IMPLEMENTING: Sec. 50-50-103 MCA

16.10.236 TEMPORARY FOOD SERVICE ESTABLISHMENTS

(1) - (9) Same as existing rule.

(10) All sewage, including liquid waste, shall be disposed of according to law by a lawfully constructed and operated public sewage disposal system, by approved portable toilet units with acceptable final waste disposal, or by properly constructed pit privies.

(11) - (14) Same as existing rule.

AUTHORITY: Sec. 50-50-103 MCA

IMPLEMENTING: Sec. 50-50-103 MCA

16.10.238 LICENSES

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

(4) The ~~department~~ Montana Department of Health and Environmental Sciences shall issue a license to the applicant if the inspection an inspection by a state or local health officer or sanitarian reveals that the proposed food service establishment complies with all applicable requirements of this sub-chapter.

(5) The department may, after providing opportunity for hearing, revoke a license for serious or repeated violations of any of the requirements of this sub-chapter or for interference with the department or other authorized persons in the performance of duty.

~~46)~~ (5) Prior to revocation, the department shall notify, in writing, the holder of the license or the person in charge, of the specific reason(s) for which the license is to be revoked and that the license shall be revoked at the end of the ten days following service of such notice unless a written request for hearing is filed with the department by the holder of the license within such 10-day period following service. If no request for hearing is filed within the 10-day period, the revocation of the license becomes final.

~~47)~~ (6) Submission to the department of an acceptable plan of correction within 10 days after receipt from the department of written notice of violation and execution of an acceptable plan within the time prescribed in the written notice of approval of the plan by the department shall be a bar to cancellation of the license for that violation.

~~48)~~ (7) A notice provided for in this rule is properly served when it is delivered to the holder of the license, or the person in charge, or when it is sent by registered or certified mail, return receipt requested, to the last known address of the holder of the license. A copy of the notice shall be filed in the records of the department.

~~49)~~ (8) The hearing provided for in this rule shall be conducted by the department at a time and place designated by it. The department shall make a final finding based upon the complete hearing record and shall sustain, modify or rescind any notice or order considered in the hearing. A written report of the hearing decision shall be furnished to the

holder of the license by the department.

{10} (9) Whenever a revocation of a license has become final, the holder of the revoked license may make written application for a new license.

AUTHORITY: Sec. 50-50-103 MCA

IMPLEMENTING: Sec. 50-50-103, 50-50-201 to 50-50-215 MCA

16.10.241 REVIEW OF PLANS (1) Whenever a food service establishment is constructed or extensively remodeled and whenever an existing structure is converted to use as a food service establishment, properly prepared plans and specifications for such construction, remodeling or conversion shall be submitted to the regulatory authority for review and approval before construction, remodeling or conversion is begun. The plans and specifications shall indicate the proposed layout, arrangement, mechanical plans, and construction materials of work areas, and the type and model of proposed fixed equipment and facilities. The regulatory authority shall approve the plans and specifications if they meet the requirements of this sub-chapter. No food service establishment shall be constructed ~~or extensively or remodeled, or converted nor shall~~ any existing building be converted into a food service establishment except in accordance with plans and specifications approved by the regulatory authority.

(2) An existing building may not be used as a food service establishment and the use of one type of establishment may not change to another type of establishment without the prior approval of the regulatory authority.

(3) When a proposal to use an existing building as an establishment or to change the use from one type of establishment to another involves structural modification, plans meeting the requirements of subsection (1) of ARM 16.10.241 must be submitted to the regulatory authority for review and approval. If no structural modification is involved, the regulatory authority may waive the requirement for submission of plans if an inspection by the regulatory authority indicates that the proposed establishment meets the requirements of this sub-chapter.

{a} (4) Individuals are reminded that the plans and specifications must also be approved by the local or state building official having jurisdiction.

{2} (5) Whenever plans and specifications are required by subsection (1) of this rule to be submitted to the department, the regulatory authority shall inspect the food service establishment prior to the start of operations, to determine compliance with the approved plans and specifications and with the requirements of this sub-chapter.

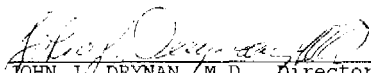
AUTHORITY: Sec. 50-50-103 MCA

IMPLEMENTING: Sec. 50-50-103 MCA

4. The Department is proposing these amendments to the rules to clarify the rules concerning the authority of local health officials to carry out most of the department's duties under Title 50, Chapter 50, MCA; to specify and incorporate by reference statutes and rules of other agencies; and to insert minor updating changes in certain rules in the subchapter.

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 Complex, Helena, Montana, no later than June 28, 1985.

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


JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State May 20, 1985

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

In the matter of the repeal	)	NOTICE OF PUBLIC HEARING ON
of rule 16.10.902, setting	)	PROPOSED REPEAL OF RULE
standards to protect health	)	16.10.902
and water quality which must	)	(Private Campgrounds)
be met by private campgrounds.))	

To: All Interested Persons

1. On June 21, 1985, at 10:00 a.m., a public hearing will be held in Room A110 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the repeal of rule 16.10.902.

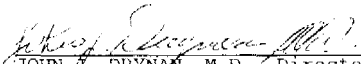
2. The rule proposed to be repealed can be found on page 16-458 of the Administrative Rules of Montana.

3. The rule is proposed to be repealed because the department no longer has authority to adopt a rule concerning a private campground other than a youth camp, and, subsequent to the 1983 legislative grant to the department of authority to adopt standards for youth camps, ARM 16.10.902 is being largely replaced by the standards for youth camps proposed at page 454 of the 1985 Montana Administrative Register, issue number 9.

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 Robert L. Solomon, Cogswell Building, Capitol Complex, Helena, MT., no later than June 27, 1985.

5. Robert L. Solomon, Cogswell Building, Capitol Complex, Helena, MT., has been designated to preside over and conduct the hearing.

6. The authority of the Department to repeal the rule is based on section 50-52-102, MCA.


JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State May 20, 1985

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

In the matter of the repeal of	) NOTICE OF PUBLIC HEARING ON
ARM 16.10.903, setting health	) PROPOSED REPEAL OF
and environmental standards for	) ARM 16.10.903, LABOR
labor camps, and the adoption of	) CAMPS, AND ADOPTION
rules setting construction;	) OF NEW RULES ON
water; sewer; food service;	) WORK CAMPS
solid waste disposal; insect,)
weed, and rodent control; and)
equipment and maintenance)
requirements for work camps)

To: All Interested Persons

1. On June 21, 1985, at 10:00 a.m., a public hearing will be held in Room 1110 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the repeal of rule 16.10.903, setting health and environmental standards for labor camps, and the adoption of new rules which set standards work camps must meet concerning construction; water supply; sewer; food service; solid waste disposal; insect, weed, and rodent control; and equipment and maintenance.

2. The rule proposed to be repealed can be found on page 16-461 of the Administrative Rules of Montana.

3. The rule is proposed to be repealed because it is too vague in places to be enforceable and, as an old rule, applies primarily to types of camps which are no longer common, yet lacks standards currently found necessary to protect public health. ARM 16.10.903 will be replaced by a complete updated revision of the standards applicable to work camps and proposed as new rules in this notice.

4. The proposed new rules will replace rule 16.10.903 found at pages 16-461 through 16-465 of the Administrative Rules of Montana.

5. The proposed new rules provide as follows:

RULE 1 (to be codified 16.10.904) DEFINITIONS (1) The following definitions apply to this sub-chapter:

(a) "Contamination" means impairment or other alteration of the physical, chemical, or biological properties of water, including causing violation of the surface water quality standards contained in ARM Title 16, chapter 20, sub-chapter 6 or the maximum contaminant levels for public water supplies contained in ARM Title 16, chapter 20, sub-chapter 2, or otherwise creating a hazard to human health.

(b) "Lateral" means that portion of a water system or sewerage system which extends horizontally from the water or sewer main to the water or sewer riser pipe.

(c) "Potable water" means water which is safe for human consumption in terms of bacteriological and chemical quality.

(d) "Potentially hazardous food" means any perishable food that consists in whole or in part of milk products, eggs, meat, poultry, fish, shellfish, edible crustacea, or other ingredients, including synthetic ingredients, in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms. The term does not include clean, whole, uncracked, odor-free shell eggs or foods which have a pH level of 4.6 or below or a water activity (a_W) value of 0.85 or less.

(e) "Public water supply system" means any installation or structure that provides water for human consumption and services 10 or more families or 25 or more persons at least 60 days out of the calendar year.

(f) "Sanitary station" means a facility used for removing and disposing of wastes from trailer holding tanks.

(g) "Self-contained trailer" means a trailer which can operate independently of connections to sewer, water, and electric systems. It contains a water-flushed toilet and lavatory, shower, and kitchen sink, any or all of which are connected to water storage and sewage holding tanks located within the trailer.

(h) "Sewer line connection" means the connection consisting of all pipes, fittings, and appurtenances from the drain outlet of the trailer to the inlet of the corresponding sewer riser pipe of the sewage system serving the work camp.

(i) "Sewer riser pipe" means that portion of the sewer system which extends vertically to the ground elevation and terminates at each trailer space.

(j) "State waters" means any body of water, irrigation system, or drainage system, either surface or underground.

(k) "Stop-and-waste valve" means any unit that permits the outlet valve to be drained through a port or drain hole provided in the valve.

(l) "Trailer space" means that part of a work camp designated for the placement of a single trailer and the exclusive use of its occupants.

(m) "Water service connection" means the connection consisting of all pipes, fittings, and appurtenances from the water riser pipe to the water inlet pipe of the distribution system within the trailer.

(n) "Water riser pipe" means that portion of the water system which extends vertically to the ground elevation and terminates at a designated point at each trailer space.

(o) "Water station" means a facility for supplying potable water to the water storage tanks of trailers and other potable water containers.

(2) The department hereby adopts and incorporates by reference the provisions of ARM Title 16, chapter 20, sub-chapters 2 and 6, which establish, respectively, maximum contaminant levels for public water supplies and surface

water quality standards. Copies of sub-chapters 2 and 6 may be obtained from the Food and Consumer Safety Bureau or Water Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana, 59620.

AUTHORITY: Sec. 50-52-102 MCA

IMPLEMENTING: Sec. 50-52-102 MCA

RULE II (to be codified 16.10.905) LAYOUT PLAN REVIEW

(1) Scaled layout plans and specifications for a proposed work camp, or any alteration or enlargement of an existing work camp, must be prepared and submitted to the department and the local health officer for approval prior to the camp's establishment, alteration, or enlargement.

(2) The use of an existing water supply and distribution system, and sewage collection and disposal system, in a proposed work camp may be approved only if it can be shown that the existing system meets or exceeds the relevant standards in [RULES III or IV].

(3) Approval to establish, alter, or enlarge a work camp lasts two years from the date written approval is issued by the department and local health officer; if construction has not begun during the two-year period, plans and specifications must again be submitted for re-evaluation and approval before the work camp may be established, altered, or enlarged.

(4) Conversion of a work camp to a trailer court, campground, or any other establishment required by law to be licensed by the department must have prior approval by the department and the local health officer and be separately licensed for the type of establishment the conversion constitutes.

AUTHORITY: Sec. 50-52-102 MCA

IMPLEMENTING: Sec. 50-52-102 MCA

RULE III (to be codified 16.10.906) WATER SUPPLY SYSTEM

(1) In order to ensure an adequate and potable supply of water, a work camp must either:

(a) connect to a water supply system meeting the requirements of Title 16, chapter 20, sub-chapters 2, 3, and 4 of the Administrative Rules of Montana; or

(b) if the work camp utilizes a water system with no more than 9 service connections or is utilized by no more than 24 persons or no more than 9 families daily during all but 59 or fewer days out of the calendar year, including guests, staff, and residents; and an adequate public water supply system is not accessible; utilize a non-public water supply system whose construction and use meet those standards set in department circular #84-11, except that if it is not feasible to develop a permanent water supply due to the temporary or transient nature of the work camp, a temporary water supply

may be utilized which is constructed and operated in accordance with one of the following department circulars:

- (i) Circular #11 for springs
- (ii) Circular #17 for cisterns.
- (2) A non-public water supply system other than one meeting the standards in circulars #11, #17, or #84-11 may be utilized only if it is designed by an engineer registered in Montana and, to the satisfaction of the department and local health officer, offers sanitary protection equivalent to that provided by those circulars.

(3) If a work camp uses a non-public water supply system, it must submit a water sample from that water supply system at least quarterly to a laboratory licensed by the department to perform microbiological analysis of water supplies, in order to determine that the water does not exceed the maximum microbiological contaminant levels stated in ARM 16.20.207.

(4) A work camp must replace or repair the water supply system serving it whenever the water supply:

- (a) contains microbiological contaminants in excess of the maximum levels cited in ARM 16.20.207; or
- (b) does not have the capacity to provide adequate water for drinking, cooking, personal hygiene, laundry, and water-carried waste disposal.

(5) Any extension, alteration, repair, or replacement of a water distribution system, or development of a new water supply system, must be in accordance with the standards set forth in this rule.

(6) Unless each living unit in the work camp is provided with an individual water service connection, the work camp must provide a common water station which:

- (a) consists of at least a water hydrant;
- (b) is protected against backflow and hose contamination; and
- (c) is located so that the use of the hose for sewage holding tank flushing is impossible.

(7) If facilities for individual water service connections to trailers are provided, they must meet the following requirements:

(a) Water riser pipes provided for individual water service connections must:

- (i) be so located, constructed, and protected (for example, by posts, fences, or other permanent barriers) that they will not be damaged by the parking of trailers or vehicles; and

(ii) extend at least 4 inches above ground elevation and be at least 3/4 of an inch in diameter.

(b) Measures must be taken which are adequate to prevent freezing of service lines, valves, and riser pipes.

(c) Where water risers are provided for irrigation use,

a "backflow preventer" must be installed in the water service line at or near the outlet.

(d) A stop-and-waste valve and cock may be installed in an underground water service line only if:

(i) the stop-and-waste valve is located a minimum of two feet above the level of the water table and in soil providing good drainage.

(ii) at least 10 feet of horizontal distance exists between a sewer line connection and the stop-and-waste valve.

(e) Valves must be provided for the outlet of each water service connection and must be turned off and the outlets capped or plugged when the latter are not in use.

(8) A water service lateral must be constructed as follows:

(a) Pipe used for a water service lateral must be either copper, 160 psi-rated plastic approved for potable water supply use, or an equivalent.

(b) Inside pipe diameter must be a minimum of 3/4 of an inch.

(c) The lateral must be laid at least 10 feet horizontally from any existing or proposed sewer unless:

(i) it is laid in a separate trench or an undisturbed earth shelf located on one side of the sewer, in either case at such an elevation that the bottom of the water service lateral is at least 12 inches above the top of the sewer; or

(ii) the sewer is constructed of schedule 40 PVC, schedule 40 ABS, or standard weight cast iron pipe tested for leakage in accordance with [RULE IV(5)(a)], in which case the lateral may be laid without regard to vertical separation from the sewer.

