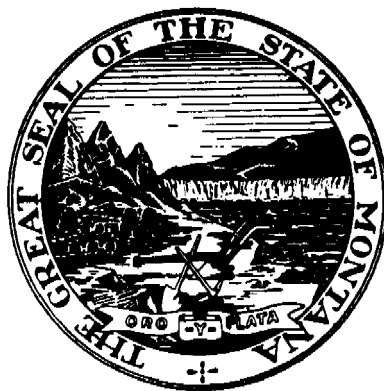


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# **MONTANA ADMINISTRATIVE REGISTER**

1985 ISSUE NO. 2  
JANUARY 31, 1985  
PAGES 35-140



# MONTANA ADMINISTRATIVE REGISTER

## ISSUE NO. 2

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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

### TABLE OF CONTENTS

<u>NOTICE SECTION</u>	<u>Page Number</u>
<u>COMMERCE, Department of, Title 8</u>	
8-36-10 (Board of Optometrists) Notice of Proposed Amendment - Fee Schedule. No Public Hearing Contemplated.	35
8-111-3 (Montana Board of Housing) Notice of Public Hearing. Annual Policy Statement Report - Housing, Development, and Low Income Housing Assistance for Issuing Qualified Mortgage Bonds and Mortgage Credit Certificates.	36-37
<u>EDUCATION, Title 10</u>	
10-3-80 (Board of Public Education) Notice of Public Hearing on Proposed Amendment - Teaching Assignments.	38-44
10-3-88 (Board of Public Education) Notice of Public Hearing on Proposed Amendment - Accreditation Period.	45
10-3-89 (Board of Public Education) Notice of Public Hearing on Proposed Amendment - Class 3 Administrative Certificate - Provisional Certificate.	46-51
10-3-90 (Board of Public Education) Notice of Proposed Amendment - General - Inspections. No Public Hearing Contemplated.	52-53
10-3-91 (Board of Public Education) Notice of Public Hearing on Proposed Adoption - Opportunity and Educational Equity.	54
-i-	2-1/31/85

Page Number

LIVESTOCK, Department of, Title 32

32-2-105 Notice of Proposed Amendment - Change  
of Ownership Test. No Public Hearing  
Contemplated. 55-56

32-2-106 Notice of Proposed Adoption -  
Brucellosis Vaccination of Imported Cattle  
Under 4 Months of Age. No Public Hearing  
Contemplated. 57-58

REVENUE, Department of, Title 42

42-2-282 Notice of Proposed Amendment and  
Adoption - Tax Treatment of Interest Earned on  
Federal Obligations. No Public Hearing  
Contemplated. 59-61

SOCIAL AND REHABILITATION SERVICES, Department of, Title 46

46-2-427 Notice of Public Hearing on the Proposed  
Repeal and Adoption - Licensing of Child Placing  
Agencies. 62-78

46-2-428 Notice of Public Hearing on Proposed  
Adoption - Licensing of Adult Foster Homes. 79-92

46-2-429 Notice of Public Hearing on Proposed  
Amendment - Restriction of Access to Medical  
Services. 93-95

46-2-430 Notice of Public Hearing on Proposed  
Amendment - Medical Assistance, Definitions. 96-97

46-2-431 Notice of Public Hearing on Proposed  
Amendment - Services Not Provided by the  
Medicaid Program. 98-99

RULE SECTION

ADMINISTRATION, Department of, Title 2

NEW Administration of Annual Vacation Leave. 100-106  
AMD  
REP

NEW (Workers' Compensation Judge) Attorney  
AMD Fees - Petition for New Trial or Reconsideration  
of Attorney Fee Award. 107

	<u>Page Number</u>
<u>COMMERCE, Department of, Title 8</u>	
AMD (Board of Horse Racing) Penalties, Hearings and Appeals	108
AMD (Board of Nursing) Educational Requirements and Other Qualifications Applicable to Specialty Areas of Nursing - Re-examination - Registered Nurse - Re-examination - Practical Nurse.	108
AMD (Board of Social Work Examiners) Fee Schedule.	108-109

EDUCATION, Title 10

AMD (Superintendent of Public Instruction) Special Education Evaluation Procedures and The Child Study Team Process.	110
NEW (Superintendent of Public Instruction) Additional Procedures for Evaluating Specific Learning Disabilities.	110
AMD (Board of Public Education) Minimum Units for Graduation	111
AMD (Board of Public Education) Correspondence Extension and In-Service Credits - Reinstatement - Class 2 Standard Teaching Certificate.	112

REVENUE, Department of, Title 42

NEW Waiver of Penalty and Interest by the Department of Revenue.	113-114
---	---------

INTERPRETATION SECTION

Opinions of the Attorney General

1 Municipalities - Disqualification of Member on Local Urban Renewal Agency Board of Commissioners Following Change of Residency Outside Municipality - Public Officers - Residency - Urban Renewal Agencies.	115-118
2 Elections - The Act of Registering to Vote by Military Personnel as Evidence of State Residency for Purpose of Determining Tax Exemption - Military Personnel - Residence - Taxation - Soldiers' and Sailors' Civil Relief Act of 1940.	119-123
-iii-	2-1/31/85

	<u>Page Number</u>
3 Hotels and Lodging Establishments - Applicability of Subdivision and Platting Act to Renting Hotel Rooms - Housing - Application of Subdivision and Platting Act to Duplexes or Second Family Dwellings Constructed on Single Parcel of Land - Subdivision and Platting Act - Applicability to Duplexes, Hotels, Office Buildings and Second Family Dwellings.	124-130

#### SPECIAL NOTICE AND TABLE SECTION

Functions of the Administrative Code Committee.	131
How To Use ARM and MAR.	132
Accumulative Table.	133-140

STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE BOARD OF OPTOMETRISTS

In the matter of the proposed ) NOTICE OF AMENDMENT OF  
amendment of 8.36.409 con- ) 8.36.409 FEE SCHEDULE  
cerning the fee schedule. )

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On March 2, 1985, the Board of Optometrists proposes to amend 8.36.409 concerning the fee schedule.

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

"8.36.409 FEE SCHEDULE

(1) Original certificate of registration	<del>550.00</del>	\$90.00
(2) Annual renewal	<del>55.00</del>	<u>90.00</u>
(3) Penalty for late renewal	<del>45.00</del>	<u>90.00</u>
(4) Application for examination	<del>75.00</del>	<u>125.00</u>
(5) Reciprocity application	<del>160.00</del>	<u>200.00</u>
(6) Copies of documents, <del>includes lists</del>	<del>7.50</del>	<u>10.00</u> "

Auth: 37-1-134, 37-10-202, MCA Imp: 37-1-134, 37-10-302, 303, 307, MCA

3. The board is proposing the amendment to set fees commensurate with costs of administering the program as required by section 37-1-134, MCA. These are the fees necessary to cover each program area cost.

4. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Optometrists, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than February 28, 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 Optometrists, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than February 28, 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 19 based on the 195 licensees in Montana.

BOARD OF OPTOMETRISTS

ALVERNE S. KAUTZ, O.D.

PRESIDENT

BY: Keith L. Colbo  
KEITH L. COLBO, DIRECTOR  
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, January 21, 1985.  
MAR NOTICE NO. 8-36-10

2-1/31/85

STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE MONTANA BOARD OF HOUSING

In the matter of the publishing of )  
an annual policy statement report by)  
the Montana Board of Housing with )  
respect to housing, development, )  
and low income housing assistance )  
which such board will follow for )  
issuing qualified mortgage bonds )  
and mortgage credit certificates. )

NOTICE OF  
PUBLIC HEARING

TO: All interested persons.

1. On February 21, 1985, at 10 o'clock a.m., a public hearing will be held in the auditorium of the Scott Hart Building, 303 North Roberts Street, Helena, Montana, to consider the publishing of an annual policy statement report by the Montana Board of Housing (the "board") with respect to housing, development, and low income housing assistance which the board will follow for issuing qualified mortgage bonds and mortgage credit certificates.

2. The proposed annual policy statement report does not replace or modify any section currently found in the Administrative Rules of Montana.

3. (a) Recent amendments of Section 103A of the Internal Revenue Code provide in substance that the Governor, as elected representative of the Montana Board of Housing, shall publish and file with the Secretary of the U.S. Treasury a report which includes (i) a statement of the policies with respect to housing development and low-income housing assistance which the board is to follow in issuing qualified mortgage bonds and mortgage credit certificates and (ii) an assessment of such governmental unit during the preceding 1-year period preceding the date of the report with (I) the statement of policy on qualified mortgage bonds and mortgage credit certificates that was set forth in the previous report, if any, of an applicable elected representative of such governmental unit, and (II) the intent of Congress that state and local governments are expected to use their authority to issue qualified mortgage bonds and mortgage credit certificates to the greatest extent feasible (taking into account prevailing interest rates and conditions in the housing market) to assist lower income families to afford home ownership before assisting higher income families.

(b) A copy of the entire proposed annual policy statement report may be obtained by contacting Jay F. McLeod, the administrator of the Montana Board of Housing, 2001 Eleventh Avenue, Helena, Montana.

4. The board is proposing to publish an annual policy statement report to comply with the United States Tax Reform Act of 1984, Public Law No. 98-369.

2-1/31/85

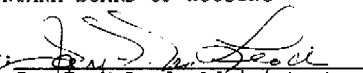
MAR NOTICE NO. 8-111-3

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 Jay F. McLeod, the administrator of the Montana Board of Housing, 2001 Eleventh Avenue, Helena, Montana 59620, no later than February 28, 1985.

6. Jay F. McLeod, the administrator of the Montana Board of Housing has been designated to preside over and conduct the hearing.

7. The authority of the board to make the proposed annual policy statement report is based on section 90-6-104, MCA, and the report implements section 90-6-106, MCA.

MONTANA BOARD OF HOUSING

By:   
Jay F. McLeod, Administrator

Certified to the Secretary of State January 18, 1985.



BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the amendment ) NOTICE OF PUBLIC HEARING ON  
of Rule 10.55.303 Teaching ) PROPOSED AMENDMENT OF RULE  
Assignments ) 10.55.303 TEACHING ASSIGNMENT

TO: All Interested Persons.

1. On February 21, 1985, at 10:30 a.m., a public hearing will be held in the Board of Regents Conference Room, 33 South Last Chance Gulch, Helena, Montana 59620 in the matter of the amendment of rule 10.55.303 Teaching Assignments.

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

10.55.303 TEACHING ASSIGNMENTS (1) Teachers shall be assigned at the levels and in the subjects for which their certificates are endorsed. Exceptions:

(a) Individuals serving in administrative training positions approved by the Board of Public Education.

(b) Teachers assigned in grade 7 or 8 who hold a secondary certificate may teach in subject areas for which they hold no endorsement if they have 15 quarter hour (10 semester) credits or of preparation in the assigned subject area. The 15 credits shall include a methods course in the teaching of that subject area appropriate to the grade levels.

(c) Teachers assigned in grades 5 or 6 in a departmentalized classroom or middle school, who hold a 5-12 secondary certificate, must be endorsed in the subjects they are teaching. A 5-12 certificate will not cover a 5 or 6 grade assignment in a self-contained classroom.

(d) Clarification for teaching assignments in grades 5 & 6 and 9-12.

<u>If you are teaching</u>	<u>You must be endorsed in:</u>	<u>Specific credit</u>
<u>in the following</u>	<u>(subject &amp;</u>	<u>requirement:</u>
<u>subjects:</u>	<u>code number)</u>	

<u>Art</u>	<u>Art (83 or 84)</u>
------------	-----------------------

<u>Business English</u>	<u>English (20) or</u>
	<u>Business Education</u>
	<u>(70, 71, or 72)</u>

<u>Business Law</u>	<u>Business Education</u>
	<u>(70, 71 or 72)</u>

<u>Business Mathematics</u>	<u>Mathematics (40) or</u>
	<u>Business Education</u>
	<u>(70, 71 or 72)</u>

<u>Business-General</u>	<u>Business Education</u>
	<u>(70, 71 or 72)</u>

<u>Business-Shorthand, Steno</u>	<u>Business Education</u>
	<u>(70)</u>

<u>Business-Typing</u>	<u>Business Education</u> <u>(70 or 71)</u>	
<u>Business-Book-keeping</u>	<u>Business Education</u> <u>(70, 71 or 72)</u>	
<u>Civics</u>	<u>Social Science (10)</u> <u>or Political Sci-</u> <u>ence (15) or His-</u> <u>tory-Political Sci-</u> <u>ence (17)</u>	<u>15 quarter credits in</u> <u>U. S. government if</u> <u>endorsed in (10)</u>
<u>Crafts</u>	<u>Art (83 or 84) or</u> <u>Industrial Arts (62)</u>	
<u>Dramatics</u>	<u>English (20) or</u> <u>Dramatics (22) or</u> <u>Speech-Drama (25)</u>	<u>15 quarter credits in</u> <u>drama if endorsed in</u> <u>(20)</u>
<u>Economics</u>	<u>Social Science (10)</u> <u>or Economics (12)</u> <u>or Economics-</u> <u>Sociology (16)</u>	<u>15 quarter credits in</u> <u>economics if endorsed</u> <u>in (10)</u>
<u>English-Language Arts</u>	<u>English (20)</u>	
<u>Geography</u>	<u>Social Science (10)</u> <u>or Geography (14)</u>	<u>15 quarter credits in</u> <u>geography if endorsed</u> <u>in (10)</u>
<u>Gifted and Talented</u>	<u>Appropriate subject</u> <u>area</u>	
<u>Government</u>	<u>Social Science (10)</u> <u>or Political Sci-</u> <u>ence (15) or His-</u> <u>tory-Political Sci-</u> <u>ence (17)</u>	<u>15 quarter credits in</u> <u>U.S. government if</u> <u>endorsed in (10)</u>
<u>Guidance</u>	<u>Guidance (94) or</u> <u>Guidance K-12 (67</u> <u>or 97)</u>	<u>30 quarter credits in</u> <u>guidance if not en-</u> <u>dorsed</u>
<u>Health</u>	<u>P.E. &amp; Health (91</u> <u>or 92) or Health</u> <u>(93)</u>	<u>15 quarter credits in</u> <u>health if endorsed in</u> <u>(91) or (92)</u>
<u>History</u>	<u>Social Science (10)</u> <u>or History-Politi-</u> <u>cal Science (17)</u>	<u>15 quarter credits in</u> <u>history if endorsed in</u> <u>(10)</u>

<u>Journalism</u>	<u>English (20) or Journalism (23)</u>	<u>At least 1 course in journalism if endorsed in (20)</u>
<u>Library</u>	<u>Library (24) or Library K-12 (67 or 26)</u>	
<u>Mechanical Drawing or Drafting</u>	<u>Industrial Arts (62)</u>	<u>6 quarter credits in mechanical drawing if endorsed in (62)</u>
<u>Music</u>	<u>Music (81 or 82)</u>	
<u>Native American Studies</u>	<u>Any endorsement</u>	<u>(Effective 1986, 15 quarter credits in Native American Studies if certified as a teacher at the level offered. The utilization of a qualified Native American resource person under the supervision of a certified teacher can be used in lieu of the 15 credit requirement.)</u>
<u>Physical Education</u>	<u>Physical Education (91 or 92)</u>	
<u>Problems of Democracy</u>	<u>Social Science (10) or Political Science (15) or History-Political Science (17)</u>	<u>15 quarter credits in government if endorsed in (10)</u>
<u>Psychology</u>	<u>Social Science (10) or Psychology (96)</u>	<u>15 quarter credits in psychology if endorsed in (10)</u>
<u>Reading</u>	<u>Reading K-12 (27) or English (20)</u>	<u>15 quarter credits in reading if endorsed in (20)</u>
<u>Science-General</u>	<u>Science (50) or any two science endorsements (51) through (56)</u>	
<u>Science-Biology</u>	<u>Science (50) or Biological Science (52) or Biology (55)</u>	<u>15 quarter credits in biology if endorsed in (50)</u>

<u>Science-Chemistry</u>	<u>Science (50) or Physical Science (51) or Biological Science (52) or Chemistry (54) or Biology (55)</u>	<u>15 quarter credits in chemistry if endorsed in (50), (51), (52) or (55)</u>
<u>Science-Earth</u>	<u>Science (50) or Earth Science (56)</u>	<u>15 quarter credits in earth science if endorsed in (50)</u>
<u>Science-Physical</u>	<u>Science (50) or Physical Science (51) or Chemistry (54) and Physics (53)</u>	<u>15 quarter credits in physical science if endorsed in (50)</u>
<u>Science-Physics</u>	<u>Science (50) or Physical Science (51) or Physics (53)</u>	<u>15 quarter credits in physics if endorsed in (50) or (51)</u>
<u>Science-Physiology</u>	<u>Science (50) or Biological Science (52) or Biology (55)</u>	<u>15 quarter credits in biology and/or physiology if endorsed in (50)</u>
<u>Social Science-General (Social Studies)</u>	<u>Social Science (10) or any two social science endorsements (11 through 17)</u>	
<u>Sociology</u>	<u>Social Science (10) or Sociology (13) or Economics-Sociology (16)</u>	<u>15 quarter credits in sociology if endorsed in (10)</u>
<u>Special Education</u>	<u>Special Education (95) or Special Education K-12 (67 or 98)</u>	
<u>Speech Communication</u>	<u>English (20) or Speech Communication (21) or Speech-Drama (25)</u>	<u>15 quarter credits in speech if endorsed in (20)</u>
<u>Traffic Education</u>	<u>No specific endorsement required</u>	<u>12 quarter credits in traffic education. (Must include basic and advanced traffic education.)</u>

TITLE I - Identified and Funded Supplemental and Remedial Programs

<u>Remedial Math- Elementary</u>	<u>Elementary Education (00) or Special Ed- ucation K-12 (67 or 98)</u>
<u>Remedial Math- Secondary</u>	<u>Elementary Education (00) or Special Ed- ucation K-12 (67 or 98) or Mathematics (40) on a secondary certificate</u>
<u>Remedial Reading- Elementary</u>	<u>Elementary Education (00) or Reading K-12 (67 or 27) or Special Education K-12 (67 or 98)</u>
<u>Remedial Reading- Secondary</u>	<u>Elementary Education 15 quarter credits in (00) or Reading reading if endorsed K-12 (67 or 27) in (20) or Special Educa- tion K-12 (67 or 98) or English (20) on a secondary certifi- cate</u>
<u>Remedial Language Arts - Elementary</u>	<u>Elementary Education (00) or Special Ed- ucation K-12 (67 or 98)</u>
<u>Remedial Language Arts - Secondary</u>	<u>Elementary Education (00) or Special Ed- ucation K-12 (67 or 98) or English (20) on a secondary certificate</u>

TRADES AND INDUSTRIES: Teachers of subjects which qualify for vocational reimbursement may be required to have additional specific courses and work experience.

