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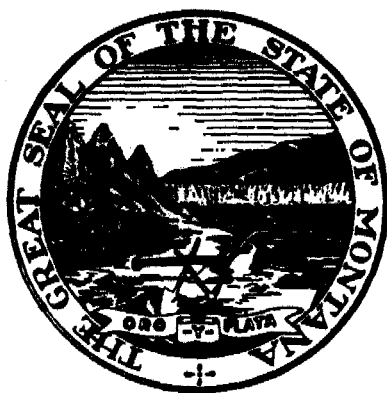
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OF MONTANA

MONTANA ADMINISTRATIVE REGISTER

**1985 ISSUE NO. 13
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INDEX COPY**



MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 13

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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

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BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amend-)	NOTICE OF PUBLIC HEARING
ment of rules relating to	)	ON PROPOSED AMENDMENT OF
the administration of sick	)	ARM 2.21.122, 2.21.123,
leave	)	2.21.132 AND 2.21.133
	)	RELATING TO SICK LEAVE

NO PUBLIC HEARING
CONTEMPLATED

TO: All Interested Persons.

1. On August 30, 1985 the department of administration proposes to amend ARM 2.21.122, 2.21.123, 2.21.132 and 2.21.133 relating to sick leave.

2. The proposed amendments provide as follows:

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

(1) "Abuse of sick leave" means, misrepresentation of the actual reason for charging an absence to sick leave and may include chronic, persistent, or patterned use of sick leave.

(2) "Break in service" means, as provided in 2-18-601, MCA, "a period of time in excess of 5 working days when the person is not employed and that severs continuous employment." A break in service could result from a termination or resignation or could result from an absence of more than 5 working days in a row without an approved leave of absence.

(3) "Continuous employment" means, as provided in 2-18-601, MCA, "working within the same jurisdiction without a break in service of more than 5 working days or without a continuous absence without pay of more than 15 working days." An approved continuous leave of absence without pay exceeding 15 working days does not constitute a break in service.

(4) "Immediate family" means the employee's spouse and any member of the employee's household, or any parent, child, grandparent, grandchild or corresponding in-law.

(5) "Jurisdiction" means the extent sphere of authority of any state or local government, entity within which the limits of authority or control may be exercised. State government is a single jurisdiction.

(6) "Qualifying period" means a 90-calendar day period an employee must be continuously employed to be eligible to use sick leave credits or to be eligible for a lump sum payment upon termination for unused sick leave credits.

(7) "Sick leave" means, as provided in 2-18-601, MCA, "a leave of absence with pay for a sickness suffered by an employee or his immediate family."

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(8) "Sick leave credits" mean the earned number of sick leave hours an employee is eligible to use upon completion of the qualifying period.

(9) "Transfer" means, as provided in 2-18-601, MCA, "a change of employment from one agency to another agency in the same jurisdiction without a break in service."

(Auth. 2-18-604, MCA; Imp. 2-18-618, MCA)

2.21.123 POLICY AND OBJECTIVES (1) It is the policy of the state of Montana to grant executive branch state employees sick leave benefits in accordance with section 2-18-618, MCA.

(2) Nothing in this policy guarantees approval of the granting of such leave in any instance. Each request will be judged by the agency in accordance with this policy.

(3) The objectives of this policy are to establish functional uniform procedures for calculating and granting sick leave benefits in accordance with section 2-18-618, MCA; provide interpretation required for automation of the payroll system, and ensure compliance with the State Montana Maternity Leave Act, 49-2-310 and 49-2-311, MCA, and the 1978 amendment to the Civil Rights Act of 1964 (42 USC S 20003, 78 statute 253) banning pregnancy discrimination.

(Auth. 2-18-604, MCA; Imp. 2-18-618, MCA)

2.21.132 CONDITIONS FOR USE OF SICK LEAVE An employee may use sick leave credits for:

(1) illness;

(2) injury;

(3) medical disability;

(4) maternity related disability, including prenatal care, birth, miscarriage, abortion, or other medical care for either employee or child;

(5) quarantine resulting from exposure to contagious disease;

(6) medical, dental or eye examination or treatment;

(7) necessary care of or attendance to an immediate family member, or at the agency's discretion, another relative, for the above reasons until other attendance can reasonably be obtained; and care of or attendance to another relative for above at the agency's discretion; and

(8) death or funeral attendance for an immediate family member or, at the agency's discretion, for another person.

(Auth. 2-18-604, MCA; Imp. 2-18-618, MCA)

2.21.133 ACCRUAL AND USE OF SICK LEAVE CREDITS (1) All employees serving in positions that are permanent, temporary, seasonal, part-time, and intermittent are eligible to earn sick leave credits.

(2) Sick leave credits accrue from the first day of employment.

(3) An employee must be continuously employed for the qualifying period of 90 calendar days to use sick leave.

(4) Leave may not be advanced nor may leave be taken retroactively.

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(5) Unless there is a break in service, an employee only serves the qualifying period once.

(6) After a break in service, an employee must again complete anew the qualifying period to use sick leave.

(7) A seasonal employee's accrued sick leave credits may be carried over to the next season if management has a continuing need for the employee, or paid out as a lump-sum to the employee when the season ends in accordance with Rate ARM 2.21.141.

(8) If sick leave credits are carried over, employment in two or more seasons is continuous employment and can be counted toward the 90-calendar day qualifying period provided a break in service does not occur.

(9) Returning seasonal employees must immediately report back for work by the date and time specified by the agency when operations resume to avoid a break in service.

(10) Persons simultaneously employed in two or more positions in the same or in different agencies will accrue sick leave credits in each position according to the number of hours worked. Leave credits will be used only from the position in which the credits are earned and with approval of the supervisor or appropriate authority for that position. Only hours paid at the regular hourly rate will be counted. Under no circumstances will an employee accrue sick leave credits for more than 40 hours of work in a week.

(11) Sick leave credits will not accrue for overtime (those hours exceeding 40 per workweek that are paid at time and a half.)

(12) As provided in 2-18-618, MCA, "an employee may not accrue sick leave credits while in a leave without pay status."

~~++13- An employee who has worked the qualifying period for use of sick leave does not have to repeat that period upon return to work from a continuous leave of absence without pay exceeding 15 working days.~~

~~++14- (13) When an employee who has not worked the qualifying period for use of sick leave must repeat that period upon return to work from a takes an approved continuous leave of absence without pay exceeding 15 working days, the amount of time on leave of absence will not count toward completion of the qualifying period. The approved leave of absence exceeding 15 working days is not a break in service and the employee will not lose any accrued sick leave credits or lose credit for time earned toward the qualifying period. But would not be eligible to use any earned sick leave credits until after working 90 continuous days. An approved continuous leave of absence without pay of 15 working days or less will be counted as time earned toward the 90-day qualifying period.~~

(14) Where an employee has been laid off and has been allowed by the agency to maintain sick leave credits, as provided in ARM 2.21.5007(9), the employee shall not take any accrued sick leave credits. The employee may take those sick leave credits if reinstated or reemployed during the preference period by the agency, or if employed during the preference period by another state agency which agrees to accept

the sick leave credits. If the employee is not reinstated or reemployed during the preference period by a state agency, the employee shall be cashed out, as provided in ARM 2.21.141, at the salary rate the employee earned at the effective date of lay-off.

(Auth. 2-18-604, MCA; Imp. 2-18-618, MCA)

3. Amendments to the rules are being proposed to make definitions consistent with those used in the Annual Leave Policy, ARM 2.21.215, et seq.; to update the citation of the Montana Maternity Leave Act; to modify the way the qualifying period is completed when leave of absence without pay is taken to avoid an apparent conflict between 2-18-618, MCA and 49-2-311, MCA; and to restrict an employee who is in lay-off status from actually taking sick leave credits which an agency may have allowed the employee to maintain during a preference period following a reduction in force.

4. Proposed amendments to ARM 2.21.122 add interpretive material to the definitions of break in service, continuous employment and qualifying period. The interpretations were developed in the recent process of amending the Annual Leave Policy and the amendment of these rules is proposed for consistency and to provide additional interpretation. The proposed amendment to ARM 2.21.123 is a housekeeping change. The amendment to ARM 2.21.133 is proposed as a result of comments received in the process of amending the annual leave rules. Those rules also contained the requirement to repeat the full qualifying period for leave use where a leave of absence without pay exceeding 15 days is approved. Several agencies and an informal opinion from the Human Rights Division indicate that this requirement may be in conflict with the specific statute 49-2-311, MCA, which provides that a woman on maternity leave must be returned to her position "with equivalent pay and accumulated seniority, retirement, fringe benefits and other service credits." The effect of ARM 2.21.133(14) may be to remove a benefit already earned, probably in violation of the Maternity Leave Act. ARM 2.21.216(2) has been amended to clarify the term continuous employment, which is used in this rule. Under the proposed change, a leave of absence without pay of more than 15 working days will not count toward completion of the qualifying period, but the employee will not forfeit time already earned. Under provisions in ARM 2.21.5005, et seq. an employee who is laid off may be allowed by the agency to maintain sick leave credits for the one-year employment preference period, rather than have the credits cashed out at the time of lay-off. It was not intended that an employee could actually use sick credits while not employed by the state. ARM 2.21.133 (14), would clarify that an employee may not use sick leave credits while laid off.

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

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MAR Notice No. 2-2-142

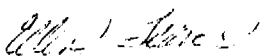
Dennis M. Taylor, Administrator
State Personnel Division
Department of Administration
Room 130, Mitchell Building
Helena, Montana 59620

no later than August 9, 1985.

6. If a person who is directly affected by the proposed amendment of ARM 2.21.122, 2.21.123, 2.21.132, and 2.21.133 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 written comments he has to: Dennis M. Taylor, Administrator, State Personnel Division, Department of Administration, Room 130, Mitchell Building, Helena, Montana, 59620, no later than August 9, 1985.

7. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the Legislature; from a governmental sub-division or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be at least 25 persons.

8. The authority of the agency to make the proposed amendments is based on 2-18-604, MCA, and the rules implement 2-18-618, MCA.



Ellen Feaver, Director
Department of Administration

Certified to the Secretary of State July 1, 1985.

BEFORE THE STATE AUDITOR
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PROPOSED AMEND-
amendment of procedural rule	)	MENT OF PROCEDURAL RULE
6.2.101, and the adoption	)	6.2.101, AND PROPOSED
of procedural rules for	)	ADOPTION OF PROCEDURAL
contested case hearings	)	RULES FOR CONTESTED CASE
before the securities	)	HEARINGS BEFORE THE
department	)	SECURITIES DEPARTMENT

NO PUBLIC HEARING
CONTEMPLATED

TO: All Interested Persons

1. On August 29, 1985, the State Auditor proposes to amend ARM 6.2.101, to provide that it applies only to the insurance department of the State Auditor's office. The State Auditor further proposes to adopt procedural rules for contested case hearings before the securities department.

2. Rule 6.2.101, as proposed to be amended provides as follows:

6.2.101 INCORPORATION OF ATTORNEY GENERAL'S MODEL PRO-
CEDURAL RULES BY THE INSURANCE DEPARTMENT

(1) The office of the state auditor, including each of the departments herein. The insurance department of the state auditor's office has adopted the attorney general's Model Procedural Rules by reference to such rules as stated in ARM 1.3.101 through ARM 1.3.234 with the exceptions and amendments enumerated in this chapter.

The proposed rules for contested case hearings before the securities department provide as follows:

RULE I INCORPORATION OF ATTORNEY GENERAL'S MODEL PRO-
CEDURAL RULES BY THE SECURITIES DEPARTMENT

(1) The securities department of the state auditor's office has adopted the attorney general's Model Procedural Rules by reference to such rules as stated in ARM 1.3.101 through 1.3.234 with the exceptions enumerated in this chapter.

AUTH: 30-10-107, MCA

IMP: 30-10-107, MCA

RULE II ORDERS

(1) All orders issued pursuant to the Securities Act of Montana shall be signed by the securities commissioner. In the absence of the securities commissioner, the deputy securities commissioner shall sign such orders.

AUTH: 30-10-107, MCA

IMP: 30-10-107, MCA

13-7/11/85

MAR Notice No. 6-8

RULE III TEMPORARY CEASE AND DESIST ORDERS

(1) Whenever a cease and desist order is issued without reasonable notice and opportunity for a hearing, such order shall be designed as a "temporary" cease and desist order.

(2) When a temporary cease and desist order is issued by the commissioner, the Respondent shall have fifteen (15) days from receipt of the order to make a written request for a contested case hearing on the allegations contained in the order. The hearing shall then be held within thirty (30) days of the commissioner's receipt of the hearing request, unless the time is extended by agreement of the parties. If no hearing is requested within fifteen (15) days of receipt of the order by the Respondent, and none is ordered by the commissioner, the order shall become permanent.

AUTH: 30-10-107, MCA

IMP: 30-10-305, MCA

RULE IV HEARINGS -- FINAL ORDER

(1) When a hearing is held on a cease and desist order issued under 30-10-305(1)(a), MCA, or a denial, suspension or revocation order issued under 30-10-201(1) or 30-10-207(1), MCA, both parties shall have twenty (20) days from the date the hearing is concluded, or from the date a transcript of the hearing is filed if one is requested, to submit proposed findings of fact, conclusions of law, orders and supporting briefs to the hearings examiner. The parties shall then have an additional ten (10) days in which to submit comments on the opposing party's proposed findings of fact, conclusions of law, order and briefs. Within thirty (30) days of the submission of such comments, a final order shall issue.

(2) The final order shall be signed by the hearings examiner and the securities commissioner.

AUTH: 30-10-107, MCA

IMP: 30-10-305, MCA
30-10-201, MCA
30-10-207, MCA

RULE V JUDICIAL REVIEW

(1) Any person aggrieved by a final order of the securities commissioner may obtain a review of the order in any court of competent jurisdiction by filing in court, within sixty (60) days after the entry of the order, a written petition praying that the order be modified or set aside, in whole or in part.

(2) Judicial review is made of the evidence which was before the securities commissioner and hearings examiner when the final order was entered.

(3) Judicial review shall not be accomplished by trial de novo.

AUTH: 30-10-107, MCA

IMP: 30-10-308, MCA

3. The amendment to Rule 6.2.101 is proposed in order to separate the procedural rules of the securities department from the procedural rules of the insurance department. The new rules are proposed to provide procedural guidelines for contested case hearings before the securities department.


4. Interested persons may submit their data, views, or arguments concerning the proposed rules in writing no later than August 11, 1985, to:

J. Kim Schulke
Staff Attorney
State Auditor's Office
P.O. Box 4009
Helena, MT 59604-4009

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 J. Kim Schulke at the above address no later than August 11, 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 is an indeterminate number of persons who may appear before the securities department in contested case hearings.

7. The authority of the agency to adopt the proposed rules is based on 30-10-107, MCA, and the rules implement 30-10-107, 30-10-305, 30-10-201, 30-10-207, and 30-10-308, MCA.


Andrea "Andy" Bennett
State Auditor and
Commissioner of Securities

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE STATE ELECTRICAL BOARD

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of 8.18.407 con-) OF 8.18.407 FEE SCHEDULE
cerning the exam fee.)
NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On August 10, 1985, the State Electrical Board proposes to amend rule 8.18.407 concerning the examination fee.

2. The amendment will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-549, Administrative Rules of Montana)

"8.18.407 FEE SCHEDULE

(1) Examination fee \$25-00 \$35.00
(2) ..."

Auth: 37-1-134, 37-68-201, MCA Imp: 37-1-134, 37-68-304, 305, MCA

3. The board is proposing the amendment to the exam fee as the Educational Testing Service, Princeton, New Jersey, who administers the examination, has increased the fee to \$35.00.

4. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the State Electrical Board, 1424 9th Avenue, Helena, Montana, 59620, no later than August 8, 1985.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the State Electrical Board, 1424 9th Avenue, Helena, Montana, 59620, no later than August 8, 1985.

6. If the board receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendment, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

STATE ELECTRICAL BOARD
EDGER JUSTESEN, CHAIRMAN

BY: 

ROBERT WOOD, ATTORNEY
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, July 1, 1985.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF SANITARIANS

In the matter of the proposed amendments of 8.60.407 concerning applications, 8.60.408 concerning minimum standards for registration, 8.60.410 concerning registration exam and certificates, 8.60.411 concerning annual renewals and proposed adoption of a new rule setting a fee schedule)	NOTICE OF PROPOSED AMENDMENTS OF 8.60.407 APPLICATIONS, 8.60.408 MINIMUM STANDARDS FOR REGISTRATION CERTIFICATE, 8.60.410 REGISTRATION EXAMINATION AND CERTIFICATE, 8.60.411 ANNUAL CERTIFICATE (LICENSE) RENEWAL, AND PROPOSED ADOPTION OF A NEW RULE, FEE SCHEDULE
--	--

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On August 10, 1985 the Board of Sanitarians proposes to amend and adopt the above-stated rules.

2. The proposed amendment of 8.60.407 will amend subsections (2)(a) and (d), add a new subsection (3) and renumber the remaining subsections and will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-1648 and 8-1649, Administrative Rules of Montana)

"8.60.407 APPLICATIONS (1) ...

(2) ...

(a) Applications in the form prescribed, accompanied by the ~~\$75.00 fee for licensure by examination or the \$35.00 fee for licensure by reciprocity~~ the application fee shall be entered in the records of the board.

(b) ...

(d) If the information provided in the application indicates an applicant cannot comply with the provisions of Title 37, Chapter 40, MCA, or with the rules of the board, or if the application is withdrawn prior to the taking of the registration examination, the application and any fees paid, ~~less \$25 administrative costs, shall be returned along with~~ will be maintained for administrative costs. A notification as to why the application cannot be accepted will be mailed to the applicant.

(3) Upon approval of an application for examination, the applicant will be required to pay an examination fee.

(3) (4) ..."

Auth: 37-40-203, MCA Imp: 37-40-302, 303, MCA

3. The board is proposing the amendment to remove the fee amounts from the rule. The fees will be placed in a new rule setting out a fee schedule to eliminate amending several rules whenever a fee is changed. By adding a separate application and examination fee, a portion of the application fee need no longer be refunded if an individual does not take the examination. Subsection (3) provides for the payment of the examination fee after the application is approved.

13-7/11/85

MAR Notice No. 8-60-7

4. The proposed amendment of 8.60.408 will amend subsection (2) of that rule and will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-1649, Administrative Rules of Montana)

"8.60.408 MINIMUM STANDARDS FOR REGISTRATION CERTIFICATE

(1) ...

(2) The applicant must successfully complete an examination within 30 days from the date of application with a minimum score of ~~60%~~ 70%. Additional time may be allowed at the discretion of the board."

Auth: 37-40-203, MCA Imp: 37-40-302, MCA

5. The board is proposing the amendment to bring the passing score into line with other states. Most states, including Montana, use the Professional Examination Service examination for registration of sanitarians. A recent survey of licensing requirements in other states showed Montana's passing score of 60% was the second lowest. It also showed most states required a minimum passing score of 70%. The board feels the 70% passing score will allow more flexibility for our licensees to reciprocate with other states, as well as continuing to upgrade the profession in Montana.

6. The proposed amendment of 8.40.410 will amend subsection (3) of the rule and will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-1649 and 8-1650, Administrative Rules of Montana)

8.60.410 REGISTRATION EXAMINATION AND CERTIFICATE

(1) ...

(3) If an applicant should fail the registration examination, the applicant will be allowed to retake the examination upon payment of a ~~\$50~~ \$50 reexamination fee.

(4) ...

Auth: 37-40-203, MCA Imp: 37-40-302, MCA

7. The board is proposing the amendment to remove the reference to the fee amount. This fee, along with all others will be placed in a fee schedule. As stated previously, this will eliminate amending two rules when the examination fee is changed.

8. The proposed amendment of 8.60.411 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-1650, Administrative Rules of Montana)

8.60.411 ANNUAL CERTIFICATE (LICENSE) RENEWAL (1) ...

(a) The annual certificate (license) renewal fee will be ~~\$30.00~~.

(2) The licensee will be allowed a one month grace period after July 1 or until July 31 to renew the license. A late fee, in addition to the renewal fee, will be charged to any licensee whose license has lapsed for more than 15 days. Any licensee who has let his license lapse for a period greater than 60 days after its expiration. Unless a the licensee can present a satisfactory explanation to the board justifying failure to renew the license on or before July 31 July 1, he or she will be considered in violation of the provisions of Title 37, Chapter 40, MCA, and these rules and will it will be make-it necessary for the licensee to pay the certificate of registration fee application and examination fees and to retake the examination to be relicensed.