(d) A lateral constructed less than 10 feet from a sewer must be kept to one side of the sewer, with crossings minimized.

(e) A lateral crossing a sewer line must be laid to provide a minimum vertical distance of 12 inches between the bottom of the lateral and the top of the sewer line, unless a single length of schedule 40 PVC, schedule 40 ABS, or standard weight cast iron pipe tested for leakage in accordance with [RULE IV(5)(a)] is centered on the crossing, in which case the pipe may be laid without regard to vertical separation.

(9) The department hereby adopts and incorporates by reference:

(a) Title 16, chapter 20, sub-chapters 2, 3, and 4 of the Administrative Rules of Montana which, respectively, set standards protecting the bacteriological, chemical, and radiological quality of public drinking water supplies; protect water hauled for cisterns from contamination, and require pre-construction review and set construction standards for water and sewer systems.

(b) ARM 16.20.207, stating maximum microbiological

contaminant levels for public water supplies; and

(c) the following department publications setting construction, operation, and maintenance standards for springs, wells, and cisterns, respectively:

(i) Department circular #11, "Springs"

(ii) Department circular #84-11, "Minimum Design Standards for Small Water Systems"

(iii) Department circular #17, "Cisterns for Water Supplies".

Copies of ARM Title 16, chapter 20, sub-chapters 2, 3, or 4; ARM 16.20.207; or Circulars #11, #84-11 or #17 may be obtained from the Water Quality Bureau or the Food and Consumer Safety Bureau of the Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana, 59620.

AUTHORITY: Sec. 50-52-102 MCA

IMPLEMENTING: Sec. 50-52-102 MCA

RULE IV (to be codified 16.10.907) SEWAGE TREATMENT AND DISPOSAL (1) In order to ensure sewage is completely and safely disposed of, a work camp must:

(a) connect to a public sewage system meeting the requirements of Title 16, chapter 20, sub-chapter 4 of the Administrative Rules of Montana; or

(b) if the work camp is utilized by no more than 24 persons or no more than 9 families daily during all except 59 or fewer days of the calendar year, including day workers and residents; and an adequate public sewage system is not available; utilize a non-public system which meets the construction and operation standards contained in either of department circulars #84-10 or #13 or which is designed by an engineer registered in Montana and, to the satisfaction of the department and local health officer, offers sanitary protection equivalent to those circulars.

(2) Liquid wastes from sinks, showers, or baths may not be allowed to accumulate on the ground surface and must be discharged into the sewage treatment and disposal system serving the work camp or into an alternate system approved by the department and local health officer.

(3) A sewage treatment and disposal system must be replaced or repaired if any of the following conditions occur:

(a) The system refuses to accept sewage effluent at the rate of application.

(b) Sewage effluent seeps from, or ponds on or around, the system.

(c) Effluent from the sewage treatment and disposal system contaminates a potable water supply or state waters.

(d) The sewage system is subjected to mechanical failure, including electrical outage or collapse or breakage of a septic tank, lead line, or drainfield line.

(4) An extension, alteration, or replacement of any

sewage treatment and disposal system must be made in accordance with the standards set forth in this rule.

(5) Any sewer service lateral must be constructed as follows:

(a) the lateral must be water tight at all points and tested for that quality by filling with water, by another equivalent test, or, in the case of a lateral which is required by [RULE 111(8)(c)(ii)] to be constructed of schedule 40 PVC, schedule ABS, or standard weight cast iron pipe, by testing under pressure of at least a 10-foot head of water for a minimum of 15 minutes, or other equivalent test.

(b) Pipe size must be a minimum of 4 inches in diameter.

(c) The lateral must be sloped to maintain a 2-foot per second flow velocity (1.2% slope for 4-inch line).

(6) If facilities for individual sewer connections to trailers are provided, they must meet the following requirements:

(a) The sewer riser pipe must:

(i) have a 4-inch diameter;

(ii) be so located on the trailer space that a sewer connection to the trailer drain outlet will approximate a vertical position; and

(iii) be separated from the water riser by at least 6 feet at finished grade.

(b) Surface drainage must be diverted away from the riser.

(c) Provisions must be made for plugging or capping the sewer riser pipe with a tamper resistant cap having an air tight seal whenever a trailer does not occupy the space.

(7) A sewer connection between a trailer and a sewer riser must:

(a) have a nominal inside diameter of at least 3 inches;

(b) be sloped at least $\frac{1}{4}$ inch per foot;

(c) consist of one line only, without any branch fitting;

(d) have watertight joints;

(e) be constructed of corrosion resistant, non-absorbent, durable material with a smooth inner surface, except that flex hose may be used for making a sewer connection whenever the connection will be made for 14 days or less.

(8) A work camp which provides trailer space for self-contained trailers must also provide one sanitary station meeting the standards in (9) below for every 100 trailer spaces, or fraction thereof, which lack individual sewer risers, except in the following cases:

(a) Whenever a sanitary station is available for public use on a full-time basis within a reasonable distance from the work camp.

(b) Whenever installation of a sanitary station is not feasible due to lack of electricity, water under pressure, or

other similar considerations beyond the control of the work camp operator.

(9) A sanitary station must have:

(a) a sewer riser pipe at least four inches in diameter which is:

(i) connected to the work camp sewage system;

(ii) surrounded at the inlet end by a concrete apron at least four feet square sloped to the drain;

(iii) provided with a self-closing hinged cover.

(b) a water outlet equipped with anti-back-siphoning devices and connected to the work camp water supply system to permit periodic washdown of the immediately adjacent area; and

(c) a sign stating that the water is unsafe for drinking.

(10) If any living units are not provided with individual toilet facilities, central toilet facilities must be located within 300 feet of all sleeping quarters lacking such individual toilets and provided in the ratio of one toilet for every 10 persons or fraction thereof needing them.

(11) The department hereby adopts and incorporates by reference Title 16, chapter 20, sub-chapter 4 of the Administrative Rules of Montana, which sets construction standards for sewage systems; and the following department publications setting construction and operation standards for specific types of sewage systems:

(a) Department circular #84-10, "Sewers and Sewage Treatment for Multi-Family and Non-Residential Buildings";

(b) Department circular #13, "The Sanitary Pit Privy".

Copies of ARM Title 16, chapter 20, sub-chapter 4, and circulars #84-10 and #13 may be obtained from the Food and Consumer Safety Bureau or the Water Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

AUTHORITY: Sec. 50-52-102, MCA

IMPLEMENTING: Sec. 50-52-102, MCA

RULE V (to be codified 16.10.908) SOLID WASTE In order to ensure that solid waste is safely stored and disposed of, a work camp must:

(1) Store all solid waste between collections in containers which have lids and are corrosion-resistant, flytight, watertight, and rodent-proof;

(1) Locate solid waste containers within 150 feet of all sleeping quarters;

(3) Clean all solid waste containers frequently;

(4) Keep the containers in exterior collection stands which prevent the containers from being tipped, protect them from deterioration, and allow easy cleaning below and around them; and

(5) Transport the solid waste at least weekly to a

licensed landfill site, either by utilizing a private or municipal hauler or by otherwise transporting the waste in a covered vehicle or covered containers.

AUTHORITY: Sec. 50-52-102, MCA

IMPLEMENTING: Sec. 50-52-102, MCA

RULE VI (to be codified 16.10.909) FOOD SERVICE

(1) Whenever food is prepared by the work camp for service to work camp residents, the following requirements apply:

- (a) Food must be:
 - (i) free from spoilage, filth, or other contamination;
 - (ii) obtained from sources that comply with all federal and state law applicable to the source relating to food and food labeling;
 - (iii) at all times, including while being stored, prepared, displayed, served, or transported, protected from potential contamination, such as dust, insects, rodents, unclean equipment and utensils, unnecessary handling, coughs and sneezes, flooding, drainage, and drips from overhead condensation.
 - (iv) thoroughly washed and/or cooked as necessary to destroy disease-causing microorganisms.
- (b) A potentially hazardous food must:
 - (i) be maintained at 45°F or below, or 140°F or above;
 - (ii) when thawed after being frozen, be thawed either at 45°F or below, by quick-thawing during the cooking process, or by an equivalent method approved by the department.
- (c) No food may be served which has been stored in an hermetically sealed container unless the container was prepared in a licensed food processing establishment.
- (d) If food or food utensils are transported from the kitchen to an area not immediately contiguous to the kitchen, the food and utensils must, during transportation, be kept in covered containers or completely wrapped or packaged so as to be protected from contamination.
- (e) No person who is either infected with a communicable disease in a form that can be transmitted by foods; a carrier of organisms that cause such a disease; or afflicted with a boil, an infected wound, diarrhea, acute gastro-intestinal illness, or an acute respiratory infection may work in a kitchen in any capacity in which there is a likelihood of that person contaminating food or food contact surfaces with pathogenic organisms or transmitting disease to other persons.
- (f) Kitchen workers must maintain a high degree of personal cleanliness and conform to good hygienic practices.
- (g) Food preparation, storage, and serving equipment and utensils must:
 - (i) not impart odors, color, or taste to food nor contribute to its contamination;

- (ii) be thoroughly cleaned after each usage;
- (iii) be constructed, repaired, and finished with non-toxic materials, resistant to corrosion, smooth, and, if multi-use, easily cleanable, non-absorbant, and durable under conditions of normal use;
- (iv) when cleaned and sanitized, or if single-service, be handled and stored in a way that protects them from contamination.
- (h) Facilities must be provided which are adequate for washing and sanitizing all multi-use utensils used for preparing, serving, and storing food.
- (i) Kitchen floors, walls, ceilings, equipment, and storage areas must be smooth, non-absorbant, easily cleanable, and kept clean and in good repair.
- (2) Individual or family use kitchens provided by the work camp must be equipped with at least the following:
 - (a) Facilities to wash utensils and cooking equipment.
 - (b) Refrigeration equipment capable of maintaining foods at or below 45°F.
 - (c) Cooking facilities.
 - (d) Adequate space to store and prepare food.

AUTHORITY: Sec. 50-52-102, MCA

IMPLEMENTING: Sec. 50-52-102, MCA

RULE VII (to be codified 16.10.910) SHELTER; STRUCTURAL AND MAINTENANCE REQUIREMENTS (1) A work camp must meet the following structural and maintenance requirements in regard to any shelter it provides for work camp residents:

- (a) All rooms and hallways must be provided with at least 10 footcandles of light.
- (b) Floors and walls of rooms subject to large amounts of moisture must be smooth and non-absorbent.
- (c) Floor and wall-mounted furnishings must be easily moved or mounted in such a way as to allow for easy cleaning.
- (d) Toilet and handwashing facilities must be provided and kept clean.
- (e) The floors, walls, ceilings, furnishings, and equipment must be kept in good repair, free of hazards, and clean.
- (f) The temperature of water for handwashing and bathing must be limited to 120°F or below.
- (g) Bathing facilities must be provided with anti-slip surfaces.
- (h) Cleaning equipment and supplies must be provided and accessible to residents in sufficient quantity to meet the housekeeping needs of the facility.
- (i) Before a new resident moves into living quarters which were previously occupied, the quarters must be thoroughly cleaned and any necessary repairs to them must be made.
- (j) If laundry service is provided by the work camp, the requirements of ARM 16.10.637 must be met.

(k) If housekeeping service is provided by the work camp, the requirements of ARM 16.10.638 must be met.

(2) The department hereby adopts and incorporates by reference ARM 16.10.637, which sets equipment and operation requirements for laundries, and ARM 16.10.638, which sets housekeeping and maintenance standards for public accommodations. Copies of ARM 16.10.637 and 16.10.638 may be obtained from the Food and Consumer Safety Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

AUTHORITY: Sec. 50-52-102, MCA

IMPLEMENTING: Sec. 50-52-102, MCA

RULE VIII (to be codified 16.10.911) INSECT, RODENT, AND WEED CONTROL The operator of the work camp must ensure that:

(1) Camp buildings and other structures are kept free, to the extent possible, of harborage for, and infestations of, insects and rodents.

(2) Any extermination or control measures involving insecticides, rodenticides, or herbicides strictly conform to the manufacturer's applications instructions.

(3) The growth of brush, weeds, grass, and other plants is controlled within central camp areas to the extent necessary to eliminate harborage for ticks, chiggers, and similar insects of danger to public health.

(4) Ragweed, poison ivy, poison oak, poison sumac, and other similarly noxious plants do not grow on camp property within the area customarily frequented by humans.

AUTHORITY: Sec. 50-52-102, MCA

IMPLEMENTING: Sec. 50-52-102, MCA

RULE IX (to be codified 16.10.912) ABANDONMENT OF WORK CAMP Whenever operation of a work camp is permanently discontinued, and in order to prevent injury to health or environmental damage, all septic tanks, privy vaults, and cisterns must be removed, or emptied and subsequently filled with solid materials.

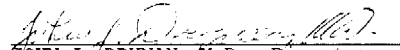
AUTHORITY: Sec. 50-52-102, MCA

IMPLEMENTING: Sec. 50-52-102, MCA

6. The Department is proposing these rules because they are needed to replace the existing vague and out-of-date requirements in ARM 16.10.903 and to provide comprehensive minimum standards the most currently common types of work camps must meet in order to ensure public health.

7. 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 Complex, Helena, MT, no later than June 27, 1985.

8. Robert L. Solomon, Cogswell Building, Capitol Complex, Helena, MT, has been designated to preside over and conduct the hearing.


JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State May 20, 1985

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the Matter of the REPEAL,)
AMENDMENT and ADOPTION of)
RULES pertaining to the sale,) NOTICE OF THE PROPOSED REPEAL,
installation and service of) AMENDMENT AND ADOPTION OF
fire protection equipment.) RULES FOR issuance of per-
mits to sell, business
license and certificates of
registration to install or
service fire protection
equipment.
)
) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Interested Persons.

1. On June 29, 1985, the Department of Justice proposes to repeal, amend and adopt rules pertaining to the sale, installation and service of fire protection equipment.

2. The rules proposed to be repealed (ARM 23.7.155 RED TAGS), (ARM 23.7.156 PROOF OF MANUFACTURER AUTHORIZATION AND INSURANCE), ARM 23.7.157 EQUIPMENT REQUIRED) and (ARM 23.7.158 LICENSE LIMITATIONS) can be found on pages 23-370 of the Administrative Rules of Montana.

The rules proposed to be amended provides as follows:

23.7.111 UNIFORM FIRE CODE (1) The Department of Justice hereby adopts and incorporates by reference the Uniform Fire Code, International Conference of Building Officials, 1982 edition, and the appendices listed in subsections (a) through (g) with the modifications appearing in subsections (2) through (7). Copies of the Uniform Fire Code and appendices may be obtained from the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601. Information is available upon request from the State Fire Marshal Bureau, Department of Justice, 303 North Roberts, Helena, Montana 59620.