<u>Auto Body</u>	<u>I.A. (62) or T &amp; I (65-Auto Body) or Class 4-Auto Body</u>	<u>15 quarter credits in auto body if endors- ed in (62)</u>
<u>Auto Mechanics</u>	<u>I.A. (62) or T &amp; I 65-Auto Mechanics or Class 4-Auto Mechanics</u>	<u>15 quarter credits in auto mechanics if endorsed in (62)</u>

<u>Building Trades</u>	<u>I.A. (62) or T &amp; I (65-Building Trades) or Class 4-Building Trades</u>	<u>9 quarter credits in construction if endorsed in (62). Does not include woodworking.</u>
<u>Electronics</u>	<u>I.A. (62) or T &amp; I (65-Electronics) or Class 4-Electronics</u>	<u>15 quarter credits in electronics if endorsed in (62)</u>
<u>Graphic Arts</u>	<u>I.A. (62) or Art (83 or 84) or T &amp; I (65-Graphic Arts) or Class 4-Graphic Arts</u>	<u>6 quarter credits in graphic arts if endorsed in (62), (83 or 84)</u>
<u>Machine Shop</u>	<u>I.A. (62) or Class 4-Machine Shop</u>	<u>10 quarter credits in machine shop if endorsed in (62)</u>
<u>Mechanical Drawing or Drafting</u>	<u>I.A. (62) or T &amp; I (65-Drafting) or Class 4-Drafting</u>	<u>6 quarter credits in machine drawing if endorsed in (62)</u>
<u>Metal Working</u>	<u>I.A. (62) or Class 4-Metals</u>	<u>15 quarter credits in general metals if endorsed in (62)</u>
<u>Power Mechanics (includes energy &amp; transportation)</u>	<u>I.A. (62) or Class 4-Power Mechanics</u>	<u>10 quarter credits in power mechanics if endorsed in (62)</u>
<u>Small Engines</u>	<u>I.A. (62) or T &amp; I (65-Auto Mechanics)</u>	<u>5 quarter credits in small engines if endorsed in (62)</u>
<u>Welding</u>	<u>I.A. (62) or T &amp; I (65-Welding) or Class 4-Welding</u>	<u>10 quarter credits in welding if endorsed in (62)</u>

~~{2}---Teachers holding certificates endorsed for general subject fields (e.g., general science or social sciences) shall have 15 quarters (10 semester) credits of preparation in any specific subject taught within the general area.~~

~~{3} (2) Teachers in state approved junior high schools shall hold valid Montana teacher certificates endorsed for appropriate levels and subjects. Certification at the~~

~~elementary level based on a bachelor's degree entitles the holder to teach in grades kindergarten through nine. Exception:~~

~~(a) In schools organized as a junior high school, teachers with such certification shall have a minimum of 30 quarter (20 semester) credits in all subjects which they teach at the ninth grade. This exception is restricted to the junior high school.~~

~~(4)---Teachers-assigned-to-teach-reading-skills-or-remedial  
reading-shall-have-one-of-the-following-certification  
endorsements---a)-elementary-education,-b)-an-endorsement  
in-reading,-c)-an-endorsement-in-English-with-at-least-15  
credits-in-reading-instruction.~~

AUTH: Sec. 20-7-101, MCA

IMP: Sec. 20-4-101 and 20-4-202, MCA

3. This rule is being amended a) to make an experimental administrators training program possible, b) to clarify middle school assignments, and c) to clarify specific exceptions from endorsements.

4. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or argument may also be submitted to Ted Hazelbaker, Chairman, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620 no later than February 28, 1985.

5. Ted Hazelbaker, Chairman, and Hidde Van Duym, Executive Secretary to the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana have been designated to preside over and conduct the hearing.

  
TED HAZELBAKER, CHAIRMAN  
BOARD OF PUBLIC EDUCATION

By: 

Certified to the Secretary of State January 21, 1985

BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the amendment ) NOTICE OF PUBLIC HEARING  
of a rule relating to Accredi- ) FOR PROPOSED AMENDMENT OF  
tation Period 10.55.101 ) A RULE - ACCREDITATION  
 ) PERIOD 10.55.101

TO: All Interested Persons.

1. On February 21, 1985, at 10:30 a.m., a public hearing will be held in the Board of Regents Conference Room, 33 South Last Chance Gulch, Helena, Montana 59620 in the matter of amendment of rule relating to Accreditation Period.

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

10.55.101 ACCREDITATION PERIOD (1) through (4) remain the same.

(5) All rules published for adoption in the ARM prior to December 1 will be effective July 1 of the year following unless noted otherwise. They should be found in the Montana School Accreditation Standards and Procedures Manual which is updated and distributed by the Superintendent in January of every year. This policy reaffirms the board's basic belief in school districts' responsibility. School districts are responsible for filing and updating any information pertinent to the accreditation process.

AUTH: Sec. 20-7-101, MCA

IMP: Sec. 20-7-102, MCA

3. This rule is amended in order to ensure a clear assignment of timelines for all parties concerned in the accreditation process.

4. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or argument may also be submitted to Ted Hazelbaker, Chairman, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620 no later than February 28, 1985.

5. Ted Hazelbaker, Chairman, and Hidde Van Duym, Executive Secretary to the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana have been designated to preside over and conduct the hearing.

*Ted Hazelbaker*  
\_\_\_\_\_  
TED HAZELBAKER, CHAIRMAN  
BOARD OF PUBLIC EDUCATION

By: *Hidde Van Duym*  
\_\_\_\_\_

Certified to the Secretary of State January 21, 1985

MAR NOTICE NO. 10-3-88

2-1/31/85



BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the amendment ) NOTICE OF PUBLIC HEARING  
of Rule 10.57.403 Class 3 ) ON PROPOSED AMENDMENT OF  
Administrative Certificate, and ) RULE 10.57.403 CLASS 3  
Rule 10.57.405 Provisional ) ADMINISTRATIVE CERTIFICATE,  
Certificate ) AND RULE 10.57.405 PRO-  
VISIONAL CERTIFICATE

TO: All Interested persons.

1. On February 21, 1985, at 11:00 a.m. to 12:00 a.m., a public hearing will be held in the Board of Regents Conference Room, 33 South Last Chance Gulch, Helena, Montana 59620 in the matter of the adoption of amendment of Rule 10.57.403 Class 3 Administrative Certificate, and Rule 10.57.405 Provisional Certificate.

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

10.57.403 CLASS 3 ADMINISTRATIVE CERTIFICATE (1)  
Term: 5 years - renewable.

~~(2)---Basic-education---Master's-degree-in-administration or-related-instruction-field.~~

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

~~(3)---Experience;--3-years-teaching-or-the-equivalent.~~

~~(4) (3) Renewal: Verification of one year of successful experience or the equivalent in the area of endorsement.~~

~~(5) (4) Reinstatement: 6 quarter (4 semester) credits or one year experience or the equivalent earned within the 5-year period preceding the effective date of the certificate. Requirements must be met that are in force at the time of reinstatement. (See guidelines for reinstatement of certificates allowed to lapse 15 years or more.)~~

~~(6)---Superintendent-endorsement-- Eligibility-for-the class-quarter-(16-semester)-credits-or-the-equivalent-in-education,-including-the-following:~~

~~(a)---At-least-12-graduate-quarter-(8-semester)-credits, or-the-equivalent,-in-elementary-education-if-the-applicant does-not-qualify-for-elementary-endorsement-on-the-class-1-or-2-teaching-certificate,-or-at-least-12-graduate-quarter-(8-semester)-credits,-or-the-equivalent,-in-secondary-education~~

2-1/31/85

MAR NOTICE NO. 10-3-89

if the applicant does not qualify for secondary endorsement on the class 1 or 2 teaching certificate; and

(b)---One or more graduate courses, or the equivalent, in each of the following: school finance, general school administration, school curriculum, school supervision, and effective July 1, 1983, school law; and

(c)---A course in guidance or counseling, or the equivalent.

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

(a) Eligibility for the class 1 or class 2 teaching certificate.

(b) Full eligibility for a principal endorsement in Montana.

(c) Twelve (12) graduate quarter credits beyond the master's degree to include:

(i) school management/facilities,

(ii) school negotiation,

(iii) school finance (economics of education),

(iv) public relations

(d) Twelve (12) graduate quarter credits in elementary education to include elementary administration and elementary curriculum if endorsed as a teacher at the secondary level; twelve (12) graduate quarter credits in secondary education to include secondary administration and secondary curriculum if endorsed as a teacher at the elementary level.

(e) Experience: 3 years of teaching experience from the date fully qualified as a principal, OR one (1) year of administrative experience as an appropriately certified administrator (principal, assistant principal or supervisor), OR one (1) year of a supervised administrative internship as superintendent.

(f)---Elementary principal endorsement:--Eligibility for the class 1 or class 2 teaching certificate with elementary endorsement; and, at least 15 quarter (10 semester) credits, or the equivalent in education, including the following:

(a)---At least 8 graduate quarter (6 semester) credits, or the equivalent in elementary education; and,--

(b)---One or more graduate courses, or the equivalent, in general school administration; elementary school administration; and effective July 1, 1983, school law; and

(c)---At least one graduate course, or the equivalent, in elementary school curriculum or school supervision; and

(d)---A course in guidance or counseling, or the equivalent.

(5)---Secondary principal endorsement:--Eligibility for the class 1 or class 2 teaching certificate with secondary endorsement; and at least 15 quarter (10 semester) credits, or the equivalent in education, including the following:

(a)---At least 8 graduate quarter (6 semester) credits, or the equivalent in secondary education; and,--

(b)---One or more graduate courses, or the equivalent, in general school administration; secondary school administration; and, effective July 1, 1983, school law; and

(c)---At least one graduate course, or the equivalent, in secondary school curriculum or school supervision; and.

~~(d) --- A course in guidance or counseling, or the equivalent.~~

(6) Elementary principal endorsement:

(a) Eligibility for the class 1 or class 2 teaching certificate with elementary endorsement.

(b) Master's degree in an approved school administration program or the equivalent.

(c) Verification of a minimum of three years of successful experience as an appropriately certified and assigned teacher at the elementary level.

(d) At least 21 graduate quarter (14 semester) credits in education or the equivalent to include the following courses:

(i) general school administration

(ii) elementary school administration

(iii) administration of guidance services

(iv) supervision of instruction/evaluation - elementary

(v) school curriculum - elementary

(vi) school finance (budgeting)

(vii) school law

(7) Secondary principal endorsement:

(a) Eligibility for the class 1 or class 2 teaching certificate with secondary endorsement.

(b) Master's degree in an approved school administration program or the equivalent.

(c) Verification of a minimum of three years of successful experience as an appropriately certified and assigned teacher at the secondary level.

(d) At least 21 graduate quarter (14 semester) credits in education or the equivalent to include the following courses:

(i) general school administration

(ii) secondary school administration

(iii) administration of guidance services

(iv) supervision of instruction/evaluation - secondary

(v) school curriculum - secondary

(vi) school finance (budgeting)

(vii) school law

(9) (8) Supervisor endorsement: This administrative endorsement is issued in specific fields such as math, music, special education, and guidance and counseling, or in general areas such as elementary education, secondary education and curriculum development. This endorsement may be issued to applicants who submit acceptable evidence of successful completion, at an accredited institution of higher learning, of a master's degree or the appropriate professional programs for the general area endorsement. The applicant must meet eligibility requirements for a class 1 or class 2 teaching certificate endorsed in the field of specialization. The professional training required for this endorsement must include a graduate course in school law (effective July 1, 1983) and 15 graduate quarter (10 semester) credits in supervision, curriculum and methods in the fields to be endorsed. The recommendation of the appropriate official(s) is required.

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

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

2-1/31/85

MAR NOTICE NO. 10-3-89

10.57.405 CLASS 5 PROVISIONAL CERTIFICATE (1)  
through (7) remain the same.

(8) ---Administrative endorsement:--Class 5 Certification with a plan of professional intent leading to class 3 (administrative) certification may be issued to applicants who within the last five years have been fully eligible for administrative certification endorsed in one of the general areas (elementary principal, secondary principal, superintendent or supervisor) but who may not meet course requirements for either general areas.--In addition, the class 5 certificate may be approved for individuals in programs that have been authorized by the superintendent of public instruction--All administrators' certificates are based on a minimum of a master's degree in administration or related instructional field with state specified course work.

(8) Administrative endorsement:

(a) Superintendent endorsement: Class 5 certification with a plan of professional intent leading to a Class 3 (administrative) certificate with a superintendent endorsement may be issued to applicants who meet the following minimum requirements:

(i) Eligibility for a class 1, 2, or 5 teaching certificate at the appropriate level.

(ii) 3 years of teaching experience from the date fully qualified as a principal, OR 1 year of administrative experience as an appropriately certified administrator (principal, assistant principal or supervisor), OR 1 year of a supervised administrative internship.

(iii) Master's degree in school administration or the equivalent to include:

(A) Completed school administration program for principal (must include core outlined for principal).

(B) At least 12 graduate quarter (8 semester) credits, or the equivalent, in elementary education if the applicant does not qualify for elementary endorsement on the class 1 or 2 teaching certificate; or, at least 12 graduate quarter (8 semester) credits, or the equivalent, in secondary education if the applicant does not qualify for secondary endorsement on the class 1 or 2 teaching certificate.

(iv) The plan of professional intent leading to regular certification must have in the program 12 graduate quarter credits in administration beyond the master's degree to include:

(A) school management/facilities,

(B) school negotiations,

(C) school finance (economics of education),

(D) public relations,

(b) Principal endorsement: Class 5 certification with a plan of professional intent leading to a class 3 (administrative) certificate with principal endorsement may be issued to applicants who meet the following minimum requirements, and have a minimum of three years of appropriate teaching experience [see ARM 10.57.403 (6) (c) and (7) (c).]

(i) Eligibility for a class 1, 2, or 5 teaching certificate at the appropriate level,

- (ii) Master's degree in a field offered for certification in Montana, and
- (iii) 21 graduate quarter (14 semester) credits to include the following courses:
  - (A) general school administration
  - (B) Specific area administration as appropriate (elementary or secondary)
  - (C) administration of guidance services
  - (D) supervision of instruction/evaluation at the appropriate level
  - (E) school curriculum at the appropriate level
  - (F) school finance (budgeting)
  - (G) school law

These applicants must complete an approved school administration program during the term of the class 5 certificate.

(iv) Class 5 certification with a plan of professional intent leading to class 3 (administrative) certification may also be issued to applicants who within the last five years have been fully eligible for administrative certification in Montana endorsed in one of the general areas (elementary principal, secondary principal, superintendent or supervisor) but who may not meet course requirements for other general areas. In addition, the class 5 certificate may be approved for individuals in programs that have been authorized by the superintendent of public instruction. All administrative certificates are based on a minimum of a master's degree in administration or the equivalent with state specified course work, and a minimum of three years of appropriate teaching experience.

(v) Class 5 certification with a plan of professional intent leading toward the class 3 (administrative) certificate may be issued to applicants who hold valid certification in another state in general administrative areas but who may not meet Montana's specific course requirements. The current certification must have been based on not less than a master's degree and the completed approved program in school administration of a college accredited for administrative preparation.

(9) through (11) remain the same.

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

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

3. This rule is being amended in order to assure that the preparation of future school administrators will conform to higher standards as recommended by both professional organizations and accrediting bodies.

4. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or argument may also be submitted to Ted Hazelbaker, Chairman, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620 no later than February 28, 1985.

5. Ted Hazelbaker, Chairman, and Hidde Van Duym, Executive Secretary to the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana have been designated to preside over and conduct the hearing.

*Ted Hazelbaker*

\_\_\_\_\_  
TED HAZELBAKER, CHAIRMAN  
BOARD OF PUBLIC EDUCATION

By \_\_\_\_\_

*Hidde Van Duym*

Certified to the Secretary of State January 21, 1985

BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the amendment ) NOTICE OF PROPOSED AMEND-  
of Rule 10.64.601 General, and ) MENT OF RULE 10.64.601  
Rule 10.64.604 Inspections ) GENERAL, AND RULE 10.64.604  
 ) INSPECTIONS

NO PUBLIC HEARING CONTEM-  
PLATED

TO: All Interested Persons.

1. On March 2, 1985, the Board of Public Education proposes to amend Rule 10.64.601 General, and Rule 10.64.604 Inspections.

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

10.64.601 GENERAL (1) remains the same.

(2) The board of public education will approve or disapprove annually on an individual basis.

~~(3)---The alternative vehicle may be used when adverse road and/or weather conditions dictate; use of such a vehicle will be approved on an annual basis.~~

~~(4)~~ (3) The vehicle will transport eight (8) passengers or less.

~~(5)~~ (4) The four-wheel drive alternative vehicle will not be identified as a school bus by color, lighting, or other visual designation.

~~(6)~~ (5) The four-wheel drive alternative vehicle will be inspected by the Montana highway patrol for safe operating conditions before it is used to transport children to or from school.

~~(7)~~ (6) State reimbursement to the local school district will be based on the on-schedule rate of twenty cents (\$.20) per mile.

AUTH: 20-2-121, IMP: 20-10-111, MCA

10.64.604 INSPECTIONS (1) The Montana highway patrol will inspect semi-annually four-wheel drive alternative vehicles used by school districts for adverse road and/or weather conditions.

(2) and (3) remain the same.

AUTH: Sec. 20-2-121, MCA

IMP: Sec. 20-10-111, MCA

3. These rules are being amended (a) to make application for the use of four-wheel drive vehicles more practicable by school districts, and (b) to ensure that the policy for four-wheel drive vehicles runs parallel to policies to the standard school buses.

2-1/31/85

MAR NOTICE NO. 10-3-90

4. Interested parties may submit their data, views or arguments concerning the proposed rules in writing to Ted Hazelbaker, Chairman, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620 no later than February 28, 1985.

5. If a person who is directly affected by the proposed rules wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Ted Hazelbaker, Chairman, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620 no later than February 28, 1985.

6. If the agency receives requests for a public hearing on the proposed rules from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed rules; 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 twenty five.

*Ted Hazelbaker*

\_\_\_\_\_  
TED HAZELBAKER, CHAIRMAN  
BOARD OF PUBLIC EDUCATION

By: \_\_\_\_\_  
*Charles Van Dyke*

Certified to the Secretary of State January 21, 1985



In the matter of the adoption ) NOTICE OF PUBLIC HEARING FOR  
of RULE I Opportunity ) PROPOSED ADOPTION OF RULE I  
and Educational Equity ) OPPORTUNITY AND EDUCATIONAL  
 ) EQUITY

1. On February 21, 1985, at 1:00 p.m., a public hearing will be held in the Board of Regents Conference Room, 33 South Last Chance Gulch, Helena, Montana 59620 in the matter of the proposed adoption of RULE I Opportunity and Educational Equity.

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

3. The rule as proposed to be adopted provides as follows:

RULE 1 OPPORTUNITY AND EDUCATIONAL EQUITY A school district will not discriminate against any student on the basis of sex, race, marital status, national origin or handicapping condition in any area of accreditation. This is inclusive of programs, facilities, textbooks, curriculum, counseling, library services and extra-curricular activities. It is the purpose of the accreditation standards to guarantee the full educational potential of each person regardless of sex, race, marital status, national origin or handicapping condition.

AUTH: Sec. 20-2-121(7), MCA  
IMP: Sec. 20-7-101, MCA

4. The board is proposing this rule to ensure that every school district administers its programs, services, and activities in compliance with Article X, Section 1 of the constitution.

5. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or argument may also be submitted to Ted Hazelbaker, Chairman, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620 no later than February 28, 1985.

6. Ted Hazelbaker, Chairman, and Hidde Van Duym, Executive Secretary to the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana have been designated to preside over and conduct the hearing.

TED HAZELBAKER, CHAIRMAN  
BOARD OF PUBLIC EDUCATION

By :

Certified to the Secretary of State January 21, 1985

2-1/31/85

MAR NOTICE NO. 10-3-91

BEFORE THE BOARD OF LIVESTOCK  
OF THE STATE OF MONTANA

In the Matter of the AMENDMENT )	NOTICE OF PROPOSED
OF RULE 32.3.407A, Waiving in )	AMENDMENT OF RULE
Six Additional Counties the )	32.3.407A CHANGE OF
Test for Brucellosis )	OWNERSHIP TEST

NO PUBLIC HEARING  
CONTEMPLATED

TO: All Interested Persons.

1. On March 4, 1985 the Board of Livestock proposes to adopt an amendment to Rule 32.3.407A waiving in the counties of Lincoln, Lake, Sanders, Mineral, and Missoula the requirement that cattle be tested negative for brucellosis before ownership is changed.