Auth: 37-40-203, MCA Imp: 37-40-304, MCA

9. The board is proposing the rule amendment to allow for the charging of a late fee when a license renewal is overdue. The amendment also allows 60 days, rather than 30 days before the license must be reexamined. The board feels the rules will prevent individuals from working several years without renewing their license.

10. The proposed adoption of the new rule setting a fee schedule will read as follows:

"1. FEE SCHEDULE

- | | |
|---|---------|
| (1) Application fee | \$50.00 |
| (2) Reciprocity | 50.00 |
| (3) Examination | 90.00 |
| (4) Reexamination | 90.00 |
| (5) Renewal | 40.00 |
| (6) Late renewal (in addition to renewal fee) | 35.00" |

Auth: 37-1-134, 37-40-203, MCA Imp: 37-1-34, 37-40-302, 303, 304, MCA

11. Section 37-1-134, MCA allows the licensing boards the authority to set fees commensurate with program area costs. These are the fees necessary to cover those costs. The board is also proposing the adoption of the rule to place all fees in one area.

12. Interested persons may submit their data, views or arguments concerning the proposed amendments and adoption in writing to the Board of Sanitarians, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than August 8, 1985.

13. If a person who is directly affected by the proposed amendments and adoption wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Sanitarians, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than August 8, 1985.

6. If the board receives requests for a public hearing on the proposed amendments and adoption from either 10% or 25, whichever is less, of those persons who are directly affected

by the proposed amendments and adoption, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 14 based on the 145 licensees in Montana.

BOARD OF SANITARIANS
JAMES M. PETERSON, CHAIRMAN

BY: 

ROBERT WOOD, ATTORNEY
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, July 1, 1985.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF SOCIAL WORK EXAMINERS

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of 8.61.404 con-) OF 8.61.404 FEE SCHEDULE
cerning the renewal fee)
NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On August 10, 1985, the Board of Social Work
Examiners proposes to amend rule 8.61.404.

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

"8.61.404 FEE SCHEDULE

(1) ...

(4) Renewal fee (based on biennial renewal) 75-99
150.00"

Auth: 37-1-134, 37-22-201, MCA Imp: 37-1-134, 37-22-
202, MCA

3. The board is proposing the change because when the
fee was set the board was under the impression that the
biennial fee had been changed in the 1985 legislative session
to reflect an annual renewal date. Fee justifications were
based on an annual renewal. It has come to the attention of
the board since the adoption of this fee that the biennial
renewal was not changed and that the fee would not be
sufficient to cover a two year period.

4. Interested persons may submit their data, views or
arguments concerning the proposed amendment in writing to the
Board of Social Work Examiners, 1424 9th Avenue, Helena,
Montana, 59620-0407, no later than August 8, 1985.

5. If a person who is directly affected by the proposed
amendment wishes to express his data, views or arguments
orally or in writing at a public hearing, he must make written
request for a hearing and submit this request along with any
comments he has to the Board of Social Work Examiners, 1424
9th Avenue, Helena, Montana, 59620-0407, no later than August
8, 1985.

6. If the board receives requests for a public hearing
on the proposed amendment from either 10% or 25, whichever is
less, of those persons who are directly affected by the
proposed amendment, from the Administrative Code Committee of
the legislature, from a governmental agency or subdivision, or
from an association having no less than 25 members who will be
directly affected, a public hearing will be held at a later
date. Notice of the hearing will be published in the Montana
Administrative Register. Ten percent of those persons
directly affected has been determined to be 14 based on the
148 licensees in Montana.

BOARD OF SOCIAL WORK
EXAMINERS
LINDA WILLIAMS, BOARD MEMBER

BY: Robert Wood
ROBERT WOOD, ATTORNEY
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, July 1, 1985.
13-7/11/85 MAR Notice No. 8-61-3

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION
STATE OF MONTANA

IN THE MATTER OF THE	)	NOTICE OF PROPOSED
AMENDMENT OF	)	AMENDMENT OF ARM
SPECIAL EDUCATION	)	10.16.1003 AND
RULES CONCERNING	)	10.16.1902 CONCERNING
PROGRAM NARRATIVE	)	SPECIAL EDUCATION
AND DESTRUCTION OF	)	PROGRAM NARRATIVE
DATA	)	AND DESTRUCTION
	)	OF DATA
)	
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

To: All Interested Persons.

1. On August 19, 1985, the Superintendent of Public Instruction proposes to amend rules 10.16.1003 and 10.16.1902 concerning special education program narrative and destruction of data.

2. The proposed rules will read as follows:

10.16.1003 DESTRUCTION OF DATA (1) In accordance with local board of trustees policies, each local educational agency (LEA) must establish written procedures to ensure that parents or the student after he or she reaches the age of 18 shall have the option to request destruction of their or their child's confidential records five years after termination of special education services, after reviewing them. be informed when special education personally identifiable information that has been collected, maintained or used is no longer needed to provide educational services to the child. The information must be destroyed at the request of the parent or eligible student. Otherwise the LEA shall keep the record for five years beyond legal school age. Reasonable effort shall be taken by the agency maintaining personally identifiable data to provide parents with notification 60 days prior to its destruction and the parents will be offered the opportunity to receive a copy of such records.

(2) and (3) remain the same.

10.16.1902 PROGRAM NARRATIVE (1) The program narrative must describe the total special education program within a given district and shall include the following components:

- ~~(a) identification;~~
- ~~(i) screening; and~~
- ~~(ii) number of students receiving services;~~
- ~~(b) referral;~~
- ~~(i) sources of student performance information; and~~
- ~~(ii) referral contact;~~
- ~~(c) staffing;~~
- ~~(i) pre-staffings;~~
- ~~(ii) child study team; and~~
- ~~(iii) staffing format.~~
- ~~(d) personnel;~~
- ~~(i) administration (special education);~~
- ~~(ii) teachers; and~~
- ~~(iii) supportive personnel;~~
- ~~(e) evaluation;~~
- ~~(i) student; and~~
- ~~(ii) program;~~
- ~~(f) facilities;~~
- ~~(g) needs or deficiencies;~~
- ~~(h) additional information.~~
- (a) Child Identification
- (b) Confidentiality of Personally Identifiable

Information

- (c) Full Education Opportunity Goal
- (d) Facilities, Personnel and Services
- (e) Personnel Development
- (f) Parent Involvement
- (g) Participation in Regular Education Programs
- (h) Child Study Team
- (i) Individualized Education Programs
- (j) Procedural Safeguards

(2) remains the same.

Auth: 20-7-403 and 20-7-414 MCA
IMP: 20-7-403(2) and 20-7-403(7) MCA

(3) The change is being proposed to comply with federal requirements under P.L. 94-142 as amended.

(4) Interested parties may submit their data, views or arguments concerning the proposed rule in writing to Rick Bartos, Staff Attorney, Office of Public Instruction, State Capitol, Helena, Montana 59620 no later than August 15, 1985.

(5) If a person who is directly affected by the proposed rule amendment wishes to express data, views or arguments orally or in writing at a public hearing, he or she must make written request for a hearing and submit this request along with any written comments to Rick Bartos, Staff Attorney, Office of Public Instruction, Helena, Montana 59620 no later than August 15, 1985.

(6) If the Superintendent receives requests for a public hearing on the proposed rule amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed rule; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 1,500 or 10% of 15,000 handicapped students in the state of Montana.

ED ARGENBRIGHT

Superintendent of Public Instruction

Certified to the Secretary of State July 1, 1985.

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

In the matter of the adoption)	NOTICE OF
of new RULES I through XVII,)	PROPOSED AMENDMENTS
(to be codified 16.10.1110)	OF RULES
through 16.10.1126), and the)	AND EXTENSION OF
repeal of rules 16.10.1101)	COMMENT PERIOD
through 16.10.1109, relating)	
to health and safety in schools)	(Schools)

To: All Interested Persons

1. On May 16, 1985, the department published notice of proposed adoption of Rules I through XVII (to be codified 16.10.1110 through 16.10.1126), and the repeal of rules 16.10.1101 through 16.10.1109, concerning health and safety in schools, at page 443 of the 1985 Montana Administrative Register, issue number 9. A public hearing was held on June 7, 1985.

2. Several commenters at the hearing complained of insufficient time to evaluate and comment on the proposed rules and asked that the record remain open until September, 1985. The Department will accede to this request and will leave the record open until September 10, 1985. Final action on adoption of these rules will be deferred until after that date. However, the Department will respond at the present time to the substantive comments which have been received.

3. In response to comments received, the Department proposes the following changes in the proposed rules:

RULE I (to be codified 16.10.1110) DEFINITIONS Same as proposed.

RULE II (to be codified 16.10.1111) PRECONSTRUCTION REVIEW (1) Before construction commences, plans for construction of a new school or an addition to or an alteration of an existing school must be submitted to the department or local health authority for review and approval. Plans must include the following where applicable:

(a) - (k) Same as proposed.

(2) Same as proposed.

(3) Construction may not commence until all plans required by subsection (1) of this rule have been approved by the department or local health authority. The department or local health authority shall complete this review within 60 days after submission to them of complete plans and specifications. Construction must be in accordance with the plans as approved unless permission is granted in writing by the department or local health authority to make changes.

(4) Same as proposed.

AUTHORITY: Sec. 50-1-206 MCA

IMPLEMENTING: Sec. 50-1-203, 50-1-206 MCA

13-7/11/85

MAR Notice No. 16-2-295

RULE III (to be codified 16.10.1112) EXISTING BUILDING--CHANGE OF USE (1) An existing building not currently used as a school may not be used as a school without the prior approval of the department or local health authority.

(a) When a proposal to use an existing building as a school involves ~~structural~~ physical modification, plans meeting the requirements of subsection (1) of [RULE II, to be codified 16.10.1111] must be submitted to the department or local health authority for review and approval. If no ~~structural~~ physical modification is involved, the department or local health authority may waive the requirement for submission of plans if an inspection by the department or local health authority indicates that the proposed school meets the requirements of this sub-chapter.

(2) Whenever compliance with this sub-chapter requires capital expenditures for the modification of an existing building currently being used as a school on [THE EFFECTIVE DATE OF THIS RULE], compliance with such requirements must be achieved no later than December 31, 1986.

AUTHORITY: Sec. 50-1-206 MCA

IMPLEMENTING: Sec. 50-1-203, 50-1-206 MCA

RULE IV (to be codified 16.10.1113) STATE-LOCAL COORDINATION Same as proposed.

RULE V (to be codified 16.10.1114) INSPECTION Same as proposed.

RULE VI (to be codified 16.10.1115) STRUCTURAL PHYSICAL REQUIREMENTS (1) A school must comply with the following ~~structural~~ physical requirements:

(a) Adequate and convenient janitorial facilities including a sink and storage area for equipment and chemicals must be provided.

(b) Floors, walls and ceilings in toilet, locker and shower rooms, laundries, janitorial closets, and similar rooms subject to large amounts of moisture must be maintained in a smooth and non-absorbent condition.

(c) Floor and wall-mounted furnishings must be easily movable to allow for cleaning or mounted in such a manner as to allow for cleaning around and under such furnishings.

(d) Adequate wrap and book storage for each pupil must be provided.

(2) In addition to compliance with this sub-chapter, school officials should also be aware of the need to comply with the building and fire safety codes administered by the State Building Codes Division and the State Fire Marshal or by local building officials (see Title 50, Chapters 60 and 61, MCA, and rules adopted thereunder).

AUTHORITY: Sec. 50-1-206 MCA

IMPLEMENTING: Sec. 50-1-203, 50-1-206 MCA

RULE VII (to be codified 16.10.1116) SAFETY REQUIREMENTS
Same as proposed.

RULE VIII (to be codified 16.10.1117) HEALTH SUPERVISION AND MAINTENANCE

(1), (2) Same as proposed.
(3)(a), (b) Same as proposed.
(c) Report each case of suspected- communicable disease the same day by telephone to the local health authority, or as soon as possible thereafter if no contact can be made the same day.

(4), (5) Same as proposed.
(6) In addition to the requirements of this rule, school officials should also be aware of the need to comply with the laws and rules relating to immunization of children (20-5-402 et seq. MCA; ARM 16.28.701 et seq.), health certification of teachers (20-4-104(b), MCA; ARM 16.28.1005), and reporting of communicable diseases (ARM 16.28.201, 16.28.202, and 16.28.601 et seq.) Copies of these requirements may be obtained from the Health Services Division, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana, 59620.

(7) Pursuant to the advisory authority of section 50-1-202(11) and (12), MCA, the department recommends that students be evaluated by appropriately qualified personnel on a periodic basis in order to identify those health problems which have the potential for interfering with learning, including:

(a) assessment of student's health and developmental status
(b) vision screening
(c) hearing screening
(d) scoliosis screening
(e) chemical and alcohol abuse
(f) nutritional screening

AUTHORITY: Sec. 50-1-206, 50-1-202(11), (12), MCA

IMPLEMENTING: Sec. 50-1-202(11), (12), 50-1-203, 50-1-206 MCA

RULE IX (to be codified 16.10.1118) LIGHTING Same as proposed.

RULE X (to be codified 16.10.1119) HEATING Same as proposed.

RULE XI (to be codified 16.10.1120) WATER SUPPLY SYSTEM
Same as proposed.

RULE XII (to be codified 16.10.1121) SEWAGE SYSTEM Same as proposed.

RULE XIII (to be codified 16.10.1122) LAUNDRY FACILITIES
Same as proposed.

RULE XIV (to be codified 16.10.1123) CLEANING AND MAINTENANCE Same as proposed.

RULE XV (to be codified 16.10.1124) FOOD SERVICE REQUIREMENTS (1) Same as proposed.

(a) If the food service is available only to staff and students of the school and their guests, licensure as a food service establishment is not required, but compliance with ARM Title 16, chapter 10, sub-chapter 2, rules for food service establishments is required.

(2) Same as proposed.

AUTHORITY: Sec. 50-1-206 MCA

IMPLEMENTING: Sec. 50-1-203, 50-1-206 MCA

RULE XVI (to be codified 16.10.1125) SOLID WASTE Same as proposed.

RULE XVII (to be codified 16.10.1126) NOXIOUS PLANT AND ANIMAL CONTROL Same as proposed.

4. Additional comments and responses are as follows:

RULE I(2) Comment: Jesse Long of the School Administrators' Association questioned the exclusion of "home schools" from these regulations.

Response: "Home school" refers to the teaching of children by their own parents or guardians in their own homes. The Department does not consider it either necessary or appropriate to extend public health regulation to the private home setting.

RULE 11(1): Comment: Robert Anderson of the Office of Public Instruction asked for clarification of the term "construction".

Response: The Department does not feel that any special definition beyond common usage is necessary. School construction cannot commence in any event until plans are reviewed by the Building Codes Division or by local building officials, so there should be no ambiguity as to the applicability of this rule.

(3) Comment: Charles Erdman, representing the Montana School Board Association, asked that a 10-day deadline be imposed on the department or local health authority to complete the plan review.

Response: Ten days is an unworkably short period. It may take that long just to receive the plans from the local

officials. In general, plan reviews are conducted in a timely manner after receipt by the department, and we do not see this as a major problem. However, to reassure the public, the department proposes the addition of a 60-day time limit for review. This is consistent with our review responsibilities in other areas.

Rule V(1) Comment: A number of commenters suggested that "should" be replaced by "shall" in the second sentence.

Response: Given the staff and resources available to the department and local authorities, it would be an impossible burden to mandate annual inspections of all schools. The recommended inspection schedule must be considered in the nature of a guideline.

Comment: Mr. Erdman requested that prior notice be given the school before an inspection.

Response: This suggestion is rejected. It would impose too great a burden on local health officials, who must often cover large areas in the course of administering numerous health statutes, to have to schedule all inspections in advance. In addition, unannounced visits are often the most effective means of detecting health and sanitation problems.

(2) Comment: Mr. Anderson asked that copies of all inspection reports be sent to the Board of Public Education.

Response: Again, the department is reluctant to impose excessive administrative burdens on the local health officials who bear the major brunt of administering these regulations. It is also doubtful that the Board of Public Education will find much use in receiving hundreds of reports, most of which will reveal no problems. The Board could, of course, require local school officials to provide copies of the inspection reports.

RULE VII(3) Comment: Mr. Long and Mr. Erdman questioned the need for dual temperature requirements for hand-sinks and showers (Rule VII(3)) and laundry (Rule XIII(1)(b)).

Response: Water which is hot enough to adequately clean laundry is too hot for safety in showers. If a school chooses to provide both services, it is in the best interest of both health and safety to observe these dual requirements.

(4), (5) Comment: Mr. Long suggested that ground fault interruptors are superior to master shut-offs.

Response: Ground fault interruptors would not achieve the emergency response capability which is desired. If a student's clothes became entangled in shop equipment, for example, a ground fault interruptor would not necessarily detect that situation and shut off.

RULE VIII In response to recommendations from the Montana Association of School Nurses, the department proposes the addition of provisions for health assessment screening. However, this language is added under the advisory authority of 50-1-202(11) and (12), MCA, rather than the public health regulatory authority of 50-1-206, MCA.

RULE IX Comment: Mr. Hanson suggested that local sanitarians lack the expertise to adequately enforce the proposed lighting standards.

Response: The intent is that these regulations will provide guidance in the first instance for the design engineers who prepare the building specifications. The proposed standards are significantly simpler than the current ones, and should pose no special problems for sanitarians.

Comment: Mr. Hanson suggests that the standards are vague and conflict with industry standards.

Response: The proposed standards are derived from recommended standards promulgated by the Center for Disease Control and the Illuminating Engineering Society. The state building codes do not address classroom lighting at all, so there is no conflict with them.

Comment: "Excessive glare" is too vague.

Response: Unfortunately, it is impossible to quantify the notion of glare without making the enforcement of this rule unduly burdensome. The department does not foresee any difficulties arising from entrusting the observance of this requirement to the reasonable judgment of the inspectors and the school officials.

General Comments

Comment: Several commenters questioned the need for a dual system of inspections involving both health officials and building code officials.

Response: Building code officials rarely make routine inspections after construction is complete. Therefore, there is little duplication of inspection. With respect to pre-construction plan review, it is true that a dual review takes place. However, the areas of concern of the two agencies are significantly different. One review is primarily for structural integrity and fire safety. The other is for public health and welfare, and sanitation. Neither agency can adequately evaluate all criteria in both areas, so a dual review process is necessary. However, this does not constitute "duplication" of effort.

Comment: Mr. Erdman noted that several new requirements in the proposed rules will necessitate expenditures by the

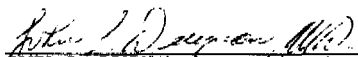
local school districts, and requested delayed effective dates for such requirements to enable the schools to accommodate their budgets.

Response: The department concurs and has provided a grace period for compliance with new requirements. (See Rule III)

Comment: A number of comments questioned the department's statutory authority to adopt heating, lighting and other "structural standards" which are covered by the State Building and Fire Codes.

Response: It is not the department's intent to regulate areas adequately covered by the State Building Codes. It was for this reason that several requirements which appear in the current rules are proposed for deletion (e.g., ventilation). However, our primary concern is health and sanitation, and the department is fully authorized to regulate in those areas not specifically addressed by the building codes. James Kemel of the Building Codes Division has submitted comments concurring in this approach. In this regard language is proposed to be added to Rule VI(1)(b) to clarify that our primary concern is with maintenance of sanitary conditions, rather than with construction standards.

5. Written comments on the proposed rules may be submitted to Robert L. Solomon, Department of Health and Environmental Sciences, 1400 Broadway, Helena, Montana, 59620, and must be received by the department no later than September 10, 1985.


JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State June 22, 1985

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

In the matter of the adoption	)	NOTICE OF
of rules I through XIV [to be	)	PROPOSED AMENDMENTS
codified 16.10.801 - 16.10.814]	)	OF RULES
setting health and sanitation	)	AND EXTENSION OF
standards for youth camps	)	COMMENT PERIOD

(Youth Camps)

TO: All Interested Persons

1. On May 16, 1985, the department published notice of proposed adoption of Rules I through VII (to be codified 16.10.801 through 16.10.807), setting health and sanitation standards for youth camps, at page 454 of the 1985 Montana Administrative Register, issue number 9. A public hearing was held on June 7, 1985.

2. Several persons making comments at the hearing requested that the comment period be extended substantially to allow more interested parties to study the proposal and to suggest changes, as well as more time for the department to consider them. In response, the department agrees to leave the record open until July 31, 1985, and will consider any comments submitted to the department by that date. Final action on adoption of these rules will be deferred until after that date. However, the department will respond at the present time to most of the comments which have been received.