(a) Appendix I-B: Stairway Identification.

(b) Appendix II-A: Suppression and Control of Hazardous Fire Areas.

(c) Appendix II-B: Protection of Flammable or Combustible Liquids in Tanks in Locations That May Be Flooded.

(d) Appendix III-A: Test Procedures for Fire Extinguishing Systems.

(e) Appendix III-C: Fire Alarm Systems.

(f) Appendix IV-A: Interior Floor Finish.

(g) Appendix VI-B: Model Citation Program.

(2) As used in the Uniform Fire Code, the following definitions apply to ARM 23.7.111 through ARM 23.7.154:

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(a) Alarm - means a device that detects heat, products of combustion or visible smoke and gives an audible or visible fire emergency signal.

(b) Alarm System - means a system incorporating a device or devices to detect heat, products of combustion, visible smoke or other fire related devices that gives a fire emergency warning through bells, alarms, or voice or transmits a signal to a central control station.

(c) Apprentice - means a person in a training position for the installation or service of fire protection equipment.

(d) Approved - means approved by the State Fire Marshal.

(e) "Building official" is treated as referring to the administrator of the Building Codes Division of the Department of Administration.

(f) The terms "chief," "fire chief," "fire marshal," and "fire prevention engineer" are treated as referring to the State Fire Marshal.

(g) "City" is treated as referring to the State of Montana.

(h) The terms "fire department" and "bureau of fire prevention" are treated as referring to the Fire Marshal Bureau of the Department of Justice.

(i) Fire Extinguishing System - means a system incorporating a device or devices to detect heat, products of combustion, visible smoke or other fire-related devices that when activated causes the automatic discharge of an approved extinguishing agent.

(j) Fire Protection Equipment - means any listed and/or labeled fire alarm, fire alarm system, fire extinguishing system or portable fire extinguisher.

(k) Installation and Service - means the installation and servicing of fire protection equipment as required by the Uniform Fire Code and nationally recognized standards referenced to by the Uniform Fire Code.

(l) Labeled - means fire protection equipment that has an identification label of a nationally recognized testing laboratory, indicating the labeled equipment complies with accepted standards.

(m) Listed - means fire protection equipment that has been tested, passed and certified by a nationally recognized testing laboratory.

(n) Portable Fire Extinguisher - means a hand-portable or wheeled container filled with any of a variety of approved fire extinguishing agents that can be used to extinguish small fires.

(o) Registrant - means a person certified by the State Fire Marshal who performs the installation or service on fire protection equipment.

(p) Uniform fire Code - means the latest edition of the Uniform Fire Code adopted by the State Fire Marshal.

(3) The Department of Justice amends the first para-

graph of section 10.301(c), of the Uniform Fire Code, as follows:

"When required by the chief an approved water supply capable of supplying required fire flow for fire protection shall be provided to all premises upon which buildings or portions of buildings are hereafter constructed. When any portion of the building protected is in excess of 150 feet from a water supply on a public street, there shall be provided, when required by the chief, on-site fire hydrants and mains capable of supplying the required fire flow."

(4) The Department of Justice also amends Section 61.105, of the Uniform Fire Code, to include:

EXCEPTION: Commerical or industrial occupancies using burners designed to burn crankcase oil or waste oil containing gasoline. Such burners shall be approved, and shall be installed in accordance with the manufacturer's instructions and the terms of their listing.

(5) The Department of Justice does not adopt the provisions of Article 4 of the Uniform Fire Code concerning permits or certificates.

(6) If there is any conflict between the Uniform Fire Code and chapters 3 or 61 of Title 50 of the Montana Code Annotated, the provisions of the Montana Code Annotated control.

(7) This rule establishes a fire protection code to be used in conjunction with the Uniform Building Code, ARM 2.32.101.

AUTH: 50-3-102(2)(a) & 50-61-102, MCA

IMP: 50-3-102 & 50-61-102, MCA

23.7.122 SUSPENSION OR REVOCATION OF PERMIT, LICENSE OR CERTIFICATE The State Fire Marshal shall suspend or revoke a permit, license, or certificate of registration, following notice and opportunity for hearing, if the holder has:

(1) Obtained or attempted to obtain a permit, license or certificate of registration by fraudulent misrepresentation;

(2) Committed malpractice or exhibited incompetency in the sale, installation, repair or servicing of any portable fire extinguisher, fire extinguishing system, fire alarm, or fire alarm system fire protection equipment;

(3) Advertised or sold a portable fire extinguisher, fire extinguishing system, fire alarm, or fire alarm system fire protection equipment by knowingly making false or deceptive statements;

(4) Sold or installed a portable fire extinguisher, fire extinguishing system, fire alarm, or fire alarm system fire protection equipment not approved by the State Fire Marshal under ARM 23.7.143;

(5) Failed, upon request, to produce the items required by ARM 23.7.157, Serviced, and failed to correct any fire protection equipment that has been improperly

installed;

(6) Employed a person who is required to have a certificate of registration under ARM 23-7-131 but who does not have such a certificate to install, service, charge, recharge or inspect a portable fire extinguisher, fire extinguishing system, fire alarm, or fire alarm system installed or serviced fire protection equipment improperly or who installed or serviced fire protection equipment without the required certificate of registration;

(7) Violated any provisions of this chapter.

AUTH: 50-3-102, MCA

IMP: 50-3-102, MCA

23.7.125 INVESTIGATION OF COMPLAINTS IMPROPER INSTALLATION OR SERVICE (1) Upon the request of a local authority the State Fire Marshal shall conduct an inspection of the installation or service of fire protection equipment; receipt of a signed complaint of improper installation or inadequate servicing by a holder of a permit, license, or certificate, the State Fire Marshal shall conduct an investigation of the complaint.

(2) A licensee is responsible for the installation and workmanship of apprentices and registrants employed by the licensee. The State Fire Marshal may enjoin the use of all or a portion of a building where fire protection equipment has been improperly installed or serviced. Sec. 50-3-102(2)(b) MCA.

AUTH: 50-3-102, MCA

IMP: 50-3-102, MCA

23.7.131 WHO MUST OBTAIN A CERTIFICATE OF REGISTRATION

(1) Except as provided in subsection (2), a natural person must obtain a certificate of registration from the State Fire Marshal prior to installing, or servicing, charging, recharging, or inspecting portable fire extinguishers, fire extinguishing systems, fire alarms, or fire alarm systems fire protection equipment. An applicant must be a proprietor or an employee of a place of business that is licensed under ARM 23-7-151 or a member of a fire department who intends to recharge or service portable fire extinguishers.

(2) The following persons need not obtain a certificate of registration.

(a) A manufacturer filling or charging a portable fire extinguisher prior to its initial sale.

(b) An apprentice of a fire extinguishing or alarm system firm installing or servicing portable fire extinguishers, fire extinguishing or fire alarm systems. However, the firm must have verified to the State Fire Marshal that the apprentice performing these services, listed by name, will perform the installation or servicing of portable fire extinguishers, fire extinguishing systems, or fire alarm systems fire protection equipment under the personal immediate personal supervision of a qualified

registrant. An apprentice is a person who is engaged in a training position by a firm licensed pursuant to ARM 23-7-151. A person may serve as an apprentice to a firm for no more than 1 year before obtaining a certificate of registration.

(c) An electrical contracting firm which has a contract to physically install and wire a fire alarm system fire protection equipment according to drawings, provided that all final connections of the system ~~is~~ are supervised by a qualified registrant.

(d) An owner, manager, or maintenance personnel making monthly inspections and/or annual maintenance checks of portable fire extinguishers.

(3) A certificate of registration is valid for 1 year unless it is renewed by the registrant to renew a certificate of registration, the registrant shall submit an application during the month preceding its scheduled expiration. A registrant need not take an examination in order to renew a current certificate of registration.

(4) A certificate of registration is valid only when the holder is a proprietor or an employee of a place of business that is licensed under ARM 23-7-131 or a member of a fire department who is certified to recharge or service portable fire extinguishers.

AUTH: 50-3-102, MCA

IMP: 50-3-102, MCA

23-7-132 CERTIFICATE FEE (1) Except as provided in subsection (2):

(a) The original fee for a certificate of registration is \$5. Each registrant shall pay a fee of \$5 for a certificate of registration.

~~(b) There is no fee for annual renewal of a certificate of registration.~~

(2) The State Fire Marshal shall examine and certify the following persons without a fee:

(a) The personnel of a non-profit fire department who intend to recharge or service portable fire extinguishers. To qualify under this subsection, the non-profit fire department must provide a public service and use any money generated to serve to the public interest.

AUTH:50-3-102, MCA

IMP: 50-3-102, MCA

23-7-133 EXAMINATION FOR CERTIFICATE (1) "The State ~~Fire~~ ~~Marshal~~ shall issue a certificate of registration to an applicant who scores a passing grade on an examination devised by the State ~~Fire~~ ~~Marshal~~ and who pays the required fee." Section 50-39-102(3) MCA. The examination shall include a written examination and may include practical tests or demonstrations that the State Fire Marshal finds necessary to determine the applicants knowledge and ability to service portable fire extin-

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guishers, fire extinguishing systems, fire alarms or fire alarm systems for the installation or service of fire protection equipment.

(2) The written examination may include information from the latest edition of the Fire Protection Handbook, the latest editions of the Uniform Fire Code Standard No. 10.1, and the National Fire Protection Association (NFPA) Pamphlets Number 10, 13, 13A, and 13D, 72A, 72B, 72C, 72D, and 72E, and 74.

(3) An examination may be waived in the discretion of the State Fire Marshal if the applicant provides satisfactory documentation that he or she has received the training required by the manufacturer and that he or she is that qualifieds the applicant to install or service that fire extinguisher or alarm system fire protection equipment.

(4) The examination may also include information concerning hydrostatic testing of Department of Transportation listed cylinders contained in the Compressed Gas Association Pamphlet C-1 (Methods for Hydrostatic Testing Compressed Gas Cylinders.)

(5) A passing grade for the written examination is a score of 70 or better. An applicant who fails may reapply after 30 days to take another examination.

AUTH: 50-3-102, MCA

IMP: 50-3-102, MCA

23.7.141 WHO MUST OBTAIN A PERMIT TO SELL A self-employed person, firm, corporation, or partnership engaged in selling or leasing portable fire extinguishers, fire extinguishing systems, fire alarms, or fire alarm systems fire protection equipment must obtain a permit to sell for each separate business location.

AUTH: 50-3-102, MCA

IMP: 50-3-102, MCA

23.7.143 APPROVAL OF EQUIPMENT PRIOR-TO-SALE-OR-INSTALLATION No person or firm may sell, lease, or install or service a portable fire extinguisher or components of a fire extinguishing system, fire alarm, or fire alarm system fire protection equipment or components of fire protection equipment, unless the equipment has been approved, labeled, or listed by Underwriters Laboratories, Inc., Underwriters Laboratory of Canada, Factory Mutual Laboratories or other nationally recognized testing laboratories approved by the State Fire Marshal.

AUTH: 50-3-102, MCA

IMP: 50-3-102, MCA

23.7.151 WHO MUST OBTAIN A LICENSE TO INSTALL

(1) Except as provided in subsection 2, a self-employed person, firm, public agency, corporation, or partnership engaged in the installation, testing, or servicing of portable fire extinguishers, fire extinguishing

systems, fire alarm, or fire alarm systems of fire protection equipment must obtain a license to install for each separate business location, specifying the type of work to be performed.

(2) A manufacturer engaged only in filling or charging portable fire extinguishers prior to initial sale need not obtain a license to install.

(3) A license is valid for 1 year unless it is renewed by the licensee. To renew a license, the licensee shall, during the month preceding its scheduled expiration, submit an application and proof of manufacturer authorization and insurance, as required by ARM 23-7-156.

(4)(3) A license is valid only so long as the holder is engaged in the installation, testing, or servicing of portable fire extinguishers, fire extinguishing systems, fire alarm, or fire alarm systems of fire protection equipment.

AUTH: 50-3-102, MCA

IMP: 50-3-102, MCA

23.7.152 LICENSE FEE (1) The original fee for a license to install is \$5.

(2) There is no fee for an annual renewal for a licensee.

AUTH: 50-3-102, MCA

IMP: 50-3-102, MCA

23.7.154 SERVICE TAGS (1) A service tag must be used to indicate when fire protection equipment is installed or when service is performed on fire protection equipment and the name of the registrant installing or servicing the equipment. A service tag may not be used to indicate monthly inspections or annual maintenance checks of portable fire extinguishers by owners, managers or maintenance personnel. A licensee shall attach a service tag to each portable fire extinguisher, fire extinguishing system, or fire alarm system. A licensee who places a tag on a new fire extinguishing or fire alarm system shall notify the State Fire Marshal and or other appropriate fire authority of the address and completion date of the installation of the system shall be notified within 3 months following the completion date when a tag is placed on a new installation of fire protection equipment, except for portable fire extinguishers.

(2) A service tag shall be of a size and of a durable material approved by the State Fire Marshal but not less than 4-1/2 inches by 2-1/2 inches. It must not be red.

(3) A service tag must bear the following information:

(a) Name of servicing firm;

(b) Address and phone number of servicing firm;

(c) License number of servicing firm;

(d)(a) Type of service performed;

(e)(b) Month and year of servicing; and

10-5/30/85

MAR Notice NO. 23-2-67

BEFORE THE BOARD OF LIVESTOCK
OF THE STATE OF MONTANA

In the Matter of the AMENDMENT)	NOTICE OF PROPOSED
OF RULE 32.2.401, Increasing)	AMENDMENT OF RULE
Inspection Fees and Permits)	32.2.401 DEPARTMENT OF
to Reflect Department Costs)	LIVESTOCK LICENSE FEES,
)	PERMIT FEES, AND
)	MISCELLANEOUS FEES

NO PUBLIC HEARING
CONTEMPLATED

T0: All Interested Persons.

1. On July 1, 1985 the Board of Livestock proposes to adopt an amendment to Rule 32.2.401 raising the costs of livestock brand inspection and transportation permits and fees.