2. The proposed amendment provides as follows:  
32.3.407A CHANGE OF OWNERSHIP TEST (1) In the ~~counties~~ county of Flathead, ~~Lincoln, Lake, Sanders, Mineral,~~ ~~Missoula, and Ravalli~~ before ownership of animals listed in (2) is changed or before the animals are moved to Montana premises located in a Class Free area they must undergo an official test for brucellosis and must be determined negative. The test must be performed not more than 30 days prior to the date they are sold or moved and the results must be entered on a department official test form.

(2) Remains the same.

(3) Remains the same.

(4) Remains the same.

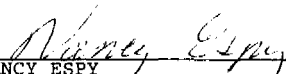
3. The reason for the amendment is to allow the movement of cattle from the five counties without a costly brucellosis test. The test has been required in all areas which had evidence of brucellosis within one year. These five counties have been brucellosis free for the past year. They now join the 49 counties previously released from the test requirement.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Donald P. Ferlicka, D.V.M., Administrator & State Veterinarian, Animal Health Division, Capitol Station, Helena, Montana 59620, no later than February 28, 1985.

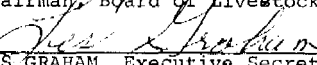
5. If a person is directly affected by the proposed rule wishes to express his data, views, and arguments orally or in writing at a public hearing he must make written request for a hearing and submit this request along with any written comments he has to Donald P. Ferlicka, D.V.M., Administrator & State Veterinarian, no later than February 28, 1985.

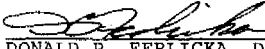
6. If the agency receives requests for a public hearing on the proposed adoption from either 10 to 25%, whichever is less, of the persons who are directly affected by the proposed adoption from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an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

7. The authority to make the proposed amendment is based on Sections 81-2-102 and 81-2-103, MCA. It implements Section 81-2-102 and 81-2-103, MCA.

  
\_\_\_\_\_  
NANCY ESPY  
Chairman, Board of Livestock

By:

  
\_\_\_\_\_  
LES GRAHAM, Executive Secretary  
to the Board of Livestock

  
\_\_\_\_\_  
DONALD P. FERLICKA, D.V.M.  
Administrator & State Veterinarian

Certified to the Secretary of State January 21, 1985.

BEFORE THE BOARD OF LIVESTOCK  
OF THE STATE OF MONTANA

In the Matter of the ADOPTION )	
OF A RULE Specifying the )	NOTICE OF PROPOSED
Brucellosis Vaccination of )	ADOPTION OF RULE
Imported Cattle Under 4 Months) )	CONCERNING IMPORT
of Age )	OF CATTLE
	NO PUBLIC HEARING
	CONTEMPLATED

TO: All Interested Persons.

1. On March 4, 1985 the Board of Livestock proposes to adopt a rule specifying that imported cattle under the age of 4 months be vaccinated soon after arrival in Montana

2. The proposed rule provides as follows:

RULE I - BRUCELLOSIS VACCINATION OF IMPORTED CATTLE UNDER 4 MONTHS OF AGE (1) Female cattle under the age of 4 months imported without their dams into the State of Montana for any purpose other than immediate slaughter shall be quarantined on arrival and must be vaccinated for brucellosis within 6 months of their entry.

(2) If after 6 months following entry they have not been vaccinated the Department shall vaccinate the cattle. In accordance with Section 81-2-109, MCA, the owner or agent is responsible for all necessary expenses. The expenses are a lien on the animals and the Department may retain and foreclose according to Section 81-2-109, MCA.

(3) All cattle imported under this section shall be ear tagged prior to entry at origin.

(AUTH: Sec. 81-2-102, MCA; IMP Sec. 81-2-102, MCA)

3. The rule is proposed to be adopted to reduce the risk of brucellosis infection. Calves under 4 months of age imported without their dams pose a substantial risk of brucellosis infection, especially in dairy herds. Vaccination before the age of 10 months will ensure there is little risk of infection.

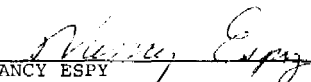
4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Donald P. Ferlicka, D.V.M., Administrator & State Veterinarian, Animal Health Division, Capitol Station, Helena, Montana 59620, no later than February 28, 1985.


5. If a person is directly affected by the proposed rule wishes to express his data, views, and arguments orally or in writing at a public hearing he must make written request for a hearing and submit this request along with any written comments he has to Donald P. Ferlicka, D.V.M.,


Administrator & State Veterinarian, no later than February 28, 1985.

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

7. The authority to adopt the proposed rule is based on Section 81-2-102, MCA. It implements Section 81-2-102, MCA.

  
\_\_\_\_\_  
NANCY ESPY  
Chairman, Board of Livestock

By:   
\_\_\_\_\_  
LES GRAHAM, Executive Secretary  
to the Board of Livestock

  
\_\_\_\_\_  
DONALD P. FERLICKA, D.V.M.  
Administrator & State Veterinarian

Certified to the Secretary of State January 21, 1985.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMEND- )  
MENT of Rules 42.23.416 and )  
42.23.417 and the ADOPTION of )  
NEW RULE 1, all of which re- )  
late to the tax treatment of )  
interest earned on federal )  
obligations. )

NOTICE OF PROPOSED AMENDMENT  
of Rules 42.23.416 and  
42.23.417 and the ADOPTION of  
NEW RULE 1, all of which re-  
late to the tax treatment of  
interest earned on federal  
obligations.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On March 4, 1985, the Department of Revenue proposes to amend rules 42.23.416 and 42.23.417 and to adopt new rule 1, all of which relate to the tax treatment of interest earned on federal obligations.

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

42.23.416 ADJUSTMENT OF ALLOWABLE DEDUCTIONS (1) Pursuant to the Montana Supreme Court's decision in First Federal Savings and Loan Association v. Department of Revenue, (654 P.2d 496), interest from the following obligations was held to be exempt from taxation under the Montana corporate license tax:

(a) United States treasury bills issued pursuant to 31 U.S.C. §769.

(b) Federal home loan bank notes issued pursuant to 12 U.S.C. §1433.

(c) Federal land bank obligations issued pursuant to 12 U.S.C. §2055.

(d) Federal farm credit bank securities issued pursuant to 12 U.S.C. §§ 2079 and 2134.

(e) Federal home loan bank dividends on stocks issued pursuant to 12 U.S.C. §2134.

(f) Federal savings and loan insurance corporation obligations issued pursuant to 12 U.S.C. §1725.

A corporation which excludes interest income from the above obligations or any other federal obligations which would otherwise be taxable except for federal law, must adjust its allowable deductions for all years for which such interest is excluded.

(2) This rule is effective for taxable periods beginning which begin on or after December 31, 1978, and which end on or before November 23, 1984. It is applicable to such taxable periods for which a corporation has excluded interest income based upon federal law or for which a corporation has included interest income and subsequently filed claims for refund based upon federal law. However, the rule is not effective for any amendments received on or after November 24, 1984, no matter

what taxable period is covered by the amendment.  
AUTH: 15-31-501 MCA; IMP: 15-31-116 MCA.

42.23.417 COMPUTATION OF ADJUSTMENT (1) Allowable deductions must be reduced by the result of the following calculation:

$$\frac{\text{Exempt Interest Income}}{\text{Total Interest Income}} \times \text{Total Deductions*} = \text{Deductions Disallowed}$$

\*Total deductions allowable under 15-31-114, MCA.

The total deductions disallowed may not exceed the amount of exempt interest.

(2) This rule is effective for taxable periods beginning which begin on or after December 31, 1978, and which end on or before November 23, 1984. It is applicable to such taxable periods for which a corporation has excluded interest income based upon federal law or for which a corporation has included interest income and subsequently filed claims for refund based upon federal law. However, the rule is not effective for any amendments received on or after November 24, 1984, no matter what taxable period is covered by the amendment.

AUTH: 15-31-501 MCA; IMP: 15-31-116 MCA

NEW RULE 7 FEDERAL OBLIGATION INTEREST The Montana Supreme Court in Schwinden et al. v. Burlington Northern, Inc., P.2d \_\_\_\_ (1984) held that interest on federal obligations may be considered in determining the corporate license tax. Thus, federal obligation interest must be included in gross income and cannot be deducted. The 1984 decision overruled the holding in First Federal Savings & Loan Association v. Department of Revenue, 654 P.2d 496 (1982) and held that 15-31-116, MCA, enacted as a result of the 1982 decision was invalid. The 1984 decision will be applied to corporations subject to the corporation license tax based upon the following general principles:

(1) Corporate taxpayers with a taxable period which ends on or after November 24, 1984, shall include all interest on federal obligations in gross income in accordance with the 1984 decision.

(2) Corporate taxpayers with a taxable period which ended on or before November 23, 1984, may exclude interest on federal obligations, but must adjust deductions pursuant to 15-31-116, MCA, and ARM 42.23.416 and 42.23.417.

(3) Any amended corporation license tax return received by the department on or after November 24, 1984, is subject to the 1984 decision. Therefore, interest on federal obligations will be fully taxable and included in gross income for the tax period for which the amendment was filed.

(4) The department will not require the 1984 decision to be applied to tax periods ending on or before November 23, 1984,

whether an original return or an amended return, as long as the amendment was received on or before November 23, 1984.  
AUTH: 15-31-501, MCA; IMP: 15-31-113, 15-31-114, and 15-31-116, MCA.

3. The proposed amendments to ARM 42.23.416 and 42.23.417 and proposed new rule I implement the decision of the Montana Supreme Court in Schwinden et al. v. Burlington Northern, Inc., 41 St. Rep. 2184 (1984). The rules are necessary to inform taxpayers, local government officials, and the general public of the Department of Revenue's policy for the application of the decision.


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

Ann Kenny  
Department of Revenue  
Legal Division  
Mitchell Building  
Helena, Montana 59620  
no later than March 1, 1985.

5. If a person who is directly affected by the proposed amendments and adoption wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Ann Kenny at the above address no later than March 1, 1985.

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

7. The authority of the Department to make the proposed amendments and adoption is based on § 15-31-501, MCA, and the rules implement §§ 15-31-113, 15-31-114, and 15-31-116, MCA.

  
JOHN D. LaFAVER, Director  
Department of Revenue

Certified to Secretary of State 01/21/85



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

In the matter of the repeal	)	NOTICE OF PUBLIC HEARING ON
of Rules 46.5.401, 46.5.402	)	PROPOSED REPEAL OF RULES
and 46.5.403 and the	)	46.5.401 through 46.5.402 AND
adoption of rules pertaining	)	THE PROPOSED ADOPTION OF RULES
to the licensing of child	)	PERTAINING TO LICENSING OF
placing agencies.	)	CHILD PLACING AGENCIES.

TO: All Interested Persons

1. On February 21, 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 repeal of rules and the adoption of rules pertaining to the licensing of child placing agencies.

2. Rules 46.5.401, 46.5.402 and 46.5.403 which are proposed to be repealed are on pages 46-225 and 46-227 of the Administrative Rules of Montana.

AUTH: Sec. 53-4-111 and 53-5-403(3) MCA  
IMP: Sec. 53-4-113(4) and 53-4-403 MCA

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

RULE I CHILD PLACING AGENCY, DEFINITIONS (1) "Child placing agency" means any corporation, partnership, association, firm, agency, institution or person who places or who arranges for placement for foster care or adoption, any child with any family, person, or facility not related by blood or marriage to said child.

(a) "To arrange for placement" means to act as an intermediary by assisting a parent or guardian or legal custodian to place or plan to place a child with persons other than persons related to the child.

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

(3) "Child" or "youth" means any person under the age of 18 years without regard to sex or emancipation.

(4) "Biological parent" or "birth parent" means the mother and father who conceived and gave birth to the child.

(5) "Agency youth foster home" means a youth foster home licensed by the department after being studied by a child placing agency other than the department.

AUTH: Sec. 53-4-111 and 53-5-403(3) MCA  
IMP: Sec. 53-4-113(4) and 53-4-403 MCA

RULE II CHILD PLACING AGENCY, LICENSE REQUIRED (1) No person shall maintain or operate a child placing agency without first securing a license in writing from the department.

AUTH: Sec. 53-4-111 and 53-5-403(3) MCA  
IMP: Sec. 53-4-113(4) and 53-4-403 MCA

RULE 111 CHILD PLACING AGENCY, LICENSES (1) One-year licenses. The department shall issue a one-year license to any license applicant that meets all requirements established by these rules in this sub-chapter, as determined by the department after a licensing study.

(a) The department shall renew the license annually on the expiration date of the previous year's license if:

(i) the child placing agency makes written application for renewal at least 60 days prior to the expiration date of its current license; and

(ii) the child placing agency continues to meet all requirements established by these rules, as determined by the department after a relicensing study.

(2) A child placing agency may be licensed to license youth foster homes, to place children in youth foster homes and/or in adoptive homes. The license shall specify those services which the child placing agency is licensed to provide.

(3) Licensing procedures. Application for a child placing agency license must be made on an application form provided by the department.

(a) Upon receipt of the application for license or renewal of license, the department shall, within sixty (60) days, conduct a licensing study to determine if the applicant meets all applicable requirements for licensure established in these rules.

(b) If the department determines that an application or accompanying information is incomplete or erroneous, it will notify the applicant of the specific deficiencies or errors, and the applicant shall submit the required or corrected information within 60 days. The department shall not issue or renew a license until it receives all required or corrected information.

(c) At the initial application the agency shall submit a written purpose and policy statement for the general operation and management of the agency. The statements shall include:

(i) statement of the purpose of the agency, the geographic area the agency expects to serve, the ages of children to be placed and any other specific factors regarding the children to be placed or the homes in which the children shall be placed;

(ii) a written placement policy, including parental agreement forms, and a description of the legal procedures which will be used to obtain the authority to place the child;

(iii) a written statement of the fees which will be charged for each type of service;

(iv) for child placing agencies conducting licensing studies, a description of how studies will be conducted and

sample of the application and study report forms.

(4) At annual relicensing the agency shall submit a copy of its yearly budget and annual audit of expenditures.

AUTH: Sec. 53-4-111 and 53-5-403(3) MCA

IMP: Sec. 53-4-113(4) and 53-4-403 MCA

RULE IV CHILD PLACING AGENCY, LICENSE REVOCATION AND DENIAL

(1) The department, after written notice to the applicant or licensee, may deny, suspend, restrict, revoke or reduce to a provisional status a license upon finding that:

(a) the agency is not in substantial compliance with licensing requirements established by these rules;

(b) the agency has made any misrepresentations to the department, either negligent or intentional, regarding any aspect of its operations or facility; or

(c) the agency or a member of its staff have been named as a perpetrator in a substantiated report of child abuse or neglect.

AUTH: Sec. 53-4-111 and 53-5-403(3) MCA

IMP: Sec. 53-4-113(4) and 53-4-403 MCA

RULE V CHILD PLACING AGENCY, REPORTS

(1) The agency shall agree to submit to the department, upon its request, any reports required by federal or state law or regulation.

(2) The agency shall report any of the following changes to the department prior to the effective date of the change:

(a) a change of administrator;

(b) a change in location;

(c) a change in the name of the agency.

(3) At the application for relicensure the agency shall report to the department any significant changes in the organization, administration, purposes, programs or services.

(4) As required by section 41-3-201 MCA, the agency and each staff member shall report any incidents of known or suspected child abuse or neglect to the local county welfare office or the state child abuse hot line 1-800-332-6100.

(a) If no action is taken on the report, or if the above resources are not available at the time, reports shall be made to the social and rehabilitation services district or state office.

(b) The agency shall inform each new employee, within the first 24 hours of employment, of the child abuse and neglect reporting statute and responsibilities of staff relative to this law.

AUTH: Sec. 53-4-111 and 53-5-403(3) MCA

IMP: Sec. 53-4-113(4) and 53-4-403 MCA

RULE VI CHILD PLACING AGENCY, HEARING (1) Any person dissatisfied because of denial, revocation, suspension, or restriction of a license may request a hearing as provided in ARM 46.2.202.

AUTH: Sec. 53-4-111 and 53-5-403(3) MCA

IMP: Sec. 53-4-113(4) and 53-4-403 MCA

RULE VII CHILD PLACING AGENCY, CONFIDENTIALITY OF RECORDS

(1) All records maintained by an agency pertaining to an individual child are confidential and may not be disclosed to any person, agency or organization except as specified in sections 40-8-126 MCA and 50-15-206 MCA.

(2) All records pertaining to individual children placed by the agency shall be made available at any time to the department's designated representatives.

AUTH: Sec. 53-4-111 and 53-5-403(3) MCA

IMP: Sec. 53-4-113(4) and 53-4-403 MCA

RULE VIII CHILD PLACING AGENCY, GOVERNING BODY (1) The governing body shall be the corporation, partnership, association, firm, agency, institution or person in whom the ultimate authority and legal responsibility is vested for the conduct of the child placing agency.

(2) The governing body shall be identified by its legal name. If the governing body has a board of directors, the names of the officers of the board shall be given to the department prior to licensure.

(3) The governing body of the child placing agency shall:

(a) be responsible for the protection of the legal rights of children served by the agency;

(b) be responsible for approval of the budget, obtaining and disbursing the agency's funds;

(c) appoint an executive director who meets the requirements and certify that staff members responsible for placement of children and/or certification of foster homes meet the requirements set forth in these rules.

AUTH: Sec. 53-4-111 and 53-5-403(3) MCA

IMP: Sec. 53-4-113(4) and 53-4-403 MCA

RULE IX CHILD PLACING AGENCY, PERSONNEL (1) Personnel policy. Each child placing agency must have a written personnel policy covering the following items: job qualifications, job descriptions, supervisory structure, salary schedules, fringe benefits, insurance, hours of work, and performance evaluations.

(2) Personnel records. Each child placing agency must maintain a personnel file for each employee. The personnel

file must contain: application for employment, reports from references, record of in-service training or other training acquired after the date of hiring, and periodic performance evaluations for each employee.

(3) General personnel qualifications. All personnel of a child placing agency must meet the following general qualifications:

- (a) be at least 18 years of age;
- (b) be of good character;
- (c) be emotionally mature and stable;
- (d) like and understand children;
- (e) be in good mental and physical health;
- (f) understand the purpose of the agency and be willing to carry out its policies and programs;
- (g) have experience in working with children; and
- (h) meet any additional qualifications for the position established by these rules.

(4) Executive Director. The agency must have an executive director who shall be responsible for the administration and management of the agency, including the supervision of the placement services provided to children.

(a) The executive director shall have demonstrated knowledge of and experience in the provision of child welfare services, including administrative and supervisory experience.

(b) Any executive director appointed after the adoption of these rules shall have the following qualifications:

(i) a bachelors degree from an accredited college or university, with a minimum of thirty (30) semester credits, or equivalent quarter credits, in social science courses;

(ii) at least two years experience in an administrative or supervisory capacity;

(iii) three letters of recommendation from individuals unrelated to the applicant, one of whom should be a former employer or supervisor of the applicant, which describe the executive director's character, reliability, knowledge of child welfare services, and general ability to perform the tasks of the executive director as set forth in the job description for that position;

(iv) if the executive director is also to act as a placement supervisor, she/he must also meet the qualifications of a placement supervisor.

(5) Placement Supervisor. The agency must have a placement supervisor who is responsible for supervising the selection, matching, placement of and provision of services to children.

(a) The placement supervisor shall have the following qualifications:

(i) have a masters degree in a behavioral or social science, with an emphasis in child development or family relations, or equivalent education and experience;

(ii) at least two years experience of full time or equivalent part time employment in social work, with demonstrated experience in child placement;

(iii) two letters of recommendation which describe the person's character, knowledge of child welfare services and child placement, and ability to perform the tasks of a placement supervisor as set forth in the person's job description.