3. In response to comments already received, the department proposes the following changes and additions to the proposed rules:

RULE I (to be codified 16.10.801) COMPLIANCE-WITH-PUBLIC ACCOMMODATION RULES--(1)--A youth camp must meet the standards set in Title 16, chapter 10, sub-chapter 6, of the Administrative Rules of Montana for hotels, motels, tourist homes, roominghouses, and retirement homes.

(2)--The department hereby adopts and incorporates by reference the rules in Title 16, chapter 10, sub-chapter 6, of the Administrative Rules of Montana, establishing health and safety requirements which must be met by hotels, motels, tourist homes, roominghouses, and retirement homes concerning construction, food service, licensure procedure, water supply, sewage and solid waste disposal, laundry facilities, house-keeping and maintenance, swimming areas, and guest registration. A copy of Title 16, chapter 10, sub-chapter 6, may be obtained from the department's Food and Consumer Safety Bureau, Cogswell Building, Capitol Station, Helena, Montana 59620. DEFINITIONS

The following definitions apply to this sub-chapter:

(1) "Bedding" means mattresses, box springs, mattress covers, mattress pads, sheets, pillow slips, pillows, pillow

covers, blankets, comforters, quilts, bedspreads, or sleeping bags.

(2) "Fixture" means a shower, bathtub, toilet, toilet seat, urinal, lavatory, kitchen sink, janitor or custodial sink, or utensil sink and all exposed plumbing integral to each.

(3) "Furnishing" means cups, glasses, pitchers, utensils, draperies, curtains, blinds, light fixtures, lamps and lamp shades, chairs, tables, desks, shelves, books, magazines, book-cases, dressers, bedsteads, mattress springs other than box springs, towels, wash cloths, soap, toilet tissue, radios, television sets, coffee makers, water heaters, pictures, mirrors, cabinets, closets, refrigerators, or similar items.

(4) "Local health authority" means a local health officer or sanitarian authorized to act on behalf of a local board of health.

AUTHORITY: Sec. 50-52-102 MCA

IMPLEMENTING: Sec. 50-52-102 MCA

RULE II (to be codified 16.10.802) PRECONSTRUCTION REVIEW (1) Before commencement of construction of a new youth camp or of an addition to or alteration of an existing youth camp, plans for its construction must be submitted to the department for review to determine if the standards in this subchapter are met; such plans must include whichever of the following are applicable:

(a) Scaled plan of the camp, including location of boundary lines, all buildings, sewage systems, water supplies, natural and manmade hazards, any swimming facilities, all toilet facilities, streams, lakes, and any other physical features pertinent to this subchapter.

(b) Location and detail of any storage room used for extra bedding and furnishings;

(c) Location and detail of janitorial facilities, if any;

(d) Specifications for the water supply to serve the youth camp unless the water supply has been previously approved by the department;

(e) Specifications for the sewage treatment and disposal system to serve the youth camp unless the sewage treatment and disposal system has been previously approved by the department;

(f) Location and detail of any laundry facilities, including a description of equipment, floor and wall finish material, and a flow chart indicating the route of laundry through sorting, washing, drying, ironing, folding, and storage.

(g) Specifications for a swimming or spa facility to serve the youth camp unless that facility has been previously approved by the department;

(h) Location and detail of all on-site solid waste storage areas;

- (i) Name of the department-approved sanitary landfill which will receive solid waste from the youth camp;
 - (j) Specifications for a food service to serve the youth camp unless the food service has been previously approved by the department; and
 - (k) Any other information requested by the department.
- (2) Construction may not commence until all plans required by subsection (1) of this rule have been approved by the department and local health authority.
- (3) Construction must be in accordance with the plans as approved unless permission is granted by the department to make changes.
- (4) Approval of construction will last for three years after the date it is granted, after which, if construction has not been completed, plans must again be submitted to the department for re-evaluation.
- AUTHORITY: Sec. 50-52-102 MCA
IMPLEMENTING: Sec. 50-52-102 MCA

RULE ~~##~~ III (to be codified ~~16-10-002~~ 16.10.803) USE BY NON-LICENSEE -- LICENSEE RESPONSIBILITY (1) Whenever the licensee of a camp rents, leases, or otherwise relinquishes control of the camp facilities to a private organization which manages the camp and restricts its availability to members of that private organization, the licensee:

- (a) Will be responsible only for the standards contained in this subchapter which relate to structural and equipment requirements, and for any other requirements which remain under the control of the licensee; and
 - (b) Must supply the private organization with an operation and maintenance manual which includes instructions for operation and maintenance of the water, sewage, heating/cooling, and ventilation systems, and any other facilities necessary for the safe and sanitary operation of the camp.
- (2) If the licensee allows use of the camp by an organization which is either public or will allow access to the camp by individuals who are not organization members, the licensee will be responsible for compliance with all of the standards in this subchapter.
- AUTHORITY: Sec. 50-52-102 MCA
IMPLEMENTING: Sec. 50-52-102 MCA

RULE ~~##~~ IV (to be codified ~~16-10-003~~ 16.10.804) NON-PERMANENT-HOUSING-MAINTENANCE Non-permanent-structures-used-for-housing-of-campers-or-employees,-such-as-tents,-awnings,-teepees,-or-similar-shelters,-must-be-maintained-in-good-repair HOUSEKEEPING, MAINTENANCE, AND LAUNDRY (1) Every structure within the youth camp, including tents and similar

non-permanent enclosures, and all furnishings, fixtures, and bedding provided by the youth camp, must be maintained in good repair and in safe and sanitary condition.

(2) The youth camp must implement a systematic maintenance program which ensures clean and safe conditions throughout the immediate area surrounding camp structures, living quarters, and other frequently used areas.

(3) The youth camp must keep on hand and readily available cleaning equipment and supplies in sufficient quantity to meet the housekeeping needs of the facility.

(4) Any laundry facilities provided by the youth camp for use by residents or campers must be maintained in clean and sanitary condition.

(5) If the youth camp provides campers with bed linens, towels, or washcloths for their use, it must clean them with laundry facilities which meet the standards contained in ARM 16.10.637, except that if, due to the nature of the camp, those standards are extremely difficult or impossible to meet, alternative procedures may be followed if approved by the department or local health authority as providing equivalent protection.

(6) If the youth camp supplies any camper with a mattress, it must either equip the mattress with:

(a) a removable cover and launder the cover in accordance with the requirements of ARM 16.10.637 after the mattress is used by one camper and before it is assigned to another; or

(b) a non-removable but washable outer covering and clean and disinfect that cover with a germicidal agent after it is used by one camper and before it is assigned to another.

(7) The department hereby adopts and incorporates by reference the standards in ARM 16.10.637, which ensure sanitary conditions in laundries. A copy of ARM 16.10.637 may be obtained from the department's Food and Consumer Safety Bureau, Cogswell Building, Capitol Station, Helena, Montana 59620.

AUTHORITY: Sec. 50-52-102 MCA

IMPLEMENTING: Sec. 50-52-102 MCA

RULE V (to be codified 16.10.805) PHYSICAL REQUIREMENTS

A youth camp must meet the following physical standards:

(1) If bedding and/or other furnishings are provided to campers, sufficient room must be set aside for the storage of any extra bedding and furnishings.

(2) Floors and walls in any room subject to large amounts of moisture, such as a toilet or bathing room, a laundry room, or janitorial closet, must be smooth and non-absorbant.

(3) Floor or wall-mounted furnishings must be easily movable to allow for cleaning, or constructed and mounted in a manner that allows for cleaning around and under such

furnishings.

AUTHORITY: Sec. 50-52-102 MCA

IMPLEMENTING: Sec. 50-52-102 MCA

RULE VI (to be codified 16.10.806) WATER SUPPLY SYSTEM

(1) In order to ensure an adequate and potable supply of water, a youth camp must utilize a water supply system which meets the standards contained in ARM 16.10.906.

(2) The department hereby adopts and incorporates by reference ARM 16.10.906, setting construction and operation requirements for drinking water supplies. A copy of ARM 16.10.906 may be obtained from the department's Food and Consumer Safety Bureau, Cogswell Building, Capitol Station, Helena, Montana 59620.

AUTHORITY: Sec. 50-52-102 MCA

IMPLEMENTING: Sec. 50-52-102 MCA

RULE VII (to be codified 16.10.807) SEWAGE TREATMENT AND DISPOSAL

(1) In order to ensure sewage is completely and safely disposed of, a youth camp must utilize a sewage system which meets the standards contained in ARM 16.10.907.

(2) The department hereby adopts and incorporates by reference ARM 16.10.907, setting construction and operation requirements for sewage disposal systems. A copy of ARM 16.10.907 may be obtained from the department's Food and Consumer Safety Bureau, Cogswell Building, Capitol Station, Helena, Montana 59620.

AUTHORITY: Sec. 50-52-102 MCA

IMPLEMENTING: Sec. 50-52-102 MCA

RULE VIII (to be codified 16.10.808) SOLID WASTE In order to ensure that solid waste is safely stored and disposed of, a youth camp must:

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

(2) Clean all solid waste containers frequently;

(3) Utilize exterior collection stands for the containers referred to in subsection (1) of this rule which prevent the containers from being tipped, protect them from deterioration, and allow easy cleaning below and around them; and

(4) 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 IX (to be codified 16.10.809) FOOD SERVICE Whenever food is prepared by the youth camp for service to campers,

the following requirements apply:

- (1) Food must be:
 - (a) free from spoilage, filth, or other contamination;
 - (b) obtained from sources that comply with all federal and state law applicable to the source relating to food and food labeling;
 - (c) 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.
 - (d) thoroughly washed and/or cooked as necessary to destroy disease-causing microorganisms.
- (2) A potentially hazardous food must:
 - (a) be maintained at 45°F or below, or 140°F or above;
 - (b) 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 or local health authority.
- (3) 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.
- (4) 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.
- (5) 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.
- (6) Kitchen workers must maintain a high degree of personal cleanliness and conform to good hygienic practices.
- (7) Food preparation, storage, and serving equipment and utensils must:
 - (a) not impart odors, color, or taste to food nor contribute to its contamination;
 - (b) be thoroughly cleaned after each usage;
 - (c) 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;
 - (d) when cleaned and sanitized, or if single-service, be handled and stored in a way that protects them from contamination.
- (8) Facilities must be provided which are adequate for washing and sanitizing all multi-use utensils used for prepar-

ing, serving, and storing food.

(9) Kitchen floors, walls, ceilings, equipment and storage areas must be smooth, non-absorbent, easily cleanable, and kept clean and in good repair.

AUTHORITY: Sec. 50-52-102 MCA

IMPLEMENTING: Sec. 50-52-102 MCA

RULE X (to be codified 16.10.810) SWIMMING AND BATHING AREAS (1) The construction and operation of any swimming pool, spa, or other swimming area owned and utilized by the youth camp must be in accordance with the standards pertaining to the type of facility in question contained in Title 16, chapter 10, sub-chapters 13 (swimming areas) or 15 (swimming pools and spas) of the Administrative Rules of Montana.

(2) The department hereby adopts and incorporates by reference the rules in Title 16, chapter 10, subchapters 13 and 15, of the Administrative Rules of Montana, which establish construction, equipment, and operation standards for swimming areas and swimming pools and spas, respectively. Copies of Title 16, chapter 10, subchapters 13 or 15, may be obtained from the department's Food and Consumer Safety Bureau, Cogswell Building, Capitol Station, Helena, Montana 59620.

AUTHORITY: Sec. 50-52-102 MCA

IMPLEMENTING: Sec. 50-52-102 MCA

RULE ~~IV~~ XI (to be codified ~~16-10-004~~ 16.10.811) TOILETS

Toilet facilities must be:

(1) Located within 300 feet of all sleeping quarters, unless local conditions, such as high ground water, flood hazard, or inappropriate topography or soil conditions, render that impossible, in which case they must be located as closely as those conditions permit.

(2) Provided in the ratio of one toilet for every ten persons or fraction thereof.

AUTHORITY: Sec. 50-52-102 MCA

IMPLEMENTING: Sec. 50-52-102 MCA

RULE ~~V~~ XII (to be codified ~~16-10-005~~ 16.10.812) SAFETY

The operator of a youth camp must:

(1) Ensure that the camp site is as free as reasonably possible of objects or conditions which are hazardous to humans.

(2) Post a warning of potential natural hazards and otherwise inform each camper of the danger.

(3) Plainly mark any substance which is potentially toxic if ingested, inhaled, or handled and store it in a locked cabinet or enclosure that is inaccessible to campers.

(4) Ensure that each facility and piece of equipment used in camp programs is of sufficient quality and maintained in a manner that ensures that it does not present undue risk to

campers.

AUTHORITY: Sec. 50-52-102 MCA

IMPLEMENTING: Sec. 50-52-102 MCA

RULE ~~VI~~ XIII (to be codified ~~16-10-806~~ 16.10.813) ILLNESS OR INJURY The operator of the camp must:

(1) Do the following, if a child develops symptoms of illness while at camp:

(a) Isolate the child immediately in a room or area segregated for that purpose.

(b) As soon as possible, contact and inform a parent or guardian of the child about the illness and request that person to pick up the child.

(c) The same day a suspected case of communicable disease is discovered, report it by telephone to the local health officer or as soon as possible thereafter if no contact can be made the same day.

(2) Develop and enforce policies on first aid which include, at a minimum:

(a) Keeping a record of an emergency phone number for the parent or guardian of each child attending the camp;

(b) Measures to be taken in case of injury; and

(c) During camp-sponsored activities, having a physician on call and a person on-site who is trained in Red Cross basic first aid. [Recommendations for first aid supplies and policies may be secured from the department's Nursing Bureau, Cogswell Building, Capitol Station, Helena, Montana 59620]

(3) Complete and submit to the department a department illness/injury report form for each fatality which stems from an injury occurring at camp and for each illness or injury occurring at camp which results in the camper either being sent home, admitted to a hospital, or positively diagnosed as having a disease or injury after a laboratory analysis or x-ray is performed.

(4) In order to assist in control of any outbreak of a communicable disease, keep a register of all non-employee individuals utilizing the camp, including each person's name, home address and phone number, and the building or other living unit in which s/he was assigned sleeping quarters.

AUTHORITY: Sec. 50-52-102 MCA

IMPLEMENTING: Sec. 50-52-102 MCA

RULE ~~VII~~ XIV (to be codified ~~16-10-807~~ 16.10.814) INSECT, RODENT, AND WEED CONTROL The operator of the camp must ensure that:

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

(2) Any extermination or control measures involving insecticides, rodenticides, or herbicides strictly conform to

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the manufacturer's application instructions.

(3) The growth of brush, weeds, grass, and other plants in the area customarily frequented by campers is restricted 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 campers.

AUTHORITY: Sec. 50-52-102 MCA

IMPLEMENTING: Sec. 50-52-102 MCA

4. Comments and responses are as follows:

Comment: Most of the comments centered around the application, in Rule 1, of the public accommodation rules to youth camps. Bruce Whearty, director of the YMCA's Camp Child; Mary Englund, Lorie Glatt, Patricia Bare, and Mindi Federman of the Girl Scouts; Jovanna Wooden, executive director of the Big Sky Girl Scout Council; Patricia Phelps of the Council and the Glacier Presbytery; James King of the Montana Boy Scout Council; and Carole Toppen, Camp Fire board president; expressed concern that the public accommodation rules were inappropriate for youth camps and requested delay in the rules' adoption until more public comment from youth organizations could be garnered. Ms. Wooden, Mr. Whearty, and Pete Frazier of the Cascade City-County Health Department, suggested that a youth camp be allowed to meet, as an alternative to the public accommodation standards, "equivalent industry standards" and that the modified food service rules proposed in May 30, 1985, issue of the Montana Administrative Register for work camps be utilized for youth camps instead of the rules for food service establishments which are incorporated into the public accommodation rules and therefore are part of the standards proposed for youth camps. Both the Girl Scouts and Jennifer Cote of the Ponderosa Council of Camp Fire suggested utilizing the existing standards of the American Camping Association.

Response: The department has eliminated wholesale adoption by reference of the public accommodation rules and has instead revised the proposed rule package to include only those portions of the public accommodation rules which appear appropriate to youth camps and to utilize standards for water supplies, sewage systems, and food service taken from the newly adopted standards for work camps, which by nature bear a closer relationship to youth camps than do hotels, motels, etc.

Comment: Ms. Wooden, Ms. Glatt, Ms. Bare, Ms. Federman, and Ms. Cote were concerned that application of the 10 foot-candle of light requirement in the public accommodation rules

to tents, teepees, and cabins would be unnecessary, impractical and, in some cases, dangerous, as would be the requirement in the same rules for inside locks.

Response: The revised rules have eliminated the lighting and lock requirements; in fact, the recently amended public accommodation rules no longer contain the lock requirement, either, as of June 28, 1985.

Comment: The above representatives of the Girl Scouts and Camp Fire, as well as Mr. Whearty, also were concerned that the public accommodation rules did not allow use of pit privies or chemical toilets.

Response: The revised rules adopt as sewage system standards the newly adopted (as of July 1, 1985) sewage standards for work camps (rather than those for public accommodations), which allow pit privies and alternative sewage systems under certain circumstances.

Comment: Ms. Cote and Ms. Wooden pointed out that geographical peculiarities of a site might make it difficult to meet the 300-foot requirement in former Rule IV (now Rule XI), and suggested that toilets be allowed, in the alternative, to be "easily accessible and well-marked".

Response: The department agreed the natural features common to many youth camps might make the 300-foot requirement prohibitive, so compromised with the qualifying language added to present proposed Rule XI.

Comment: Ms. Cote felt some semi-primitive buildings, such as those constructed from logs, could not meet the public accommodation rule requirements that rooms subject to large amounts of moisture, such as showers, have smooth and non-absorbant walls and floors.

Response: That requirement has been retained in the revised rules [see Rule V(2)] because cleanability of such moisture-laden areas has historically proved to be important in preventing cultivation of bacteria, mold, etc.

Comment: Ms. Glatt, Ms. Bare, and Ms. Federman were concerned that ARM 16.10.638 of the public accommodation rules would require a camp to have a maid service, which would defeat the Girl Scouts' attempt to teach camper responsibility for maintaining the facility.

Response: ARM 16.10.638 is no longer part of this package of rules; revised Rule IV (formerly Rule III) now simply requires that the camp develop and implement a systematic maintenance program, which could, as an option, include camper involvement in such maintenance.

Comment: Ms. Glatt, Ms. Bare, and Ms. Federman also

questioned whether ARM 16.10.638(1)(k) and (m) would require the camp to provide bedding, wash cloths, and towels, although campers customarily bring their own.

Response: The revised rules (Rule IV, formerly Rule III) no longer require towels, washcloths, or bedding to be provided, but, if the camp does supply such things to campers, the rule requires the camp to meet laundry standards intended to ensure sanitation.

Comment: Ms. Cote suggested that if mattresses were supplied by a camp, that it might be enough to require them to be in good condition, cleaned, and maintained.

Response: Revised Rule IV(6) sets cleaning standards for mattresses that are supplied by the camp.

Comment: Ms. Glatt, Ms. Baré, and Ms. Federman felt it was inappropriate to apply the public accommodation laundry rule to youth camps since, in their case, the girls do their own hand-washing.

Response: Revised Rule IV now only requires the facilities used by campers for laundry washing to be clean and sanitary.

Comment: Ms. Glatt, Ms. Bare, and Ms. Federman commented, in regard to Rule VII (now Rule XIV), that the U.S. Forest Service would prohibit it from using insecticides on the Council's leased site, and that, while serious hazards should be removed, teaching children to recognize and avoid poison ivy, etc., was more important than eliminating all such plants altogether.

Response: The rule does not require utilization of insecticides, but rather requires directions be carefully followed in the event that insecticides are used. As for poisonous plants, while education of campers to avoid them is certainly a fine idea, the seriousness of the danger they present was felt by the department to warrant retaining the rule language as originally proposed.

Comment: Ms. Cote wanted the rules to contain a definition of "youth camp" and wondered whether the rules applied to day camps or to those with one-day or one-week sessions.

Response: The definition of "youth camp" is in state law [see Sec. 50-52-101(9), MCA] and includes "a parcel of land on which permanent buildings, tents, or other structures are maintained as living quarters for 10 or more people and that is used primarily for educational or recreational use by minors.." (with the exception of a camp owned and used solely by the members or their families of a private organization). If a facility fits that definition, it would be a youth camp, and the length of time of the sessions it offers appears to be irrelevant. If, on the other hand, it offers only day sessions and

does not maintain "living quarters", it would appear not to be a youth camp subject to these rules.