2. The proposed amendment provides as follows:

32.2.401 DEPARTMENT OF LIVESTOCK LICENSE FEES, PERMIT FEES, AND MISCELLANEOUS FEES The department of livestock shall charge:

- (1) Remains the same.
- (2) Remains the same.
- (3) Remains the same.
- (4) for inspection of livestock before removal from a county or before change of ownership as required by 81-3-205 M.C.A., a fee of 25 35 cents per head ~~for 12 head or less, or \$3 for 12 head to 20 head and 20 cents per head for each head over 20 head;~~
- (5) for issuance of a market consignment permit or transportation permit before removal from a county as required by 81-3-205 M.C.A., a fee of 25 cents \$1 per head ~~for each permit issued for 12 head or less, 50 cents for each permit for 12 to 30 head and \$1 for each permit issued for over 30 head;~~
- (6) for issuance of a permanent horse transportation permit as required by 81-3-205 M.C.A., a fee of \$5 \$10 per head;
- (7) for inspection of livestock before being sold or offered for sale at a licensed livestock market or slaughtered at a licensed slaughterhouse as required by 81-3-205 M.C.A., a fee of 20 35 cents per head ~~or 10 cents per head if an animal was previously inspected under (5) of this rule;~~
- (8) for releasing an animal for purpose of removal from a licensed livestock market as required by 81-3-205 M.C.A., a fee of 20 35 cents per head;
- (9) for inspection of horses, mules or asses before removal from a county or before change of ownership as required by 81-3-205 M.C.A., a fee of \$1 \$3 per head ~~for the~~

MAR Notice No. 32-2-107

10-5/30/85

first-10-head--and-50-cents-per-head-for-each-animal-more-than
10;

(10) for inspection of horses, mules, or asses before sold or offered for sale at a licensed livestock market as required by 81-3-205 M.C.A., a fee of \$1 \$3 per head;

(11) Remains the same.

(12) for a permanent horse transportation permit as required by 81-3-211 M.C.A., a fee of \$5 \$10;

(13) for an adjoining county transportation permit as required by 81-3-211 M.C.A., a fee of \$5 \$10;

(14) for an adjacent state transportation permit as required by 81-3-214 M.C.A., a fee of \$5 \$10;

(15) Remains the same.

(16) Remains the same.

(17) Remains the same.

(18) Remains the same.

(19) Remains the same.

(20) for hide inspection as required by 81-9-112 M.C.A., a fee of ~~25 cents~~ \$1 a head;

(21) Remains the same.

(22) Remains the same.

(23) Remains the same.

(24) Remains the same.

(25) Remains the same.

(26) Remains the same.

(27) Remains the same.

(28) Remains the same.

(29) Remains the same.

(30) Remains the same.

(31) Remains the same.

(32) Remains the same.

(33) Remains the same.

(34) Remains the same.

(35) Remains the same.

(36) Remains the same.

(37) Remains the same.

(3) The reason for the amendment is to increase the fees and permits to reflect their cost to the department. A 1983 legislative change requires the department to charge all fees commensurate with department cost.

(4) Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Les Graham, Executive Secretary to the Board of Livestock, Capitol Station, Helena, Montana 59620, no later than June 30, 1985.

(5) If a person who is directly affected by the proposed rules wishes to express his data, views, and arguments orally or in writing at a public hearing he must make written request for a hearing and submit this request along with any written comments he has to Les Graham, Executive Secretary to the Board of Livestock, no later than June 30, 1985.

(6) If the agency receives requests for a public hearing on the proposed adoption from either 10 or 25%, whichever is less, of the persons who are directly affected by the proposed adoption; from the Administrative Code Committee of the

BEFORE THE BOARD OF LIVESTOCK
OF THE STATE OF MONTANA

In the Matter of the AMENDMENT)	NOTICE OF PROPOSED
OF RULE 32.2.401, increasing)	AMENDMENT OF RULE
Inspection Fees and Permits)	32.2.401 DEPARTMENT OF
to Reflect Department Costs)	LIVESTOCK LICENSE FEES,
)	PERMIT FEES, AND
)	MISCELLANEOUS FEES

NO PUBLIC HEARING
CONTEMPLATED

TO: All Interested Persons.

1. On July 1, 1985 the Board of Livestock proposes to adopt an amendment to Rule 32.2.401 raising the costs of livestock brand inspection and transportation permits and fees.

2. The proposed amendment provides as follows:

32.2.401 DEPARTMENT OF LIVESTOCK LICENSE FEES, PERMIT FEES, AND MISCELLANEOUS FEES The department of livestock shall charge:

- (1) Remains the same.
- (2) Remains the same.
- (3) Remains the same.
- (4) for inspection of livestock before removal from a county or before change of ownership as required by 81-3-205 M.C.A., a fee of 25 ~~35~~ cents per head ~~for 12 head or less, or \$3 for 12 head to 20 head and 20 cents per head for each head over 20 head;~~
- (5) for issuance of a market consignment permit or transportation permit before removal from a county as required by 81-3-205 M.C.A., a fee of ~~25 cents~~ \$1 per head ~~for each permit issued for 12 head or less, 50 cents for each permit for 12 to 30 head and \$1 for each permit issued for over 30 head;~~
- (6) for issuance of a permanent horse transportation permit as required by 81-3-205 M.C.A., a fee of \$5 \$10 per head;
- (7) for inspection of livestock before being sold or offered for sale at a licensed livestock market or slaughtered at a licensed slaughterhouse as required by 81-3-205 M.C.A., a fee of 20 35 cents per head ~~or 10 cents per head if an animal was previously inspected under (5) of this rule;~~
- (8) for releasing an animal for purpose of removal from a licensed livestock market as required by 81-3-205 M.C.A., a fee of 20 35 cents per head;
- (9) for inspection of horses, mules or asses before removal from a county or before change of ownership as required by 81-3-205 M.C.A., a fee of ~~\$1~~ \$3 per head ~~for the~~

MAR Notice No. 32-2-107

10-5/30/85

first-10-heads-and-50-cents-per-head-for-each-animal-more-than 10;

(10) for inspection of horses, mules, or asses before sold or offered for sale at a licensed livestock market as required by 81-3-205 M.C.A., a fee of \$1 \$3 per head;

(11) Remains the same.

(12) for a permanent horse transportation permit as required by 81-3-211 M.C.A., a fee of \$5 \$10;

(13) for an adjoining county transportation permit as required by 81-3-211 M.C.A., a fee of \$5 \$10;

(14) for an adjacent state transportation permit as required by 81-3-214 M.C.A., a fee of \$5 \$10;

(15) Remains the same.

(16) Remains the same.

(17) Remains the same.

(18) Remains the same.

(19) Remains the same.

(20) for hide inspection as required by 81-9-112 M.C.A., a fee of 25 cents \$1 a head;

(21) Remains the same.

(22) Remains the same.

(23) Remains the same.

(24) Remains the same.

(25) Remains the same.

(26) Remains the same.

(27) Remains the same.

(28) Remains the same.

(29) Remains the same.

(30) Remains the same.

(31) Remains the same.

(32) Remains the same.

(33) Remains the same.

(34) Remains the same.

(35) Remains the same.

(36) Remains the same.

(37) Remains the same.

(3) The reason for the amendment is to increase the fees and permits to reflect their cost to the department. A 1983 legislative change requires the department to charge all fees commensurate with department cost.

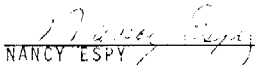
(4) Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Les Graham, Executive Secretary to the Board of Livestock, Capitol Station, Helena, Montana 59620, no later than June 30, 1985.

(5) If a person who is directly affected by the proposed rules wishes to express his data, views, and arguments orally or in writing at a public hearing he must make written request for a hearing and submit this request along with any written comments he has to Les Graham, Executive Secretary to the Board of Livestock, no later than June 30, 1985.

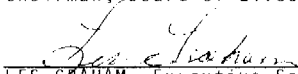
(6) If the agency receives requests for a public hearing on the proposed adoption from either 10 or 25%, whichever is less, of the persons who are directly affected by the proposed adoption; from the Administrative Code Committee of the

legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be (250) persons, based on a survey by the Montana Stockgrowers Association.

(7) The authority to adopt the proposed rules is based on Section 81-1-102, 81-22-102 MCA. It implements Sections 81-1-102, 81-2-502, 81-3-107, 81-3-205, 81-3-211, 81-3-214, 81-5-202, 81-7-504, 81-8-256, 81-8-276, 81-8-304, 81-9-112, 81-9-201, 81-9-301, 81-9-411, 81-20-201, 81-21-102, 81-22-102, 81-22-204, 81-22-205, 81-22-208, 81-23-202 MCA.



NANCY ESPY
Chairman, Board of Livestock

By: 

LES GRAHAM, Executive Secretary
to the Board of Livestock

Certified to the Secretary of State May 15, 1985.

BEFORE THE BOARD OF LIVESTOCK
OF THE STATE OF MONTANA

In the Matter of the AMENDMENT)	NOTICE OF AMENDMENT OF
OF RULE 32.22.103, allowing)	RULES 32.22.103 DURATION
issuance of self-renewing)	OF PERMITS-FEE (AERIAL
permits dependent upon)	HUNTING)
compliance with aerial hunting)	
regulations)	NO PUBLIC HEARING
	CONTEMPLATED

TO: All Interested Persons.

1. On July 1, 1985 the Board of Livestock proposes to adopt an amendment to Rule 32.22.103 which would allow the department to issue a self renewing aerial hunting permit valid for up to 3 years. Noncompliance with applicable regulations would halt self-renewal.

2. The proposed amendment provides as follows:
32.22.103 DURATION OF PERMITS-FEE (1) Permits will be valid for a period to be determined by the department not to exceed 3 years.

(2) Fees for permits will be:
(a) \$30.00 for a permit issued for less than 1 year.
(b) \$40.00 for a permit issued for 1 year to 2 years.
(c) \$50.00 for a permit issued for 2 years to 3 years.

(3) The Department may issue self-renewing multiple year permits dependent upon compliance with the rules of the department and state law. Noncompliance will halt renewal if not corrected prior to the annual self-renewal date.

3. The reason for the amendment is to allow flexibility of permit registration by reducing the need or permittees to annually reregister. However, when a three year permit is issued, noncompliance with regulations may become a problem. Therefore all permits may be made self renewing, but such self renewal will be halted if noncompliance is detected and there is a failure to correct the deficiency before the annual renewal date.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Les Graham, Executive Secretary to the Board of Livestock, Capitol Station, Helena, Montana 59620, no later than June 30, 1985.

5. If a person who is directly affected by the proposed rules wishes to express his data, views, and arguments orally or in writing at a public hearing he must make written request for a hearing and submit this request along with any written

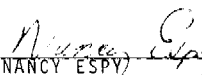
10-5/30/85

MAR Notice No. 32-2-108


comments he has to Les Graham, Executive Secretary to the Board of Livestock, no later than June 30, 1985.

6. If the agency receives requests for a public hearing on the proposed adoption from either 10 or 25%, whichever is less, of the persons who are directly affected by the proposed adoption; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of hearing will be published in the Montana Administrative Register. Ten percent of the those persons directly affected has been determined to be (250) persons, based on a survey by the Montana Stockgrowers Association.

7. The authority to adopt the proposed amendment is based on Section 81-7-502 MCA. It implements Section 81-7-503 MCA.



NANCY ESPY
Chairman, Board of Livestock

By: 

LES GRAHAM, Executive Secretary
to the Board of Livestock

Certified to the Secretary of State May 15, 1985.

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

In the matter of the amendment	:	NOTICE OF PROPOSED
of ARM 36.12.103 to revise	)	AMENDMENT OF ARM
the application fee for Water Right	)	36.12.103 APPLICATION
Transfer Certificates	)	AND SPECIAL FEES

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On July 26, 1985 the Board of Natural Resources and Conservation proposes to adopt the proposed amendment to present rule ARM 36.12.103.
2. The rule as proposed to be amended provides as follows:

36.12.103 APPLICATION AND SPECIAL FEES (1) A fee, if required, shall be paid at the time the permit, change or sever-sell, notice of completion, transfer certificate, or petition application (hereafter singularly or collectively referred to as application) is filed with the department. The department will not process any application without the proper filing fee. Failure to submit the proper application fee with an application or within 30 days after notice shall result in a determination that the application is not in good faith and does not show a bona fide intent to appropriate water for a beneficial use, and the application shall be terminated. A fee paid on an application is a one-time filing and processing fee paid at the time of making the application, and the fee will not be returned once the application has been filed with the department, except as noted below. If an applicant withdraws an application, he shall be entitled to a refund, or, if an applicant inadvertently files the wrong form, the applicant may apply the fee paid to the correct form for his purpose and pay the difference due or be entitled to a refund, if overpayment is made. However, no refund upon withdrawal or no exchanges of fees from one form to another or a refund, if otherwise justified, will be made in any case once the newspaper publication of the application has been initiated, or substantial direct processing costs have been accrued in making the application correct and complete prior to publication or department waiver of publication. When an application needs to be republished due to an applicant's error or request for republication, the applicant shall pay the direct cost of the new republication. The fees cover direct costs for newspaper publication, individual notices, issuance of certificates of water right on perfected permits, hearing costs, computer processing, and other miscellaneous direct costs connected with the permit process.

(a) For an Application for Beneficial Water Use Permit, Form No. 600, there shall be a fee charge based on the following rate schedule:

0 - less than 25	acre-feet per year . . .	\$ 50
25 - less than 100	acre-feet per year . . .	100
100 - less than 500	acre-feet per year . . .	150
500 - less than 1,000	acre-feet per year . . .	200
1,000 or more	acre-feet per year . . .	250

For an application with only a diversion rate increase, and no acre-foot increase, the minimum fee shall apply.

10-5/30/85

MAR Notice No. 36-46

(b) For an Application for Beneficial Water Use Permit, Form No. 600, there shall be a fee charge based on the following rate schedule when filing an application for non-consumptive uses:

0 - less than 1,000	acre-feet per year . . . \$	50
1,000 - less than 10,000	acre-feet per year . . .	100
10,000 or more	acre-feet per year . . .	200

For any application with a combination of consumptive and non-consumptive uses the rate schedule shown in (a) above shall apply.

(c) For any request for an Interim Permit, there shall be a fee of \$10 in addition to the rate schedules shown in (a) or (b) above.

(d) For a Notice of Completion of Groundwater Development (for groundwater developments with a maximum use less than 100 gpm), Form No. 602, there shall be a fee of \$10.

(e) For an Application for Provisional Permit for Completed Stockwater Pit or Reservoir (maximum capacity of the pit or reservoir must be less than 15 acre-feet), Form No. 605, there shall be a fee of \$10.

(f) For an Application for Change of Appropriation Water Right, Form No. 606, there shall be a fee of \$50, except, for any change application concerning a replacement well or reservoir in the same source, there shall be a fee of \$10.

(g) For a Water Right Transfer Certificate, Form No. 608, there shall be a fee of ~~\$5--~~ \$10.

(h) For an Application to Sever or Sell Appropriation Water Right, Form No. 609, there shall be a fee of \$50.

(i) For a Petition to the Board of Natural Resources and Conservation for Controlled Groundwater Area, Form No. 630, there shall be a fee of \$100 for filing this petition form, plus the petitioner shall also pay reasonable costs of giving notice, holding the hearing, conducting investigations, and making records pursuant to Sections 85-2-506 and 85-2-507, MCA, except the cost of salaries of the department personnel.

(j) For a Petition to the Department of Natural Resources and Conservation to Adopt Rules to Reject Permit Applications, or Modify or Condition Permits Issued in a Highly Appropriated Water Basin or Subbasin, Form No. 631, there shall be a fee of \$100 for filing this petition form, plus the petitioners shall also pay reasonable costs of giving notice, holding the hearing, conducting investigations, and making records pursuant to Section 85-2-319, MCA, except the cost of salaries of the department personnel.