(6) Social Workers. The agency shall employ an adequate number of social workers to provide selection, matching, placement and supportive services to the children and families and to the youth care facilities utilized by the agency.

(a) The social worker(s) must meet the following qualifications:

(i) bachelor's degree from an accredited college or university in social work, social science or related field;

(ii) some course work, specialized training regarding child welfare, or work experience in child welfare services;

(iii) some combination of education and experience equivalent to the above. Persons employed as social workers who do not meet the qualifications for placement supervisor must be supervised by a person qualified to be a placement supervisor.

(7) Clerical staff. The child care agency shall have sufficient clerical staff to meet the requirements set forth in these rules for record keeping, bookkeeping and reporting.

(8) Paraprofessionals and trainees. The agency may employ persons not qualified to act as social workers to assist the social worker, but such persons may not assume primary responsibility for providing placement-related services. Qualifications for such persons shall be contained in the job descriptions prepared by the agency for such persons.

(9) The child placing agency is responsible for assuring that no persons hired by the agency shall pose any potential threat to health, welfare and safety of the children placed.

AUTH: Sec. 53-4-111 and 53-5-403(3) MCA

IMP: Sec. 53-4-113(4) and 53-4-403 MCA

RULE X CHILD PLACING AGENCY, LICENSING OF AGENCY FOSTER HOMES

(1) Licensed child placing agencies are authorized by these rules to conduct licensing studies of youth foster homes and to make recommendations to the department for approval or denial of the license consistent with the licensing requirements adopted by the department.

(a) The licensing requirements which are established by the department for youth foster homes must be met by any foster home being recommended by the child placing agency for licensure.

(b) Copies of the licensing rules for youth foster homes shall be supplied by the department to each child placing agency which shall provide copies to each youth foster home applicant.

(2) A youth foster home which has been studied by a child placing agency and licensed by the department may not accept placements from any source other than the child placing agency that conducted the study without the consent and approval of the department as to each such child.

(3) The agency shall provide information to prospective foster parent(s) about foster care, the agency's policies and practices, the licensing process including licensing requirements for foster homes, the children needing foster care, and the reimbursement rates.

(4) Agency youth foster home licensing procedure.

(a) The youth foster home applicant shall complete an application form provided by the agency and approved by the department.

(b) The agency, in response to an application for a license, shall conduct a licensing study to determine compliance with the state licensing rules for youth foster homes. Only persons who meet the qualifications of social workers, placement supervisors or executive directors may conduct licensing studies.

(5) Agency youth foster home licensing study.

(a) The agency shall conduct an initial foster home licensing study to determine the applicant(s) compliance with the state licensing rules for youth foster homes. The agency's foster home study shall assess the following areas:

(i) the applicant's motivation for foster care;

(ii) strengths and weaknesses of each member of the household in providing foster care;

(iii) the applicant's ability to provide for the child's physical and emotional needs;

(iv) adjustment of own children;

(v) recommendations for number, age, sex, characteristics, and special needs children best served by the family, and recommendations regarding children which would not be appropriate for the family;

(vi) any other factors which may affect the ability of the applicant to provide protection and supervision of a child placed in the home.

(b) The agency shall submit the written licensing study and recommendations to the department.

(c) The agency shall contact three (3) personal and community references of the applicant(s) and shall investigate any incomplete, negative or questionable references.

(6) Agency youth foster home recommendation for licensure.

(a) The agency shall submit a recommendation for licensing action to the department.

(b) The agency shall make the results of the licensing study available in writing for the licensing record and for the applicant(s) if requested.

(c) The department is solely responsible for determining whether the applicant meets all of the licensing requirements.

(d) If the applicant(s) do not meet the requirements for licensure the agency shall notify the applicant(s) in writing within 30 days of completing the licensing study.

(e) If the applicant meets all of the licensing requirements and the placing agency recommends licensure, the department shall issue a one year license within 30 days.

(7) Agency youth foster home monitoring and annual licensing study.

(a) The agency shall monitor all of its licensed foster homes for compliance with the department's youth foster home rules.

(b) The agency shall conduct annual relicensing reports of all licensed homes to determine continued compliance with the youth foster home rules and to make licensing renewal recommendations to the department. The annual relicensing report shall include at least one home visit by the agency.

(8) Agency youth foster home complaints in licensed foster homes. When receiving a complaint which may indicate possible violations of the youth foster home rules, the agency shall:

(a) conduct an investigation to assess compliance with applicable rules;

(b) submit a written report of the investigation to the department with a statement on rule compliance and a recommendation regarding any licensing action which should be taken; and

(c) send a written report to the home stating findings, conclusions, and any anticipated action affecting the license.

(d) When a complaint is received regarding abuse or neglect of a child in care, the agency shall immediately notify the county's child protective services office which will conduct an investigation.

(9) Agency youth foster home recommendations to revoke, deny or suspend a license. The agency shall send the department an assessment of rule compliance and any documents supporting the findings with any recommendation for revocation, denial or suspension of a youth foster home license.

AUTH: Sec. 53-4-111 and 53-5-403(3) MCA

IMP: Sec. 53-4-113(4) and 53-4-403 MCA

RULE XI CHILD PLACING AGENCY, SERVICES TO FOSTER PAR-  
ENT(S) (1) Orientation. The agency shall provide orientation to applicant(s) for a foster home license to acquaint them with the agency's policies and practices and the department's licensing rules.



(2) Agreement. The agency shall have a signed agreement with all foster parent(s) which includes the following:

(a) expectations and responsibilities of the agency, the staff, and the foster parent(s);

(b) the services to be provided;

(c) the financial arrangements for the children placed in the home;

(d) the authority the foster parent(s) can exercise for the children placed in their home;

(e) the actions which require agency staff authorization; and

(f) the legal responsibility for damage or risk resulting from children in their homes.

(3) Payments. The agency shall have a written statement as to the reimbursement rates paid to foster parent(s) for cost of care expenditures and/or fees for service.

(a) Reimbursement payments must be an amount sufficient to assure adequate care for the child in the youth foster home.

(b) Payment at the rate adopted by the department for youth foster care will be presumed to be an amount sufficient to assure adequate care.

(c) When homes are used which are not reimbursed, the agency shall include a written statement of the reasons why reimbursement is not necessary and a written statement assuring that the child can be adequately cared for without reimbursement as part of the written agreement between the agency and the foster home.

AUTH: Sec. 53-4-111 and 53-5-403(3) MCA

IMP: Sec. 53-4-113(4) and 53-4-403 MCA

RULE XII CHILD PLACING AGENCY, YOUTH FOSTER HOME RECORDS

(1) The agency shall keep separate records for each agency youth foster home which shall contain:

(a) the application;

(b) the foster home licensing study;

(c) foster parent(s) CSD 33 Personal Statement of Health for License;

(d) annual assessment of strengths and weaknesses of the foster family relative to the care of individual children placed with them;

(e) annual licensing compliance study and reports connected with it;

(f) history of the care given by the family, children placed, dates admitted and discharged from care; and

(g) a termination summary for homes which are closed containing the reasons for the closing.

AUTH: Sec. 53-4-111 and 53-5-403(3) MCA

IMP: Sec. 53-4-113(4) and 53-4-403 MCA

RULE XIII CHILD PLACING AGENCY, THE PLACEMENT PROCESS

In addition to an agency's responsibility to inspect and to supervise the ongoing operation of its licensed foster homes, the agency shall comply with the following requirements applicable to the placement process:

- (1) Intake procedures and practices.
  - (a) The intake study shall be written and shall include:
    - (i) the identification of the specific needs of the child and family which warrant consideration of removal and placement of the child;
    - (ii) the family's strengths;
    - (iii) the involvement of the child's parent(s) and significant others in his/her care;
    - (iv) the available resources;
    - (v) the stated goals for the family;
    - (vi) available social and medical history of the child and all family members; and
    - (vii) the child's legal status, including parental agreement/court order.
  - (b) The agency shall keep a record of all requests for services, placements and the reasons for acceptance and denial of services.
- (2) Case plan.
  - (a) The agency shall develop a written case plan upon completion of the intake study and prior to placement. In cases of emergency placements, the assessment and case plan shall be initiated within one week and completed within six weeks of placement. The plan shall include, but not be limited to, the following:
    - (i) documentation of whether available social services to preserve and strengthen the family unit have been provided to the family and child and that all alternatives to placement and their consequences have been explored with them;
    - (ii) the reasons for the selection of the type of care and how it meets the child's and family's needs;
    - (iii) projected duration of care;
    - (iv) preplacement activities with child and family;
    - (v) specific initial case goals for the child and family;
    - (vi) specific steps to accomplish goals;
    - (vii) specific time schedule for goals;
    - (viii) designation of responsibility for carrying out steps with the child, parent(s), foster parent(s), adoptive parent(s), and the court (when involved), including frequency of contacts;
    - (ix) visiting plans between the child, parent(s), and siblings, if appropriate;
    - (x) date of first review of progress; and
    - (xi) description of the conditions under which the child shall be returned home or when termination of parental

rights should be initiated.

(b) The agency shall include the parent(s), other significant persons, and the child (when appropriate to age and understanding) in the development of placement and care plans.

(c) The agency, prior to accepting a child for placement, shall secure from parent(s), guardian(s), or court, written authority to place the child and to obtain medical care.

(d) The agency shall help the parent(s) to understand the legal rights and obligations that they retain and those delegated to the agency by the court.

(3) Supervisor and review of the case plan.

(a) The agency shall complete a review of the case plan at least every six months indicating progress toward goal achievement and changes made in the service plan.

(b) The agency shall include in the review an assessment of the child in care, the progress of the growth and development of the child, the relationships between the child and care givers, and the problems which may have occurred.

(c) The case review shall utilize either administrative staff or outside agency personnel to ascertain whether children are being served in a prompt, effective manner and the progress on permanent plans for each child.

(4) Placement services to families and children.

(a) Services to biological parent(s):

(i) The agency shall make services accessible and available to parent(s) requesting them.

(ii) The agency shall help the family gain access to the services necessary to preserve and strengthen the family and to accomplish the case plan goals. While the child is in care, the agency shall assist parent(s) with the problems and needs that brought about the need for placement.

(iii) The agency shall make counseling available to expectant parent(s) considering placement before the child is born and immediately thereafter.

(iv) The agency shall encourage contacts between parent(s) and children after placement, in accordance with the case plan.

(v) The agency shall have a signed agreement with the parent(s) of the child in care which includes, but is not limited to, the expectations and responsibilities of the agency and the parent(s) for carrying out the steps to meet the case plan goals, the financial arrangements for the child in care, and visiting plans.

(b) Selection of care:

(i) The agency shall select the most appropriate form of care for the child consistent with the child's and family's needs for foster care or adoption.

(ii) In choosing such care, the agency shall provide for any specialized services the child may need and shall make every effort when placing to select the least restrictive and

most appropriate setting closest to the child's home.

(iii) The agency shall involve the child's parent(s) in the selection of care to the maximum extent possible.

(iv) The agency shall only place the child(ren) in a licensed youth care facility.

(c) Preplacement preparation:

(i) The agency social worker for the child shall become acquainted with the child and biological family prior to placement, except when a child is placed on an emergency basis.

(ii) The agency social worker shall help the child understand the reasons for placement and prepare him/her for the new environment. The caseworker shall plan and participate in at least one preplacement visit (except when placing under emergency conditions) and shall be available for supportive services to the child, the birth parent(s), and the foster parent(s).

(iii) The agency shall obtain and record a developmental history for each child.

(d) Services during care:

(i) The agency shall supervise care of the child and shall coordinate the planning and services for the child and family as stated in the case plan.

(ii) The agency worker shall see a child as often as necessary to carry out the case plan. For children in foster homes, there shall be no less than two visits per month during the first three months of care and monthly visits thereafter. For children in youth group homes or child care agencies, there shall be no less than two visits during the first month of care and quarterly thereafter.

(iii) The agency worker or, by written agreement, the residential group care worker shall meet with the parent(s) and child together on a regular basis to assess and work on the following:

(A) progress in resolving problems which precipitated placement;

(B) parent and child relationship difficulties;

(C) adjustment to separation; and

(D) achievement of case plan goals.

(iv) The agency shall refer the parent(s) to other agencies in the community providing appropriate services when they require services which the agency does not offer. The agency shall maintain communication with the agency providing service when a cooperative effort has been arranged.

(v) The agency shall make provisions for specialized services and health care services as stated in the case plan.

(vi) The agency shall be available to give foster parent(s) assistance, consultation, and emotional support with situations and problems encountered in fostering children.

(e) Aftercare services:

(i) The agency shall make continuing supportive services available for children and families for at least six months following an adoption or a child's return to his/her family in order to strengthen and support new or renewed family functioning.

(ii) The agency shall offer supportive help and referral services to parent(s) who decide not to place their child after receiving agency services.

(f) Interstate placements. The agency shall send written notice to the administrator of the interstate compact on placement of children whenever an agency plans to place a child in another state or receives for placement a child from another state and shall comply with the requirements of section 41-4-101, et seq., MCA in making or receiving an interstate placement.

AUTH: Sec. 53-4-111 and 53-5-403(3) MCA

IMP: Sec. 53-4-113(4) and 53-4-403 MCA

RULE XIV CHILD PLACING AGENCY, ADOPTIVE SERVICES In addition to the child placing agency licensing requirements, those agencies that place children for adoption must meet the following requirements:

(1) Adoptive home recruitment:

(a) Agencies serving Indian children shall actively recruit Indian homes and shall comply with the placement requirements contained in the Indian Child Welfare Act (42 USC 1901 et seq.).

(b) The agency shall provide information to prospective adoptive parent(s) about the adoption process:

(i) the agency's policies and practices, legal procedures and the approximate time the process will take, adoptive requirements, types of children placed, the fees, and the availability of subsidy.

(2) Adoptive home application:

(a) The agency shall have an application process that allows for notice to prospective adoptive parents of the status of their application.

(b) The agency may bill applicants for applications commensurate with professional application services rendered.

(3) Adoptive home study:

(a) The study process shall be a joint effort of the child placing agency and the applicant(s).

(b) The process shall be conducted by the social worker in a minimum of 3 meetings with the applicants, at least one meeting of which shall be in the applicant's home.

(c) Separate interviews shall be conducted with each member of the household.

(d) The agency shall study the following areas and shall record the information in the adoptive applicant(s) record:

- (i) motivation for adoption;
  - (ii) strengths and weaknesses of each member of the household with regard to adoption of a child;
  - (iii) the attitudes and feelings of the family, extended family, and significant others involved with the family toward accepting adoptive children, and parenting children who are not born to them;
  - (iv) attitudes of the applicant(s) toward the birth parent(s) and the reason(s) the child is in need of adoption;
  - (v) the applicant's plan for discussing adoption with the child;
  - (vi) emotional stability and maturity of applicant(s);
  - (vii) ability to cope with problems, stress, frustrations, crises, and loss;
  - (viii) capacity to give and receive affection;
  - (ix) child caring skills and willingness to acquire additional skills needed for the child's development;
  - (x) ability to provide for the child's physical and emotional needs;
  - (xi) adjustment of birth children or previously adopted children;
  - (xii) a report of a physical examination for members of the adoptive family living in the household which verifies that each person is free from communicable disease, specific illness, or disabilities which would interfere with the family's ability to parent a child;
  - (xiii) ability to provide financially for the child or children to be adopted with or without agency financial assistance through adoption subsidy;
  - (xiv) personal and community character references;
  - (xv) location and physical environment of the home;
  - (xvi) plan for child care if parent(s) work; and
  - (xvii) recommendations for adoption in regard to number, age, sex, characteristics, and special needs of children best served by the family.
- (4) Notification regarding denial:
- (a) When applicant(s) are not accepted, the agency shall notify the applicant(s) in writing within ten (10) days of the decision and share with them the reasons why a child cannot be placed in their home. The agency shall offer services to the applicant(s) to assist them to adjust to such a decision.
- (5) Services to adoptive parent(s):
- (a) The agency shall discuss the potential children with the adopting family.
  - (b) The agency shall prepare the adoptive family for the placement of a particular child. Preparation shall include:
    - (i) information about the needs, characteristics, and expectations of the child, of the child's family, and of the adopting family; and

(ii) review of medical histories of the child and of the child's family; and

(iii) visiting by the adoptive parents with the child prior to placement.

(c) The agency worker shall visit the adoptive family at least two times within six months after the placement of a child, prior to final decree. Observations made during the visits shall be used in making recommendations for the finalization of the adoption.

(d) The agency shall make post-adoption services available to the adoptive parent(s), the birth parent(s), and the adoptee after the finalization of the adoption.

(6) Agencies must secure a court order terminating the parental rights of the birth parents and legal authority to place the child for adoption prior to adoptive placements.

AUTH: Sec. 53-4-111 and 53-5-403(3) MCA

IMP: Sec. 53-4-113(4) and 53-4-403 MCA

RULE XV CHILD PLACING AGENCY, ADOPTIVE CHILD'S RECORD

(1) The agency shall maintain individual records for each child placed in any adoptive home. The records shall be current to the date of adoption and shall contain the following if applicable:

(a) demographic information including the name, address, sex, race, birth date, and birth place of the child;

(b) the name, address, telephone number, and marital status of the parent(s) and guardian(s) of the child;

(c) the name, address, and telephone number of siblings if placed elsewhere and other significant relatives if available;

(d) copies of legal documents of importance to the child, such as birth record and any court dispositions;

(e) the medical history, cumulative health record, and available psychological and psychiatric reports;

(f) the social assessment and background of the family and parent(s);

(g) a summary which reflects the dates of contact, initial assessment, case plan, and content of the worker's visits;

(h) the circumstances leading to the decision to place a child, the agency's involvement with the parent(s), including services offered, delivered, or rejected;

(i) educational records and reports;

(j) summary of any administrative or outside service reviews on the progress of each child toward goal determination;

(k) summary of the child's contacts with family members; and

(l) a record of the child's placements with names of caregivers, addresses, and date of care.

(2) The agency shall insure that upon discharge, a child's record contains the following:

(a) a discharge summary showing services provided during care, the growth and accomplishments, assessed needs which remain to be met, and recommendations of the services needed to meet these goals;

(b) dates of discharge, reason for discharge, and the name, address, telephone number, and relationship of the person(s) or agency to whom the child was discharged; and

(c) discharge plans which specify the responsibility for follow-through.

AUTH: Sec. 53-4-111 and 53-5-403(3) MCA

IMP: Sec. 53-4-113(4) and 53-4-403 MCA

RULE XVI CHILD PLACING AGENCY, BIRTH FAMILY RECORDS

(1) The agency shall maintain a record of the birth family of every child whom the agency places into care. Such records shall contain:

(a) demographic information including address, birth dates, race, religion, family composition, and interested others;

(b) the social history, including any psychological or psychiatric reports and medical histories;

(c) strengths and needs of the family and the services required;

(d) worker's assessment and initial case plan;

(e) signed agreements between the agency and family;

(f) summary of dates of contact and progress toward goals;

(g) case review reports;

(h) legal documents which grant the agency the legal authority to place the child for adoption; and

(i) discharge summary.

(2) The agency shall keep all records current and shall record the following events within one month of occurrence: intake study, case plan, case plan reviews, and major events in the lives of the child and family members.

AUTH: Sec. 53-4-111 and 53-5-403(3) MCA

IMP: Sec. 53-4-113(4) and 53-4-403 MCA

RULE XVII CHILD PLACING AGENCY, ADOPTIVE STUDY RECORDS

(1) The agency shall keep separate records for each adoptive family which contain:

(a) the application;

(b) the adoptive assessment study;

(c) current medical records of the family;

(d) references from at least three sources;

(e) a copy of the information given to the parent(s) concerning child(ren) to be placed for adoption with them;



(f) all legal documents pertaining to the adoption;  
(g) summary containing the placement decision, preplacement and post-placement contacts with the family and the adoptive child.