Comment: Ms. Cote also had several other questions and suggestions, the response to which the department is still considering and will defer until the final notice of adoption is filed.

Comment: Gary Watt, a sanitarian who formerly worked for Deer Lodge, Granite, and Powell Counties, expressed support for the general concept of youth camp regulation, especially the need to prevent food poisoning and ensure proper construction of water and sewer systems.

5. Written comments on the proposed rules may be submitted to Robert L. Solomon, Department of Health and Environmental Sciences, 1400 Broadway, Helena, Montana 59620, and must be received by the department no later than July 31, 1985.


JOHN J. ORYNAN, M.D., Director

Certified to the Secretary of State July 1, 1985

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING ON
adoption of rules relative to	)	RULES I - XV FOR THE USE OF
the use of the AIS-315 Optical	)	THE AMERICAN INFORMATION
Scan Ballot Counter	)	SYSTEMS 315 OPTICAL SCAN
		BALLOT COUNTER

TO: All Interested Persons

1. On August 6, 1985 at 10:00 a.m. a public hearing will be held in Room 225, State Capitol Building at Helena, Montana to consider the adoption of Rules I - XV.

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

3. The proposed rules provide as follows:

RULE I DEFINITIONS - AMERICAN INFORMATION SYSTEMS (AIS-315) (1) Unless the context clearly indicates otherwise, the following terms shall have the following meanings:

(a) "Automatic Tabulating Equipment" means and includes apparatus necessary to automatically examine and count votes as designated on a ballot, and data processing machines which can be used for counting ballots and tabulating results (i.e., AIS-315).

(b) "Ballot" means an instrument issued to each voter which presents in printed form the choices for public offices or issues on a paper document.

(c) "Secrecy sleeve/envelope" means an envelope or device which will serve to protect the secrecy of the voted ballot.

(d) "Duplicate Ballot", means a ballot which is distinctly marked DUPLICATE on its face and has no stub. It is used for duplicating damaged or defective ballots at the computer center. The duplicate ballots may be a color different from the regular ballots.

AUTH & IMP: 13-17-107(2), MCA

RULE II PROCEDURES FOR USE OF AMERICAN INFORMATION SYSTEMS (AIS-315) - CENTRAL TABULATING SYSTEM - BEFORE THE POLLS OPEN
(1) The Election administrator shall arrange for the computer and the program to be tested to ascertain that equipment will correctly count the votes cast for all offices and on all ballot issues. Before the date of the official test, the election administrator shall test every ballot office and issue in every precinct for accuracy, then sign an affidavit

certifying that such testing was successfully completed. The public test, which shall be advertised according to Section 7-5-2411 MCA, shall be observed by the Observation Board and shall be open to representatives of the political parties, candidates, the press and the general public. The test shall be as prescribed under Central Tabulation Center Procedures and Board Duties - Observation Board.

(2) The Election Administrator shall hire and train all board members required for the central counting center.

AUTH & IMP: 13-17-107(2), MCA

RULE III PROCEDURES FOR USE OF AMERICAN INFORMATION SYSTEMS (AIS-315) - CENTRAL TABULATING SYSTEM - WHILE THE POLLS ARE OPEN (1) After the elector signs the precinct register, the pollbook judge shall write the elector's name in the pollbook, along with the stub number of the ballot/s issued to him.

(2) The ballot judge shall then stamp and issue the appropriate ballot/s, demonstrating to the elector the proper insertion of the ballot/s into the secrecy sleeve/envelope.

(3) Before the elector takes his ballot/s to the voting booth, the ballot judge shall read aloud the instructions on the ballot stub, making sure the elector understands the procedure, and reminding the elector to use the pencil provided in the voting booth.

(4) Instructions to the voter shall include a caution against pasting any pre-printed write-in label over a name already printed on the ballot. Write-ins will only be counted by the device if entered on the blank line provided for each office.

(5) A voter may request that his ballot be hand-counted. If so, the ballot judge shall receive the ballot from the voter in the secrecy sleeve/envelope, tear off the stub(s), and proceed as specified in the procedures required for hand counting established by the county election administrator.

(6) After voting in a primary election the elector shall fold his unvoted ballots and return them to the election judge indicating they are unvoted. The voted ballot/s with stub/s attached shall be placed in the secrecy sleeve/envelope and be returned to the election judge in charge of the ballot box.

(a) After voting his ballot in a general election the elector shall place the ballot inside the secrecy sleeve/envelope with the stub attached, and return it to the judge in charge of the ballot box.

(7) The ballot box judge shall remove the stub/s, place it in the stub box and the ballot/s in the ballot box.

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(8) The Election administrator may provide for early pick-up of ballots for transfer to the central tabulating center. Election judges, at the precinct, one from at least two parties having ballot access (they may be specially appointed to begin working 1/2 hour before the scheduled pick-up time) shall:

(a) after ballots of all voters who have been issued ballots to the time of early pick-up have been returned to the ballot box, remove the original ballot box and pollbook from the voting room to a separate area;

(b) open the ballot box, remove and count the ballots to reconcile the total with the number issued, as recorded in the pollbook, and record the numbers on a form provided to be given to chief election judge for the precinct;

(c) check the ballots to be sure the official ballot stamp appears on them;

(d) place the ballots in the "Early Tally Pick-up" container marking the precinct number, and the total number of ballots enclosed on the outside of the container;

(e) officially seal the container as required; and

(f) surrender the "Early Tally Pick-up" container to authorized personnel for delivery to the counting center, obtaining a receipt.

(9) The precinct judges shall use a second ballot box and second set of pollbooks provided by the election administrator for ballots issued and voted after the point of early tally pick-up.

AUTH & IMP: 13-17-107(2), MCA

RULE IV PROCEDURES FOR USE OF AMERICAN INFORMATION SYSTEMS (AIS-315) - CENTRAL TABULATING SYSTEM - AFTER THE POLLS CLOSE: (1) Polling place judges shall:

(a) Open the ballot box;

(b) Determine the number of ballots and reconcile with the total number of voters shown in Poll Book.

(c) If local procedures require tally the "Hand Count" ballots recording votes for each candidate in each office on Tally Sheets as specified in Section 13-15-202 MCA;

(d) Place ballots in the ballot transfer container and seal as required;

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(e) Seal all unvoted ballots and other books and supplies as indicated by the election administrator.

(f) Return the sealed ballot box, transport case or envelope and all records and supplies to the election administrator or to an authorized transport deputy for delivery to the counting center.

AUTH & IMP: 13-17-107(2), MCA

RULE V CENTRAL TABULATING CENTER PROCEDURES: (1) The election administrator shall develop a central tabulating center with all procedures to be directed by the election administrator.

(2) The election administrator may appoint such boards as deemed appropriate and shall appoint at least one board in each of the following categories:

- (a) Observation Board
- (b) Receiving Board
- (c) Staging Board
- (d) Ballot Tabulation Board
- (e) Duplication Board
- (f) Resolution Board
- (g) Write-In Board
- (h) Ballot Sealing Board
- (i) Election Results Board

(3) A "Hand Count" board may be appointed to tally those ballots designated by electors to be counted without the use of any machine or device.

(4) Members of the above boards shall be appointed by the election administrator and each board shall consist of a minimum of one person each from at least two political parties having ballot access.

(5) At the discretion of the election administrator the above boards, except for board (a), may be combined and the board members given double duties.

AUTH & IMP: 13-17-107(2), MCA

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RULE VI CENTRAL TABULATING CENTER PROCEDURES AND BOARD DUTIES - OBSERVATION BOARD (1) The election administrator shall consult with the county chairman of each political party having ballot access for appointment of members to this board. The board shall verify the accuracy of the computer program and attest to the procedures during computer processing of the ballots. The duties are as follows:

(a) Prior to the election, the computer and the program shall be tested to ascertain that the equipment will correctly count the votes cast for all offices and on all ballot issues. The test shall be observed by the Observation Board and shall be open to representatives of the political parties, candidates, the press and the general public. The test shall be conducted by processing a preaudited group of ballots so marked as to record a pre-determined number of valid votes for each candidate and on each issue, for randomly selected precincts, at least one in each legislative district in the county, and no fewer than five precincts total. It shall include one or more ballots which have votes in excess of the number allowed by law in order to test the ability of the computer to reject such votes. The Board shall verify that the election administrator has pre-tested all precincts in the county and signed an affidavit so swearing.

(b) If an error is detected in the test, it shall be corrected. An error-free test must be conducted before the program and computer are approved by the Observation Board.

(c) The test shall be repeated immediately before the start of the official count of the ballots, in the same manner as set forth above.

(d) The Observation Board should be familiar with the correct procedures for processing ballots as well as general AIS-315 operating procedures.

(e) All proceedings at the computer center shall be open to the observations of each political party and the public, but no persons except those specifically authorized for the purpose, shall touch any ballot or return.

AUTH & IMP: 13-17-107(2), MCA

RULE VII CENTRAL TABULATING CENTER PROCEDURES AND DUTIES - RECEIVING BOARD (1) It shall be the responsibility of the Receiving Board to receive the sealed ballot box, transport case or envelope from each precinct. The duties are as follows:

(a) When a ballot container is received by a Receiving Board, the following entries shall be made in the Receiving Board Log:

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- (i) precinct name
- (ii) initials of the receiving official
- (iii) time of delivery, and
- (iv) condition of the ballot container (note any discrepancies, i.e., seals broken, etc...).

(b) If it appears that the ballot transfer container has been tampered with or the seal broken, it shall be immediately referred to the election administrator.

(c) The Receiving Board shall deliver the ballot container, unopened to the Staging Board.

(d) The procedure for early pick-up is the same except that authorized county personnel rather than election judges may deliver the containers.

AUTH & IMP: 13-17-107(2), MCA

RULE VIII CENTRAL TABULATING CENTER PROCEDURE AND DUTIES - STAGING BOARD (1) It shall be the responsibility of the Staging Board to prepare the ballots for processing by the tabulating equipment. There shall be as many staging boards as deemed necessary by the election administrator. The duties are as follows:

(a) The Ballot Staging Board is responsible for preparing the ballots for processing by the AIS-315. They will remove the ballots from the ballot container and "jog" the precinct stacks.

(b) After the ballots have been properly jogged, the Ballot Preparation Board will inspect each precinct stack to insure that all the ballots are facing in the same direction. Once this has been accomplished the ballots will be delivered to the Ballot Input Tables.

AUTH & IMP: 13-17-107(2), MCA

RULE IX CENTRAL TABULATING CENTER PROCEDURES AND DUTIES - BALLOT TABULATION BOARD (1) The Ballot Tabulation Board shall consist of as many trained personnel as required to handle and process all ballots delivered to the computer area. Tabulation of ballots shall be done by using instructions contained in the current operating manual for the tabulation equipment. The duties are as follows:

(a) A Ballot Tabulation Board member shall remove ballots from the input tables and place them in the AIS-315's input hopper as needed.

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(b) As ballots are stacked in the output tray, they shall be removed by a board member, and sorted by precinct into envelopes to await final check and sealing for storage.

(c) If a ballot is spoiled during processing, a board member shall remove the ballot and place it in an output basket marked "Spoiled Ballots to be Duplicated". Periodically the contents of this basket shall be delivered to the Duplication Board.

(d) Ballots containing write-in votes which are indicated by the scanner shall be removed and placed in an output basket marked "Write-ins to be Tallied." Periodically the contents of this basket shall be delivered to the Write-in Tally Board.

(e) Ballots indicated by the scanner as being blank or having overvotes shall be removed and placed in a basket marked "Blanks and Overvotes to be Examined." Periodically the contents of this basket shall be delivered to the Resolutions Board.

(f) All ballots, accuracy decks, copy of the accuracy test and copy of the results shall be delivered to the election administrator.

AUTH & IMP: 13-17-107(2), MCA

RULE X CENTRAL TABULATION CENTER PROCEDURES AND DUTIES -
DUPLICATION BOARD (1) It shall be the responsibility of the Duplication Board to duplicate damaged or defective ballots. The duties are as follows:

(a) If any ballot is damaged or defective so that it cannot be properly counted by the AIS-315, a true duplicate ballot shall be made of the damaged or defective ballot.

(b) All duplicate ballots shall be clearly labeled "DUPLICATE", and shall bear a space for a serial number which shall be recorded on both the original and duplicate ballot so the pair can be re-checked if necessary at some future date.

(c) The election administrator shall provide the Duplication Board with an envelope in which the voter's original ballot, which requires duplication, shall be kept.

(d) The duplicate ballot shall be counted in lieu of the original ballot.

(e) The voter's original ballot will be deposited in an envelope provided for that purpose, marked "Original Ballots". One envelope may be used for each precinct which requires duplicate ballots.

AUTH & IMP: 13-17-107(2), MCA

RULE XI CENTRAL TABULATING CENTER PROCEDURES AND DUTIES -
RESOLUTION BOARD: (1) The election administrator shall appoint members of opposite parties to serve as Judges on the "Resolution Board".

(2) The Resolution Board shall be comprised of teams of two.

(3) Ballots will be sent to the Resolution Board for one of the following reasons:

(a) Ballots that appear to the scanner as blank.

(i) All ballots that have been rejected by the AIS-315 for appearing to be "Blank" shall be examined by the Resolution Board members to verify if they are blank or were marked with a "non-detectible" marking device.

(ii) If it is determined that the ballot was marked with a non-detectible device, the Resolution Board Judges should overmark the voter's mark with a detectible marking device.

(b) Overvoted ballots.

(i) Ballots that are rejected by the AIS-315 for containing overvotes, shall be inspected by the Resolution Board.

(ii) if any smudge, tear, or mark of some kind is able to be identified as clearly an unintentional mark made by the voter, but had the effect of registering too many votes for an office, the Resolution Board may place an adhesive sticker (Avery-0-806 Removable Labels) over the unintentional mark.

(4) The Resolution Board shall forward all ballots to the Tabulation Board once they have resolved the reason for rejection by the AIS-315.

AUTH & IMP: 13-17-107(2), MCA

RULE XII CENTRAL TABULATING CENTER PROCEDURES AND DUTIES -
WRITE-IN TALLY BOARD (1) The board shall consist of members who shall be appointed from each party as evenly as possible. It shall be the responsibility of the Write-In Tally Board to tally write-in votes. The duties are as follows:

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(a) The following information shall be entered on the Write-In Tally Sheets:

- (i) precinct name,
- (ii) time of receipt.

(b) Write-in votes shall be tallied one precinct at a time as follows:

- (i) stack similar types together,
- (ii) process one stack at a time, with board members reading, tallying and determining validity of write-in's,

(c) When validated, board members shall write the candidates names as voted and the office in the Write-in Tally Sheet for that precinct as follows:

(i) the total numbers of votes received shall be entered in the space provided,

(ii) all members of the board shall sign the tally sheets pertaining to each precinct.

(iii) all ballots shall be passed to the Tabulation Board member who is sorting ballots by precinct for the Sealing Board.

(d) Once one precinct is completed, another precinct shall be requested and the steps outlined above shall be followed.

(e) Election Tally Sheets for Write-in votes shall be forwarded to the Election Results Board to be added to the Results Sheet for each precinct as necessary.

AUTH & IMP: 13-17-107(2), MCA

RULE XIII CENTRAL TABULATING CENTER PROCEDURES AND DUTIES

- BALLOT SEALING BOARD (1) It shall be the responsibility of the Ballot Sealing Board to prepare the tabulated ballots for storage at the close of the counting center. The duties are as follows:

(a) Upon receipt of the complete set of a precinct's tabulated ballots the Ballot Sealing Board members shall double-check to be sure no other precinct's ballots are included, make sure the envelope containing the tabulated ballots is correctly labeled with precinct number, place the envelopes containing the ballots in a secured area, in precinct order, for final sealing with official seals after all ballots have been processed (including write-in votes) and checked.

(b) The tabulated and sealed ballot envelopes shall be delivered to a storage area designated by the election administrator.

AUTH & IMP: 13-17-107(2), MCA

RULE XIV CENTRAL TABULATING CENTER PROCEDURES AND DUTIES - ELECTION RESULTS BOARD (1) It shall be the responsibility of the Election Results Board to prepare the final unofficial election results report for posting at each precinct and at the computer center. The duties are as follows:

(a) The Election Results Board shall make a copy of the Election Results Sheet and give to a runner to post in the precinct upon completion of the tabulation and certification.

(b) When cumulative totals for each candidate and each ballot issue come from the Ballot Tabulating Board it shall be posted on the Computer Center Results Board.

AUTH & IMP: 13-17-107(2), MCA

RULE XV CENTRAL TABULATING CENTER PROCEDURES AND DUTIES - CLOSING OF TABULATING CENTER (1) It shall be the duty of the election administrator to collect all tabulated ballots, logs and materials used for the tabulating center and store as required by law.

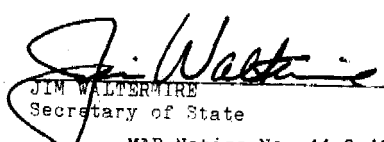
AUTH & IMP: 13-17-107(2), MCA

(4) The reason for the proposed adoption of these rules is to implement the use of an optical scan device for counting of ballots as required of the secretary of state under Section 13-17-107(2).

(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 Alan D. Robertson, Secretary of State's Office, Room 225, State Capitol, Helena, MT 59620, no later than August 12, 1985.

(6) Alan D. Robertson, Chief Counsel, Office of Secretary of State has been designated to preside over and conduct the hearing.

Dated this 1st day of July 1985.


JIM WALTERMIRE
Secretary of State

13-7/11/85

MAR Notice No. 44-2-40

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 July 31, 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 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:

(a) The juvenile has been adjudicated as 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.

(2) If the parents or guardians of the youth refuse to cooperate in establishing indigency, the social worker or probation officer may submit other verification or documentation which would be sufficient to document that the parents or guardians are indigent as defined in the previous paragraph.

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 \$110.00 per day for each day of care actually provided, not to exceed 40 days of care.

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

IMP: Sec. 1, Ch. 177, L. 1985 (SR 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, department of institutions 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 August 9, 1985.

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

Clarence J. Davis
Director, Social and Rehabilitation Services

Certified to the Secretary of State July 1, 1985.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE MONTANA ECONOMIC DEVELOPMENT BOARD

In the matter of the amendments)	NOTICE OF AMENDMENTS 8.97.
8.97.701 concerning definitions)	701 DEFINITIONS, 8.97.702
8.97.702 concerning scope of)	SCOPE OF SUB-CHAPTER 7, 8.97.
sub-chapter 7, 8.97.711 con-)	711 CLOSING REQUIREMENTS,
cerning closing requirements)	ADOPTIONS OF NEW RULES,
and adoptions of new rules)	8.97.901 MONTANA CASH ANTI-
concerning the Montana cash)	CIPATION FINANCING PROGRAM,
anticipation financing pro-)	8.97.902 APPLICATION PRO-
gram, financial requirements)	CEDURE FOR THE MONTANA
and covenants, terms, inter-)	CASH ANTICIPATION FINANCING
est rates, fees and charges)	PROGRAM, 8.97.903 FINANCIAL
and closing requirements)	REQUIREMENTS AND COVENANTS,
)	8.97.904 TERMS, INTEREST RATES,
)	FEES AND CHARGES AND CLOSING
)	REQUIREMENTS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On May 16, 1985, the Montana Economic Development Board published a notice of amendments and adoption of the above-stated rules at pages 399 through 401, 1985 Montana Administrative Register, issue number 9.
2. The board has amended and adopted the rules exactly as proposed.
3. No comments or testimony were received.

DEPARTMENT OF COMMERCE
BEFORE THE MONTANA ECONOMIC DEVELOPMENT BOARD

In the matter of the amendments)	NOTICE OF AMENDMENTS OF
of 8.97.301 concerning defini-)	8.97.301 DEFINITIONS, 8.97.
tions, 8.97.306 concerning the)	306 REVIEW OF APPLICATION BY
review of applications by ad-)	ADMINISTRATOR and 8.97.307
ministrator, and 8.97.307)	BOARD REVIEW OF APPLICATIONS
concerning board review of)	
applications)	

TO: All Interested Persons:

1. On May 16, 1985, the Montana Economic Development Board published a notice of amendments of the above-stated rules at pages 402 through 404, 1985 Montana Administrative Register, issue number 9
2. The board has amended, repealed and adopted the rules exactly as proposed.
3. No comments or testimony were received.