(k) For any correction to an issued permit, authorization, or certificate for an error caused by an applicant, there shall be a fee of \$10. No fee shall be charged for corrections caused by the department.

(2) There shall be no fees charged for filing the following forms:

- (a) Form No. 603, Well Log Report.
- (b) Form No. 607, Application for Extension of Time.
- (c) Form No. 611, Objection to Application.
- (d) Form No. 614, Statement of Conditional Agreement.
- (e) Form No. 617, Notice of Completion of Permitted Water Development.
- (f) Form No. 618, Notice of Completion of Change of Appropriation Water Right.

(3) The following special fees must be paid for the described public service:

- (a) For microfilm, reader-printer copies . . . \$.25 per sheet.
- (b) For photostatic copy, letter and legal size. \$.15 per sheet.
- (c) For computer services requested . . . reasonable costs.
- (d) For making a blueprint of any tracing . . . \$1.00 per sheet.
- (e) For making a hearing transcript . . . reasonable costs not to exceed \$1.00 per page.

3. The Board proposes to amend ARM 36.12.103 by setting a new fee for filing of Form No. 608, Water Right Transfer Certificate, to reflect a statutory change in the manner in which the form is processed which will require the Department to collect a higher fee to reasonably pay administrative costs for the Department and each County Clerk and Recorder.

4. Interested persons may present their data, views, or arguments concerning the proposed adoption of amendment in writing to Ronald J. Guse, Administrative Officer, 32 South Ewing, Helena, Montana 59620, no later than July 8, 1985.

5. If a person who is directly affected by the proposed adoption wishes to express his/her data, views, or arguments orally or in writing at a public hearing, he/she must make written request for a hearing and submit this request along with any written comments he/she has to Ronald J. Guse, Administrative Officer, 32 South Ewing, Helena, Montana 59620, no later than July 8, 1985.

6. If the Board receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the Administrative Code Committee of the legislature; from a governmental agency or subdivision; 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. The number of persons to be possibly directly affected will be greater than 250.

7. The authority of the Board to make the proposed amendment is based on Section 85-2-113, MCA, and implements Section 85-2-113, MCA, for the rule.

GORDON G. HOLTE, CHAIRMAN
BOARD OF NATURAL RESOURCES
AND CONSERVATION

Certified to the Secretary of State on May 13, 1985

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

In the matter of the amend-	)	NOTICE OF PUBLIC HEARING ON
ment of Rules 46.2.201,	)	PROPOSED AMENDMENT OF RULES
46.2.202, 46.2.207,	)	46.2.201, 46.2.202,
45.2.208 and 46.2.211	)	46.2.207, 46.2.208 AND
pertaining to contested case	)	46.2.211 PERTAINING TO
procedures including the	)	CONTESTED CASE PROCEDURES
denial, suspension or revo-	)	INCLUDING THE DENIAL,
cation of licenses.	)	SUSPENSION OR REVOCATION OF
	)	LICENSES

TO: All Interested Persons

1. On June 19, 1985, at 9:30 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the amendment of Rules 46.2.201, 46.2.202, 46.2.207, 46.2.208 and 46.2.211 pertaining to contested case procedures including the denial, suspension or revocation of licenses.

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

46.2.201 DEFINITIONS For purposes of this chapter, unless the context requires otherwise, the following definitions apply:

Subsections (1) through (2)(c) remain the same.

(d) an action by the department establishing conditions on the manner or form of benefits, including restrictive or protective payments, or establishing conditions for the receipt of benefits, including a work requirement; ~~or~~

(e) an action by the department to deny, terminate or fail to renew certification or a provider agreement for the medicaid program to any skilled nursing facility or intermediate care facility; or

(f) an action by the department to deny, suspend, reduce, revoke or terminate or fail to renew certification, ~~or licensure or the registration certificate~~ of a provider.

Subsections (3) through (11) remain the same.

(12) "Provider" means an individual or organization licensed or registered by the department or authorized by the department to provide services to a person eligible for benefits.

AUTH: Sec. 41-3-1142, 53-2-201, 53-2-606, 53-2-803, 53-3-102, 53-4-111, 53-4-212, 53-4-403, 53-4-503, 53-5-304, 53-5-504, 53-6-111, 53-6-113, 53-7-102 and 53-20-305 MCA

IMP: Sec. 41-3-1103, 53-2-201, 53-2-306, 53-2-606, 53-2-801, 53-3-107, 53-4-112, 53-4-404, 53-4-503, 53-4-513, 53-5-304, 53-6-111 and 53-20-305 MCA

46.2.202 OPPORTUNITY FOR HEARING Subsections (1) through (1)(d) remain the same.

(2) Providers contesting actions by the department regarding payment for services performed by medical providers or actions by the department to deny, suspend, terminate or fail to renew registration, certification or licensure, shall be granted the right to hearing as provided in this chapter.

(a) A request for a hearing from a provider must be submitted in writing within 30 days of the date of notice of the department's adverse action, except that day care providers must submit a request for fair hearing within ten (10) days of the date of notice of the department's adverse action.

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

(5) There is no opportunity for hearing on departmental activities not defined as an adverse action in ARM 46.2.201(2). A dispute regarding a contract between the department and a provider is not an adverse action by the department and there is no opportunity for fair hearing concerning such disputes.

AUTH: Sec. 41-3-1142, 53-2-201, 53-2-606, 53-2-803, 53-3-102, 53-4-111, 53-4-112, 53-4-403, 53-4-503, 53-5-304, 53-6-111, 53-6-113, 53-7-102 and 53-20-305 MCA

IMP: Sec. 41-3-1103, 53-2-201, 53-2-306, 53-2-606, 53-2-801, 53-3-107, 53-4-112, 53-4-404, 53-4-503, 53-4-513, 53-5-304 and 53-20-305 MCA

46.2.207 HEARING OFFICER, POWERS AND DUTIES A hearing shall be conducted by an impartial individual appointed or hired by the department as hearing officer who has had no direct involvement in the initial determination of the adverse action.

Subsections (i) through (1)(d) remain the same.

~~(e) order, where relevant and useful, an independent medical assessment or professional evaluation from a source mutually satisfactory to the claimant and the department, the cost of which shall be borne by the department;~~

(fe) allow, for good cause shown, a third party to represent a claimant as an authorized representative in those instances where written authorization of the claimant is not obtainable;

(gf) grant a continuance not to exceed thirty (30) days at the request of a claimant for good cause shown, or at the request of the department or another party for good cause shown if the claimant agrees to such continuance in writing; and

(hg) take judicial notice of state and federal laws and regulations and facts within the general knowledge of the public.

Subsections (2) through (2)(e) remain the same.

AUTH: Sec. 53-2-201, 53-2-606, 53-4-212, 53-6-113,
53-7-102 MCA

IMP: Sec. 53-2-201 MCA

46.2.208 ADMINISTRATIVE REVIEW (1) Upon the request for a hearing by a claimant the department shall conduct an administrative review with the purpose of resolving the case and avoiding an unnecessary hearing. This review may be conducted in person or by telephone.

(2) An administrative review includes:

(a) at the claimant's or provider's discretion, an informal conference with the department; and

Subsections (2)(b) through (5)(a)(iii) remain the same.

AUTH: Sec. 53-2-201, 53-2-606, 53-4-212, 53-6-113,
53-7-102 MCA

IMP: Sec. 53-2-201 MCA

46.2.211 NOTICE OF APPEAL, FILING AND SERVICE OF BRIEFS, AND BOARD REVIEW OF PROPOSAL FOR DECISION Subsections (1) through (2)(b) remain the same.

(3) ~~If a request for board review is not received within fifteen (15) days of the date of mailing of the proposal for decision, the proposal for decision shall become final without further action by the board, unless a party can show that the failure to request board review was for good cause. The proposal for decision prepared by the hearing officer is the final agency decision, without further action by the board, unless a request for board review is received within fifteen (15) days of the date of mailing of the proposal for decision. The fifteen (15) day time limit may be extended if a party can show good cause but in no event shall the period of time be extended beyond 45 days.~~

Subsections (4) through (4)(b) remain the same.

AUTH: Sec. 53-2-201, 53-2-606, 53-4-212, 53-6-113,
53-7-102 MCA

IMP: Sec. 53-2-201 and 53-2-606 MCA

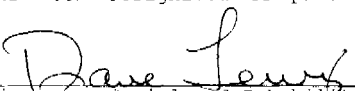
3. These rules are being amended to omit authority of the hearing officer to order independent medical examinations at the expense of the department. The rules are also being amended to clarify that the hearing officer's decision is a final agency decision unless appealed within 15 days but a good cause extension of time may be granted.

The amendments further specify that persons and facilities licensed by the department shall have a right to a fair hearing if aggrieved by any licensing or registration action taken by the department and to establish a specified period in which they may request a hearing. A shorter time period for requesting a hearing is required by 53-4-513(2) MCA

and is necessary to provide for a prompt resolution of pending licensing and registration actions.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than June 27, 1985.

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



Director, Social and Rehabilitation
Services

Certified to the Secretary of State May 20, 1985.

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

In the matter of the adop-	)	NOTICE OF PUBLIC HEARING ON
tion of rules pertaining to	)	THE PROPOSED ADOPTION OF
residential alcohol and drug	)	RULES PERTAINING TO
treatment for indigent	)	RESIDENTIAL ALCOHOL AND
juveniles.	)	DRUG TREATMENT FOR INDIGENT
	)	JUVENILES

TO: All Interested Persons

1. On June 19, 1985, at 1:30 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed adoption of rules pertaining to residential alcohol and drug treatment for indigent juveniles.

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

RULE I RESIDENTIAL ALCOHOL AND DRUG TREATMENT FOR INDIGENT JUVENILES The purpose of this rule is to establish eligibility criteria and rules for the administration of funds for residential alcohol and drug treatment for indigent juveniles.

AUTH: Sec. 41-3-1103(2)(c) MCA

IMP: Sec. 1, Ch. 177, L. 1985 (SB 121)

RULE II DEFINITIONS For purposes of this rule, the following definitions apply:

(1) "Department" means the department of social and rehabilitation services.

(2) "Indigent juvenile" means a person under the age of 18 whose family meets the eligibility criteria for indigency set forth in Rule V.

(3) "Residential alcohol and drug treatment" means chemical dependency treatment provided in a hospital licensed by the department of health and environmental sciences or an inpatient hospital care component or inpatient free standing component approved by the department of institutions pursuant to ARM Title 20, chapter 3, subchapter 2.

(4) "Provider" means a residential alcohol and drug treatment facility.

AUTH: Sec. 41-3-1103(2)(c) MCA

IMP: Sec. 1, Ch. 177, L. 1985 (SB 121)

RULE III ELIGIBILITY FOR SERVICES (1) A juvenile will be eligible for residential alcohol and drug treatment payments if he meets the following eligibility criteria:

MAR Notice No. 46-2-438

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(a) The juvenile has been adjudicated as either a youth in need of care pursuant to Title 41, chapter 3, MCA, a youth in need of supervision or a delinquent youth pursuant to Title 41, chapter 5, MCA; and

(b) The juvenile and his family are determined to be indigent by the department pursuant to the criteria set forth in Rule V; and

(c) The juvenile is in need of residential alcohol and drug treatment and has been evaluated by a chemical dependency counselor certified by the department of institutions who has recommended residential treatment for the juvenile; and

(d) The juvenile will be treated in a residential alcohol and drug treatment facility approved by the department of institutions or licensed by the department of health and environmental sciences.

(2) Residential alcohol and drug treatment benefits provided under this rule are available only to those eligible juveniles who have not received such benefits previously.

AUTH: Sec. 41-3-1103(2)(c) MCA
IMP: Sec. 1, Ch. 177, L. 1985 (SB 121)

RULE IV APPLICATION FOR SERVICES (1) An application for residential alcohol and drug treatment shall be submitted to the Department of Social and Rehabilitation Services, Community Services Division, Box 4210, Helena, Montana by the social worker or probation officer responsible for arranging the placement of the juvenile. Application must be made on the forms provided by the department.

(2) The person making application must provide sufficient documentation to establish that the juvenile meets the eligibility criteria set forth in Rule III.

AUTH: Sec. 41-3-1103(2)(c) MCA
IMP: Sec. 1, Ch. 177, L. 1985 (SB 121)

RULE V DETERMINATION OF INDIGENCY (1) Any juvenile will be determined indigent if his parents or guardians meet the financial eligibility requirements for the aid to families with dependent children program which are set forth in ARM 46.10.401 through 403, 46.10.406, and 46.10.505 through 513.

AUTH: Sec. 41-3-1103(2)(c) MCA
IMP: Sec. 1, Ch. 177, L. 1985 (SB 121)

RULE VI BILLING, REIMBURSEMENT AND PROCESSING The department shall make payments directly to the provider, subject to the following conditions and limitations:

(1) Providers shall submit claims for reimbursement on the forms provided by the department. The claim shall be submitted within 30 days of the last day treatment was provided

to the juvenile in the facility.

(2) Providers shall be reimbursed according to the rates set forth in Rule VIII. The provider will accept payment in accordance with Rule VIII as payment in full.

(3) The department will not reimburse the provider for any services other than alcohol and drug treatment.

AUTH: Sec. 41-3-1103(2) (c) MCA

IMP: Sec. 1, Ch. 177, L. 1985 (SB 121)

RULE VII ERRONEOUS OR IMPROPER PAYMENTS (1) The department is entitled to promptly recover all payments erroneously or improperly made to a provider.

(2) The provider shall notify the department of any erroneous or improper payment and shall promptly refund the entire amount of any erroneous or improper payment.

AUTH: Sec. 41-3-1103(2) (c) and 53-2-108 MCA

IMP: Sec. 1, Ch. 177, L. 1985 (SB 121)

RULE VIII RATES (1) The department will pay providers the usual and customary charges or the rates set forth in this rule, whichever is lower.

(2) The rate for residential alcohol and drug treatment for indigent juveniles shall be \$162.00 per day for each day of care actually provided, not to exceed 29 days of care.

AUTH: Sec. 41-3-1103(2) (c) MCA

IMP: Sec. 1, Ch. 177, L. 1985 (SB 121)

RULE IX UNAVAILABILITY OF FUNDS (1) Payments for residential alcohol and drug treatment for indigent juveniles are subject to the availability of funds appropriated for that purpose.

(2) When the entire amount of the appropriation has been accrued in any fiscal year, the department will no longer accept applications for residential alcohol and drug treatment for indigent juveniles.

(3) The department shall send written notice to the youth courts, probation officers and the residential alcohol and drug treatment facilities when the entire amount of the appropriation has been accrued for the fiscal year.