(2) In the event a family was not accepted or did not have a child placed with them, the agency shall keep on file a narrative clearly indicating the reason and the manner in which the decision was presented to the family.

(3) If an agency ceases operation all agency records of children, birth families and adoptive families shall be forwarded to the department upon cessation.

AUTH: Sec. 53-4-111 and 53-5-403(3) MCA

IMP: Sec. 53-4-113(4) and 53-4-403 MCA

4. These rules are necessary to fulfill the department's statutory responsibility for licensing child placing agencies and to establish standards for the operation of child care agencies which will assure the adequate protection of children and families who are served by such agencies.

5. 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 March 1, 1985.

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

  
\_\_\_\_\_  
Director, Social and Rehabilitation Services

Certified to the Secretary of State \_\_\_\_\_ January 21 \_\_\_\_\_, 1985.

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

In the matter of the adop-	)	NOTICE OF PUBLIC HEARING ON
tion of rules pertaining to	)	PROPOSED ADOPTION OF RULES
the licensing of adult	)	PERTAINING TO LICENSING
foster homes	)	ADULT FOSTER HOMES

TO: All Interested Persons

1. On February 22, 1985, at 10:30 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 adoption of rules relating to the licensing of adult foster homes.

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

RULE I ADULT FOSTER HOME, PURPOSE (1) The purpose of these rules in this sub-chapter is to establish licensing requirements for adult foster family care homes.

(2) The purpose of an adult foster family care home is to offer in a safe environment light personal care, custodial care and supervision to aged or disabled adults who require assistance in meeting their basic needs.

(3) An adult foster family care home is limited to light personal care, custodial care and supervision and does not provide skilled nursing care.

AUTH: Sec. 53-5-304 MCA

IMP: Sec. 53-5-303 MCA

RULE II ADULT FOSTER HOME, DEFINITIONS For purposes of this sub-chapter, the following definitions apply:

(1) "Adult foster family care home" means a private home operated by one or more persons 18 years of age or older which offers light personal care, custodial care and supervision to disabled adults who are not related to the operator by blood or marriage or which offers light personal care or custodial care to aged persons. (An adult foster family care home shall hereafter be referred to as an adult foster home.)

(2) "Aged person" means a person who is at least sixty (60) years old.

(3) "Disabled adult" means a person 18 years of age or older who has been determined to be disabled by the social security administration, the veteran's administration (full disability), or the department for the purposes of medicaid eligibility.

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

(5) "Custodial care" means providing a sheltered, family-type setting for an aged person or disabled adult to provide for the basic needs of food and shelter and having a spe-

cific person available to help the adult meet these basic needs.

(6) "Light personal care" means assisting the aged person or disabled adult in accomplishing such personal hygiene tasks as bathing, dressing, hair grooming, and supervision of self-medication.

(i) "Assisting" means supervision of the resident in personal hygiene tasks with only occasional "hands on" assistance.

(ii) "Supervision" means guidance of a person as he carries out activities of daily living, including reminding a resident to maintain his medication schedule as directed by his physician, reminding him of important activities to be carried out, assisting him in keeping appointments and being aware of his general whereabouts even though he may travel independently about the community.

(7) "Responsible person" means a relative or friend of the resident or an advocate identified by the department or the placing agency in the placement agreement.

(8) "Skilled nursing care" means 24-hour care supervised by a registered nurse or a licensed practical nurse under orders of an attending physician.

AUTH: Sec. 53-5-304 MCA

IMP: Sec. 53-5-303 MCA

RULE III ADULT FOSTER HOME, LICENSE REQUIRED (1) Every adult foster home shall be licensed by the department.

AUTH: Sec. 53-5-304 MCA

IMP: Sec. 53-5-303 MCA

RULE IV ADULT FOSTER HOME, LICENSES (1) The department shall issue a one year license for an adult foster home to any license applicant meeting all of the requirements established by these rules and the governing statutes.

(2) The department shall determine whether an applicant meets the requirements after conducting a licensing study.

(3) The department shall renew the license annually on the expiration date of the previous year's license if:

(a) the licensee makes written application for issuance at least 30 days prior to the expiration date of the current license; and

(b) the licensee continues to meet all requirements established by these rules, as determined by the department after a licensing study.

(4) An adult foster home may be licensed to care for four or fewer aged persons or disabled adults in need of such care, and shall not care for more residents than the number allowed by their license.

(5) The department may in its discretion issue a provisional license for any period, not to exceed 6 months, to any license applicant that has met all applicable requirements for fire safety and has submitted a written plan approved by the department to comply fully with all minimum requirements established by these rules within the time period covered by the provisional license.

AUTH: Sec. 53-5-304 MCA

IMP: Sec. 53-5-303 MCA

RULE V ADULT FOSTER HOME, LICENSING PROCEDURES (1) An applicant shall apply for an adult foster home license prior to the operation of such home or to the expiration of a current license. Application shall be made to the department upon forms provided by the department.

(2) Upon receipt of application, the department shall conduct a study and evaluation of the home and applicant to determine if the home and the applicant comply with the licensing requirements.

(3) If the department determines that an application or accompanying information is incomplete or erroneous, the department will notify the applicant of the specific deficiencies or errors and the applicant shall submit the required or corrected information within 60 days. The department shall not issue a license until it receives all required information.

(4) Each applicant must report to the department any changes which would affect the current accuracy of information provided on the application within 48 hours of the change.

AUTH: Sec. 53-5-304 MCA

IMP: Sec. 53-5-303 MCA

RULE VI ADULT FOSTER HOME, LICENSE REVOCATION, DENIAL OR SUSPENSION (1) The department may deny, revoke or suspend an adult foster home license by written notification to the licensee if the department determines that:

(a) the home is not in compliance with licensing requirements established by this sub-chapter; or

(b) the licensee has made misrepresentations to the department, either negligent or intentional; or

(c) the licensee or other persons at the home have been named as a perpetrator in a substantiated report of elder abuse.

(2) If any violation of these rules by a licensee places a resident in imminent risk of injury or harm, the license may be immediately revoked.

AUTH: Sec. 53-5-304 MCA

IMP: Sec. 53-5-303 MCA

RULE VII ADULT FOSTER HOME, FAIR HEARING (1) Any person dissatisfied because of denial, revocation or suspension of a license may request a fair hearing in accordance with ARM 46.2.201 through 46.2.214 within 90 days of the notice of adverse action.

(2) The licensee shall cease operation of the foster home pending the fair hearing in those instances where the revocation or suspension of the license is based upon actions that the department has determined places a resident in imminent risk of harm or injury.

AUTH: Sec. 53-5-304 MCA

IMP: Sec. 53-5-303 MCA

RULE VIII ADULT FOSTER HOME, RECORDS (1) The licensee shall submit to the department, upon its request, any reports required by federal or state law or regulation.

(2) A licensee shall report a change of address to the department at least three weeks prior to moving, and the department shall evaluate whether the new residence meets the licensing requirements before the licensee may operate an adult foster home in the new residence.

(3) As required by the Elder Abuse Prevention Act, Section 53-5-511(3)(3), MCA, any person who operates or is employed by an adult foster home shall report any abuse, neglect or exploitation of a resident to the department or its local affiliate.

(4) The licensee shall maintain a record regarding each resident in the home which shall contain at least the following information:

(a) name, address and telephone number of next of kin or legal guardian;

(b) name, address and telephone number of person or agency responsible for placing the resident in the home and a copy of the placement agreement;

(c) date of admission;

(d) the name and address of the preferred physician and hospital;

(e) any accident reports or other incident reports regarding the resident;

(f) any grievance or complaints lodged by the resident;

(g) all resident records shall be updated at least quarterly.

AUTH: Sec. 53-5-304 MCA

IMP: Sec. 53-5-303 MCA

RULE IX ADULT FOSTER HOME, ENVIRONMENTAL REQUIREMENTS

(1) The home shall be located close to community resources.

(a) The home shall be accessible to transportation -- bus, train, car.

(b) The home shall be in reasonable proximity to shopping areas, churches, senior centers, medical and dental clinics and hospitals.

(2) The home shall have an adequate and safe sewage system and water supply.

(3) The foster home must be equipped with a telephone. Telephone numbers of the hospital, police department, fire department, ambulance, and poison control center must be posted by each telephone.

(4) The licensee shall keep the home clean and in good repair and the premises shall be kept free from objects, materials, and conditions which constitute a danger to the residents.

(5) The floor plan and routine of a home shall be such that a resident may spend the majority of his nonsleeping hours outside of his bedroom.

(6) The foster home shall make adequate provisions for laundering of residents' personal laundry.

(7) The licensee shall be equipped to provide an adequate amount of hot water for a resident's use between the temperature range of 110-120 degrees F. at the fixture.

(8) Bedrooms. There shall be no more than three (3) persons in any bedroom and each room shall include:

(a) floor to ceiling walls;

(b) one door which can be closed to allow privacy for residents;

(c) a minimal clear floor space of 7' x 9' shall be provided for a single-bed room; 13' x 9' for a double room; and 13' x 17' for a three-bed room. The space does not include closet space;

(d) at least one window which can be opened from the inside without the use of tools;

(e) a mirror appropriate for grooming;

(f) an adequate closet or wardrobe, lighting sufficient for reading and other resident activities, bureau or dresser or equivalent and at least 1 chair with arms in each bedroom for every 2 residents;

(g) an individual bed for each resident at least 36 inches wide and 72 inches long with comfortable springs in good condition, a clean protected mattress not less than 5 inches thick or 4 inches if of a synthetic construction and a pillow;

(h) a licensee shall provide washable bedding for each bed which includes 2 sheets, a pillow case, minimum of 1 blanket and a bedspread;

(i) bed linen shall be changed at least weekly or more often if soiled;

(j) a licensee shall have a linen supply for twice the number of beds in the home.

(9) Living rooms. A foster home shall provide distinct living and sleeping areas. All areas shall be well lighted, heated and ventilated.

(a) The home shall have a living or day room area for use by a resident and his visitors.

(b) The living and sleeping areas for a given resident shall not be in separate wings, units or buildings.

(c) A living room, dining room or other room not ordinarily used for sleeping shall not be used for sleeping by residents or foster family members.

(10) Bathrooms. One toilet, sink, and bath or shower shall be provided for each six (6) adults in the foster home, including the foster family and the residents. At least one toilet and sink shall be available on each floor where residents' bedrooms are located.

(a) All bathrooms used by residents shall have the following:

(i) a toilet and sink;

(ii) a tub or shower equipped with non-skid and permanent sturdy hand grips;

(iii) an individual towel rack and place for resident's toilet articles; and

(iv) a light switch by the door.

(b) Bathrooms shall be vented to outside or have an outside window.

(11) Kitchen. The kitchen shall be equipped properly to prepare and serve adequate meals.

(a) Waste shall be kept in leakproof, nonabsorbent containers with close fitting covers for garbage, refuse and other solid waste. Waste shall be removed from the kitchen daily and from the premises at least weekly.

(b) Poisonous compounds, caustics and other dangerous material shall not be kept in the food preparation area.

(c) The kitchen shall be maintained in a clean and sanitary condition.

(d) Proper refrigeration and food storage shall be provided.

(e) Food shall not be stored on the floor.

(12) Heating. The home shall be heated by centralized heating or its equivalent. All rooms used by residents shall be kept at a temperature range of 68° - 72° F during non-sleeping hours.

(a) If the heating mechanism is located in the basement of the home, the separation shall include at least a 1 3/4 inch solid wood core door or equivalent to create a floor separation between the basement and the first floor.

(b) A permanent outside vent which cannot be closed shall be incorporated in the design of heating plan rooms so that adequate air for proper combustion is assured.

(c) Flame producing water heaters or incinerators shall

be installed with the same protection as the heating mechanism.

(d) The use of space heaters in a foster home is prohibited.

(e) Factory mutual and underwriter's laboratories approved permanent, fixed type electrical heating, such as recognized panel or baseboard fixed type may be utilized in any location.

(f) In existing homes where an American gas association (AGA) approved sealed combustion wall heater has been installed in accordance with both the AGA and the manufacturer's recommendations, approval will be given if the unit is located on an outside wall, obtains combustion air directly from the outside and vents products of combustion directly to the outside.

(g) All wood burning stoves must be properly installed and inspected by the local fire inspector or a state fire marshal.

(h) Storage of combustible materials is prohibited in rooms containing the heating mechanism, water heater or incinerator.

(i) The heating mechanism shall be inspected by the licensee at least yearly and necessary repairs made.

AUTH: Sec. 53-5-304 MCA

IMP: Sec. 53-5-303 MCA

RULE X ADULT FOSTER HOME, FIRE SAFETY (1) A smoke detector approved by a recognized testing laboratory, which is properly maintained and regularly tested, shall be located on each level of the foster home. Mobile homes shall have smoke detectors near all sleeping areas.

(2) A workable portable fire extinguisher on each floor of the home with a minimum rating of 2A10BC is required. Extinguishers shall be readily accessible at all times.

(3) No unvented fuel-fired heating devices are allowed in the home.

(4) No stove or combustion heater will be so located as to block escape in case of malfunctioning of the stove or heater.

(5) Exits. Exits are defined as a means of egress or passage to safe ground outside a building.

(a) Every room used for sleeping, living or dining shall have at least two exits, at least one of which shall be a door or stairway providing a means of unobstructed travel to the street or ground level outside of the building.

(b) All exits shall be maintained in unobstructed, easily traveled condition at all times, free of ice and snow on the outside.

(c) Where basements are regularly utilized for resident activities, there shall be 2 exits.



(d) Doors which form a part of a required exit shall be at least 36 inches in width in new construction, and at least 30 inches in width in existing facilities, and insure adequate width for residents requiring wheelchairs.

(e) Traffic to and from any room shall not be through a resident's bedroom.

(f) The first floor of a foster home shall have at least 2 separate and independent exits leading to the outside.

(g) Homes accommodating residents who regularly require wheelchairs, shall be equipped with ramps located at each exit to the outside. A ramp shall not exceed 1 foot of rise in 12 feet of run.

(h) No required path of travel to the outside shall be through rooms that are subject to locking or otherwise controlled by a person other than the person seeking to escape.

(6) No occupied room shall have as its means of access a trap door, ladder, or folding stairs.

(7) Every door that can be locked shall have a means to open the door from the outside in case of emergencies. Locks on closet doors shall be openable from both sides.

AUTH: Sec. 53-5-304 MCA

IMP: Sec. 53-5-303 MCA

#### RULE XI ADULT FOSTER HOME, OTHER SAFETY REQUIREMENTS

(1) Rugs shall be attached to the floor or made of non-skid material. Unattached throw rugs and scatter rugs are prohibited.

(2) Corridors shall be well lighted, uncluttered and at least three feet wide.

(3) Stairways and ramps shall have sturdy banisters. Open stairways should be protected by gates, if aged persons are being cared for. Stairs shall be provided with non-slip tread and shall be at least three feet wide.

(4) Every bathroom door shall be designed to permit the opening of the locked door from the outside in an emergency.

(5) Bathtubs and showers shall be equipped with non-skid mat and sturdy grips.

(6) All areas occupied by residents shall be well lighted. Night lights shall be provided for each resident. Light switches shall be located at the door and switches in bathroom shall be located at least four feet from tub or shower. Exposed light bulbs shall not be used in the home.

(7) The yard area shall be kept free from all hazards, nuisances, refuse and litter.

(8) Medication shall be kept in original container, labeled with the original prescription label and shall be kept where access is available only to the person for whom the medication is prescribed.

(a) A daily record of medication taken should be kept by

the resident or the licensee if the resident is not able to keep the record.

AUTH: Sec. 53-5-304 MCA

IMP: Sec. 53-5-303 MCA

RULE XII ADULT FOSTER HOME, EMERGENCY PREPAREDNESS

(1) The adult foster home shall have procedures for emergency evacuation to be followed in the case of fire or other emergency.

(2) Residents, adult members of the foster family and other persons in the home shall be familiar with emergency procedures and such procedures shall be practiced with the residents at least quarterly.

(3) Emergency procedures shall include a plan for removing all residents, including nonambulatory residents.

AUTH: Sec. 53-5-304 MCA

IMP: Sec. 53-5-303 MCA

RULE XIII ADULT FOSTER HOME, ILLNESSES, ACCIDENTS, ABSENCES OR DEATH

(1) In case of an accident or sudden illness, the licensee shall obtain needed care immediately and notify the relative, other person or agency responsible for placing and maintaining the resident in the foster home.

(2) Accidents or incidents resulting in injury to resident which required medical attention shall be reported to the department within 72 hours. An accident record or incident report shall be prepared for any accident involving a resident, foster family member or visitor. Incident includes seizures or highly unusual behavior episodes. An accident record or incident report shall include the following information:

- (a) name of person involved in accident or incident;
- (b) date, hour, place and cause of accident or incident;
- (c) description of the accident or incident;
- (d) effect of accident or incident on person involved and care given;
- (e) name of physician notified and time of notification;
- (f) physician's statement regarding extent of injuries, treatment ordered and disposition of person involved;
- (g) corrective measures taken to avoid repetition of accident or incident.

(3) If a resident is absent from the home without explanation for a period of four (4) hours or more, the foster parents shall notify the local law enforcement authorities, the licensing social worker, the relatives or legal guardian and the person or agency responsible for placing and maintaining the resident in the adult foster home.

(4) When a resident dies, the licensee shall immediately notify the resident's physician, the next of kin or legal

guardian, the licensing social worker and the person or agency responsible for placing and maintaining the resident in the adult foster home.

AUTH: Sec. 53-5-304 MCA

IMP: Sec. 53-5-303 MCA

RULE XIV ADULT FOSTER HOME, PROGRAM (1) The licensee shall provide light personal care, custodial care and supervision for residents, including:

(a) a minimum of three (3) regular, nutritious, attractively prepared meals per day served family style;

(i) Not more than fifteen (15) hours shall elapse between the evening and morning meal.

(ii) All perishable foods shall be stored at such temperatures as will protect against spoilage.

(iii) All foods while being stored, prepared or served shall be protected against contamination and be kept safe for human consumption.

(iv) Home canned foods cannot be used for resident's meals.

(v) The licensee shall prepare meals which comply with the special dietary needs of the resident who has been placed on a special diet by his physician or a registered dietician or nutritionist.

(b) opportunities for residents to participate in community organizations and activities.

(2) The licensee shall cooperate with the placing agency to implement the resident's case plan.

(3) The licensee shall allow each resident the opportunity to voluntarily practice his or her own religion. Residents shall be permitted by the licensee to attend religious services of the resident's choice in the community and to visit with representatives of their faith.

(4) The licensee shall allow each resident the opportunity to identify with his cultural heritage.

(5) The licensee shall allow for the privacy for the resident. The licensee shall provide appropriate sleeping arrangements, separate storage space for clothing and personal articles, and a place to display pictures, belongings and other personal items.

(6) The resident shall be provided the opportunity for bathing and personal grooming as desired.

(7) The resident shall be allowed to dress as fashion, personal tastes, cleanliness and the season warrants.

(8) An adult member of the foster family or another adult employee of the licensee shall always be present when a resident is in the home except as may be provided in a resident's individual assessment plan.

(9) The licensee shall not subject the resident to moral, social and financial exploitation.

(10) Residents shall not be used as employees of the foster home or be coerced into performing tasks such as house-keeping, laundering and yard work for the operator or others.

(11) A resident shall have access to the use of the United States mails, and may write and send mail at his own expense without censorship and receive mail addressed to him unopened.

(12) A resident shall have daily, private access and use of a telephone for local calls. Similar access is to be granted for long distance calls which are made collect or for which charges are otherwise paid by the resident.