DEPARTMENT OF COMMERCE


In the matter of the adoption	)	NOTICE OF ADOPTION OF NEW
of new rules concerning fire-	)	RULES 8.70.1401 APPLICATION
works wholesaler permit and the	)	FOR FIREWORKS WHOLESALER
contents of fireworks whole-	)	PERMIT AND 8.70.1402 CONTENTS
saler permit	)	OF FIREWORKS WHOLESALER PERMIT

TO: All Interested Persons:

1. On May 30, 1985, the Department of Commerce published a notice of adoption of the above-stated rule at pages 536 and 537, 1985 Montana Administrative Register, issue number 10.

2. A phone call was received from Jim Lear, Attorney with the Legislative Council expressing some concern with the fact that the statement of intent, which accompanied the legislative changes allowing for issuance of a fireworks wholesaler permit, contained additional items to be adopted by rule. The statement contemplated rules which would "provide a monitoring and information function", "elicit pertinent information from the applicant, such as ... suppliers, products to be sold under the permit, etc.", and "provide for conveying of information to the applicant at the time of application, such as responsibilities under Montana law, federal law, and both state and federal administrative rules". The statutory rule making authority under 50-37-104, MCA, however, provided for more limited rules dealing only with requirements for issuance of the permit and contents of the permit itself. The department does not feel it would be appropriate to go beyond the scope of the statutory requirements. Information with regard to state and federal laws and rules will be sent to each applicant. No other comments or testimony were received.

3. The board has adopted the rule exactly as proposed.

BY: 
ROBERT WOOD, ATTORNEY
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, July 1, 1985.

BEFORE THE DEPARTMENT OF FISH,
WILDLIFE AND PARKS OF THE STATE
OF MONTANA

In the matter of the adoption)	NOTICE OF THE ADOPTION
of rules pertaining to the)	OF RULES PERTAINING TO
management of recreational use)	THE MANAGEMENT OF RECREATIONAL
of rivers and streams)	USE OF RIVERS AND STREAMS

TO: All Interested Persons

1. On May 16, 1985, the Montana Department of Fish, Wildlife and Parks (Department) and the Montana State Fish and Game Commission (Commission) published notice of a proposed adoption of rules pertaining to the management of recreational use of rivers and streams. The notice was published at page 405 of the Montana Administrative Register, Issue No. 9.

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

(I) 12.4.101 PURPOSE This subchapter sets forth the regulations pertaining to management under 87-1-303 and [section 2(5) of H.B. 265], MCA, of recreational use of rivers and streams.

AUTH: 87-1-303, MCA IMP: [H.B. 265, Section 2(5),]
Chpt. 556, Laws of 1985

(II) 12.4.102 DEFINITIONS For the purposes of this subchapter:

(1) "Adversely affecting" means significantly and harmfully altering the quality or quantity of fish or wildlife populations.

(2) "Class I water" means any river or stream which:

(a) lies within the officially recorded federal government survey meander lines thereof;

(b) flows over lands that have been judicially determined to be owned by the state by reason of application of the federal navigability test for state streambed ownership;

(c) are or have been capable of supporting commercial activity within the meaning of the federal navigability test for state streambed ownership; or

(d) are or have been capable of supporting the following commercial activities: log floating, transportation of furs and skins, shipping, commercial guiding using multiperson watercraft, public transportation or the transportation of merchandise; as these activities have been defined by published judicial opinion as of April 19, 1985.

(3) "Class II water" means any river or stream that is not a class I water.

(4) "Damage" means physical harm to structures, equipment, agricultural production, or stream beds or banks up to the ordinary high-water mark or to ~~adjacent lands~~ land beyond the ordinary high water mark.

(5) "Degradation" means physical harm to the stream banks and beds that results in continuous, long-term violations of state or federal water quality standards.

(6) "Disrupting or altering" means causing modification of an area resulting in a measurable harmful reduction in biotic community or communities.

(7) "Ordinary high-water mark" means the line that water impresses on land by covering it for sufficient periods to cause physical characteristics that distinguish the area below the line from the area above it. Characteristics of the area below the line include, when appropriate, but are not limited to deprivation of the soil of substantially all terrestrial vegetation and destruction of its agricultural vegetative value. A floodplain adjacent to surface waters is not considered to be within the surface waters' ordinary high-water mark.

(8) "Person" means an individual, firm, corporation, association, partnership, municipality, or local, state, or federal governmental agency.

(9) "Recreational use" means fishing, hunting, swimming, floating in small craft or other flotation devices, boating in motorized craft or craft propelled by oar or paddle, and other water related pleasure activities.

AUTH: 87-1-303, MCA

IMP: [H.B. 265, section 2(5),]
Chpt. 556, Laws of 1985

(III) 12.4.103 PETITIONS (1) Any person may petition the Commission:

(a) to limit, restrict, or prohibit the type, incidence, or extent of recreational use of a surface water as provided in this section; or

(b) to alter limitations, restrictions, or prohibitions on recreational use of a surface water imposed by the commission as provided in Rule IV; or

(c) with respect to class II waters, to identify streams capable of no recreational use or of limited recreational use, and to restrict the recreational use to the actual capacity of the water, as provided in Rule V VI.

(2) Petitions to the commission under this subchapter must

(a) be in writing and signed by the petitioner or his authorized agent;

(b) state the name and ~~exact~~ location of the river or stream that is the subject of the petition;

(c) state the remedy that the commission is being requested to grant;

(d) allege one or more of the facts set forth in Rule ~~III(2)~~, IV(2), or V(2), or IV(2) accompanied by specific data or documentation in support thereof; and

(e) describe the historical recreational use of the river or stream that is the subject of the petition, if known.

(3) Upon receipt of a petition, the commission chairman shall order the department to conduct an investigation of the

facts alleged, and may order a physical inspection of the area described in the petition.

(4) The department shall publish a notice of the request for action in at least one daily newspaper in the area of the requested action and in at least 4 other major daily newspapers within the state. The notice shall solicit public comment on the proposal and shall provide at least 30 days for public comment from the time of the notice. The department shall provide notice of the petition to any groups or individuals who have expressed interest in the issue.

(5) Within 45 days of the publication of the notice described in Rule III(4), the commission may upon its own motion or upon request of an interested party order a public hearing within the county in which the petition requests commission action.

(6) The department shall submit a report and recommendation to the commission within 30 45 days after the commission directs an investigation. The department shall send a copy of its report and recommendation to the petitioner and to any other party who has requested them at the same time it submits its report to the commission. When circumstances warrant, the Commission may extend the time within which a report is due.

(7) The department's report shall address every allegation in the petition requesting commission action.

(8) Upon receipt of the department's report the commission shall, within 30 days, issue a decision granting, denying or granting with modifications the petitioned relief. The decision shall be supported by written findings which specifically describe the factual basis for the decision.

(9) The commission may summarily dismiss a petition with a brief statement of the reasons for dismissal if the petition:

(a) is unsupported by specific substantial factual allegations, data or documentation;

(b) requests relief substantially similar to that requested by another petition which has been acted upon within the preceding 365 days; or

(c) requests relief which is not permitted or is unnecessary under [H.B. 265, Chpt. 556, Laws of 1985].

(10) Notwithstanding subsections (1) through (9) of this rule, the commission may, upon request of an affected landowner, who has filed a petition with the commission under subsections (1) through (9) of this rule, temporarily close or restrict recreation use on a stream or on any part of a stream if the failure to do so would result in irreparable damage to property, irreparable disruption or alteration of the natural areas or biotic communities, or irreparable degradation of the waterbody. The commission may act under this subsection through the chairman and the commissioner in the affected region after consultation with the director. Any closure or restriction under this subsection may remain in effect only until the commission acts

upon the petition filed pursuant to subsections (1) through (9) of this rule.

AUTH: 87-1-303, MCA

IMP: [H.B. 265, Section 2(5),]
Chpt. 556, Laws of 1985

(IV) 12.4.104 PETITIONS RELATING TO RESTRICTING RECREATIONAL USE OF CLASS I OR CLASS II RIVERS AND STREAMS (1) Any person may petition the commission for an order limiting, restricting or prohibiting the type, incidence, or extent of recreational use of a class I or class II water.

(2) A petition under this section must meet the requirements of Rule III(2) and must specifically allege one or more of the following facts in support of the request for commission action:

(a) that public use is damaging the banks and land adjacent to the water body;

(b) that public use is damaging the property of the landowner underlying or adjacent to the water body;

(c) that public use is adversely affecting fish or wildlife;

(d) that public use is disrupting or altering natural areas or biotic communities;

(e) that public use is causing degradation of the water body; and

(f) that any alleged damage, adverse effect, disruption or alteration is not being caused by private use.

(g) where public recreational use presents a clear threat of degradation to the water body or of disruption or alteration to natural areas or biotic communities, and where present and future owners are legally bound by conservation easements to stringent management practices which protect the natural values of the waterbodies and its bed and banks.

(h) where present or anticipated use presents a clear and immediate threat of any of the items described in subsections (a) through (e) of this subsection.

(3) Each allegation of damage in the petition must be accompanied by a specific description of the damage, including the character of the damage (i.e., erosion, crop damage, etc.) and a description of the location on the river or stream where the damage has occurred.

(4) The commission shall process the petition in accordance with Rule III(3) through (9), and may order any restriction on recreational use it finds necessary to alleviate damage described in Rule IV(2), including absolute prohibition of recreational use, provided that it confines its action to that which is least disruptive to public recreational use and still provides the necessary protection.

AUTH: 87-1-303, MCA

IMP: [H.B. 265, Section 2(5),]
Chpt. 556, Laws of 1985

(V) 12.4.105 PETITIONS RELATING TO ALTERING RECREATIONAL USE OF CLASS I OR CLASS II RIVERS AND STREAMS (1) Any person may petition the commission for an order altering limitations,

restrictions, or prohibitions on recreational use of class I or class II rivers and streams ordered by the commission pursuant to Rule IV or Rule VI.

(2) A petition under this section must meet the requirements of Rule III(2) and must specifically allege one or more of the following facts in support of the request for commission action:

(a) that because of changed circumstances the previous order of the commission is no longer necessary or appropriate; or

(b) that the damage alleged in the petition requesting the previous order of the commission did not in fact occur or was caused primarily by use other than public use.

(3) Each allegation in the petition must be accompanied by specific data and documentation.

(4) The commission shall process the petition in accordance with Rule III(3) through (9), and may alter any restriction on recreational use no longer necessary or appropriate, provided the alteration is the least disruptive to public recreational use and still provides the necessary protection.

AUTH: 87-1-303, MCA IMP: [H.B. 265, Section 2(5),]
Chpt. 556, Laws of 1985

(VI) 12.4.106 SPECIAL DESIGNATIONS OF CLASS II STREAMS (1) Any person may petition the commission for an order to identify class II streams which are not capable of recreational use or are capable of limited recreational use, and to restrict the recreational use to the actual capacity of the stream.

(2) A petition under this section must meet the requirements of Rule III(2) and must include allegations and supporting data and documentation that the class II stream is incapable of or is capable in a limited fashion of supporting one or more of the following recreational uses: fishing, hunting, swimming, floating in small craft or other flotation devices, boating in motorized craft or craft propelled by oar or paddle.

(3) The commission shall process the petition in accordance with Rule III(3) through (9).

(4) In its determination, the commission shall consider, among others, the following factors for each kind of use:

(a) with respect to fishing, the department's stream evaluation data for that particular stream, any fish population data for the stream, and the suitability of the stream habitat for gamefish;

(b) with respect to hunting, the likelihood that a hunter will be able to confine his hunting, including retrieval of downed game, to the area within the ordinary high-water marks, and the suitability of the habitat for game species;

(c) with respect to swimming, the danger and difficulty associated with swimming the waters and the availability on the stream of waters deep enough to swim;

(d) with respect to floating or use of watercraft, instream flow data describing the minimum flow necessary to support various watercraft and the actual suitability of the water to the

use of watercraft as evidenced by historical use or other data; and

(e) with respect to other water related pleasure activities, any other relevant factors.

(5) The commission shall process the petition in accordance with Rule III(3) through (9), and may order any restriction it finds necessary to limit recreational use to the actual capacity of the stream, including absolute prohibition of recreational use, provided it confines its action to that which is least disruptive to public recreational use and still provides the necessary protection.

(6) Nothing in this rule shall obligate the petitioner to conduct formal studies to provide relevant data or to bear the expense of such studies. If the commission requires additional studies to reach an informed decision the department shall bear the cost of the additional studies.

AUTH: 87-1-303, MCA

IMP: [H.B. 265, Section 2(5)]
Chpt. 556, Laws of 1985

3. The following is a summary of the substantive oral and written testimony, data, views and arguments received by the Department and Commission, and the Department and Commission's responses:

Comment: Many commentators urged that the rules should provide for closures or restrictions for prospective or future, anticipated damage. They felt that the present rules applied only where damage has already occurred. Other commentator stated closures or restrictions should not be based on potential damage.

Response: The Commission has included provisions in Rule IV which will allow for petitioners to petition the Commission on the basis of prospective damage.

Comment: Some commentators felt that the petition requirements were too complicated and burdensome. Other commentators believed that the procedure should not be made simple and easy because the procedure could then be used as a "loop-hole" to exempt or restrict streams. Some felt that a simple form for a petition should be developed.

Response: The Commission based its procedure on the language found in the statement of intent. It has attempted to provide a process which will assure that petitioners allege facts to support their requests and to discourage speculative or conjectural petitions. In addition, the Department is developing a petition form to assist petitioners.

Comment: Comments were received requesting that the term "actual capacity of the water" be defined.

Response: "Actual capacity of the water" for recreational use depends on the kind of recreational use discussed. Instead of attempting one definition, the Commission has described

guidelines for assessing a stream's capacity for specific kinds of recreational use.

Comment: Some commentators requested that the Commission on its own motion close many small stream as not suitable to recreational use or as too fragile to support recreational use. They wanted the Commission to designate restricted streams rather than only providing for closures or restrictions through the petition process.

Response: Section 5 of the Stream Access Bill (HB265; Chapter 556, Laws of 1985) appears to give to Commission the authority to act on its own motion to close streams. Nonetheless, this rule is limited to the description of procedures for landowners and recreationists to solicit Commission action on streams. It is beyond the scope of this rule making process to enact restrictions on specific streams.

Comment: There were recommendations that a procedure be developed to provide for emergency closures pending a Department investigation and Commission decision.

Response: The Commission has adopted a procedure in Rule III which would provide for temporary restriction of a stream when failure to do so would result in irreparable harm to the stream or adjacent land.

Comment: One commentator suggested that the Department be granted authority to make 24-hour closures to deal with specific "nuisance" causing activities such as parties, littering, camping and fires.

Response: This proposal is administratively unworkable insofar as it seeks random, yet immediate action to landowner complaints without benefit of any factual support. "Nuisance" problems are more properly addressed under existing trespass statutes.

Comment: Several commentators, including the Administrative Code Committee, questioned whether subsection (4) of Rules IV, V, and VI were wholly in conformity with HB 265's Statement of Intent. Subsection (4) of these rules provides, in part, that the Commission in various situations may order any necessary restriction on recreational use and states "provided that it (the Commission) confines its action to that which is least disruptive to public recreational use and still provides the necessary protection". The last sentence of the second paragraph of the Statement of Intent provides: "In adopting the procedural rules required by Section 2, the Commission shall emphasize that in close cases the decision must be to protect the environment by restricting or continuing to restrict recreational use since it is easier to prevent environmental degradation than it is to repair it".

Response: Section (4) of Rules IV, V, and VI is consistent with the Statement of Intent. First, in addition to the language described in the comment the Statement of Intent requires the Commission to "strive to permit the broad exercise of public rights, while protecting the water resource and its ecosystem." The Commissions language strikes that balance. In addition, as noted above, the Commission has adopted provisions that are preventive in nature.

Comment: Some commentator questioned whether the summary dismissal provision of Rule III (9)(b) was reflective of the Statement of Intent for HB 265 which provides for summary dismissal "when a substantially similar request has been received and acted upon within a brief time prior to the second or subsequent request." Rule III (9)(b) provides for summary dismissal of a petition which "requests relief substantially similar to that requested by another petition which has been acted upon within the preceding 365 days".

Response: While the Statement of Intent specifically mentions one instance in which summary dismissal is appropriate it does not preclude the Commission from enacting other dismissal provisions designed to assure the airing of substantive complaints. In addition the language of Section 5 of the Stream Access bill is sufficiently broad to permit this kind of procedural provision.

Comment: Numerous commentators expressed concerns about increased crime, vandalism, invasions of privacy, etc.

Response: While those may be legitimate concerns, they exceed the scope of this rule, which is a procedural rule, and not a substantive one.

Comment: Several commentators wanted the definition of Class I water in the rules, Rule II (2)(d) to contain the phrase "as these activities have been defined by published judicial opinion as of April 19, 1985." Another commentator wanted to add "commercial" before "log floating" in Rule II (2)(d).

Response: The above phrase has been added and the definition in the Rules is now verbatim with the definition of "Class I water" in HB 265. Because the definition is the statutory definition from HB 265, the Commission cannot add to the definition the qualifier "commercial" before log floating in Rule II (2)(d).

Comment: At least one commentator suggested that it was not necessary to advertise or solicit public comments on petition for closure.

Response: Under Title 2, Chapter 3, part 1, M.C.A., the Commission has an affirmative obligation to encourage public participation in its decisions that are of significant public

interest. Stream access is clearly an issue of significant public interest.

Comment: One commentator suggested that the definition of "disrupting or altering" should include introduction of noxious weeds as a "harmful reduction in biotic community or communities." Another commentator advocated adding to the definition of "adversely affecting" the phrase "and landowner management practices".

Response: The definition of "disrupting or altering" is sufficiently broad to cover the introduction of noxious weeds.

The phrase in which "adversely affecting" is used, in Rule IV, is substantially the same language used in the Statement of Intent and goes only to fish and wildlife. Therefore it is inappropriate to extend it to landowner practices.

Comment: A commentator requested that the Commission develop rules for emergency restrictions to deal with condition such as drought and extreme fire danger.

Response: The Commission already has the authority under general emergency statutes to address fire danger or drought. In addition, the Commission, through its fisheries management authorities can address drought.

Comment: Some commentator, including the Montana Land Reliance expressed concerns about the potentially adverse effects of HB 265 on existing and future conservation easements. They requested that the rules provide for recognizing conservation easement restrictions.

Response: The Commission has included a provision which will allow for preventive remedies to lands protected by conservation easements.

Comment: One commentator wanted it made clear that the Department would bear the cost of additional studies.

Response: This was done by adding Subsection (6) to Rule VI.

Comment: Many commentators wanted the Department and Commission to adopt restriction on dogs, use of fires, collection of firewood, shooting or target practice along streams.

Response: Those are suggestions for substantive rules which go beyond the scope of this rule. They may be addressed in future rulemaking proceedings, however.

Comment: Many commentators wanted clarification of HB 265. They wanted decisions on whether beaver dams are included, whether trapping is a recreational use, and similar issues.

Response: Those questions are ones of interpretation of the statute which exceed the scope of this rule.

Comment: Some commentators wanted the rules to address specific distances from occupied dwelling where hunting would be allowed along Class I streams and to prohibit recreation on private impoundments as provided in the Statement of Intent to HB 265.

Response: That request is a substantive one which exceeds the scope of this rulemaking proceeding.

Comment: Two commentators suggested adding language to the definition of "damage" to make it clear that land beyond the ordinary high water mark was included.

Response: This was done. See definition of "Damage" in Rule II (4).

Comment: One commentator advocated adding to the definition of "disrupting or altering" language to include changes in the life style of permanent residences and changes in agricultural practices on adjacent land.

Response: "Disrupting or altering" was used in the Statement of Intent to describe impacts to natural areas or biotic communities. Therefore, it is inappropriate to address lifestyle or agricultural practices in this definition.

Comment: At least two commentators stated in Rule III (2) it appears that the burden of proof is placed on petitioners and suggested that the burden of proof should be on the Commission.

Response: The burden of proof is too bold. A petitioner must make a prima facie case that conditions warrant restriction. Simple, unfounded apprehension is not a sufficient basis for restriction. Once it is before the Commission, the Commission then has to burden to support whatever decision it makes by reference to the facts surrounding the petition.

Comment: One commentator suggested adding criteria to Rule VI dealing with the proximity of residences.

Response: The Commission declined to adopt such criteria at this time because it lacks sufficient information upon which to base such criteria. With more experience under the Stream Access Bill, it may be able to address this provision.