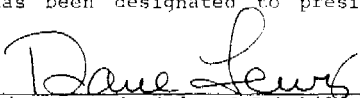
(4) All providers who are providing residential alcohol and drug treatment to eligible indigent juveniles at the time of receiving the notice that the appropriated funds have been exhausted will be reimbursed for the treatment of those juveniles who have been determined eligible for benefits by the department and are receiving treatment at the time of notice. The provider shall be reimbursed according to the terms and conditions set forth in Rule VIII.

AUTH: Sec. 41-3-1103(2)(c) MCA
IMP: Sec. 1, Ch. 177, L. 1985 (SB 121)

3. This rule is necessary to administer state funds appropriated to the department for residential alcohol and drug treatment for indigent youth.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than June 27, 1985.

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



Director, Social and Rehabilitation
Services

Certified to the Secretary of State May 20, 1985.

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

In the matter of the amendment) NOTICE OF PUBLIC HEARING ON
of Rule 46.10.403 pertaining) THE PROPOSED AMENDMENT OF
to AFDC assistance standards) RULE 46.10.403 PERTAINING TO
) AFDC ASSISTANCE STANDARDS

TO: All Interested Persons

1. On June 20, 1985, at 9:30 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the proposed amendment of Rule 46.10.403 pertaining to AFDC assistance standards.

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

46.10.403 TABLE OF ASSISTANCE STANDARDS Subsections (1) and (2) remain the same.

(a) Gross monthly income standards to be used when adults are included in the assistance unit are compared with gross monthly income defined in ARM 46.10.505.

GROSS MONTHLY INCOME STANDARDS TO BE USED WHEN ADULTS ARE
INCLUDED IN THE ASSISTANCE UNIT

No. Of Persons in Household	With Shelter Obligation Per Month	Without Shelter Obligation Per Month
1	\$ 474	\$ 170
2	623 631	279 279
3	742 792	374 385
4	949 951	487
5	1,123	575 581
6	1,262 1,273	648 655
7	1,397 1,434	714 729
8	1,534 1,593	784 803
9	1,667 1,754	855 875
10	1,800 1,915	925 949
11	1,935 2,076	995 1,023
12	2,070 2,237	1,066 1,097
13	2,203 2,398	1,136 1,171
14	2,338 2,559	1,206 1,245
15	2,473 2,720	1,277 1,319
16	2,607 2,880	1,347 1,391

(b) Gross monthly income standards to be used when no adults are included in the assistance unit are compared with gross monthly income defined in ARM 46.10.505.

GROSS MONTHLY INCOME STANDARDS TO BE USED WHEN NO ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

<u>No. of Children in Household</u>	<u>Amount Per Month</u>
1	\$ 129
2	229 233
3	339 346
4	448 461
5	561 574
6	672 688
7	786 803
8	901 916
9	1,016 1,030
10	1,130 1,143
11	1,245 1,258
12	1,360 1,373
13	1,473 1,486
14	1,587 1,600
15	1,702 1,713
16	1,817 1,828

(c) Net monthly income standards to be used when adults are included in the assistance unit are compared with net monthly income defined in ARM 46.10.505.

NET MONTHLY INCOME STANDARDS TO BE USED WHEN ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

<u>No. Of Persons in Household</u>	<u>With Shelter Obligation Per Month</u>	<u>Without Shelter Obligation Per Month</u>
1	\$ 256	\$ 92
2	337 341	149 151
3	401 428	202 208
4	513 514	263
5	607	311 314
6	682 688	350 354
7	755 775	386 394
8	829 861	424 434
9	901 948	462 473
10	973 1,035	500 513
11	1,046 1,122	538 553
12	1,119 1,209	576 593
13	1,191 1,296	614 633
14	1,264 1,383	652 673
15	1,337 1,470	690 713
16	1,409 1,557	728 752

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(d) Net monthly income standards to be used when no adults are included in the assistance unit are compared with net monthly income defined in ARM 46.10.505.

NET MONTHLY INCOME STANDARDS TO BE USED WHEN NO ADULTS ARE
INCLUDED IN THE ASSISTANCE UNIT

<u>No. of Children in Household</u>	<u>Amount Per Month</u>
1	\$ 70
2	124 126
3	183 187
4	242 249
5	303 310
6	363 372
7	425 434
8	487 495
9	549 557
10	611 618
11	673 680
12	735 742
13	796 803
14	858 865
15	920 926
16	982 988

Subsections (3) through (3) (b) remain the same.

(4) An assistance unit receives the full amount of the benefit standard less net monthly income which is prorated if eligibility is for less than a full month. From this amount recoveries will be taken from prior overpayments.

(a) Benefit standards to be used when adults are included in the assistance unit are compared with net monthly income defined in APM 46.10.505.

BENEFIT STANDARDS TO BE USED WHEN ADULTS ARE
INCLUDED IN THE ASSISTANCE UNIT

<u>No. Of Persons in Household</u>	<u>With Shelter Obligation Per Month</u>	<u>With Shelter Obligation Per Day</u>	<u>Without Shelter Obligation Per Month</u>	<u>Without Shelter Obligation Per Day</u>
1	\$ 212	\$ 7.07	\$ 76	\$ 2.53
2	279 282	9.30 9.40	123 125	4.10 4.19
3	332 354	11.07 11.80	167 172	5.57 5.73
4	425 426	14.17 14.20	217	7.23
5	501	16.70	250 260	8.60 8.67
6	564 570	18.80 19.00	290 293	9.67 9.77
7	624 642	20.80 21.40	320 326	10.67 10.87
8	685 713	22.83 23.77	350 359	11.67 11.97
9	744 785	24.80 26.17	380 392	12.73 13.07
10	804 857	26.80 28.57	413 425	13.77 14.17
11	864 929	28.80 30.97	445 458	14.83 15.27
12	923 1,001	30.77 33.37	476 491	15.87 16.37
13	983 1,073	32.77 35.77	508 524	16.92 17.47
14	1,042 1,145	34.73 38.17	539 557	17.97 18.57
15	1,102 1,217	36.73 40.57	571 590	19.03 19.67
16	1,162 1,289	38.73 42.97	602 623	20.07 20.77

(b) Benefit standards to be used when no adults are included in the assistance unit are compared with net monthly income defined in ARM 46.10.505.

BENEFIT STANDARDS TO BE USED WHEN NO ADULTS ARE
INCLUDED IN THE ASSISTANCE UNIT

<u>No. of Children in Household</u>	<u>Grant Amount Per Month</u>	<u>Grant Amount Per Day</u>
1	\$ 53	\$ 1.77
2	103 104	3.43 3.47
3	152 155	5.07 5.17
4	201 206	6.70 6.87
5	250 257	8.33 8.57
6	301 308	10.03 10.27
7	352 359	11.73 11.97
8	403 410	13.43 13.67
9	454 461	15.13 15.37
10	505 512	16.83 17.07
11	556 563	18.53 18.77
12	607 614	20.23 20.47
13	658 665	21.93 22.17
14	709 716	23.63 23.87
15	760 767	25.33 25.57
16	811 818	27.03 27.27


AUTH: Sec. 53-4-212 MCA

IMP: Sec. 53-4-211, 53-4-241 MCA

3. This proposed amendment raises the AFDC payment standards. The proposed payment standards reflect the intent of the legislature in HB 500 while equalizing AFDC payments at 47% of the federal FY 84 poverty index.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than June 27, 1985.

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


Director, Social and Rehabilitation
Services

Certified to the Secretary of State May 20, 1985.

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

In the matter of the amend-	)	NOTICE OF PUBLIC HEARING ON
ment of Rules 46.5.904,	)	THE PROPOSED AMENDMENT OF
46.5.905, 46.5.906, and	)	RULES 46.5.904, 46.5.905,
46.10.404 pertaining to	)	46.5.906 AND 46.10.404
day care for children of	)	PERTAINING TO DAY CARE FOR
recipients in training or in	)	CHILDREN OF RECIPIENTS IN
need of protective services	)	TRAINING OR IN NEED OF
	)	PROTECTIVE SERVICES

TO: All Interested Persons

1. On June 20, 1985, at 1:30 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of Rules 46.5.904, 46.5.905, 46.5.906 and 46.10.404 pertaining to day care for children of recipients in training or in need of protective services.

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

46.5.904 DAY CARE FOR CHILDREN OF RECIPIENTS IN TRAINING OR IN NEED OF PROTECTIVE SERVICES Day care payment will be made for children of recipients who are attending employment related training or in need of protective services day care unless otherwise provided. AFDC recipients who attend WIN training shall be referred for WIN related day care.

Subsections (1) through (1)(d) remain the same.

(e) Title IV-A day care payment shall not exceed ~~6196~~ \$207 per month per child for children in licensed or registered day care facilities.

Subsections (1)(f) through (2)(b) remain the same.

(c) Day care payments shall not exceed ~~6196~~ \$207 per month except in unusual circumstances when additional day care is approved by the department for the protection of the children.

AUTH: Sec. 53-4-111 and 53-4-503 MCA

IMP: Sec. 53-4-514 MCA

46.5.905 DAY CARE RATES (1) Full day care services are paid at a rate of ~~67-50~~ \$8.00 per day per child in care in day care homes. The maximum rate for group day care homes is ~~60-00~~ \$8.50 per child per day of care. The maximum rate for centers is ~~68-50~~ \$9.00 per child per day of care. These rate increases shall be paid beginning ~~August-167--1984~~ July 1, 1985.

(2) Part-time care is paid at a rate of ~~75¢~~ 80¢ per hour per child in day care homes, ~~80¢~~ 85¢ per hour per child in

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group day care homes, and 85¢ 90¢ per hour per child in all centers up to a maximum of a full day or night care rate.

Subsection (3) remains the same.

(4) Special child or exceptional child day care is paid at a rate determined by the day care facility, parent of the child, and the social worker up to a maximum of ~~610-00~~ \$11.00 per day or per night care; and upon approval by the department. Part-time care may be provided at a rate of up to a maximum of \$1.25 per hour per child, up to a maximum of a full day or night care special rate of ~~610-00~~ \$11.00 and subject to the same requirements as applied to the daily rate.

Subsection (5) remains the same.

AUTH: Sec. 53-4-111 and 53-4-503 MCA

IMP: Sec. 53-4-514 MCA

46.5.906 CERTIFIED ENROLLMENT Subsections (1) through (3)(c) remain the same.

(c) Certified enrollment shall begin with the first day of the billing month following the initial day of actual day care services; ~~being provided;--if--the--child--arrives--on--July--1--for--day--care--services;--however;--enrollment--begins--on--July--16--as--the--billing--month--extends--from--the--16th--of--July--through--the--15th--of--August;~~

Subsections (3)(e) through (3)(h) remain the same.

AUTH: Sec. 53-4-503 MCA

IMP: Sec. 53-4-503 MCA

46.10.404 TITLE IV-A DAY CARE FOR CHILDREN OF RECIPIENTS IN TRAINING OR IN NEED OF PROTECTIVE SERVICES Subsections (1) through (2)(c) remain the same.

(f) Day care payments shall not exceed ~~6196~~ \$207 per month per child except in unusual circumstances when additional day care is approved by the department for the protection of children.

(g) Full day care services are paid at a rate of ~~67-50~~ \$8.00 per day per child in care in day care homes. The maximum rate for group day care homes is ~~60-00~~ \$8.50 per child per day of care. The maximum rate for centers is ~~60-50~~ \$9.00 per child per day of care.

(h) Part time care is paid at a rate of ~~75¢~~ 80¢ per hour per child in day care homes, ~~80¢~~ 85¢ per hour per child in group day care homes and 85¢ 90¢ per hour per child in day care centers up to a maximum of a full day or night care rate.

Subsections (2)(i) and (2)(i)(i) remain the same.

(ii) exceptional child care, as defined in ARM 46.5.903, at a maximum of ~~610-00~~ \$11.00 per day per child for full-time care or ~~61-00~~ \$1.25 per hour per child for part-time care.

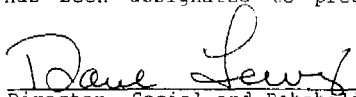
Subsections (2)(j) and (2)(k) remain the same.

AUTH: Sec. 53-4-211 and 53-4-503 MCA
IMP: Sec. 53-4-211 and 53-4-514 MCA

3. These rules are proposed to be amended to provide for an increase in the day care payment rates consistent with the testimony and legislative history relating to the appropriations contained in HB 500.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than June 27, 1985.

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



Director, Social and Rehabilitation
Services

Certified to the Secretary of State May 20, 1985.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment)	NOTICE OF AMENDMENT
of Rule 4.12.1012 increasing)	OF RULE 4.12.1012
the fees charged for sampling,)	FEE SCHEDULE.
inspection and testing of grains)	
at the State Grain Laboratories)	

TO: All Interested Persons.

1. On March 28, 1985, the Department of Agriculture published notices of the above stated rule at pages 261-263 of the 1985 Montana Administrative Register issue No. 6.

2. The department adopted the rule as proposed with the following change:

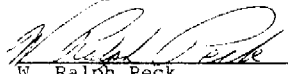
4.12.1012 GRAIN FEE SCHEDULE
OVERTIME HOURLY RATE: ~~\$20.00~~ \$15.00 per hour per individual assessed in half hour intervals with a minimum 1 hour charge. The overtime hourly rate will be assessed for sampling and for inspectors when requested to work other than regular weekly hours.

AUTH: 80-4-403, MCA; IMP: 80-4-721, MCA.

3. It was recommended the overtime rate be \$20.00 instead of \$15.00 to better reflect the costs.

4. Rex Denning submitted the comment to raise the overtime hourly rate charge.

Keith Kelly, Director
Department of Agriculture

By: 
W. Ralph Peck
Deputy Director

Certified to the Secretary of State May 20, 1985.

In the matter of the) NOTICE OF AMENDMENT OF RULE
amendment of rule 10.55.101) 10.55.101 ACCREDITATION
Accreditation Period) PERIOD

1. On January 31, 1985, the Board of Public Education published notice of a proposed amendment to rule 10.55.101 concerning Accreditation Period on page 45 of the 1985 Montana Administrative Register, issue number 2.

3. At the public hearing which was held February 21, 1985, no comments or testimony were received.

4. The authority for the rule is section 20-7-101, MCA, and the rule implements section 20-7-102, MCA.

Ted Haulbaker

TED HAZELBAKER, CHAIRMAN
BOARD OF PUBLIC EDUCATION

BY:

Certified to the Secretary of State May 20, 1985

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the) NOTICE OF AMENDMENT OF
amendment of rule 10.55.303) RULE 10.55.303 TEACHING
Teaching Assignments) ASSIGNMENTS

TO: All Interested Persons.

1. On January 31, 1985, the Board of Public Education published notice of a proposed amendment to rule 10.55.303, concerning Teaching Assignments on page 38 of the 1985 Montana Administrative Register, issue number 2.