(13) Restrictive visiting hours shall not be maintained and residents shall be allowed to receive reasonable numbers of visitors at any reasonable time.

(14) An elderly or disabled adult shall not be denied admission to, or be discharged from, a foster home because of race, religion, color or national origin.

AUTH: Sec. 53-5-304 MCA

IMP: Sec. 53-5-303 MCA

RULE XV ADULT FOSTER CARE, RESIDENT'S FUNDS (1) A resident shall have access to and use of his or her personal funds. Exceptions shall be subject to provisions of the resident's assessment plan.

(2) A licensee may handle a resident's finances only if no other responsible person is available and willing to do so.

(a) The maximum value of money and valuables a licensee shall accept for safekeeping shall not exceed \$100.00 per resident.

(b) Resident's funds shall be kept separate and apart from all funds and monies of the licensee and treated as a trust obligation of the licensee.

(3) The foster parent is responsible for maintaining a written record of each resident's personal property and personal financial transactions, except for those residents who are capable of handling their own financial affairs or those residents whose financial affairs are handled by a relative, guardian or conservator.

(4) The licensee shall keep a current monthly record of the income and source of income and expenses for each resident except those residents who are capable of handling their own financial affairs.

(a) The licensee shall insure that the resident's personal money and personal property is not appropriated or misused by any person. Any unethical use of a resident's money or property by another shall be reported to the department or its local affiliate pursuant to section 53-5-511 MCA.

(5) Transactions prohibited:

(a) A member or employee of a foster family shall not borrow money, property or other valuables from a resident.

(b) Sales or other financial transactions between a resident and a member or employee of the foster family are prohibited.

AUTH: Sec. 53-5-304 MCA

IMP: Sec. 53-5-303 MCA

RULE XVI ADULT FOSTER CARE, PLACEMENT (1) The licensee shall enter into a written placement agreement with the agency or person placing the elderly or disabled adult in the home.

(a) The agreement shall specify the responsibilities of the licensee and the placing agency or person requesting care.

(b) The agreement shall set forth the charges that will be made to the resident for care and an itemized statement of what expenses in addition to the cost for care will be charged to the resident.

(c) A copy of the agreement shall be filed in the residents file.

(d) A copy of the agreement shall be sent to the department within three days from the day the adult begins to reside in the home.

(2) The prospective resident or his guardian shall be allowed to participate in the selection of a foster home.

(3) If there is a question as to whether the aged or disabled adult can be adequately cared for in foster care, the licensee or placing agency shall contact the adult's personal physician for a recommendation.

(4) The licensee shall not discharge or transfer a resident from the home without prior planning, including but not limited to:

(a) determining that the move is in the resident's best interest;

(b) maintaining a record that includes date of discharge, the reason for discharge, the disposition of money and valuables held for safekeeping and a forwarding address of the resident or a relative, guardian or other adult;

(c) providing ten (10) days prior notice to the placing agency or person responsible for placing the resident.

AUTH: Sec. 53-5-304 MCA

IMP: Sec. 53-5-303 MCA

RULE XVII ADULT FOSTER HOME, FOSTER PARENTS (1) Foster parents, employees and other members of the household must be in good physical and mental health. To assist the department in evaluating the mental and physical health of applicants, foster parents, employees and members of the foster home household, the applicant or licensee shall cooperate with the department in providing the following information:

(a) A CSD-SS-33, "personal statement for health and licensure" form provided by the department must be completed

for each person living in the household or employed by the licensee and submitted to the department with the initial application for licensure and annually thereafter.

(b) The applicant for licensure or relicensure shall complete the application form provided by the department, which shall include questions regarding whether the applicant or other member living in the household has received inpatient or outpatient treatment for mental illness, drug or alcohol abuse.

(c) Any applicant, any licensed foster parent or any member of the foster home household or employed by the licensee may be asked to obtain a psychological evaluation or medical examination by the department.

(d) Any applicant, any licensed foster parent or any member of the foster home household or person employed by the licensee may be asked to sign an authorization of release of medical or psychological records allowing the department to obtain medical records concerning the applicant, licensed foster home parent, any other member of the household or person employed by the licensee.

(2) A foster family must include at least one adult who lives in the home on a permanent basis and who is not engaged in employment outside the home. Exceptions may be granted by the department if there is adequate provision for alternative care.

(3) The foster parent, employees and other members of the household shall:

(a) accept agency supervision;

(b) share information about the residents with the department and the agency or persons responsible for placing and maintaining the resident in the home; and

(c) cooperate with any resident's physician in assisting the resident in following the physician's recommendations to the resident.

AUTH: Sec. 53-5-304 MCA

IMP: Sec. 53-5-303 MCA

RULE XVIII ADULT FOSTER HOME, COMPLAINTS (1) The licensee shall have a written grievance policy which outlines the procedures to be followed by a resident in presenting a grievance to the family concerning his care in the home.

(2) A resident's grievances and complaint record shall be maintained which shall include copies of all residents' grievances or complaints filed in chronological order. The report shall include the nature of the complaint, the date of the complaint and a statement indicating how the issue was resolved.

AUTH: Sec. 53-5-304 MCA

IMP: Sec. 53-5-303 MCA

RULE XIX ADULT FOSTER HOME, PROHIBITED PRACTICES (1) A foster home shall not subject any resident to physical restraint, isolation, corporal punishment, personal humiliation or the withholding of meals, water, clothing, mail or visits.

(2) A licensee is prohibited from providing skilled nursing care.


AUTH: Sec. 53-5-304 MCA

IMP: Sec. 53-5-303 MCA

3. These rules are necessary to establish standards for licensing adult foster homes to assure the adequate protection of aged and handicapped persons who will receive care in such homes.

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 March 1, 1985.

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

  
\_\_\_\_\_  
Director, Social and Rehabilitation  
Services

Certified to the Secretary of State January 21, 1985.

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

In the matter of the amend-	)	NOTICE OF PUBLIC HEARING ON
ment of Rule 46.12.216	)	PROPOSED AMENDMENT OF RULE
pertaining to restriction of	)	46.12.216 PERTAINING TO
access to medical services	)	RESTRICTION OF ACCESS TO
	)	MEDICAL SERVICES

TO: All Interested Persons

1. On February 22, 1985, at 3:00 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the amendment of Rule 46.12.216 pertaining to restriction of access to medical services.

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

46.12.216 RECIPIENT RESTRICTION OF ACCESS TO MEDICAL

SERVICES (1) A medicaid recipient may be restricted to specified designated providers or required to obtain department approval prior to receiving non-emergency services if the department determines that recipient utilization is excessive, inappropriate, or fraudulent with respect to medical need.

(2) ~~Restriction and continued restriction~~ may be imposed on physician services, drugs or any other services covered by the medicaid program when:

Subsections (2)(a) through (4) remain the same.

(5) Medicaid payment for ~~routine~~ medical services provided to a restricted recipient will be made only to the designated provider/s except in-bona-fide-emergency-situations when emergency services as defined at ARM 46.12.102(2)(ii) are required or, when the primary physician refers the recipient to another physician or when the department approved the service prior to performance.

Subsection (6) remains the same.

(7) The department will determine the providers that a recipient can use and the restrictions on services. The recipient will have an opportunity to specify designate the providers he prefers and his preference will be approved unless the department determines that the provider has been sanctioned by the department in accordance with ARM 46.12.401, the designated review organization has determined that the provider has not properly managed the medical care of a recipient who has been restricted, or the provider will not accept the recipient as a patient. If the recipient does not provide to the department a written response of their provider preference prior to issuance of medicaid ID card for month that intended action is to take place, the recipient's ID card may be held for 15 days from the date of intended action in order



for the department to make the selections. If the department is unable to obtain a primary physician for the restricted recipient, all non-emergency services must be prior authorized by the department.

(8) Restricted recipients may request a change of providers. The request must be in writing and submitted to the department for approval. Provider changes will not be approved unless the department determines that there is good cause for the requested provider change/s. The department will have 30 days to take action on the request.

(9) The department will review aAll restricted recipients will be reviewed one year from the date of the restriction, or at more frequent appropriate intervals by the department. Restriction may be continued if:

(a) the department determines the recipient's utilization has remained excessive and/or unwarranted (examples are listed, but not limited to, instances in subsection (2); or

(b) the designated physician recommends, with supporting rationale, that the recipient should remain restricted; or

(c) the recipient has received or attempted to receive medicaid services not authorized under the restricted card program.

(10) ~~The recipient has the right to appeal any departmental action in accordance with ARM 46.2.202. When a recipient's utilization appears to be excessive but for whom there is insufficient data to justify a restriction, the department may recommend to the recipient that he voluntarily limit himself to one primary physician and one pharmacy. When this action is taken, the recipient shall be informed that his utilization of medicaid services shall be reviewed within one year.~~

AUTH: Sec. 53-6-113 MCA IMP: 53-6-104 MCA

3. These proposed amendments are being made to clarify the Department's policies which apply to the Recipient Restriction Program.

When a restricted recipient does not have a primary physician the Department reviews and prior authorizes non-emergency services. Emergency services has been redefined at ARM 46.12.102(2)(ii). If restriction is continued after the initial 12 month period, additional criteria is applied to determine if the recipient should continue on the Restricted Card Program.

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 March 1, 1985.

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

  
\_\_\_\_\_  
Director, Social and Rehabilitation Services

Certified to the Secretary of State January 21, 1985.

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

In the matter of the amend-	)	NOTICE OF PUBLIC HEARING ON
ment of Rule 46.12.102	)	THE PROPOSED AMENDMENT OF
pertaining to medical	)	RULE 46.12.102 PERTAINING
assistance, definitions	)	TO MEDICAL ASSISTANCE,
	)	DEFINITIONS

TO: All Interested Persons

1. On February 22, 1985, at 2:30 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the amendment of Rule 46.12.102 pertaining to definitions of terms used in the medicaid program.

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

46.12.102 MEDICAL ASSISTANCE, DEFINITIONS Subsections (1) through (2)(e) remain the same.

(i) ~~Experimental services which are considered by the medical profession as experimental~~ or services which are generally regarded by the medical profession as unacceptable treatment will not be considered medically necessary for the purpose of the medical assistance program.

(A) Experimental services are procedures and items, including prescribed drugs, considered experimental by the U.S. department of health and human services or the department's designated review organization or procedures and items approved by the U.S. department of health and human services for use only in controlled studies to determine the effectiveness of such services.

(ii) ~~Emergency service means a service performed after the provider's usual hours of business or a service that must be provided in a hospital emergency room~~ inpatient and outpatient hospital services that are necessary to prevent the death or serious impairment of the health of a recipient.

Subsections (3) through (34) remain the same.

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-101, 53-6-131 and 53-6-141 MCA

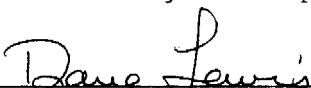
3. Experimental services have never been a benefit of the Medicaid program and this amendment is needed to clarify the basis used to determine if a service is experimental.

The definition of emergency services is being amended to comply with the federally mandated definition.

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 March 1, 1985.

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

  
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Director, Social and Rehabilitation Services

Certified to the Secretary of State January 21, 1985.

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

In the matter of the amend-	)	NOTICE OF PUBLIC HEARING ON
ment of Rules 46.12.502 and	)	THE PROPOSED AMENDMENT OF
46.12.1002 pertaining to	)	RULES 46.12.502 AND
services not provided by the	)	46.12.1002 PERTAINING TO
medicaid program	)	SERVICES NOT PROVIDED BY
	)	THE MEDICAID PROGRAM

TO: All Interested Persons

1. On February 22, 1985, at 2:00 p.m. a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the amendment of Rules 46.12.502 and 46.12.1002 pertaining to services not provided by the medicaid program.

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

46.12.502 SERVICES NOT PROVIDED BY THE MEDICAID PROGRAM  
Subsections (1) through (2)(p) remain the same.

(3) Medical services furnished to medicaid eligible recipients who are absent from the state are excluded from the Montana medicaid program except for those medical services provided when:

(a) there is a medical emergency and the recipient's health would be endangered if he were required to travel to Montana to obtain the medical services;

(b) the recipient travels to another state because the department finds the required medical services are not available in Montana; or it is determined by the department that it is general practice for recipients in a particular locality to use medical resources in another state;

(c) the recipient or his representative can demonstrate to the satisfaction of the department that out-of-state medical services and all related expenses will be less costly than in-state services; or

(d) the recipient is a child residing in another state for whom Montana makes adoption assistance or foster care maintenance payments.

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402 MCA

IMP: Sec. 53-2-201, 53-6-103, 53-6-141 and 53-6-402 MCA

46.12.1002 TRANSPORTATION AND PER DIEM, REQUIREMENTS

(1) Transportation and per diem shall be allowed when medically necessary for a recipient to obtain nonemergency services which the department finds are not--reasonably-avail-

~~able-locally-or-in-the-state~~ allowable in accordance with ARM 46.12.502(3).

(2) Transportation and per diem will not be reimbursed unless authorization is granted by the department. ~~shall-be authorized-by-the-local-county-welfare-director-prior-to-payment-~~

Subsections (3) through (8) remain the same.

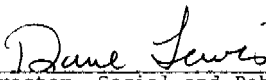
AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-101 and 53-6-141 MCA

3. The department is proposing this change as a means of controlling Medicaid costs. Out-of-state services are generally more expensive than in-state services although the level of treatment is generally the same. The department recognizes that certain specialized medical services as required under specific conditions are not available in-state and the proposed change allows for payment of these services if prior approval is obtained. The proposed change also recognizes that Medicaid recipients travelling out of state may require emergency Medicaid services.

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 March 1, 1985.

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

  
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Director, Social and Rehabilitation Services

Certified to the Secretary of State January 21, 1985.

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the adoption ) NOTICE OF THE ADOPTION OF ARM  
of a new rule, the amendment ) 2.21.217, THE AMENDMENT OF  
of rules and the repeal of ) ARM 2.21.216, 2.21.221,  
rules relating to the admin- ) 2.21.222, 2.21.223, 2.21.224,  
istration of annual vacation ) 2.21.226, 2.21.227, 2.21.228,  
leave ) 2.21.230, 2.21.232, 2.21.234,  
AND 2.21.241, AND THE REPEAL  
OF ARM 2.21.225, 2.21.231,  
AND 2.21.233 RELATING TO  
ANNUAL VACATION LEAVE

TO: All Interested Persons.

1. On November 29, 1984, the department of administration published notice of the proposed adoption of ARM 2.21.217, the amendment of ARM 2.21.216, 2.21.221, 2.21.222, 2.21.223, 2.21.224, 2.21.226, 2.21.227, 2.21.228, 2.21.230, 2.21.232, 2.21.234, and 2.21.241, and the repeal of ARM 2.21.225, 2.21.231 and 2.21.233 relating to the administration of annual vacation leave at page 1656 of the 1984 Montana Administrative Register, issue number 22.

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

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

(1) "Break in service" means, as provided in 2-18-601 (13), 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 be an absence of more than 5 working days in a row without an approved leave of absence.

(2) "Continuous employment" means, (for purposes of the qualifying period), 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.

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

2.21.221 ACCRUAL AND ELIGIBILITY TO USE VACATION LEAVE CREDITS (1) In accordance with 2-18-611, MCA, all employees serving in positions which are permanent, intermittent, or seasonal are eligible to earn vacation leave credits. As provided in In accordance with 2-18-611(5), MCA, "temporary employees do not earn vacation leave credits, except that a temporary employee who is subsequently hired into a permanent position within the same jurisdiction without a break in service and temporary employees who are employed continuously longer than 6 months may count as earned leave credits for the immediate term of temporary employment." shall receive

retroactive vacation leave credits for the preceding continuous period of temporary employment.

(2) An employee must be continuously employed for the qualifying period of 6 calendar months to be eligible to use vacation leave. Unless there is a break in service, an employee is only required to serve the qualifying period once. After a break in service, an employee must again complete ~~a new~~ the qualifying period to be eligible to use annual vacation leave.

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

(7) When a person is simultaneously employed as provided in (6), vacation 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. The agency may refuse to approve annual leave which results in a total of more than 40 hours in a pay status for the workweek.

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

~~(((An employee who has worked the qualifying period for use of annual vacation leave does not have to repeat that period upon returning to work from a continuous leave of absence without pay exceeding 15 working days.~~

(((11) Where an employee who has not worked the qualifying period for use of annual vacation leave must repeat that period upon returning to work from 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 leave of absence exceeding 15 working days is not a break in service and the employee will not lose any accrued annual leave credits or lose credit for time earned toward the qualifying period, but will not be eligible to use any earned annual leave credits until after working 6 continuous months. An approved continuous leave of absence without pay of 15 working days or less will be counted as time earned towards the 6 month qualifying period.

#### 2.21.222 CALCULATING ANNUAL VACATION LEAVE CREDITS

(1) As provided in 2-18-612, MCA, "vacation leave credits are earned at a yearly rate calculated in accordance with the following schedule, which applies to the total years of an employee's employment with any agency, whether the employment is continuous or not." For purposes of this paragraph, agency means, as provided in 2-18-601(1), MCA, "any legally constituted department, board, or commission of state, county, or city government or any political sub-division thereof."

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

#### 2.21.224 MAXIMUM ACCRUAL OF VACATION LEAVE CREDITS

~~(1) As provided in In accordance with 2-18-617(1), MCA, "annual vacation leave may be accumulated to a total not to exceed two times the maximum number of days earned annually as of the end of the first pay period of the next calendar year. Excess vacation time is not forfeited if taken within~~



~~90-calendar days from the last day of the calendar year in which the excess was accrued.~~ all full-time and part-time employees serving in permanent and seasonal positions may accumulate two times the total number of annual leave credits they are eligible to earn per year, according to the rate earned schedule.

(2) Excess vacation leave credits will be forfeited unless taken by the employee within 90 calendar days from the last day of the calendar year in which the excess credits were earned.

~~(2) (3)~~ (3) The calculation of excess vacation leave credits (those credits which must be used within the first 90 days of a the next calendar year) will be made as of the end of the first pay period which extends into the next calendar year.

2.21.227 VACATION LEAVE REQUESTS (1) - (2) Same as proposed rule.

(3) The agency shall refuse to approve annual leave which results in a total of more than 40 hours in a pay status for the workweek. In no case may the number of hours of annual leave taken exceed the number of hours the employee is regularly scheduled to work.

(4) Vacation leave must be taken in minimum increments of one-half hour.

2.21.228 VACATION LEAVE RECORDS (1) Same as proposed rule.

~~(2)--Vacation-leave-credits-used-must-be-recorded-to-the nearest-one-half-hour-when-fractions-of-hours-are-used-~~

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

3. A public hearing was conducted December 20, 1984, to receive comments on these proposed rule actions. The following testimony and written comments were received during the comment period and at the hearing.

COMMENT: In ARM 2.21.216, a comment questions the purpose for changing the definition of break in service to match the statutory definition, feeling the change is ambiguous and subject to diverse interpretation and may also abrogate established precedent for interpretation of the term.

RESPONSE: In order to avoid two sets of definitions requiring interpretation for the same term, the department has chosen to amend administrative rules where necessary to use the same definition found in statute. In order to assist in interpretation of this term the department has expanded the definition to describe where a break in service might occur.

COMMENT: In ARM 2.21.222(1) the term "agency" is used and not defined.

RESPONSE: The department added language which defines "agency" for the purposes of ARM 2.21.222(1).

COMMENT: In ARM 2.21.232(1), the term "discredit" is used and it would be useful to provide a definition of this term.

RESPONSE: The department chooses not to create a blanket definition of the term discredit, which is used in conjunction with withholding cash out of annual leave upon termination. The types of actions which would bring "discredit" upon an employee and result in withholding cash out will be specific to individual situations. The department defers to the individual agencies to establish policy on what may be considered "discredit," in light of the agency's duties, responsibilities and programs.