The Commission has responded to all comments, testimony, views, data or arguments that it feels were pertinent to the proposed procedural rules dealing with closures or restriction in the management of recreational use of rivers and streams. The Department and Commission did receive many valuable suggestions, comments and questions regarding the whole subject of stream access but which were not pertinent to the proposed procedural rules. For that reason such comments have not been responded to in this notice of adoption. Such comments included requests for legal interpretations of HB 265, requests for closures or restrictions on specific streams and requests for substantive rule-making by the Commission outside these procedural rules.

4. The authority of the department to adopt proposed Rules is based on section 87-1-303, MCA, and the rule implements [section 2(5) of H.B. 265].

Ronald H. Marcoux
Associate Director
Montana Department of Fish,
Wildlife and Parks

Certified to the Secretary of State July 1, 1985.

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

In the matter of the amendment	)	NOTICE OF AMENDMENT
of rules 16.10.203, 16.10.204,	)	OF RULES
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	)	(Food Service Establishments)

TO: All Interested Persons

1. On May 30, 1985, the department published notice of proposed amendment of rules 16.10.203, 16.10.204, 16.10.206, 16.10.213, 16.10.214, 16.10.217 through 16.10.221, 16.10.229, 16.10.232, 16.10.236, 16.10.238 and 16.10.241 concerning the minimum design, construction, operation, and equipment standards which must be met by food service establishments at page 538 of the 1985 Montana Administrative Register, issue number 10.

2. The department has amended the rules as proposed with the following changes:

16.10.203 DEFINITIONS Same as proposed.

16.10.204 FOOD SUPPLIES Same as proposed

16.10.206 FOOD STORAGE Same as proposed.

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, AND INSTALLED in accordance with the Uniform Mechanical Code as adopted by the Building Codes Division, Department of Administration, State of Montana, ARM 8.70.105.~~

(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, Capital Station, Helena, Montana 59620. ARM 8.70.105 TO THE EXTENT THAT SUCH RULE APPLIES TO HOOD SYSTEMS. ARM 8.70.105 IS A DEPARTMENT OF COMMERCE RULE~~

SETTING FORTH THE UNIFORM MECHANICAL CODE, 1982 EDITION, INCLUDING REQUIREMENTS FOR THE DESIGN AND CONSTRUCTION OF HOOD SYSTEMS. A COPY OF ARM 8.70.105 MAY BE OBTAINED FROM THE BUILDING CODES BUREAU, DEPARTMENT OF COMMERCE, CAPITOL STATION, HELENA, MONTANA 59620.

16.10.214 EQUIPMENT INSTALLATION AND LOCATION Same as proposed.

16.10.217 WATER SUPPLY Same as proposed.

16.10.218 SEWAGE Same as proposed.

16.10.219 PLUMBING (1) Plumbing shall be sized, DESIGNED, CONSTRUCTED, installed, and maintained according to law the Uniform Plumbing Code as adopted by the Building Codes Division, Department of Administration, State of Montana ARM 8.70.302. 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 DESIGNED, CONSTRUCTED, installed and maintained according to law the Uniform Plumbing Code as adopted by the Building Codes Division, Department of Administration, State of Montana, ARM 8.70.302.

(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 ARM 8.70.302, WHICH IS A DEPARTMENT OF COMMERCE RULE SETTING FORTH 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 ARM 8.70.302 may be obtained from the Food and Consumer Safety Bureau, Department of Health and Environmental Sciences, Eggshell Building, BUILDING CODES BUREAU, DEPARTMENT OF COMMERCE, Capitol Station, Helena, Montana 59620.

16.10.220 TOILET FACILITIES (1) Toilet facilities shall be DESIGNED, CONSTRUCTED, installed, AND MAINTAINED according to law the minimum required plumbing fixture schedule, as adopted by the Building Codes Division,

Department of Administration, State of Montana DELINEATED IN ARM 8.70.303 ~~1~~ 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 time the establishment is in operation.

(2) - (9) Same as proposed rule.

(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 operable window ARM 8.70.101 AND APM 8.70.105.

(11) Same as proposed rule.

(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, ARM 8.70.303, TO THE EXTENT THAT SUCH RULE APPLIES TO TOILET FACILITIES, AND ARM 8.70.101 and 8.70.105, TO THE EXTENT THAT THEY APPLY TO VENTILATION OF TOILET FACILITIES. ARM 8.70.303 SETS minimum required plumbing fixture requirements for new buildings and ARM 8.70.101 AND 8.70.105 SET FORTH, RESPECTIVELY, THE UNIFORM BUILDING CODE, 1982 EDITION, 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. COPIES OF ARM 8.70.303, 8.70.101, AND 8.70.105 MAY BE OBTAINED FROM THE BUILDING CODES BUREAU, DEPARTMENT OF COMMERCE, CAPITOL STATION, HELENA, MONTANA 59620.~~

16.10.221 LAVATORY FACILITIES (1) Lavatories shall be DESIGNED, CONSTRUCTED, installed, AND MAINTAINED according to law, ~~the Uniform Plumbing Code and Minimum Required Fixture Schedule as adopted by the Building Codes Bureau, Department of Administration, State of Montana.~~ THE STANDARDS FOR LAVATORIES IN ARM 8.70.302 AND 8.70.303.

(2) - (11) Same as proposed rule.

(12) The department hereby adopts and incorporates by reference, TO THE EXTENT THAT THEY APPLY TO LAVATORIES, ARM ~~2.32.302 8.70.302 and 2.32.303 8.70.303, which are department of administration COMMERCE 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 8.70.302 OR 8.70.303 may be obtained from the Food and Consumer Safety Bureau, Department~~

of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, BUILDING CODES BUREAU, DEPARTMENT OF COMMERCE, CAPITOL STATION, HELENA, MONTANA 59620.

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 DESIGNED, CONSTRUCTED, 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~~ THE STANDARDS PERTAINING TO VENTILATION SYSTEMS IN ARM 8.70.101 AND 8.70.105, and, when vented to the outside, shall not create an unsightly, harmful or unlawful discharge.

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

(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.~~ ARM 8.70.101 AND 8.70.105, WHICH CONTAIN, RESPECTIVELY, THE UNIFORM BUILDING CODE, 1982 EDITION, AND THE UNIFORM MECHANICAL CODE, 1982 EDITION. COPIES OF ARM 8.70.101 OR 8.70.105 MAY BE OBTAINED FROM THE BUILDING CODES BUREAU, DEPARTMENT OF COMMERCE, CAPITOL STATION, HELENA, MONTANA 59620.

16.10.232 PREMISES Same as proposed.

16.10.236 TEMPORARY FOOD SERVICE ESTABLISHMENTS Same as proposed.

16.10.238 LICENSES

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

(10) OBTAINING THE LICENSE REFERRED TO IN SUBSECTION (1) OF THIS RULE DOES NOT RELIEVE THE APPLICANT FROM SATISFYING APPLICABLE REQUIREMENTS FOR OBTAINING AND MAINTAINING:

- (a) A BUILDING PERMIT;
- (b) A PLUMBING PERMIT; OR
- (c) AN ELECTRICAL PERMIT.

16.10.241 REVIEW OF PLANS Same as proposed rule.

3. The following comments were received:

COMMENT:

Aren't DHES' incorporations by reference of the Uniform Codes as part of its own rules inconsistent with Section 50-60-202, MCA, which designates the Department of Commerce as the sole state agency to promulgate building regulations? Also, won't DHES rules need to be changed each time the Building Codes Division adopts a new edition of a Uniform Code?

RESPONSE:

The uniform codes are being incorporated by reference into DHES rules because Section 2-4-307 of the Montana Administrative Procedure Act requires agencies referencing such material to incorporate them into agency rules. DHES is not adopting building requirements but is merely referencing Uniform requirements that Building Codes Division has already adopted. However, to further clarify this point, the incorporations have been changed to refer in all cases to Building Codes rules rather than to the Uniform Codes themselves.

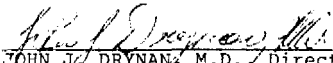
The proposed rules do not change the existing relationship between DHES and Building Codes Division, whereby violations of Uniform Codes observed during health inspections of food establishments are referred to Building Codes for evaluation and enforcement. Finally, DHES rules will need to be updated in the event Building Codes adopts a new edition of a Uniform Code.

COMMENT:

As of July 1, 1985, the Building Codes Division is transferred from the Department of Administration to the Department of Commerce. Also, ARM 16.10.241 should be changed to avoid the impression that a food service license relieves a person from Building Code requirements for building, plumbing, and electrical permits and associated inspections.

RESPONSE:

All references to building code rules have been changed from the Department of Administration numbers formerly assigned to them to their Department of Commerce counterparts. The rule has been clarified to avoid any impression that building code requirements are covered by a food service license.


JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State June 1, 1985

13-7/11/85

Montana Administrative Register

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

In the matter of the repeal	)	NOTICE OF
of rule 16.10.902, setting	)	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 May 30, 1985, the department published notice of a proposed repeal of rule 16.10.902 concerning the standards which must be met by private campgrounds to protect health and water quality at page 551 of the 1985 Montana Administrative Register, issue number 10.

2. The department has repealed rule 16.10.902 found on page 16-458 of the Administrative Rules of Montana.

3. No comments or testimony were received.


JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State July 1, 1985

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

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

To: All Interested Persons

1. On May 30, 1985, the department published notice of proposed repeal of rule 16.10.903 setting health and environmental standards for labor camps, and a proposed adoption of rules 16.10.904 through 16.10.912 concerning construction; water; sewer; food service; solid waste disposal; insect, weed, and rodent control; and equipment and maintenance standards which must be met by work camps, at page 552 of the 1985 Montana Administrative Register, issue number 10.

2. The department has repealed rule 16.10.903, found at pages 16-461 through 16-465 of the Administrative Rules of Montana, and has adopted the subsequent rules with the following change:

16.10.904 DEFINITIONS same as proposed

16.10.905 LAYOUT PLAN REVIEW (1)-(4) same as proposed
(5) Approval of plans or licensure for compliance with this subchapter does not relieve the work camp of the need to obtain any other permit otherwise required by law or regulation, and the inspections which may be incidental thereto, e.g., a building permit, a plumbing permit, or an electrical permit.

16.10.906 WATER SUPPLY SYSTEM same as proposed

16.10.907 SEWAGE TREATMENT AND DISPOSAL same as proposed

16.10.908 SOLID WASTE same as proposed


16.10.909 FOOD SERVICE same as proposed

16.10.910 SHELTER; STRUCTURAL AND MAINTENANCE REQUIREMENTS same as proposed

16.10.911 INSECT, RODENT, AND WEED CONTROL same as proposed

16.10.912 ABANDONMENT OF WORK CAMP same as proposed

3. James Kimbel, administrator of the State Building Codes Division, suggested addition of a notice to the public in the rules that meeting all of the rules' standards did not absolve anyone of the responsibility to obtain any other permits that other laws or rules might require. The department added such a notice to ARM 16.10.905.


JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State July 1, 1985

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the Matter of the REPEAL,	)	NOTICE OF THE REPEAL,
AMENDMENT and ADOPTION of	)	AMENDMENT AND ADOPTION OF
RULES pertaining to the sale,	)	RULES FOR issuance of per-
installation and service of	)	mits to sell, business
fire protection equipment.	)	license and certificates of
(23.7.111; 122; 125; 131-133;	)	registration to install or
141; 143; 151; 152; 154-158)	)	service fire protection
	)	equipment.

TO: All Interested Persons.

1. On May 30, 1985, the Department of Justice published notice of the proposed repeal, amendment and adoption of rules for issuance of permits to sell, business license and certificates of registration to install or service fire protection equipment at page 564 of the Montana Administrative Register, issue number 10.

2. The Department has repealed and amended the rules as proposed with the following changes:

23.7.111 UNIFORM FIRE CODE (1) Same as proposed. (2) (a) through (j) Same as proposed.

(K) HOUSEHOLD - MEANS A FAMILY LIVING UNIT IN SINGLE-FAMILY DETACHED DWELLINGS, SINGLE-FAMILY ATTACHED DWELLINGS, MULTI-FAMILY DWELLINGS, AND MOBILE HOMES.

~~+~~(L) 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. REQUIRED SERVICE FOR FIRE PROTECTION EQUIPMENT IS TO BE BASED ON THE PURCHASE DATE.

(1) through (p) Same as proposed except renumbered.

(3) through (7) Same as proposed.

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

IMP: Sec. 50-3-102, 50-61-102 MCA

23.7.122 SUSPENSION OR REVOCATION OF PERMIT, LICENSE OR CERTIFICATE. Subsections (1) through (7) Same as proposed.

AUTH: Sec. 50-3-102 MCA

IMP: Sec. 50-3-102 MCA

23.7.125 INVESTIGATION OF COMPLAINTS IMPROPER INSTALLATION OR SERVICE Subsections (1) through (2) Same as proposed.

AUTH: Sec. 50-3-102(2)(b) MCA

IMP: Sec. 50-3-102 MCA

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23.7.131 WHO MUST OBTAIN A CERTIFICATE OF REGISTRATION
Subsections (1) through (2)(d) Same as proposed.

AUTH: Sec. 50-3-102 MCA
IMP: Sec. 50-3-102 MCA

(2)(a) 23.7.132 CERTIFICATE FEE Subsections (1) through
Same as proposed.

AUTH: Sec. 50-3-102 MCA
IMP: Sec. 50-3-102 MCA

23.7.133 EXAMINATION FOR CERTIFICATE Subsections (1)
through (5) Same as proposed.

AUTH: Sec. 50-3-102 MCA
IMP: Sec. 50-3-102 MCA

23.7.141 WHO MUST OBTAIN A PERMIT TO SELL Same as proposed.

AUTH: Sec. 50-3-102 MCA
IMP: Sec. 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 PARTS of THAT ACTUATE OR CONTROL 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. HOUSEHOLD FIRE ALARM SYSTEMS WHEN EXAMINED AND PERFORMANCE TESTED ACCORDING TO THE INTENT OF THIS RULE AND, IF FOUND EQUIVALENT, MAY BE APPROVED.

AUTH: Sec. 50-3-102 MCA
IMP: Sec. 50-3-102 MCA

23.7.151 WHO MUST OBTAIN A LICENSE TO INSTALL
Subsections (1) through (3) Same as proposed.

AUTH: Sec. 50-3-102 MCA
IMP: Sec. 50-3-102 MCA

23.7.152 LICENSE FEE Subsections (1) through (2)
Same as proposed.

AUTH: Sec. 50-3-102 MCA
IMP: Sec. 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 BUILDING OWNERS, MANAGERS OR MAINTENANCE PERSONNEL PERFORMING monthly inspections or annual maintenance checks of portable fire extinguishers MAY NOT USE A SERVICE TAG BUT MUST MAINTAIN RECORDS. 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.

Subsection (2) Same as proposed.

(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;

(A) NAME, ADDRESS AND LICENSE NUMBER OF LICENSED FIRM;

(d)(a)(B) Type of service performed;

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

(f)(c) Name of individual registrant performing service; and

(d) Registrant's certificate of registration number, NAME AND REGISTRATION NUMBER OF REGISTRANT PERFORMING SERVICE. A licensee or registrant shall indicate the type of service performed and date of servicing by punching the appropriate section of a tag. A tag must bear dates for 1 to 5 years.

Subsections (4) through (5) Same as proposed.

AUTH: Sec. 50-3-102 MCA

IMP: Sec. 50-3-102 MCA

3. The authority of the agency to make the proposed repeals, amendments and adoptions is based on sections 50-3-102(2)(a) and 50-61-102, MCA, and the rule implements sections 50-3-102 and 50-61-102, MCA.

4. There were 36 oral and 12 written comments submitted. Thirty-four oral comments and 7 written comments endorsed the rule changes as proposed. The Department has thoroughly considered the remaining oral and written comments and has responded as follows:

COMMENT: The proposed changes, would result in lack of professionalism in the industry, lack of concern of public

safety and defeat the purpose of Title 50, chapter 39, MCA.

RESPONSE: The Department fails to see how the proposed changes will lower the professionalism of those in the industry. The Department feels public safety will be improved with more enforcement by the local authorities. The proposed changes carry out the requirements of Title 50, chapter 39, MCA.

COMMENT: The proposed changes will effect a more fluent and manageable program for the Fire Marshal's office to administrate. It also simplifies the laws, gives greater protection to the consumer, and lends professionalism to the fire protection industry.

RESPONSE: The Department feels the proposed changes will accomplish those things as stated.

COMMENT: The proposed amendment to 23.7.111 should define the terms household and define when to require service.

RESPONSE: A change has been made to define these definitions.

COMMENT: The proposed amendment to 23.7.122(5) should not place the burden of correcting deficiencies on service people.

RESPONSE: The Department feels that service should not be performed on deficient equipment and thereby give the business owner/manager a false sense of security.

COMMENT: The proposed amendment to 23.7.122(6) is not enforceable because I do not know when I hire a person if he has improperly installed or serviced fire protection equipment.

RESPONSE: 23.7.122(6) refers to current employees. The Department does not anticipate problems with this requirement.

COMMENT: The proposed amendment to 23.7.125(2) should not be in the rule.

RESPONSE: The Department feels it is proper to state in the rule the statutory authority of the Fire Marshal for correction of fire and life safety hazards in public buildings.

COMMENT: The proposed amendments to 23.7.131 and particularly to 23.7.131(2)(d) will be a step backwards in proper maintenance of fire extinguishers.

RESPONSE: The Department feels that in the enforcement of the fire code requirements and in following the interpretations of nationally recognized standards as provided for in 23.7.131, that fire extinguishers will be properly maintained.

COMMENT: The proposed amendments to 23.7.143 should not require listed or labeled component parts of household fire alarm systems.


RESPONSE: A change has been made for household fire alarm systems.

COMMENT: The proposed amendments to 23.7.154 should not delete the requirement for the firm's name and address to be on a service tag.

RESPONSE: A change has been made to include the firm's name and address on the service tag.

COMMENT: The proposed amendment to 23.7.154 should include the requirement for record keeping by persons making monthly inspections or annual maintenance checks of portable fire extinguishers.

RESPONSE: A change has been made to require those records.


MIKE GREELY
Attorney General

Certified to the Secretary of State July 1, 1985.

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Montana Administrative Register

BEFORE THE BOARD OF LIVESTOCK
OF THE STATE OF MONTANA

In the Matter of the	)	NOTICE OF AMENDMENT OF
AMENDMENT OF RULE 32.22.103,	)	RULE 32.22.103 DURATION OF
allowing issuance of self-	)	PERMITS-FEE (AERIAL
renewing permits dependent	)	HUNTING)
upon compliance with aerial)	
hunting regulations)	

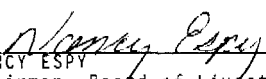
TO: All Interested Persons.

1. On May 30, 1985 the Board of Livestock published notice of proposed amendment of 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.

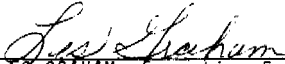
2. The Board has amended the rule as proposed.

3. No comments or testimony were received.

4. The authority to make the proposed amendment is based on Section 81-7-502 MCA. It implements Section 81-7-504 MCA.



NANCY ESPY
Chairman, Board of Livestock

By: 

LES GRAHAM, Executive Secretary
to the Board of Livestock

Certified to the Secretary of State on July 1, 1985.

BEFORE THE BOARD OF LIVESTOCK
OF THE STATE OF MONTANA

In the Matter of the	)	NOTICE OF AMENDMENT OF
AMENDMENT OF RULE 32.2.401,	)	RULE 32.2.401 DEPARTMENT
Increasing Fees and Permits	)	OF LIVESTOCK FEES, ETC.
to Reflect Department Costs)	

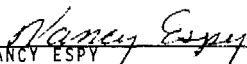
TO: All Interested Persons.


1. On May 30, 1985 the Board of Livestock published notice of proposed amendment of Rule 32.2.401 raising the costs of livestock brand inspection, transportation permits, and related fees; such increase is required to reflect increased department costs.

2. The Board has amended the rule as proposed.

3. No comments or testimony were received.

4. The authority to make the proposed amendment 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 on July 1, 1985.

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

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

TO: All Interested Persons

1. On May 30, 1985, the Department of Social and Rehabilitation Services published notice of the proposed 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 at page 581 of the 1985 Montana Administrative Register, issue number 10.