2. The Board has amended the rule as proposed.

3. At the hearing which was held February 21, 1985, one person appeared as proponent for the proposed rule. In addition to his support for the rule, he pointed out that the rule emphasized endorsement in subjects rather than endorsement in the area of characteristics of middle school pupils. He urged that the Board consider requiring teachers teaching grades 5-8 have 9 credits in subjects relating to characteristics relating to middle school pupils. The Board acknowledges this concern, but points out that the rule is meant to clarify present middle school assignments for inclusion in the Administrative Register. It will consider substantive amendments to middle school assignments through its Middle School Committee which is presently reviewing this area for the Board's consideration. There were no opponents, or written comment prior to February 28, 1985, the date the Board closed the hearing record.

4. The authority for the rule is section 20-7-101, MCA, and the rule implements sections 20-4-101 and 20-4-202, MCA.

Ted Hazelbaker
TED HAZELBAKER, CHAIRMAN
BOARD OF PUBLIC EDUCATION

By: Wanda Jean Dym

Certified to the Secretary of State May 20 1985

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF AMENDMENT OF RULE
amendment of rule 10.57.403	)	10.57.403 CLASS 3 ADMINISTRATIVE
Class 3 Administrative Cer-	)	TIVE CERTIFICATE AND RULE
tificate and rule 10.57.405	)	10.57.405 PROVISIONAL CER-
Provisional Certificate	)	TIFICATE

TO: All Interested Persons.

1. On January 31, 1985, the Board of Public Education published notice of a proposed amendment to rule 10.57.403 Class 3 Administrative Certificate and rule 10.57.405 Provisional Certificate on page 46 of the 1985 Montana Administrative Register, issue number 2.

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

10.57.403 CLASS 3 ADMINISTRATIVE CERTIFICATE (1)
remains the same.

(2) Effective ~~July 1~~ September 1, 1985, a master's degree in an approved school administration program or the equivalent will be required for administrative endorsement. Individuals enrolled in any approved master's program or administrative program at an accredited college before July 1 September 1, 1985, that would result in certification in Montana will be eligible for administrative certification under the former regulations until ~~July 1~~ September 1, 1988. Administrators currently holding a valid administrative certificate may continue to renew it under the academic minimums by which it was issued. Other renewal requirements must be met. Lapsed certificates cannot be renewed. For reinstatement requirements, see 10.57.208.

(3) and (4) remain the same as the proposed rule.

(5) Superintendent endorsement: Master's degree in school administration or the equivalent to include:

(5)(a) through (8) remain the same as the proposed rule.

AUTH: Sec. 20-4-102, MCA.

IMP: Sec. 20-4-106(1)(c), MCA.

10.57.405 CLASS 5 PROVISIONAL CERTIFICATE Remains
the same as the proposed rule.

AUTH: Sec. 20-4-102, MCA.

IMP: Sec. 20-4-106(1)(e), MCA.

3. At the public hearing which was held February 21, 1985, twenty-six persons submitted comments on the proposal. Four persons testified at the public hearing, and twenty-two persons sent written comment to the Board prior to February 28, 1985, the date on which the Board closed the hearing record. All comment was in favor of the rule. In addition, the following observations were made:

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(a) Nineteen persons requested that the July 1, 1985 effective date be changed to September 1, 1985 in order to allow for the inclusion of summer school. The Board agrees and has amended the rule accordingly.

(b) One person requested that the words "or the equivalent" be included sub. 10.57.403(5) for the sake of consistency. The Board agrees and has amended the rule accordingly.

(c) Three persons pointed out that the twelve credits referred to under 10.57.403(5)(c) move candidates half way to a degree and that the educational specialist degree would be only another quarter of work beyond what is being proposed. They urged the Board to mandate the educational specialist degree. The Board does not wish to address the educational specialist requirement at this time because the present requirements are the result of a planning process during which it was agreed to address the educational specialist requirement at a later date.

(d) Two persons suggested that courses in the techniques of grant writing be included for the superintendent and principal and that a greater emphasis be placed on evaluation rather than budgeting and school finance for principals. The Board responds by pointing out that there is an opportunity for such courses in the program without changing the proposed requirements which were the result of a planning process.

(e) One person pointed out that the experience requirement under 10.57.403(5)(e) does not permit simultaneous certification as superintendent and positions such as teacher or principal. The Board responds by pointing out that during the planning process all participants agreed that a prospective superintendent should acquire experience in these positions before becoming a superintendent.

Ted Hazelbaker

TED HAZELBAKER, CHAIRMAN
BOARD OF PUBLIC EDUCATION

By: *Shirley Ann W. J.*

Certified to the Secretary of State May 20, 1985

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

In the matter of the adoption)	NOTICE OF
of RULE I (16.32.109); the amend-) ADOPTION, AMENDMENT,	
ment of 16.32.103, 16.32.106,) AND REPEAL OF RULES	
16.32.107, 16.32.110, 16.32.111,)	
16.32.112, 16.32.114, 16.32.118;)	
and the repeal of rules)	
16.32.108, 16.32.125, 16.32.126,)	
16.32.127, and emergency rules I)	
and II, all concerning criteria)	
and procedures for review of)	
certificates of need for health)	
care facilities)	(Certificate of Need)

To: All Interested Persons

1. On April 11, 1985, the department published notice of proposed adoption of new Rule I, amendment of rules 16.32.103, 16.32.106, 16.32.107, 16.32.110, 16.32.111, 16.32.112, 16.32.114, 16.32.118; and the repeal of rules 16.32.108, 16.32.125, 16.32.126, and 16.32.127, all concerning criteria and procedures for review of certificates of need for health care facilities, at page 318 of the 1985 Montana Administrative Register, issue number 7.

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

16.32.106 BATCHING PERIODS, SUBMISSION OF APPLICATIONS

(1) - (3) Same as proposed rule.

(4) Except as provided in subsection (10) below, upon determination by the department that an activity described in a letter of intent is subject to certificate of need review, the letter of intent will be placed in the appropriate batch, according to its category and region of the state. At the conclusion of the batch period, the department will notify each applicant in the batch that its application may be submitted, and must be received by the department on a date specified by the department, which, in the case of non-comparative review, may be no earlier than 30 days after the end of the challenge period immediately following the batch just concluded, and in the case of comparative review, no later than that date, unless a later date is agreed upon by all affected applicants, and that a deadline for submission will be determined at the conclusion of the challenge period immediately following the batch just concluded. If, at the end of the challenge period, no challenging letter of intent has been submitted, the applicant's deadline for submission of an application will be set no earlier than 30 and no later than 90 days after the conclusion of the challenge period. If a challenging letter of intent has been submitted, the deadline will be 30 days after the end of the challenge

period, unless a longer time is agreed upon by all affected applicants. On the first day of the month following the conclusion of each batching period, the department will publish notices in a newspaper of general circulation in the affected areas listing the letters of intent which have been received in the batch just concluded.

(5) - (10) Same as proposed rule.

16.32.107 ACCEPTANCE OF APPLICATIONS; REVIEW PROCEDURES

(1), (2) Same as proposed rule.

(3) A notice of acceptance of a complete application must be mailed to the applicant, an agency qualified as a health systems agency pursuant to 42 U.S.C. Sec. 3001 Health Service Act including the chairman of the Health Systems Agency governing board and the chairman of the affected Sub-area Council, health care facilities and health maintenance organizations located in the service area and rate review agencies in the state. Contiguous health systems agencies qualified pursuant to 42 U.S.C. Sec. 3001 will be notified if the service area borders one of the surrounding states. A notice of preliminary decision must be circulated as provided for notices of acceptance, and published in a newspaper of general circulation in the service area affected.

(4) Same as proposed rule.

3. Comments and responses.

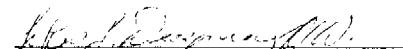
The Montana Health Systems Agency requested clarification of the procedures for distribution of notices of completed applications and preliminary decisions. Language has been added to 16.32.107(3) to clarify which officers of the HSA will receive notices.

In discussions with the HSA, provider groups and within the department, it became apparent that the proposed amendments to 16.32.106(4) were unclear and confusing. The new language which replaces the originally proposed amendments, sets forth more clearly the sequence for submission of applications and establishing of deadlines.

Pat Melby commented that the department's intent in adding the reference to 42 CFR 123.412 in ARM 16.32.110(1) should be clarified. The department concurs with Mr. Melby's comment. The department considers that it has been authorized since the enactment of Ch. 329, Laws of 1983, to adopt or incorporate by reference the federal guidelines set forth in the cited section of the Code of Federal Regulations. The intent of the current amendment to 16.32.110 is to clarify and codify this long-standing interpretation of our authority.

No other comments were received. However, letters were received from the Montana Hospital Association and the Department of Institutions commenting on the emergency rules which were promulgated on February 28, 1985. The letters made no

specific comments but expressed general concurrence in the emergency rules -- which were essentially the same as the permanent rules being adopted today.


JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State May 20, 1985

BEFORE THE WORKERS' COMPENSATION DIVISION
OF THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the emergency) NOTICE OF EMERGENCY
repeal of rules regarding lump) REPEAL OF RULES
sum conversions of benefits under)
section 39-71-741, MCA.)

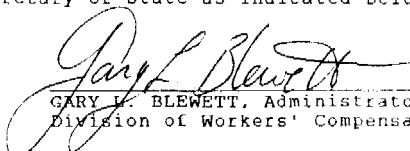
TO: All Interested Persons.

1. Statement of reasons for emergency: On May 3, 1985, the Division filed with the Secretary of State its notice of adoption of emergency rules regarding lump sum conversions of benefits under section 39-71-741, MCA. Counsel to the administrative code committee notified the Division of his objections to the statement of reasons for emergency, but the notice was already published in the MAR before the Division was so advised.

2. The rules being repealed are found at pages 494 through 499 of the 1985 Montana Administrative Register. Rules I, II, III and IV are hereby repealed.

AUTH: 39-71-203, MCA; IMP: 39-71-741, MCA.

3. This repeal of rules will become effective on the date certified to the Secretary of State as indicated below.


GARY L. BLEWETT, Administrator
Division of Workers' Compensation

CERTIFIED TO THE SECRETARY OF STATE: May 17, 1985

BEFORE THE WORKERS' COMPENSATION DIVISION
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of Rule 24.29.3801.) OF RULE 24.29.3801
) CONCERNING ATTORNEY
) FEE REGULATION

TO: All Interested Parties:

1. On December 13, 1984, the Division of Workers' Compensation published notice of the proposed amendment of rule 24.29.3801 at page 1795 of the 1984 Montana Administrative Register. This notice stated that no public hearing was contemplated. The Division received a request for a public hearing on the proposed amendment from the Yellowstone Valley Claimants' Attorneys' Association. On February 28, 1985, the division published a notice of public hearing at page 201 of the 1985 Montana Administrative Register. The hearing was held at 10:00 a.m. on April 4, 1985.

2. The division has amended Rule 24.29.3801, effective June 1, 1985, as follows:

24.29.3801 ATTORNEY FEE REGULATION (1) An attorney representing a claimant on a workers' compensation claim shall submit to the division, in accordance with section 39-71-613, MCA, a contract or a copy of a contract of employment stating specifically the terms of the fee arrangement. The contract of employment shall be signed by the claimant and the attorney, and must be approved by the Administrator of the Division of Workers' Compensation. ~~A contract complying with these rules shall be deemed approved by the Administrator unless good cause requires otherwise. The Administrator shall notify the attorney in writing of any contracts which do not comply with these rules. The administrator or his designee shall return the contract to the attorney along with a notification that the contract has been approved or disapproved.~~

(2) An attorney representing a claimant on a workers' compensation claim and who plans to utilize a contingent fee system arrangement to establish the fee arrangement with the claimant, may not charge

(a), (b), (c) same as proposed amendment

(3) same as proposed amendment

(4) For good cause shown, the division may allow contingent fees in excess of the maximum ~~fees as~~ set forth in ~~the above schedule~~ subsection (2). Such a variation from the maximum contingent fee schedule must be approved by the division before a final fee contract is entered into between the attorney and the claimant.

(5) The fee schedule set forth ~~above in subsection (2)~~ does not preclude the use of other attorney fee arrangements, such as the use of a fee system based on time. When such a fee arrangement is utilized, the contract of employment shall

specifically set forth the fee arrangement, such as the amount charged per hour.

(6) The contingent fee schedule set forth ~~above~~ in subsection (2) is a maximum schedule, and nothing prevents an attorney from charging a contingent fee below the maximum contingent fee schedule. The division encourages attorneys to review each workers' compensation claim on a case by case basis in order to determine an appropriate fee. An attorney may also reduce the attorney's fee from what was originally established in the fee contract, without the approval of the division.

(7) same as proposed amendment

(8) same as proposed amendment

(9) same as proposed amendment

3. The rationale for amending ARM 24.29.3801 is to set forth the manner in which attorneys, who represent or act on behalf of a claimant or any other party on any workers' compensation claim, submit to the division a contract of employment between the attorney and the claimant, and to set forth the manner in which the Administrator of the division regulates the amount of the attorney's fee in any workers' compensation case. The amendment of this rule was necessary to distinguish the division's responsibility to regulate attorney fees pursuant to section 39-71-613, MCA, and the workers' compensation court's responsibility to award attorney fees pursuant to section 39-71-611, or 39-71-612, MCA.

4. On April 4, 1985, a public hearing was held by the division of workers' compensation regarding the amendment of ARM 24.29.3801. The division has thoroughly considered all verbal and written commentary received. The following is a summary of the comments received from the public, and the division's responses:

COMMENT: Is the provision in subsection (7) requiring the attorney fee to be paid from funds available to the claimant inconsistent with the net award concept promulgated by the Supreme Court's decision in Wight?

RESPONSE: The net award concept in the Wight decision applies to awards made in contested cases. Fees paid from funds available to the claimant apply to uncontested cases. The 49th Legislature enacted H.B. 778 which changes the net award concept and may cause claimants to pay a portion of the attorney fees in contested cases.

COMMENT: Will the Division provide standard fee contracts that must be used by attorneys?

RESPONSE: The Division will provide a sample contract but believes attorneys should be allowed the flexibility to prepare their own contracts that comply with the statutes and rules.

COMMENT: Will cases that go to hearing or cases sent up on an appeal require a separate hearing before the Division to determine the attorney fee?

RESPONSE: No. The rule separates the role of the Division from that of the Court. Once the Court hears a case, the attorney fee that may be awarded is in the Court's jurisdiction and not the Division's.

COMMENT: Since the proposed rule does not state a fixed rate for cases which have gone to court for hearing, will the Division have to hold hearings on the fees in those cases?

RESPONSE: No. In those cases the fee that may be awarded is regulated by the Court.

COMMENT: Does the Division lose its regulatory authority over attorney fees once a petition is filed with the Workers' Compensation Court?

RESPONSE: The Division's authority to regulate attorney fees ends when the Court holds a hearing concerning benefits.

COMMENT: The rule complicates settlements by allowing "a fee above 25% of the amount of compensation payments the claimant receives due to the efforts of the attorney".

RESPONSE: This comment is apparently based on a misreading of the proposed amendment which actually states that "An attorney . . . may not charge a fee above 25% . . ."