COMMENT: A comment objects to the requirement to serve a qualifying period and suggests that supervisors should have the authority to advance annual leave credits prior to the completion of the qualifying period.

RESPONSE: Completion of a qualifying period is required by 2-18-611(1), MCA, and the department has no discretion to bypass this requirement.

COMMENT: Because we now define a year as 2,080 hours, we should also define the six-month qualifying period as 1,040 hours.

RESPONSE: Section 2-18-611(1), MCA, requires a qualifying period of "6 calendar months" for all employees and the rules will continue to reflect that calculation of time for this purpose.

COMMENT: The vacation leave definition allows supervisors to make discriminatory decisions in approving employee vacation leave and the phrase "for purpose of rest, relaxation or personal business" should be deleted.

RESPONSE: That phrase is in the statutory definition of vacation leave, found in 2-18-601, MCA. The department believes the term "personal business" is all inclusive and should be broadly construed to mean any activity of a personal nature.

COMMENT: Two comments indicate that the statutory language describing vacation administration for employees in temporary positions needs additional clarification.

RESPONSE: The department agrees and has modified ARM 2.21.221(1) to state that once temporary employees become eligible to earn leave, that they shall receive retroactive leave credits for the preceding continuous period of temporary employment.

COMMENT: With the proposed change in ARM 2.21.221, would a person terminated due to reduction in work force have to repeat the qualifying period, if called back to work?

RESPONSE: ARM 2.21.5007(10) states that an employee who returns to employment from a reduction in work force during the preference period does not have to repeat the qualifying period to use either annual or sick leave.

COMMENT: The requirement in ARM 2.21.221(12) that a person who goes on approved leave of absence without pay in excess of 15 working days before completing the qualifying period must repeat the entire qualifying period may be in conflict with 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."

RESPONSE: In light of these comments and an informal opinion from the Human Rights Commission that in this case the specific statute 49-2-311, MCA, would control the general statute 2-18-611, MCA, because the result of 2-18-611, MCA is to remove a benefit already earned, the department has amended ARM 2.21.221(12). The rule now provides that an approved leave of absence without pay which lasts longer than 15 working days will not count toward the qualifying period. Time already earned will not be forfeited. The rule will continue to require that an employee must complete 6 calendar months of employment to be eligible to take annual vacation leave. ARM 2.21.216(2) also has been amended to clarify the term continuous employment.

COMMENT: In ARM 2.21.221, the proposed rules that "leave credits may not be advanced, nor may the leave be taken retroactively" is too inflexible.

RESPONSE: The department does not believe it has the authority to extend to employees benefits they have not earned. This provision exists currently in ARM 2.21.225, Prohibited Use of Vacation Leave Credits, one of the rules proposed for repeal, and the requirement is moved to ARM 2.21.221(3) as part of the reorganization of this policy. It is not a new condition for use of leave.

COMMENT: In ARM 2.21.221(6) and (9) and ARM 2.21.222(4), language should be added that an employee may not accrue vacation leave credits for more than 8 hours in a day.

RESPONSE: There are some state employees who work a schedule of four, 10-hour days or other unusual schedules exceeding 8 hours. Those hours are not overtime hours, which these rules do exclude for purposes of accruing annual leave. To limit leave accrual to 8 hours per day would penalize those employees on unusual schedules.

COMMENT: Two comments state that the language in ARM 2.21.221(7) that an agency "may refuse to approve annual leave that results in more than a 40 hour workweek" should be mandatory and another comment suggests moving this language to ARM 2.21.227, Vacation Leave Requests.

RESPONSE: The department agrees with both these comments and has changed the rules accordingly.

COMMENT: In ARM 2.21.221(9), substitute the words "at a premium pay rate" for "time and a half."

RESPONSE: Even where an employee who works on a scheduled holiday is paid at two and one-half times the hourly rate,

the actual "premium pay" is the time and a half that applies to the hours actually worked. In addition, the employee receives 8 hours of holiday pay. The only "premium pay" state employees receive at this time is "time and a half" and the department will continue to use that term to avoid confusion.

COMMENT: Delete ARM 2.21.221(11), because an employee does not have to re-serve the qualifying period unless he has a break in service, as defined in ARM 2.21.216.

RESPONSE: The department agrees and the provision has been deleted.

COMMENT: Two commenters expressed concern about the new method of accruing time toward the annual leave rate earned which would be implemented by ARM 2.21.222, which provides that only hours in a pay status will count toward a year of employment which eventually will result in an employee earning leave at a higher rate. One comment cited the fact that part-time employees will have to work twice as long to earn a benefit and suggested a system of using months, rather than hours to accrue time. Another comment states that the "net effect is that the employment relationship has been suspended during the leave of absence without pay period, as all benefits derived from employment have ceased."

RESPONSE: The department is charged in 2-18-604, MCA, with adopting uniform procedures for the administration of annual leave. The department found that a variety of methods were used in the agencies to calculate time earned toward the annual leave rate earned and asked the attorney general to determine the correct method. He did so in an opinion issued July 31, 1984, in which he found that an employee must be in a pay status 2,080 hours to earn a year of employment toward the annual leave rate earned and toward earning a longevity increment. These rules are proposed to implement this decision and the department does not believe it has discretion to do otherwise.

COMMENT: ARM 2.21.224(1) should be clarified so that the existing interpretation regarding the maximum amount of leave a part-time employee may accrue before credits are excess credits is stated in the rule.

RESPONSE: The department agrees and has made changes to the rules.

COMMENT: In ARM 2.21.227(1), the new provision that "where the interest of the state requires the employee's attendance, the state's interest overrides the employee's interest," should be deleted, because the provision in paragraph (2), which authorizes agencies to make policy for the request and approval of leave serves the same purpose.

RESPONSE: The department disagrees. This provision is included at the specific request of agencies to resolve disputes in situations where the agency and employee disagree

on dates for leave. The department believes there is a business necessity to clarify this statute.

COMMENT: ARM 2.21.230(1) which states that absence due to illness cannot be charged to annual leave without the employee's agreement may be in conflict with leave of absence without pay rules which allow an agency to require an employee to use all accrued leave before leave of absences without pay is approved.

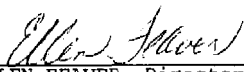
RESPONSE: The department agrees and believes amendment of the leave of absence without pay rules is the appropriate way to resolve this conflict.

COMMENT: ARM 2.21.232(2) does not provide any reasons for termination that results in forfeiture of the lump-sum payment.

RESPONSE: It is not the intention here to list possible reasons for forfeiture of the lump-sum payment, but only to provide that where an agency exercises its discretion in a particular situation to withhold the payment, that the employee may file a grievance.

COMMENT: Gender pronouns should be eliminated from the rules.

RESPONSE: Where the male pronoun is used in the rules, it is used in the context of quoting a statute, which must be done precisely. The department otherwise uses neutral pronouns in rule making.

  
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ELLEN FEAVER, Director  
Department of Administration

Certified to the Secretary of State January 21, 1985.

BEFORE THE OFFICE OF THE WORKERS' COMPENSATION JUDGE  
OF THE STATE OF MONTANA

In the matter of the adoption )	NOTICE OF ADOPTION
of Rule 2.52.343 and 2.52.344 )	OF RULES 2.52.343 AND
of the Workers' Compensation )	AND 2.52.344 OF THE
Court )	WORKERS' COMPENSATION
	COURT

TO: All Interested Persons

1. On November 5, 1984, the Workers' Compensation Court published a Notice of Proposed Amendment of Rule ARM 2.52.344 and Notice of Adoption of Procedural Rule at page 1598, Montana Administrative Register, Issue No. 21 of 1984.

2. The Office of the Workers' Compensation Judge has adopted the rules as proposed.

3. There were no comments regarding these rules filed with the Office of the Workers' Compensation Judge.

4. Authority and implementation MCA § 2-4-201 and MCA § 39-71-2901 et seq.

These rules are adopted to enable the Court to carry out the mandate of the Legislature, to give guidance to interested and involved parties of Court procedures and to allow the parties who appear before the Court to have their claims judicially considered and decided.



TIMOTHY W. REARDON, JUDGE

January 21, 1985  
CERTIFIED TO THE SECRETARY OF STATE

STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE BOARD OF HORSE RACING

In the matter of the amendment ) NOTICE OF AMENDMENT OF 8.  
of 8.22.1025 subsection (1)(a) ) 22.1025 PENALTIES, HEARINGS  
& (b) concerning penalties, ) AND APPEALS  
hearings and appeals )

TO: All Interested Persons:

1. On December 13, 1984, the Board of Horse Racing published a notice of amendment of the above-stated rule at pages 1778 and 1779, 1984 Montana Administrative Register, issue number 23.
2. The board has amended the rule exactly as proposed.
3. No comments or testimony were received.

DEPARTMENT OF COMMERCE  
BEFORE THE BOARD OF NURSING

In the matter of the amendments ) NOTICE OF AMENDMENTS OF  
of 8.32.305 concerning educa- ) 8.32.305 EDUCATIONAL RE-  
tional requirements and other ) QUIREMENTS AND OTHER  
qualifications applicable to ) QUALIFICATIONS APPLICABLE TO  
specialty areas of nursing, ) SPECIALTY AREAS OF NURSING,  
8.32.403 concerning re-examina- ) 8.32.403 RE-EXAMINATION -  
tion for registered nurses and ) REGISTERED NURSE, and 8.  
8.32.404 concerning re-examina- ) 32.404 RE-EXAMINATION -  
tion for practical nurses. ) PRACTICAL NURSE

TO: All Interested Persons:

1. On December 13, 1984, the Board of Nursing published a notice of amendments of the above-stated rules at pages 1780 through 1782, 1984 Montana Administrative Register, issue number 23.
2. The board has amended the rules exactly as proposed.
3. One letter of support was received in favor of the proposed amendment of 8.32.305. It should be noted that a typographical error was made on the proposed date of the amendment showing January 12, 1984, rather than January 12, 1985. No other comments or testimony were received within the time period allowed for comments or testimony.

DEPARTMENT OF COMMERCE  
BEFORE THE BOARD OF SOCIAL WORK EXAMINERS

In the matter of the amendment ) NOTICE OF AMENDMENT OF  
of 8.61.404 concerning the fee ) ARM 8.61.404 FEE  
schedule ) SCHEDULE

TO: All Interested Persons:

1. On December 13, 1984, the Board of Social Work Examiners published a notice of amendment of the above-stated rule at page 1783, 1984 Montana Administrative Register, issue number 23.
2. The board has amended the rule exactly as proposed.
3. No comments or testimony were received.

DEPARTMENT OF COMMERCE

BY: Keith L. Colbo  
KEITH L. COLBO, DIRECTOR

Certified to the Secretary of State, January 21, 1985.



BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION  
STATE OF MONTANA

In the matter of the amendment)	NOTICE OF AMENDMENT OF
of special education rules )	10.16.1101, 10.16.1201 AND
concerning evaluation proce- )	10.16.1205 CONCERNING SPE-
dures and the child study )	CIAL EDUCATION EVALUATION
team process )	PROCEDURES AND THE CHILD
)	STUDY TEAM PROCESS

TO: All Interested Persons:

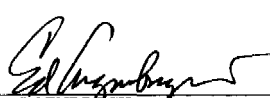
1. On November 29, 1984 the Superintendent of Public Instruction published a notice of amendment of the above-stated rules at pages 1670-1672, 1984 Montana Administrative Register, issue number 22.
2. The Superintendent has amended the rule exactly as proposed.
3. No comments or testimony were received.

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION  
STATE OF MONTANA

In the matter of the adoption )	NOTICE OF ADOPTION OF RULE
of a rule outlining additional )	10.16.1111 ADDITIONAL PRO-
procedures for evaluating )	CEDURES FOR EVALUATING
specific learning disabilities)	SPECIFIC LEARNING DISABILITIES

TO: All Interested Persons:

1. On November 29, 1984 the Superintendent of Public Instruction published a notice of adoption of the above-stated rule at pages 1673-1675, 1984 Montana Administrative Register, issue number 22.
2. The Superintendent has adopted the rule exactly as proposed.
3. No comments or testimony were received.

  
ED ARGENBROUGH  
State Superintendent of  
Public Instruction

Certified to the Secretary of State, January 21, 1985.

BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the proposed ) NOTICE OF AMENDMENT OF  
amendment of Rule 10.55.402 ) RULE 10.55.402  
Minimum Units for Graduation ) MINIMUM UNITS FOR GRADUATION

TO: All Interested Persons.

1. On October 11, 1984, the Board of Public Education published notice of proposed amendment to rule 10.55.402 concerning Minimum Units for Graduation on page 1439 of the Montana Administrative Register, issue number 19.

2. The Board has amended the rule as proposed.

3. No comments or testimony were received.

4. The authority for the rule is section 20-2-121(7), 20-7-101 and 20-7-111, MCA, and the rule implements sections 20-2-121(7) and 20-7-101.

*Ted Hazelbaker*

TED HAZELBAKER, CHAIRMAN  
BOARD OF PUBLIC EDUCATION

By: *Michaela Wynn*

Certified to the Secretary of State January 21, 1985

BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF AMENDMENT OF
amendment of Rule 10.57.207	)	RULE 10.57.207 CORRES-
Correspondence Extension and	)	PONDENCE EXTENSION AND
In-Service Credits, Rule	)	IN-SERVICE CREDITS,
10.57.208 Reinstatement, and	)	RULE 10.57.208 REIN-
Rule 10.57.402 Class 2 Standard	)	STATEMENT, AND RULE
Teaching Certificate	)	10.57.402 CLASS 2 STANDARD
	)	TEACHING CERTIFICATE


TO: All Interested Persons.

1. On October 11, 1984, the Board of Public Education published notice of a proposed amendment to rule 10.57.207 concerning Correspondence Extension and In-Service Credits, rule 10.57.208 concerning Reinstatement, and rule 10.57.402 concerning Class 2 Standard Teaching Certificates on pages 1435 and 1436 of the 1984 Montana Administrative Register, issue number 19.

2. The Board has amended the rule(s) as proposed.

3. No comment or testimony were received.

4. The authority for the rules is section 20-2-121(1), MCA, and the rules implement sections 20-4-102, 20-4-103, 20-4-106, and 20-4-108, MCA.

  
\_\_\_\_\_  
TED HAZELBAKER, CHAIRMAN  
BOARD OF PUBLIC EDUCATION

By:   
\_\_\_\_\_

Certified to the Secretary of State January 21, 1985

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION)  
of New Rules I through XIV )  
(42.3.101 - 42.3.114) relat- )  
ing to the waiver of penalty )  
and interest by the Depart- )  
ment of Revenue. )

NOTICE OF THE ADOPTION of New  
Rules I through XIV (42.3.101-  
42.3.114) relating to the  
waiver of penalty and interest  
by the Department of Revenue.

TO: All Interested Persons:

1. On November 29, 1984, the Department of Revenue published notice of the proposed adoption of new rules I through XIV (42.3.101 - 42.3.114) relating to the waiver of penalty and interest by the Department of Revenue at pages 1702 through 1711 of the 1984 Montana Administrative Register, issue number 22.

2. The Department has adopted new rule I (42.3.101) and new rules III through XIV (42.3.103 - 42.3.114) as proposed.

3. The Department has adopted new rule II (42.3.102) as proposed except as follows:

RULE II (42.3.102) APPLICATION OF RULES # 42.3.101 THROUGH  
XIV 42.3.114 (1), (2), and (3) remain as proposed.

(4) In addition, these rules do not apply to any of the following:

(a) to a penalty or interest associated with any license or fee which is not a tax and which is collected by the department;

(b) to any criminal sanction associated with the laws enforced by the department.

(c) to the collection of child support under Title 40, chapter 5, MCA, to welfare or medicaid fraud under Title 53, chapter 2, MCA, or to similar laws which are administered by the department;

(d) to any debt owed by the department by way of contract, tort, or other nontax related activity of the department; or

(e) to any claim or proceeding before a bankruptcy court;


or  
(f) to any alcohol or tobacco tax, license, or fee collected under Title 16, any property tax collected under chapters 6, 7, 8, 9, 10, 15, 16, 17, 18, 23, or 24 of Title 15, or any other tax not found in Title 15.

(5) Except as provided in 15-1-206(1), MCA, these rules do not apply to a tax which has no provision for waiver or abatement of a penalty and interest.

4. A public hearing was held on December 20, 1984, to consider the proposed adoption of the rules. No persons appeared to oppose the proposed rules. No comments or testimony were received, therefore, the Hearing Examiner deemed the rules "submitted as drafted".

The Department proposes to amend new rule II (42.3.102) to expressly exclude certain taxes from coverage of the rules. The taxes which should be expressly excluded are alcohol, tobacco, and property taxes. Alcohol and tobacco taxes are unique because they involve public policy, health, and law enforcement considerations not applicable to other taxes. Property tax is unique because the money primarily goes to counties and school districts. Those bodies must make the decision to waive or abate any penalty and interest.

5. The authority for the rules is §§ 2-4-201, 15-1-201, 15-1-206, 15-30-305, 15-31-501, 15-35-122, 15-36-107, 15-37-108, 15-38-107, 15-53-104, 15-54-111, 15-55-108, 15-56-111, 15-58-106, 15-59-106, 15-59-205, and 15-70-104, MCA. The rules implement §§ 2-4-201, 15-1-206, 15-30-321, 15-31-502, 15-35-105, 15-36-107, 15-37-108, 15-38-107, 15-53-111, 15-54-111, 15-55-108, 15-56-111, 15-58-106, 15-59-106, 15-59-205, 15-70-210, and 15-70-330, MCA.

  
JOHN D. LaFAVRE, Director  
Department of Revenue

Certified to Secretary of State 01/21/85

VOLUME NO. 41

OPINION NO. 1

MUNICIPALITIES - Disqualification of member on local urban renewal agency board of commissioners following change of residency outside municipality;  
PUBLIC OFFICERS - Disqualification of member on local urban renewal agency board of commissioners following change of residency outside municipality;  
RESIDENCY - Disqualification of member on local urban renewal agency board of commissioners following change of residency outside municipality;  
URBAN RENEWAL AGENCIES - Disqualification of member on board of commissioners following change of residency outside municipality;  
MONTANA CODE ANNOTATED - Sections 2-16-501, 7-4-4101, 7-4-4105, 7-4-4106, 7-4-4111, 7-15-4232, 7-15-4233, 7-15-4234, 7-15-4236.

HELD: A condition of both appointment to and continued service on a local urban renewal agency board of commissioners is residency within the municipality which created the board under the Urban Renewal Act.

8 January 1985

Jim Nugent  
Missoula City Attorney  
201 West Spruce Street  
Missoula MT 59801

Dear Mr. Nugent:

You have requested my opinion concerning the following question:

Must a member of the board of commissioners of an urban renewal agency who is required, pursuant to section 7-15-4234(5), MCA, to be a city resident at the time of appointment to the board continue to be a city resident during the term of his appointment to the board?

You suggest that section 7-4-4111(7), MCA, controls this matter and that, if a member of the Missoula Urban Renewal Agency Board of Commissioners establishes his residency outside the municipality, he is automatically removed from office. I agree with your conclusion but base my holding on section 2-16-501(5), MCA, and not section 7-4-4111(7), MCA.

The Urban Renewal Act, §§ 7-15-4201 to 4293, MCA, authorizes municipalities to create urban renewal agencies for the purpose of formulating and administering urban renewal plans. §§ 7-15-4232(2), 7-15-4233, MCA. If an urban renewal agency is created, a five-member board of commissioners must be appointed by the municipality's mayor with the advice and consent of the city council or other local governing body; once appointed, the board is responsible for exercising the powers and duties of the agency. §§ 7-15-4234(1), 7-15-4236, MCA. Section 7-15-4234(5), MCA, provides that "[a]ny persons may be appointed as commissioners if they reside within the municipality," while section 7-15-4234(6), MCA, states that "[a] commissioner may be removed for inefficiency, neglect of duty, or misconduct in office." No provision in the Urban Renewal Act specifically addresses the question of whether a commissioner becomes disqualified from membership on the board if, during his term, he moves his residence outside the municipality.