2. The Department has amended Rules 46.2.207, 46.2.208, and 46.2.211 as proposed.

3. The Department has amended Rule 46.2.201 as proposed. However, a typographical error in the authorities was made in the proposed notice. The correct authority for the above rule is:

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, 53-4-112, 53-4-404, 53-4-503, 53-4-513, 53-5-304, 53-6-111 and 53-20-305 MCA

4. The Department has amended Rule 46.2.202 as proposed. However, a typographical error in the authorities was made in the proposed notice. The correct authority for the above rule is:

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, 53-6-111, 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, 53-4-112, 53-4-404, 53-4-503, 53-4-513, 53-5-304 and 53-20-305 MCA

5. The Department has thoroughly considered all verbal and written comments:

COMMENT: Mary McCue, attorney for Legislative Council, noted one statute in the list of authorities had been repealed by


the 1985 legislature. She also questioned the sufficiency of the rationale for the proposed changes. She requested the Department explain more fully on the final notice why the changes were being made.

RESPONSE: The citation of authorities effected by the repeal of Section 53-3-107 MCA, have been revised accordingly.

These rules are necessary to clarify the applicability of the fair hearing procedures to persons and facilities licensed or registered by the Department. Other changes were necessary to specify that the decision of the hearing officer was the decision of the Department without board review unless there is a specific request for board review. This change was necessary for purposes of monitoring compliance with federal regulations to allow for documentation of the amount of time it takes the Department to reach a final agency decision. Other changes represent mere housekeeping measures and were necessary to update the administrative rules to reflect changes in the accepted practice in handling these contested cases.

COMMENT: APM 46.2.201(1)(e) refers to negative actions concerning certification of provider agreements for the Medicaid program, so subsection (f) need only be used for negative actions on licensure or registration.

RESPONSE: At least one division of the department is authorized to deny provider certification based upon standards set up by the Commission on Accreditation of Rehabilitation Facilities (CARF). This negative action concerning certification by a non-Medicaid program necessitates the retention of "certification" in section (f).


Director, Social and Rehabilitation Services

Certified to the Secretary of State July 1, 1985.

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

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

TO: All Interested Persons

1. On May 30, 1985, the Department of Social and Rehabilitation Services published notice of 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 at page 594 of the 1985 Montana Administrative Register, issue number 10.

2. The Department has amended Rules 46.5.904 and 46.5.906 as proposed.

3. The Department has amended the following rules as proposed with the following changes:

46.5.905 DAY CARE RATES Subsection (1) remains as proposed.

(2) Part-time care is paid at a rate of ~~75¢ 80¢~~ 90¢ per hour per child in day care homes, ~~80¢ 85¢~~ 95¢ per hour per child in group day care homes, and ~~85¢ 90¢~~ \$1.00 per hour per child in all centers up to a maximum of a full day or night care rate.

Subsections (3) through (5) remain as proposed.

(6) THE RATES SET FORTH IN THIS RULE ARE THE MAXIMUM RATES PAYABLE. THE RATE CHARGED BY THE DAY CARE PROVIDER FOR CHILDREN WHOSE DAY CARE IS PAID FOR BY THE DEPARTMENT CANNOT EXCEED THE RATE CHARGED TO PRIVATE PAYING PARENTS FOR THE SAME SERVICE.

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

IMP: Sec. 53-4-514 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)(g) remain as proposed.

(h) Part time care is paid at a rate of ~~75¢ 80¢~~ 90¢ per hour per child in day care homes, ~~80¢ 85¢~~ 95¢ per hour per child in group day care homes and ~~85¢ 90¢~~ \$1.00 per hour per child in day care centers up to a maximum of a full day or night care rate.

Subsections (2)(i) through (2)(k) remain as proposed.

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AUTH: Sec. 53-4-212 and 53-4-503 MCA

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

4. The Department has thoroughly considered all commentary received:

COMMENT: The day care hourly rates are below market value. It was recommended that the hourly rate be raised to \$1.00 per hour to encourage day care providers to accept children for part-time care rather than encouraging full-time day care.

RESPONSE: The department agrees with this comment and has increased the hourly rates to be more consistent with the full-time care rates.

COMMENT: The present policy of the department which specifies that the department will pay for a child for up to 15 days of absences per year should be discontinued.

RESPONSE: This policy was adopted to assure that day care operators will hold spaces for children who need protective services day care even if they miss a few days. Because the department is working with the parent on improving parental skills in these cases, it is important to keep the space available for the child even if the parent should fail to bring the child to day care for a few days. Prior to instituting this policy, the day care operators were not holding spaces for children who needed protective services day care if they missed a few days of care because the day care provider preferred having a paying customer fill the vacancy. This policy will not be changed at this time.

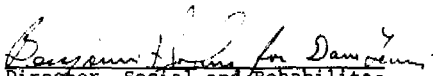
COMMENT: The regulations should specify that the rates set by the department are the maximum the State will pay. If day care providers charge their private paying parents less, then that lower rate should be charged to the State as well.

RESPONSE: The department agrees with this comment and a change has been made in the Rules.

COMMENT: The definition of full-time care is currently defined as five hours per day. The definition for full-time care should be changed to six hours per day.

RESPONSE: This comment is outside the scope of these proposed rules. The definitional section is contained in a rule which is not the subject of this Notice of Proposed Rulemaking. Any changes to the definition section would have to be made by a separate Notice of Proposed Rulemaking. Changes to other parts of the day care regulations are being considered by the department. This comment will be considered by the department

at the time the department proposes amendments to other portions of the day care regulations. No change has been made in these final rules.


Director, Social and Rehabilitation Services

Certified to the Secretary of State July 1, 1985.

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

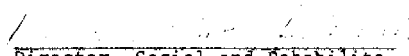
In the matter of the amendment) NOTICE OF THE AMENDMENT OF
of Rule 46.10.403 pertaining) RULE 46.10.403 PERTAINING TO
to AFDC assistance standards) AFDC ASSISTANCE STANDARDS

TO: All Interested Persons

1. On May 30, 1985, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rule 46.10.403 pertaining to AFDC assistance standards at page 589 of the 1985 Montana Administrative Register, issue number 10.

2. The Department has amended Rule 46.10.403 as proposed.

3. No written comment or testimony were received.



Director, Social and Rehabilitation Services

Certified to the Secretary of State _____ July 1 _____, 1985.

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

In the matter of the amend-	)	NOTICE OF THE AMENDMENT OF
ment of Rules 46.12.1201,	)	RULES 46.12.1201,
46.12.1202, 46.12.1203,	)	46.12.1202, 46.12.1203,
46.12.1204, 46.12.1205,	)	46.12.1204, 46.12.1205,
46.12.1206, 46.12.1207,	)	46.12.1206, 46.12.1207,
46.12.1208, and 46.12.1209	)	46.12.1208, AND 46.12.1209
pertaining to the reim-	)	PERTAINING TO THE REIM-
bursement for skilled	)	BURSEMENT FOR SKILLED
nursing and intermediate	)	NURSING AND INTERMEDIATE
care services	)	CARE SERVICES

TO: All Interested Persons

PLEASE NOTE: The Department of Social and Rehabilitation Services' rule notice published at page 823, 1985 Montana Administrative Register, issue number 12, amended several rules. Two corrections to that notice of adoption are necessary.

1. The comment-response section states at page 836:

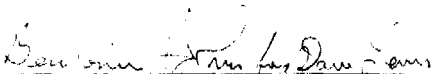
"COMMENT: Several commenters objected to the change in the date of rate issuance from the current July 1 date to August 1 of each year.

RESPONSE: The Department has withdrawn its proposed change and reinstated the original July 1 date."

This change was not reflected in the final notice. At page 828, ARM 46.12.1204(5) should have read:

(5) The averages, standard deviations, prorating for additions, ~~and--remodeling--factors-used-in--the-patient--care~~ ~~adjustment~~, area wage adjustment, or property rate are recalculated once a year, using the most currently available data prior to June 1. Revised rates based on the new calculations are issued by ~~July~~ August JULY 1 of each year.

2. At page 835, the comment-response section lists facilities currently enrolled in the program with less than 25 beds which would be "grandfathered" for purposes of computation of the operating rate. Two facilities which should be included on this list are Mineral County and Westside Rest Home.


Director, Social and Rehabilitation Services

Certified to the Secretary of State July 1, 1985.

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

In the matter of the repeal	)	NOTICE OF THE REPEAL OF
of Rules 46.25.302,	)	RULES 46.25.302, 46.25.310,
46.25.310, 46.25.320,	)	46.25.320, 46.25.340,
46.25.340, 46.25.701,	)	46.25.701, 46.25.702,
46.25.702, 46.25.704,	)	46.25.704, 46.25.709,
46.25.709, 46.25.710,	)	46.25.710, 46.25.712,
46.25.712, 46.25.713,	)	46.25.713, 46.25.723,
46.25.723, 46.25.739,	)	46.25.739, 46.25.745 AND
46.25.745 and 46.25.750; the	)	46.25.750; THE AMENDMENT OF
amendment of Rules	)	RULES 46.25.101, 46.25.705,
46.25.101, 46.25.705,	)	46.25.707, 46.25.720,
46.25.707, 46.25.720,	)	46.25.721, 46.25.726,
46.25.721, 46.25.726,	)	46.25.732, 46.25.738 AND
46.25.732, 46.25.738 and	)	46.25.755; AND THE ADOPTION
46.25.755; and the adoption	)	OF RULES 46.25.711,
of Rules 46.25.711,	)	46.25.722, 46.25.724,
46.25.722, 46.25.724,	)	46.25.725, 46.25.727,
46.25.725, 46.25.727,	)	46.25.728, 46.25.729,
46.25.728, 46.25.729,	)	46.25.730, 46.25.740,
46.25.730, 46.25.740,	)	46.25.741, 46.25.742,
46.25.741, 46.25.742,	)	46.25.743, 46.25.744,
46.25.743, 46.25.744,	)	46.25.751 and 46.25.752
46.25.751 and 46.25.752	)	PERTAINING TO THE GENERAL
pertaining to the general	)	RELIEF AND MEDICAL
relief and medical	)	ASSISTANCE PROGRAM
assistance program.)	

TO: All Interested Persons

1. On May 16, 1985, the Department of Social and Rehabilitation Services published notice of the proposed repeal of Rules 46.25.302, 46.25.310, 46.25.320, 46.25.340, 46.25.701, 46.25.702, 46.25.704, 46.25.709, 46.25.710, 46.25.712, 46.25.713, 46.25.723, 46.25.739, 46.25.745 and 46.25.750; the amendment of Rules 46.25.101, 46.25.705, 46.25.707, 46.25.720, 46.25.721, 46.25.726, 46.25.732, 46.25.738 and 46.25.755; and the adoption of rules pertaining to the general relief and medical assistance program at page 479 of the Montana Administrative Register, issue number 9.

2. The Department has repealed the rules as proposed.

3. The Department has amended Rules 46.25.707, 46.25.726 and 46.25.732 as proposed.

4. The Department has amended the following rules as proposed with the following changes:

46.25.101 DEFINITIONS For purposes of this chapter, the following definitions apply:

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Subsections (1) and (2) remain as proposed.

(3) "COUNTABLE INCOME AND RESOURCES" MEANS INCOME AND RESOURCES WHICH, IN ACCORDANCE WITH THE STATUTORY AUTHORITY AND THESE RULES, ARE TO BE UTILIZED IN DETERMINING ELIGIBILITY AND ASSISTANCE AMOUNTS.

(34) "Daily pro-rata of the monthly income level" means the monthly income level for the household size divided by 30 days and rounded down to the next whole dollar.

(245) "Department" means the Montana-state department of social and rehabilitation services.

(56) "Disability" means a diagnosable physical or mental condition that causes impairment.

(67) "Handicap" means the functional effect of the impairment on the person's ability to perform work.

(48) "General relief assistance" means a program of public financial assistance to provide basic necessities to those persons determined to be eligible.

(69) "General relief medical" means medical services provided to those persons determined eligible.

(910) "Household":

(a) "General relief assistance household" means all persons who, by choice, necessity, or legal relationship are mutually dependent upon each other for basic necessities and who reside in the same residence.

(b) "General relief medical household" means all persons who are legally responsible for each other and live in the same residence.

(1011) "Eligible members" are those persons who meet the non-financial criteria for general relief assistance or general relief medical in a financially eligible household.

(1112) "Impairment" means the effect of the disability on major life functions.

(1213) "Income" means the value of all property of any nature, earned, unearned, or in-kind, including benefits reasonably certain to be received by or available to a household during the month of the receipt of the income. This includes income from supplemental security income and aid to families with dependent children.

(1314) "Income reasonably certain to be received" means future earning potential based on employment history and assured receipt of unearned income.

(1415) "Available income" means income less applicable deductions for federal, state, FICA taxes and other nonvoluntary deductions.

(1516) "Indigent" or "misfortunate" means a person who is lacking the means, financial or otherwise, by which to prevent destitution for himself and others dependent upon him for basic necessities and who is otherwise eligible. The term does not include an able-bodied person under the age of 50 years unless that person has dependent minor children living in the household.

(17) "Infirm" means the condition of a person who is diagnosed by a licensed medical practitioner and confirmed by an expert medical review to have a physical or mental disability HANDICAP that ~~totally~~ SIGNIFICANTLY impairs the person's ability to work. BE EMPLOYED.

(1718) "Lump-sum income" means a nonrecurring source of income received in a single payment by a household during any eligibility period, including but not limited to proceeds from a lawsuit, insurance settlement, inheritance, lump-sum retirement, veterans' or unemployment benefits; benefits received under the federal Social Security Act; prizes; and tax refunds.

(1819) "Nonresident" means a person who is a resident of another state or country or who is a transient with no established residence.

(1920) "Resource" means all real and personal property retained after the calendar month of its receipt and which the household or a member of the household has a legal right to sell or liquidate.

(2021) "Secure facility" means any facility in which a person may be lawfully held against his will by federal, state, or local authorities.

(2122) "Serious medical condition" means a physical condition that causes a serious health risk to a person and for which treatment is medically necessary. Diagnosis and determination of necessary treatment must be made by a licensed medical practitioner, and the department may confirm it through an expert medical review. Serious medical condition includes pregnancy and prenatal care.

(2223) "Substantial gainful work" means:

(a) the ability to perform work which is any task as described in the dictionary of occupational titles for which remuneration (monetary or in-kind) is commonly received; and

(b) if the federal minimum wage were paid for hours able to be worked during the month, monthly income would exceed the monthly income standard for a household of one.

AUTH: Sec. 53-2-201, 53-2-803 MCA and Sec. 19, Ch. 670, L. 1985 (HB 843)

IMP: Sec. 2, Ch. 670, L. 1985 (HB 843)

46.25.721 PROCEDURES-FOLLOWED-IN-PROCESSING APPLICATIONS
PROCESSING (i)--The-following-procedures-apply-to-all

~~applicants-for-general-relief;~~

~~(i)--Verified-by-the-applicant-and-documented-in-all cases-will-be;~~

~~(ii)--residency,-except-in-the-case-of-interstate-transients-or-migrants;~~

~~(iii)--property-transfers;~~

~~(iii)--employment-or-work-registration;~~

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~~(iv)---need,--and~~

~~(v)---income-and-resources.~~

(2) Eligibility determination will be made within 30 days of the application date and the applicant promptly WILL BE notified, in writing WITHIN A REASONABLE TIME AFTER THE DETERMINATION HAS BEEN MADE, of approval or disapproval and the basis for the determination.

~~(3)---Eligibility-for-general-relief-and-payment-amount will-be-redetermined-monthly.~~

~~(4)---General-relief-payments-shall-be-in-the-form-of-war-rant,--check,--or--vender-payment-directly--to--the-client-or vendor.~~

AUTH: Sec. 53-2-201, 53-2-803 MCA and Sec. 19, Ch. 670, L. 1985 (HB 843)

IMP: Sec. 4 and 12, Ch. 670, L. 1985 (HB 843)

46.25.755 EMERGENCY ASSISTANCE Subsection (1) remains as proposed.

(2) Emergency general assistance payments are limited to \$250 per assistance unit per year unless on exception to this rule is granted by the appropriate division administrator (economic assistance and/or community services) or designee, shall be provided to persons whose income and resources do not exceed the monthly income and resource standard but WHO are not otherwise eligible.

(3) Total funds expended for emergency general assistance per county per fiscal year will not exceed the department's budgeted allocation for that county. Emergency assistance shall be limited to the following:

(a) Transportation by the least expensive means available to assist the person to return to the county of residence or state of origin, OR NEAREST POINT OUT OF STATE WHERE THERE IS A DOCUMENTED LIKELIHOOD OF FINANCIAL SUPPORT OR EMPLOYMENT.

Subsection (3) (b) remains as proposed.

AUTH: Sec. 53-2-201, 53-2-803 MCA and Sec. 19, Ch. 670, L. 1985 (HB 843)

IMP: Sec. 7, Ch. 670, L. 1985 (HB 843)

5. The Department has amended Rule 46.25.705, FAIR HEARINGS, as proposed. However, a typographical error in the authorities was made in the proposed notice. The correct authority for this rule is:

AUTH: Sec. 53-2-201, 53-2-803 MCA and Sec. 19, Ch. 670, L. 1985 (HB 843)

IMP: Sec. 18, Ch. 670, L. 1985 (HB 843)

6. The Department has amended Rule 46.25.720 as proposed. However, a typographical error in the authorities

was made in the proposed notice. The correct authority for the above rule is:

AUTH: Sec. 53-2-201, 53-2-803 MCA and Sec. 19, Ch. 670, L. 1985 (HB 843)

IMP: Sec. 9 and 12, Ch. 670, L. 1985 (HB 843)

7. The Department has amended Rule 46.25.738, GENERAL RELIEF MEDICAL APPLICATION, as proposed. However, a typographical error in the authorities was made in the proposed notice. The correct authority for the above rule is:

AUTH: Sec. 53-2-201, 53-2-803 MCA and Sec. 19, Ch. 670, L. 1985 (HB 843)

IMP: Sec. 4, 5 and 12, Ch. 670, L. 1985 (HB 843)

8. The Department has adopted Rules 46.25.727, MONTHLY INCOME AND RESOURCE STANDARD FOR GENERAL RELIEF ASSISTANCE; 46.25.742, PERIODS OF ELIGIBILITY FOR GENERAL RELIEF MEDICAL; and 46.25.752, SCOPE OF GENERAL RELIEF MEDICAL ASSISTANCE as proposed.

9. The Department has adopted the following rules as proposed with the following changes:

46.25.711 CONDITIONS OF ELIGIBILITY (1) General relief assistance for basic necessities will be provided, if otherwise eligible, to the following CATEGORIES:

- (a) persons 50 years of age and older;
- (b) persons with dependent minor children; or
- (c) infirm persons.

(2) General relief assistance will be provided for three months in any twelve-month period to able-bodied persons between 35 and 49 years of age WITHOUT DEPENDENT MINOR CHILDREN.

(3) General relief assistance will not be provided to persons in the following categories:

- (a) able-bodied PERSONS under 35 years of age without dependent minor children;
- (b) institutionalized PERSONS; or
- (c) incarcerated PERSONS.

(4) General relief medical will not be provided to persons in the following categories:

- (a) institutionalized PERSONS;
- (b) incarcerated PERSONS.

AUTH: Sec. 53-2-201, 53-2-803 MCA and Sec. 19, Ch. 670, L. 1985 (HB 843)

IMP: Sec. 4, 5 and 10, Ch. 670, L. 1985 (HB 843)

RULE 46.25.725 INCOME (1) All prospective income reasonably certain to be received by the household during the month of eligibility must be considered when determining eligibility. Available COUNTABLE income and resources must be used to meet basic necessities before general relief assistance will be granted.

Subsections (2) through (2) (c) remain as proposed.

AUTH: Sec. 53-2-201, 53-2-803 MCA and Sec. 19, Ch. 670, L. 1985 (HB 843)

IMP: Sec. 4, Ch. 670, L. 1985 (HB 843)

46.25.728 INCOME AND RESOURCE COMPUTATION (1) Income and resources of all household members will be considered when determining eligibility and grant-award ASSISTANCE amount.

(a) Countable income and resources of all household members will be deducted from the monthly income standard for a household of the same size to determine the grant--award ASSISTANCE AMOUNT. The grant--award ASSISTANCE AMOUNT shall not exceed the monthly income standard amount for the number of eligible members.

(b) Households with countable income and resources in excess of the monthly income standard for a household of the same size are ineligible for general relief assistance.

(2) Grant ASSISTANCE amount computation:

(a) For an eligibility period that covers a full calendar month the grant--award ASSISTANCE AMOUNT shall be calculated by deducting countable income and resources from the monthly income standard for the eligible household members.