COMMENT: Does this rule apply only to nonlitigated cases?

RESPONSE: This rule applies to cases settled before a Court award is made.

COMMENT: The word "system" in subsection (2) may not be as meaningful as the word "arrangement" in its place.

RESPONSE: Agreed. The rule is amended to use the word "arrangement" instead of "system".

COMMENT: Suggest striking all the language in subsection (3) after ". . . in calculating the fee."

RESPONSE: The proposed amendments do not change the language in subsection (3). We believe an attorney should be able to obtain a fee based on the circumstances contained in that subsection.

COMMENT: The proposed rule should be amended to require a positive approval for each attorney fee agreement rather than the negative approval suggested.

RESPONSE: Agreed. The rule is amended to respond affirmatively or negatively to each attorney fee agreement. Since the Division evaluates each agreement anyway, the small additional cost to notify approval as well as disapproval is worth the clarity this action may provide.

COMMENT: Suggest language indicating no fee for impairment in subsection (2).

RESPONSE: This is not necessary since the rule excludes a fee if the result is not obtained due to the efforts of the attorney. Impairment or indemnity normally does not require attorney effort, while other benefits may. However, if the insurer initially denies liability and subsequently reverses through the efforts of the attorney, resulting impairment or indemnity would have been due to the efforts of the attorney and should be included in the basis for the fee.

COMMENT: Amend page 2, subsection (4), to read: "For good cause shown, the division may allow contingent fees in excess of the maximum set forth in subsection (2). Such a variation must be approved by the division before a final fee contract is entered into between the attorney and the claimant."

RESPONSE: Agreed. Since the rule no longer specifies a schedule, but simply indicates a single upper limit contingent fee, the rule is amended to reference section (2).

COMMENT: Amend page 2, subsection (5) to read: "The fee set forth in subsection (2) does not . . . etc."

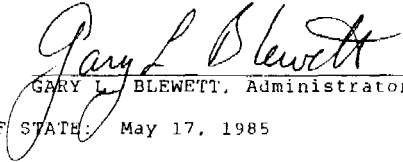
RESPONSE: Agreed. Reference to the section is preferable to the more general term "above".

COMMENT: Amend page 2, subsection (6), to read: "The contingent fee set forth in subsection (2) is maximum, and . . . etc."

RESPONSE: Agreed. Reference to the section is preferable to the more general term "above".

COMMENT: Strike subsection 9 on page 2, as it is not required.

RESPONSE: Although it is not required, it is specific language requested by attorneys who consulted with the Division in preparation of these amendments. It makes clear that another set of rules on this subject will not be adopted independent of these rules.


GARY L. BLEWETT, Administrator

CERTIFIED TO THE SECRETARY OF STATE: May 17, 1985

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

In the matter of the	)	NOTICE OF THE ADOPTION OF
adoption of Rules 46.12.590,	)	RULES 46.12.590, 46.12.591,
46.12.591, 46.12.592,	)	46.12.592, 46.12.593,
46.12.593, 46.12.595,	)	46.12.595, 46.12.597 AND
46.12.597 and 46.12.599	)	46.12.599 PERTAINING TO
pertaining to Medicaid	)	MEDICAID REIMBURSEMENT FOR
reimbursement for inpatient	)	INPATIENT PSYCHIATRIC
psychiatric services for	)	SERVICES FOR PERSONS UNDER
persons under 21	)	21

TO: All Interested Persons

1. On April 11, 1985, the Department of Social and Rehabilitation Services published notice of the proposed adoption of rules pertaining to Medicaid reimbursement for inpatient psychiatric services for persons under 21 at page 341 of the 1985 Montana Administrative Register, issue number 7.

2. The Department has adopted Rules 46.12.590, PURPOSE AND DEFINITIONS; 46.12.591, PARTICIPATION REQUIREMENTS; 46.12.592, REIMBURSEMENT; 46.12.593, COST REPORTING AND AUDITS; 46.12.595, OVERPAYMENT AND UNDERPAYMENT; 46.12.597, ADMINISTRATIVE REVIEW AND FAIR HEARING PROCEDURES and 46.12.599, UTILIZATION REVIEW AND CONTROL as proposed.

3. The Department has thoroughly considered the written commentary received:

COMMENT: The rules should be amended to allow reimbursement of prescription drugs which are administered by the hospital by incorporating 42 CFR 447.331 through 447.341, inclusive.

RESPONSE: The suggested federal regulations are typically applied to fee-based providers such as community based pharmacies. Providers of inpatient psychiatric services to persons under the age of 21 are cost-based providers. Prescription drugs which are administered by the hospital through the hospital's pharmacy will be reimbursed according to the provisions of the Medicare Health Insurance Manual-15, Section 2119, subject to the determination of allowable cost.

COMMENT: The Department may not be required to prescreen admissions under the federal regulations. Prescreening may be an unnecessary and cumbersome process.

RESPONSE: It is the intent of the preadmission screening team to fulfill the state Medicaid agency's obligation to ensure that payment is made only for those services determined to be medically necessary and that the services are provided in the

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most appropriate setting. 42 CFR 441.153 specifies conditions indicating when certification must occur. Subsection (a) provides no time reference for completing the certification of non-emergency admissions. However, since subsection (c) indicates that certification for Medicaid recipients admitted on an emergency basis must occur within 14 days after admission, then certification for Medicaid recipients admitted on a non-emergency basis must occur sometime before that cut-off. The Department feels it is in the best interest of the Medicaid client and the provider to perform certification prior to admission. This provides greater opportunity to fulfill the assurances required, including certification that other community resources are not available. Therefore, the Department considers it appropriate under 42 CFR 456.127 to implement its general authority to initiate preadmission review as deemed appropriate.

COMMENT: Because admissions to the state owned facility are made by court commitments only, the preadmission screen will not prevent those admissions which are determined to be inappropriate. This will result in state taxpayers paying the costs of care. It is suggested that a permanent committee be based in Billings to perform the screening function after admission.

RESPONSE: The determination made by the prescreening team will have no effect on the individual's eligibility for Medicaid or on the proceedings of the courts. The determination will only effect the Department's authorization for reimbursement to the provider for these services. A provision in the prescreening procedures will allow for post-admission screening in emergency situations. Because providing for a screening procedure after admission would not meet the goals of the prescreening nor the federal utilization review requirements, the Department feels the review activities should be implemented as proposed.



Director, Social and Rehabilitation Services

Certified to the Secretary of State _____ May 20 _____, 1985.

VOLUME NO. 41

OPINION NO. 12

COURTS - Compensation of court reporters;
COURTS, DISTRICT - Compensation of court reporters;
PUBLIC OFFICERS - Compensation of court reporters;
SALARIES - Compensation of court reporters;
MONTANA CODE ANNOTATED - Sections 3-5-602 to 3-5-604.

HELD: Court reporters, under Title 3, chapter 5, part 6, MCA, are not entitled to additional compensation, above and beyond traveling expenses, when traveling with their judge outside their judicial district.

10 May 1985

Ronald W. Smith
Hill County Attorney
Hill County Courthouse
Havre MT 59501

Dear Mr. Smith:

You have requested my opinion on the following question:

Are court reporters, under Title 3, chapter 5, part 6, MCA, entitled to additional compensation, above and beyond travel expenses, when traveling with their judge outside their judicial district?

Montana statutes provide for two types of compensation for court reporters: (1) a base annual salary, § 3-5-602, MCA; and (2) professional fees for preparing transcripts, § 3-5-604, MCA.

Court reporters are also entitled to be reimbursed for travel expenses. § 3-5-602(2), MCA. However, reimbursement is not compensation, and the statute specifically provides that no compensation, other than a base salary and professional fees, will be paid. § 3-5-602(1), MCA.

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The Montana Supreme Court interpreted the predecessor of the current statute, and noted that:

In view of the strictly prohibitory language of the legislature, limiting the stenographer's salary and fees to definite specified amounts for definite services rendered, it is incumbent upon the stenographer clearly and unequivocally to show that his claim comes within the statute allowing fees over and above his official salary. If he is unable to do this, the presumption is that his services were rendered for his official salary. ...

Pelletier v. Glacier County, 107 Mont. 221, 225, 82 P.2d 595, 597 (1938).

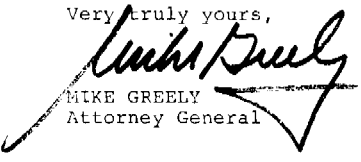
As I understand the facts in your case, court reporters have been paid a full salary in their home judicial districts, but have also requested an additional salary when traveling with their judge outside their home district. No statutory justification for the additional salary has been presented. Therefore, under the language of Pelletier, the request must be denied.

In addition, section 3-5-603, MCA, provides that the court reporter must attend all sittings of the court as part of his official duties. Since the court reporter is appointed by the district judge, it is apparent that the "court" referred to in section 3-5-603, MCA, is the district judge, and not the building occupied by the judge. Cf. Black's Law Dictionary 318 (5th ed. 1979). Consequently, the court reporter is required to travel wherever his judge goes, unless excused by the judge. § 3-5-603, MCA. Clearly, the work done while traveling with his judge outside their judicial district is part of the court reporter's official duties, and no additional compensation is warranted.

THEREFORE, IT IS MY OPINION:

Court reporters, under Title 3, chapter 5, part 6, MCA, are not entitled to additional compensation, above and beyond traveling expenses, when traveling with their judge outside their judicial district.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 41

OPINION NO. 13

AGRICULTURAL PRODUCTS - Treatment for taxation purposes of grain stored in farmer's granaries;
TAXATION AND REVENUE - Exemption for business inventory;
TAXATION AND REVENUE - Exemption for nonperishable unprocessed agricultural products;
TAXATION AND REVENUE - Treatment for taxation purposes of grain stored in farmer's granaries;
ADMINISTRATIVE RULES OF MONTANA - Section 42.21.120;
MONTANA CODE ANNOTATED - Sections 15-1-101(1)(a), 15-1-201, 15-6-136, 15-6-136(1)(b), 15-6-201, 15-6-202, 15-6-207, 15-6-207(2);
OPINIONS OF THE ATTORNEY GENERAL - 40 Op. Att'y Gen. No. 82 (1984);
SESSION LAWS OF 1975 - Chapter 442, section 1.

HELD: Grain stored in a farmer's granaries is taxable as class six property under section 15-6-136, MCA; however, it qualifies for the tax exemption provided in section 15-6-207, MCA, if held in the possession of the original producer for less than seven months following harvest. Such grain does not qualify for the business inventories exemption provided in section 15-6-202, MCA.

16 May 1985

John T. Flynn
Broadwater County Attorney
Broadwater County Courthouse
Townsend MT 59644

Dear Mr. Flynn:

You have requested my opinion on the following question:

Should the grain stored in a farmer's granaries be classified as class six property under section 15-6-136, MCA, and taxed accordingly, or does such property fall within the "business inventories" exemption provided in section 15-6-202, MCA?

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In 40 Op. Att'y Gen. No. 82 (1984), I concluded that a sugar refinery's piled sugar beets are exempt from taxation under section 15-6-202, MCA. I determined that, while raw sugar beets are "unprocessed agricultural products," they are not really in "storage" when piled at a sugar refinery awaiting processing, thus they should not be classified as class six property under section 15-6-136(1)(b), MCA. I also concluded that the beets would qualify for the business inventories exemption provided in section 15-6-202, MCA, since they are raw materials used to produce "goods primarily intended for sale ... in the ordinary course of business."

However, your question regarding grain stored in a farmer's own granaries raises an issue separate and distinct from that addressed in 40 Op. Att'y Gen. No. 82 (1984). Class six property, taxed at four percent of its market value, includes "all unprocessed agricultural products on the farm or in storage except all perishable fruits and vegetables in farm storage and owned by the producer." (Emphasis added.) § 15-6-136(1)(b), MCA. Grain stored in a farmer's granaries qualifies as "unprocessed agricultural products on the farm or in storage." See § 15-1-101(1)(a), MCA (the term "agricultural" refers to the raising of ... field crops). It is therefore taxable as class six property.

You inquire whether such grain would fall within the business inventories exemption provided in section 15-6-202, MCA. I conclude that it does not qualify for the exemption. The Department of Revenue is charged with exercising general supervision over the administration of the revenue laws for the State of Montana. § 15-1-201, MCA. A rule adopted by the Department makes it clear that the Department does not consider unprocessed agricultural products to be eligible for the business inventories exemption. Section 42.21.120, ARM, provides: "Unprocessed agricultural products, including livestock, poultry, and the unprocessed products of both, not exempted from property taxation pursuant to 15-6-201 or 15-6-207, MCA, are considered to be classified in Class 6 property for purposes of property taxation. These agricultural products are not considered to be business inventory." In construing statutes, the interpretation given to the statute by the agency charged with its administration should be afforded "great deference." Montana Power Co. v. Cremer, 182 Mont. 277, 280, 596 P.2d 483, 485 (1979).

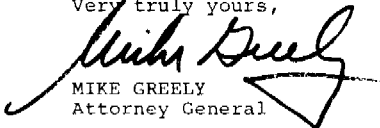
Administrative regulations can be said to reflect the interpretation of the agency with respect to the relevant statutes. See Department of Revenue v. Puget Sound Power & Light Co., 179 Mont. 255, 261-62, 587 P.2d 1282, 1286 (1978).

I agree with the Department's interpretation of the statutes. As a general rule, tax statutes granting exemptions must be strictly construed against the exemption. Flathead Lake Methodist Camp v. Webb, 144 Mont. 565, 573, 399 P.2d 90, 94-95 (1965); Cruse v. Fischl, 55 Mont. 258, 263, 175 P. 878, 880 (1918). Moreover, the Legislature has clearly evinced a general intent that grain on the farm is to be taxed as class six property. § 15-6-136, MCA. In addition, the Legislature has provided a more specific, limited exemption for certain agricultural products. Section 15-6-207(2), MCA, exempts from taxation "all nonperishable unprocessed agricultural products, except livestock, held in possession of the original producer for less than 7 months following harvest." This exemption was enacted by the Legislature in 1975 Montana Laws, chapter 442, section 1. Although the legislative history is somewhat sketchy, it appears that the intent was to exempt grain and other "nonperishable" farm products held in possession of the original producer for the limited time provided in the statute. Grain stored in a farmer's granaries would qualify for the exemption if held in the possession of the producer for less than seven months following harvest.

THEREFORE, IT IS MY OPINION:

Grain stored in a farmer's granaries is taxable as class six property under section 15-6-136, MCA; however, it qualifies for the tax exemption provided in section 15-6-207, MCA, if held in the possession of the original producer for less than seven months following harvest. Such grain does not qualify for the business inventories exemption provided in section 15-6-202, MCA.

Very truly yours,


MIKE GREELY
Attorney General

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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, 1985. This table includes those rules adopted during the period January 1, 1985 through June 30, 1985, 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, 1985, this table and the table of contents of this issue of the MAR.

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