(b) For the calendar month in which the period of eligibility begins or ends, the grant ASSISTANCE amount will be prorated by dividing the grant ASSISTANCE amount as determined in (2)(a) of this rule by 30 to determine daily pro-rata amount. The pro-rata amount is multiplied by the number of days in the month the household is eligible for assistance.

(c) For computing (2)(a) and (b) above, the product will be rounded down to the next whole dollar.

(3) For all eligible persons 50 years of age or older and persons with minor dependent children, the grant ASSISTANCE amount is determined in the month of application as specified in (2)(b) of this rule and thereafter as specified in (2)(a) of this rule.

(4) For all eligible persons 35-49 years of age, the grant ASSISTANCE amounts in the month of application and the final month are determined as specified in (2)(b) of this rule and all other months are determined as specified in (2)(a) of this rule.

AUTH: Sec. 53-2-201, 53-2-803 MCA and Sec. 19, Ch. 670,
L. 1985 (HB 843)

IMP: Sec. 4, 10 and 15, Ch. 670, L. 1985 (HB 843)

46.25.729 INTERIM ASSISTANCE AND APPLICATION FOR OTHER
BENEFITS PUBLIC ASSISTANCE PROGRAMS

(1) ~~If~~ Other federal or state programs of assistance THAT are reasonably available to meet the needs of a household, ~~an applicant~~ must ~~apply~~ BE APPLIED for BEFORE ~~those programs~~ before general relief assistance may be provided. A household shall be provided general relief ~~assistance~~ ~~or general relief medical~~ after initial application for other assistance programs. As a condition of eligibility the applicant must pursue the entire administrative appeal process OF THOSE OTHER PROGRAMS APPLIED FOR.

Subsections (2) and (3) remain as proposed.

AUTH: Sec. 53-2-201, 53-2-803 MCA and Sec. 19, Ch. 670,
L. 1985 (HB 843)

IMP: Sec. 8, Ch. 670, L. 1985 (HB 843)

RULE 46.25.730 PERIODS OF ELIGIBILITY FOR GENERAL RELIEF
ASSISTANCE

Subsections (1) through (4)(b) remain as proposed.

AUTH: Sec. 53-2-201, 53-2-803 MCA and Sec. 19, Ch. 670,
L. 1985 (HB 843)

IMP: Sec. 5 and 10, Ch. 670, L. 1985 (HB 843)

46.25.740 NOTIFICATION FOR GENERAL RELIEF MEDICAL

(1) Notification of eligibility for general relief medical will be the same as for general relief assistance AS PROVIDED IN ARM 46.25.721.

AUTH: Sec. 53-2-201, 53-2-803 MCA and Sec. 19, Ch. 670,
L. 1985 (HB 843)

IMP: Sec. 4, Ch. 670, L. 1985 (HB 843)

46.25.741 APPLICATION FOR OTHER BENEFITS RESOURCES

(1) Payment for services ~~under--this--rule~~ will be provided only after all other available resources have been identified and used. Such resources include, but are not limited to health and accident insurance; veteran's administration and hospital; industrial accident benefits; Montana medicaid program; and other liable third parties.

AUTH: Sec. 53-2-201, 53-2-803 MCA and Sec. 19, Ch. 670, L. 1985 (HB 843)

IMP: Sec. 8 and 12, Ch. 670, L. 1985 (HB 843)

46.25.743 RESOURCES FOR GENERAL RELIEF MEDICAL (1) All ~~nonexcluded~~ COUNTABLE resources of the household must be used to offset medical expenses. Excluded resources are found at ARM 46.25.726.

AUTH: Sec. 53-2-201, 53-2-803 MCA and Sec. 19, Ch. 670, L. 1985 (HB 843)

IMP: Sec. 4 and 5, Ch. 670, L. 1985 (HB 843)

10. The Department has adopted Rule 46.25.722, PROVISIONS AND VERIFICATION OF ELIGIBILITY INFORMATION, as proposed. However, a typographical error in the authorities was made in the proposed notice. The correct authority for this rule is:

AUTH: Sec. 53-2-201, 53-2-803 MCA and Sec. 19, Ch. 670, L. 1985 (HB 843)

IMP: Sec. 4, Ch. 670, L. 1985 (HB 843)

11. The Department has adopted Rule 46.25.724, DETERMINATION OF INFIRMITY, as proposed. However, a typographical error in the authorities was made in the proposed notice. The correct authority for this rule is:

AUTH: Sec. 53-2-201, 53-2-803 MCA and Sec. 19, Ch. 670, L. 1985 (HB 843)

IMP: Sec. 5, Ch. 670, L. 1985 (HB 843)

12. The Department has adopted Rule 46.25.744, INCOME FOR GENERAL RELIEF MEDICAL, as proposed. However, a typographical error in the authorities was made in the proposed notice. The correct authority for this rule is:

AUTH: Sec. 53-2-201, 53-2-803 MCA and Sec. 19, Ch. 670, L. 1985 (HB 843)

IMP: Sec. 4 and 5, Ch. 670, L. 1985 (HB 843)

13. The Department has adopted Rule 46.25.751, SELECTION OF MEDICAL PROVIDER, as proposed. However, a typographical error in the authorities was made in the proposed notice. The correct authority for this rule is:

AUTH: Sec. 53-2-201, 53-2-803 MCA and Sec. 19, Ch. 670, L. 1985 (HB 843)

IMP: Sec. 6, Ch. 670, L. 1985 (HB 843)

14. The Department has decided to add the provision to ARM 46.25.755 to assist these persons to obtain employment or family assistance so that they would not be dependent on general assistance for financial support. Numerous changes to other proposed rule adoptions and amendments have been made to conform the rules more precisely to the statute and attain a greater sense of uniformity in the wording of the rules.

15. The Department has thoroughly considered all verbal and written commentary received:

COMMENT: Greg Petesch and Mary McCue, attorneys for the Montana Administrative Code Committee, raised two issues about the rules as originally proposed in the Notice of Public Hearing, MAP Notice No. 46-2-436. They recommended the definition of "infirm" in ARM 46.25.101 be amended to conform more precisely to the statutory definition in HB 843. Additionally, they made several suggestions to correct typographical and other errors in the authorities.

RESPONSE: ARM 46.25.101(16) was amended to conform precisely to the statutory definition of "infirm" in HB 843.

The comments regarding errors in the authorities were incorporated and changes were made accordingly. None of these amendments to the authorities resulted in a substantive change in the rules as proposed.

COMMENT: Is transportation assistance provided to those eligible for General Relief?

RESPONSE: General Relief assistance will be provided by flat grant to be used at the discretion of the recipient to satisfy the need for basic necessities including transportation.

COMMENT: "Household" is defined in ARM 46.25.101 as (a) "General Relief Assistance Household" and (b) "General Relief Medical Household". Why are these household definitions different? How will the difference affect applicants and recipients?

RESPONSE: The difference between definition (a) and (b) is that (a) pertains to General Relief assistance and (b) is for General Relief Medical.

The household definition for General Relief assistance mandates that anyone who resides in the residence will have their income and resources counted in determining eligibility for any applicant within the household.

The household definition for General Relief Medical only requires the consideration of resources and income for legally responsible relatives (spouse for spouse, parent for child, adult child for indigent parent).

COMMENT: In the definition of "income", would LIEAP benefits be included? What other in-kind benefits are anticipated to be covered by this definition?

RESPONSE: Low Income Energy Assistance will not be counted as income. In-kind income is the receipt of goods or services in lieu of cash. Such income may be provision of rent or food by a third party.

COMMENT: What is the process intended here to determine infirmity?

RESPONSE: The process and standards to determine if an applicant for General Relief assistance is infirm are found in Rule III, Determination of Infirmity, on page 9 of the proposed rules. A licensed medical practitioner chosen and provided by the Department will determine infirmity after examination of the applicant. That determination will then be reviewed by a second licensed medical practitioner on contract with the Department.

COMMENT: What are the residency requirements for General Relief assistance?

RESPONSE: There are no residency requirements.

COMMENT: Who determines whether fraud or mistake occurred and what actions result?

RESPONSE: The Department will determine if client or administrative mistake has occurred as it does for all other programs it administers. For fraud, the Department will pursue legal action according to established administrative rule. If mistake is established then repayment will be required. If fraud is proven, then a penalty period will be set and a repayment will be mandated.

COMMENT: In the exclusion of resources, what appurtenant land is excluded with the home?

RESPONSE: Excluded appurtenant property is that which is necessary to the maintenance and operation of the home, but not to exceed 10 acres.

COMMENT: What is the scope of eligibility for emergency assistance?

RESPONSE: House Bill 843 is specific on the categories of aid provided in emergency situations. The individual must be income and resource eligible to receive emergency aid. This

assistance is intended to be limited as it is provided to those who are not otherwise eligible.

COMMENT: Do the age requirements allow eligibility for individuals in their 49th year?

RESPONSE: Those able-bodied persons 35 through 49 years of age who have no dependent children are potentially eligible for General Relief assistance for 3 months in any 12 month period.

COMMENT: Is the definition of infirmity as strict as the requirements for disability under Social Security regulations?

RESPONSE: The Department's definition of disability does not set limits as severe on the disabling condition as those of the Social Security Administration, nor do they require a 12-month durational standard for the disabling condition. The Department's durational standard is 30 days.

COMMENT: Proposed Rule IV, Income, applies the same disqualification for lump-sum as the AFDC and SSI programs. Persons should not be denied eligibility for all assistance programs when the income is used in a responsible manner.

RESPONSE: All available income must be used to meet needs before General Relief assistance is granted. This rule addresses only lump sum income received while a person is receiving general relief benefits and directs that, just as in AFDC, the income is to be used to meet needs at the same level as the benefit standard.

Use of lump sum income to pay medical bills, or a change in household size, allows for a recalculation of the ineligible period.

COMMENT: Subsection (2) of proposed Rule VII, Interim Assistance and Application for Other Benefits, requires repayment of assistance received. Does this include medical costs paid on behalf of a recipient?

RESPONSE: No, repayment of General Relief Medical is not required.

COMMENT: Proposed Rule VIII, Periods of Eligibility, contains a requirement that able-bodied persons 35 through 49 years old wait 60 days prior to receiving benefits. This appears to be a residency requirement.

RESPONSE: The waiting period is uniformly applied to all parties and consequently is not a residency requirement.

COMMENT: Is proposed Rule X intended to force an applicant for General Relief assistance to complete applications and appeals through other programs before receiving assistance?


RESPONSE: No, Emergency General Relief benefits may be issued after application for other programs when an applicant agrees to repay an amount equal to the interim assistance if found eligible for other benefits.

COMMENT: In proposed Rule XIII, Income for General Relief Medical, the 12-month forecast of income for General Relief Medical is too long. How do you determine "anticipated income"?

RESPONSE: The 49th Montana Legislature prescribed both the period and the "reasonably certain to be received test" for prospective income. That measure of income appears to best test a person's actual income potential rather than a lesser test which would tend to make otherwise ineligible persons with seasonal income variations eligible.

COMMENT: Proposed Rule XV, Scope of General Relief Medical Assistance, is unclear and does not give notice to applicants about what might be available and how that decision would be made.

RESPONSE: Medical care for a serious medical condition is allowed in the amount and scope of the Medicaid program. Just as for that program, the Department has the authority to utilize a professional medical review to determine the appropriateness of services. The services are described in totality at Title 46, chapter 12 of the Administrative Rules of Montana.


Director, Social and Rehabilitation Services

Certified to the Secretary of State July 1, 1985.

VOLUME NO. 41

OPINION NO. 18

CITIES AND TOWNS - Eligibility of volunteer firefighters for group health insurance;
EMPLOYEES, PUBLIC - Eligibility of volunteer firefighters for group health insurance;
FIRE DEPARTMENTS - Eligibility of volunteer firefighters for group health insurance;
HEALTH - Eligibility of volunteer firefighters for group health insurance;
INSURANCE - Eligibility of volunteer firefighters for group health insurance;
MONTANA CODE ANNOTATED - Title 2, chapter 18, part 7, Title 7, chapter 33, parts 41 and 42, Title 39, chapter 3, sections 2-18-701, 2-18-702, 2-18-703, 2-18-704, 7-33-4130;
ADMINISTRATIVE RULES OF MONTANA - Sections 24.16.1001, 24.16.1005(7).

- HELD:
1. Cities of the third class are not required to provide group health and life insurance for volunteer firefighters.
 2. Volunteer firefighters who do not work more than 20 hours per week are not eligible to belong to the group health insurance plan pursuant to Title 2, chapter 18, part 7, MCA.

18 June 1985

Joseph M. Bradley
City Attorney
P.O. Box 10
Laurel MT 59044

Dear Mr. Bradley:

You have requested my opinion on the following two questions:

1. In a city of the third class, may the members of the volunteer fire department be insured by the city's group medical, health, and life insurance contracts

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under section 2-18-702, MCA, and must the city contribute a portion of each firefighter's premium under section 2-18-703, MCA?

2. If the city is precluded by state law from contributing to the group insurance premiums for members of the volunteer fire department, may such firefighters still participate in the city's group insurance plan by paying their own respective premiums in full, with no contribution from the city?

Fire departments are regulated by Title 7, chapter 33, parts 41 and 42, MCA. Section 7-33-4130, MCA, provides as follows:

- (1) Cities of the first and second class, if they provide insurance for other city employees under Title 2, chapter 18, part 7, shall:

- (a) provide the same insurance to their respective firefighters;

- (b) pay no less than the premium rate in effect as of July 1, 1980, for insurance coverage for firefighters and their dependents notwithstanding the provisions of Title 2, chapter 18, part 7;

- (c) provide for collective bargaining or other agreement processes to negotiate additional premium payments beyond the amount guaranteed by subsection (1)(b).

- (2) Those incorporated cities and towns which require additional funds to finance the provisions of this section may levy on property, by the amount required to meet these provisions, a tax not to exceed 2 mills on the dollar upon all property in the respective city or town. This levy shall be collected in the same manner and at the same time as other taxes are levied.

This statute does not mention cities of the third class. If the Legislature had intended to require cities of the third class to provide insurance for their firefighters, it would not have limited the statute to first and second class cities. I cannot insert what has been omitted. In my opinion, cities of the third class are not required to provide group health and life insurance for volunteer firefighters.

Your second question is whether the volunteer firefighters may individually participate in the city's group insurance plan by paying their own premiums in full with no contribution by the city. The City of Laurel has established a group insurance plan pursuant to sections 2-18-701 to 704, MCA. According to section 2-18-701(2), MCA, a part-time permanent employee is eligible to participate in the group insurance plan if he is "scheduled to work a regular schedule of 20 hours or more a week." The Laurel volunteer firefighters are "on call" twenty-four hours a day and must respond, if possible, to every fire alarm. The time actually spent in training, attending department meetings, and fighting fires has never totaled 20 hours a week. Your question is whether the "on call" status of the firefighters qualifies them as having a regularly scheduled work period of 20 hours or more.

The Department of Labor and Industry has promulgated rules pursuant to the Minimum Wage and Overtime Act, Title 39, chapter 3, MCA. The rules set the guidelines to be utilized in determining what constitutes "working time." § 24.16.1001, ARM. The subject of "on call" time is discussed in § 24.16.1005(7), ARM, as follows:

On call time. An employee who is required to remain on call on the employer's premises or so close thereto that he cannot use the time effectively for his own purposes is working while "on call". An employee who is not required to remain on the employer's premises but is merely required to leave word at his home or with company officials where he may be reached is not working while on call.

As you have described the practice in Laurel, every firefighter is expected to respond when an alarm is sounded unless it is impossible for him to do so. However, the firefighters are not required to remain

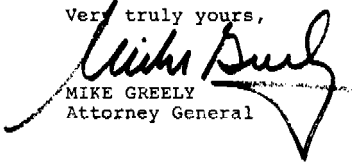
somewhere particular, or so close thereto that they cannot use the time effectively for their own purposes. In this situation, the "on call" status of volunteer firefighters is not considered work time, and cannot be used to augment the work period for purposes of section 2-18-701, MCA.

I conclude that volunteer firefighters working less than 20 hours per week do not fit within the definition of "employee" found in section 2-18-701, MCA, and are therefore excluded from the group insurance plan of a third class city established pursuant to Title 2, chapter 18, part 7, MCA. Because they are not eligible to belong to the group, they are not permitted to participate by paying their own premiums, unless they fall within the class of eligible retirees or dependents defined by section 2-18-704, MCA.

THEREFORE, IT IS MY OPINION:

1. Cities of the third class are not required to provide group health and life insurance for volunteer firefighters.
2. Volunteer firefighters who do not work more than 20 hours per week are not eligible to belong to the group health insurance plan pursuant to Title 2, chapter 18, part 7, MCA.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 41

OPINION NO. 19

COUNTY COMMISSIONERS - Responsibilities with regard to minutes and records of their minutes;
COUNTY OFFICERS AND EMPLOYEES - Duty of clerk and recorder to record minutes of board of commissioners into minute book;
MONTANA CODE ANNOTATED - Sections 7-4-2611, 7-5-2107, 7-5-2123, 7-5-2129 to 7-5-2131.

HELD: The county clerk and recorder is not required to attend the meetings of the board of county commissioners and take the original notes of the proceedings, unless the board so requests. She is required only to record the minutes into the minute books as a permanent record.

21 June 1985

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

Dear Mr. Connor:

You requested an opinion concerning:

Whether the county clerk and recorder or her designated agent is required to attend and take original notes of the proceedings at the meetings of the board of county commissioners.

Section 7-4-2511, MCA, sets forth the duties of the clerk and recorder. It provides in pertinent part:

(1) The county clerk of any county is also clerk of the county commissioner's and ex officio recorder. Any duty imposed by law upon such officer, either as county clerk, clerk of the county commissioners, or recorder, shall be performed by the county clerk, and any official act performed or certified by the county clerk shall be as valid and effectual as if performed and

certified to by him as clerk of the county commissioners or as recorder.

(2) The county clerk must ...

....

(b) record all the proceedings of the board;

....

(d) record the vote of each member on any question upon which there is a division or at the request of any member present;

....

(1) keep such other records and books and perform such other duties as are prescribed by law or by rule or order of the board.

The proceedings of the board are to be recorded in a "Minute Book" which the board of county commissioners is required to keep. § 7-5-2129, MCA. "The records must be signed by the chairman and the clerk." § 7-5-2130, MCA. "The books, records, and accounts must be kept at the office of the clerk, open at all times for public inspection free of charge." § 7-5-2131, MCA. Finally, the board must publish in a newspaper a fair summary of the minutes and records of all of its proceedings. § 7-5-2123, MCA.

Because section 7-4-2611, MCA, requires the clerk and recorder to record the proceedings of the board, the question that arises is what is meant by the term "record." This term is not defined in the Montana Code Annotated. Black's Law Dictionary 1437 (4th ed. 1951) defines the verb "record" as follows:

[To] enter in a book or on parchment, for the purpose of preserving authentic evidence of ... or to register or enroll. To transcribe a document, or enter the history of an act or series of acts, in an official volume, for the purpose of giving notice of the same, of furnishing authentic evidence, and for preservation. [Citing authority.]

Other jurisdictions, in addressing various issues pertaining to officials' duties to record information, similarly define the verb "record" as to copy or transcribe the information into some permanent book. State v. Noren, 621 P.2d.1224, 1225 (Utah 1980); Beatty v. Hughes, 143 P.2d 110, 111 (Cal. 1943).

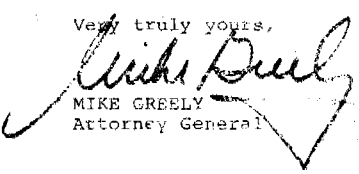
The responsibility of the clerk and recorder, as it relates to the proceedings of the board of county commissioners, is to record the minutes of the proceedings into the minute book maintained pursuant to law, and to make the book available for public examination upon request. The board is responsible for the preparation, content, and publication of the minutes. The board may employ its own personnel to take the original notes of the proceedings during the meetings pursuant to section 7-5-2107, MCA.

I conclude, therefore, that section 7-4-2611, MCA, requires the clerk and recorder only to record the minutes of the proceedings into the minute book; it does not require her to actually attend the meetings and take the original notes.

THEREFORE, IT IS MY OPINION:

The county clerk and recorder is not required to attend the meetings of the board of county commissioners and take the original notes of the proceedings, unless the board so requests. She is required only to record the minutes into the minute book as a permanent record.

Very truly yours,



MIKE GREELY
Attorney General

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 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.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1984 and 1985 Montana Administrative Registers.

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