Sections 7-4-4101 to 4114, MCA, contain general provisions relating to municipal officers. Offices in first class cities, such as Missoula, consist of several specified positions, but "any other officers necessary to carry out the provisions of this title" may be appointed. § 7-4-4101(3)(i), MCA. The city council is given authority to prescribe by ordinance the duties of all municipal officers, to fix their compensation and to abolish or consolidate any appointed offices except that of city judge. §§ 7-4-4101(4), 7-4-4105 to 4106, MCA. Section 7-4-4111(7), MCA, states that a vacancy will occur in a municipal office upon an officer's "ceasing to be a resident of the city or town or, in the case of an alderman, his ceasing to be a resident of his ward."

Although the terms "office" or "officer" as used throughout sections 7-4-4101 to 4114, MCA, may arguably be construed as applying to any officer appointed by a municipality's mayor with concurrence of the city or

town council, a construction limiting those provisions' application to officers specified in section 7-4-4101(1), MCA, or officers appointed solely pursuant to authority contained in section 7-4-4101(3), MCA, is also possible. Such a limiting application would conceivably exclude from coverage members of urban renewal agency boards of commissioners, whose conditions of appointment and responsibilities are set forth in detailed statutory provisions independent of sections 7-4-4101 to 4114, MCA.

While the scope of sections 7-4-4101 to 4114, MCA, is questionable, section 2-16-501, MCA, does clearly apply here. It provides:

An office becomes vacant on the happening of any one of the following events before expiration of the term of the incumbent:

....

(5) his ceasing to be a resident of the state or, if the office be local, of the district, city, county, town or township for which he was chosen or appointed or within which the duties of his office are required to be discharged;

....

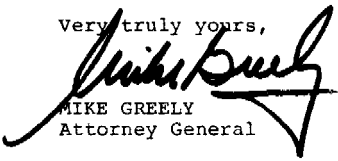
Section 2-16-501, MCA, has been applied to state, county and municipal offices, and the specific language of subparagraph (5) reflects such broad coverage. See, e.g., State ex rel. Koch v. Lexcen, 131 Mont. 161, 308 P.2d 974 (1957) (county attorney); State ex rel. Anderson v. Fousek, 91 Mont. 448, 8 P.2d 791 (1932) (city police officer); State ex rel. Klick v. Wittmer, 50 Mont. 22, 144 P. 648 (1914) (city alderman); State ex rel. Jones v. Foster, 39 Mont. 583, 104 P. 860 (1909) (district court clerk). The term "office," as used in section 2-16-501, MCA, is not defined but undoubtedly includes positions on local urban renewal agency boards of commissioners. See, generally, State ex rel. Running v. Jacobson, 140 Mont. 221, 224-25, 370 P.2d 483, 485 (1962).



THEREFORE, IT IS MY OPINION:

A condition of both appointment to and continued service on a local urban renewal agency board of commissioners is residency within the municipality which created the board under the Urban Renewal Act.

Very truly yours,



MIKE GREELY  
Attorney General

VOLUME NO. 41

OPINION NO. 2

ELECTIONS - The act of registering to vote by military personnel as evidence of state residency for purpose of determining tax exemption;

MILITARY PERSONNEL - The act of registering to vote as evidence of state residency for purpose of determining tax exemption;

RESIDENCE - The act of registering to vote by military personnel as evidence of state residency for purpose of determining tax exemption;

TAXATION - Application of Soldiers' and Sailors' Civil Relief Act of 1940 to tax exemptions for military personnel who reside in and register to vote in Montana; MONTANA CODE ANNOTATED - Sections 1-1-215, 13-1-111, 13-1-112, 13-35-103, 13-35-209, 61-3-533;

OPINIONS OF THE ATTORNEY GENERAL - 38 Op. Att'y Gen. No. 22 (1979), 39 Op. Att'y Gen. No. 46 (1982);

UNITED STATES CODE - Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. § 574.

HELD: The act of registering to vote in Montana elections by military personnel may be considered as evidence that such personnel are Montana residents, and are therefore not exempt from property and income taxation under the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. §§ 501-91.

10 January 1985

J. Fred Bourdeau  
Cascade County Attorney  
Cascade County Courthouse  
Great Falls MT 59401

Dear Mr. Bourdeau:

You have requested my opinion concerning:

Whether military personnel who are registered to vote in the State of Montana are exempt from property and income taxation by operation

of the Soldiers' and Sailors' Civil Relief Act of 1940.

The Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. §§ 501-91, hereinafter referred to as the Civil Relief Act, was enacted to protect servicemen from the burden of certain local taxes when stationed away from home. Section 574 provides in pertinent part:

For the purpose of taxation in respect of the personal property, income or gross income of any [military or naval serviceman]...by any State...of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within... such State...and personal property shall not be deemed to be located in such State.... Where the owner of personal property is absent from his residence or domicile solely by reason of compliance with military or naval orders, this section applies with respect to personal property, or the use thereof, within any tax jurisdiction other than such place of residence or domicile, regardless of where the owner may be serving in compliance with such orders. [Emphasis added.]

The statute was enacted to prevent the risk to servicemen of double taxation occasioned by their temporary duty in a state other than their domicile. Since the ownership of personal property may give rise to a tax obligation in both the state in which the owner resides and also in the state in which the property may be located during a given taxable year, the statute achieves its purposes by giving the serviceman an exemption from a tax imposed by a state of which he is neither a resident nor a domiciliary. See Sullivan v. United States, 395 U.S. 169, 177 (1969); United States v. County of Champaign, Ill., 525 F.2d 374, 377 (7th Cir. 1975).

By contrast, where a serviceman is considered a resident of the state where he is stationed, the provisions of the Civil Relief Act do not apply. The Act provides relief only for nonresident servicemen. See California v. Buzard, 382 U.S. 386, 387 (1966); United States v. State of Kansas, 580 F. Supp. 512, 515 (1984). Thus, in

order to determine whether a serviceman stationed in Montana is entitled to the broad immunity from the State's personal property and income taxation provided by the Civil Relief Act, it is necessary to determine whether the serviceman is a legal resident of the State of Montana. Your question concerns whether the act of registering to vote in the state is enough to establish Montana residency.

Montana law provides a set of general rules for determining place of residence. § 1-1-215, MCA. Section 1-1-215(1), MCA, provides that one's residence is "the place where one remains when not called elsewhere for labor or other special or temporary purpose and to which he returns in seasons of repose." Under section 13-1-111(1)(c), MCA, a person must be a resident of the State of Montana and of the county in which he offers to vote for at least 30 days. Additional rules exist for determining residence in cases involving registration or voting. § 13-1-112, MCA. The relevant portions of section 13-1-112, MCA, state:

(1) The residence of an individual is where his habitation is fixed and to which, whenever he is absent, he has the intention of returning.

....

(3) An individual in the armed forces of the United States may not become a resident solely as a result of being stationed at a military facility in the state. An individual may not acquire a residence solely as a result of being employed or stationed at a training or other transient camp maintained by the United States within the state.

(4) An individual does not lose his residence if he goes into another state or other district of this state for temporary purposes with the intention of returning unless he exercises the election franchise in the other state or district.

....

(7) The place where an individual's family resides is presumed to be that individual's place of residence. However, an individual who takes up or continues a residence at a place other than where his family resides with the intention of remaining is a resident of the place where he resides.

It is evident from the above-quoted statutes, as well as from the language of sections 1-1-215(6) and 13-1-112(8), MCA, that residence depends upon a union of act and intent. See 38 Op. Att'y Gen. No. 22 at 79 (1979). Intent is a state of mind which may be evaluated through the circumstantial evidence of a person's manifested conduct. Such circumstances include where a person exercises his political rights. District of Columbia v. Murphy, 314 U.S. 441, 456 (1941); United States v. Scott, 472 F. Supp. 1073, 1079 (D.C. Ill. 1979), affirmed, 618 F.2d 109 (7th Cir.), cert. denied, 445 U.S. 962 (1980). Since Montana law requires that a voter make his residence in a particular county within the State of Montana, the act of registering to vote is certainly persuasive evidence that the person is a Montana resident. It is not, however, conclusive evidence. There may be situations where one registers to vote in a state, although not qualified as a resident to do so. See, for example, District of Columbia v. Murphy, 314 U.S. 441, 456 (1941) (whether or not one votes where he claims domicile is highly relevant on the question of domicile but not conclusive); Woodroffe v. Village of Park Forest, 107 F. Supp. 906, 911 (N.D. Ill. 1952) (a soldier who did not qualify as a resident of Illinois, but had nevertheless voted in an Illinois school board election, could not claim the illegal act of voting as a basis for acquisition of residence in Illinois).

The act of registering to vote in the State of Montana, then, is not conclusive proof that a member of the military service is a Montana resident, just as failure to register to vote in Montana would not be conclusive proof that a serviceman is a nonresident. However, because Montana's election law requires that a person be a resident of the state before voting in the state's elections, the act of registering to vote may be used as evidence that a serviceman is a Montana resident. Thus, a serviceman who has registered to vote in Montana (thereby claiming to be a Montana resident) may not

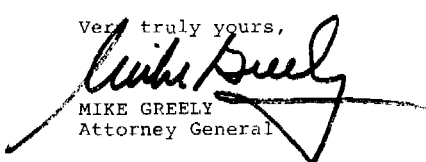
claim exemption from state property and income taxation under the Soldiers' and Sailors' Civil Relief Act without offering convincing evidence that he is in fact not a resident after all. To claim that he is in fact not a resident after having registered to vote in the state would subject him to prosecution for the misdemeanor of fraudulent registration. See §§ 13-35-103, 13-35-209, MCA.

This opinion is not inconsistent with 39 Op. Att'y Gen. No. 46 (1982), which held that military personnel serving on active duty on a military installation in Montana are exempt from the motor vehicle fees imposed by section 61-3-533, MCA. That opinion addressed the general application of § 574 of the Civil Relief Act, and the distinction between resident and nonresident servicemen was not an issue. The cases relied upon, however, in 39 Op. Att'y Gen. No. 46 (1982) support the conclusion that servicemen who are residents of the taxing state are not protected by the Civil Relief Act.

THEREFORE, IT IS MY OPINION:

The act of registering to vote in Montana elections by military personnel may be considered as evidence that such personnel are Montana residents, and are therefore not exempt from property and income taxation under the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. §§ 501-91.

Very truly yours,



MIKE GREELY  
Attorney General

VOLUME NO. 41

OPINION NO. 3

HOTELS AND LODGING ESTABLISHMENTS - Applicability of Subdivision and Platting Act to renting hotel rooms;  
HOUSING - Application of Subdivision and Platting Act to duplexes or second family dwellings constructed on single parcel of land;  
SUBDIVISION AND PLATTING ACT - Applicability to duplexes, hotels, office buildings and second family dwellings;  
MONTANA CODE ANNOTATED - Sections 1-2-101, 70-1-106(2), 76-3-103(3), 76-3-103(15), 76-3-202, 76-3-204, 76-3-207, 76-3-208, 76-3-505;  
OPINIONS OF THE ATTORNEY GENERAL - 39 Op. Att'y Gen. No. 74 (1982), 40 Op. Att'y Gen. No. 16 (1983), 40 Op. Att'y Gen. No. 57 (1984).

- HELD: 1. The construction of one duplex on a single tract of land for rental or sale purposes constitutes a "subdivision" under the Montana Subdivision and Platting Act unless otherwise excepted from "subdivision" status under section 76-3-207, MCA.
2. The construction of a second dwelling for a family member on a single parcel of land constitutes a "division of land" under the Montana Subdivision and Platting Act if the family member is intended to receive a legally enforceable possessory interest in such dwelling. If a "division of land" has occurred, such construction will constitute a "subdivision" unless otherwise exempted.
3. The construction of an office building, with individual office spaces for rent, constitutes a "subdivision" under the Montana Subdivision and Platting Act.
4. The construction of a hotel does not constitute a "subdivision" under the Montana Subdivision and Platting Act.

18 January 1985

Robert L. Deschamps, III  
Missoula County Attorney  
Missoula County Courthouse  
Missoula MT 59802

Dear Mr. Deschamps:

You have requested my opinion concerning a question which I have phrased as follows:

Does the term "subdivision," as defined in section 76-3-103(15), MCA, include (1) conveyance of a possessory interest in one duplex constructed on a single tract of land, (2) use of a second dwelling constructed on a single parcel of land by a family member, (3) renting office space within an office building, and (4) renting a hotel room?

A response to your question must be made with reference to various provisions of the Montana Subdivision and Platting Act, §§ 76-3-101 to 614, MCA (Subdivision Act), and two of my prior opinions.

The Subdivision Act comprehensively regulates the division of land tracts previously held in single or undivided ownership. See 40 Op. Att'y Gen. No. 16 (1983). This regulation is accomplished through survey requirements and, if the division of land creates a "subdivision" as defined in section 76-3-103(15), MCA, through (1) survey and platting requirements and (2) local review procedures intended to ensure that the proposed subdivision promotes the public health, safety and welfare. See §§ 76-3-102, 76-3-401 to 402, 76-3-501, MCA. As a general matter, a "division of land" as defined in section 76-3-103(3), MCA, is distinguished from a subdivision by the size of the resulting parcels. A subdivision is thus "a division of land or land so divided which creates one or more parcels containing less than 20 acres, exclusive of public roadways." "Subdivisions" are more carefully regulated than "divisions of land" because, presumably, of their greater potential for seriously impacting on



public health, environment and local services through increased population concentration.

In 40 Op. Att'y Gen. No. 57 (1984) I held that construction of 48 four-plex units to be used for rental purposes on a single parcel of land constituted a "subdivision." My holding was partially based upon the nature of the possessory interest which the four-plex unit tenants would assume:

At the very least, the tenants in this case will enjoy possession of that portion of the tract, or "parcel," upon which the four-plex which contains their dwelling unit is constructed. The end result of this construction project will therefore be a "division of land," as a number of parcels will be segregated from the larger tract by means of transference of possession of those parcels to the tenants occupying the four-plexes.

Such holding is fully consistent with the definition of "subdivision." As quoted above, "subdivision" is, in relevant part, defined as a "division of land...containing less than 20 acres;" the term "division of land" is itself defined in section 76-3-103(3), MCA, as "the segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring or contracting to transfer title to or possession of a portion of the tract." In 40 Op. Att'y Gen. No. 57 the "tract" was the land on which all of the four-plex units were constructed, while the "parcels of land" were those individual portions of the "tract" on which the separate buildings were situated. By constructing the units with the purpose of conveying a leasehold interest, transfer of "possession of a portion of the tract" was intended eventually to occur. Because each of the four-plex units was presumed to be less than 20 acres in size, all "subdivision" prerequisites were present.

While my interpretation of the terms "subdivision" and "division of land" is consonant with a precise reading of their statutory definitions, I must also observe that any other interpretation leaves a substantial regulatory void as to multi-family rental properties in what was clearly meant to be a comprehensive land use law

preventing imprudent population concentration and ensuring maintenance of basic public health, environmental and local services values. Nothing in the language of the Subdivision Act or its legislative history suggests that the Legislature envisioned nonregulation of this significant aspect of residential construction--especially when that construction raises the same concerns associated with admittedly covered matters as single unit family structures, condominiums, recreational camping vehicle areas and mobile home parks. Moreover, the conclusion that rental properties, created by a "division of land," are included within the scope of the term "subdivision" is required by a literal application of its definition which extends to instances where "title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed." § 76-3-103(15), MCA (emphasis added). See also § 76-3-208, MCA.

The reasoning underlying 40 Op. Att'y Gen. No. 57 further requires inclusion within the scope of the term "subdivision" of single multi-family structures and single multiple-use commercial structures occupying less than 20 acres. Because each structure occupies a portion of a larger tract and because possession of housing or office units within the structure--and necessarily possession of the land on which it rests--are conveyed by lease, a "subdivision" exists. See § 70-1-106(2), MCA; Wheeler v. McIntyre, 55 Mont. 295, 300-01, 175 P. 892, 894 (1918).

A more troublesome question in 40 Op. Att'y Gen. No. 57 was whether section 76-3-204, MCA, exempted the four-plex rental development from regulation under the Subdivision Act. That section states: "The sale, rent, lease, or other conveyance of one or more parts of a building, structure, or other improvement situated on one or more parcels of land is not a division of land, as that term is defined in this chapter, and is not subject to the requirements of this chapter." I concluded that, based on 39 Op. Att'y Gen. No. 74 (1982), the scope of such exemption extends only to the sale, lease or conveyance of existing and utilized structures. This interpretation of section 76-3-204, MCA, not only harmonizes that provision with the definition of "subdivision" but is also consistent with the general purpose of the Subdivision Act to avoid unregulated commercial or residential development. Such

interpretation further harmonizes section 76-3-204, MCA, with section 76-3-202, MCA, which states: "Where required by this chapter, when the land upon which an improvement is situated has been subdivided in compliance with this chapter, the sale, rent, lease, or other conveyance of one or more parts of a building, structure, or other improvement situated on one or more parcels of land is not a division of land and is not subject to the terms of this chapter." Any other conclusion effectively renders section 76-3-202, MCA, superfluous since, if section 76-3-204, MCA, were construed as creating a blanket exception from "division of land" status for all conveyances of possessory interests in portions of buildings, section 76-3-202, MCA, would add nothing to the Subdivision Act. It is, of course, an accepted principle of statutory interpretation that laws should, if possible, be construed to give full force and effect to each of their provisions. McClanathan v. Smith, 186 Mont. 56, 61, 606 P.2d 507, 510 (1980). Montana Automobile Association v. Greely, 38 St. Rptr. 1174, 1180, 632 P.2d 300, 306 (1981); § 1-2-101, MCA.

Whether the construction of the structures described in your question gives rise to "subdivisions" must be resolved in accordance with the above principles. Construction of a duplex for rental or sale purposes nominally falls within the scope of a "subdivision" because a legally enforceable possessory interest in a portion of a formerly integrated parcel of land will be conveyed. However, the duplex project may, under certain circumstances, be excepted from "subdivision" status or subjected to less stringent surveying and filing requirements. See §§ 76-3-207(1)(e), 76-3-208, MCA. The availability of exception from some or all of the act's requirements must be determined by a careful analysis of the particular facts. The construction of an office building for rental purposes will, for similar reasons, constitute a "subdivision." An exemption from full compliance with the act may nonetheless exist under section 76-3-208, MCA. The existence of a legally enforceable possessory interest determines if the construction of a second dwelling for a family member constitutes a "division of land." Whether such a possessory interest exists must be resolved with reference to the involved facts. Again, an exception to "subdivision" status and to full compliance with the act may arise even if a "division of land" has occurred.

See §§ 76-3-207(1)(b), 76-3-207(1)(d), 76-3-207(1)(e), 76-3-208, MCA. Summary review procedures applicable to "minor subdivisions" may be available as to each of these projects. See § 76-3-505, MCA.

Rental of hotel rooms will not, however, constitute a "subdivision." Although a hotel or motel guest has a form of possessory right in his room, the involved transaction is actually the sale of "a product or service which is temporary lodging." Montana Innkeepers Association v. City of Billings, 40 St. Rptr. 1753, 1756, 671 P.2d 21, 23 (1983). The guest is instead a licensee:

A principal distinction between the relationship between landlord and tenant and that existing between innkeeper and guest ...exists in the fact that the tenant acquires an interest in the real estate, while the guest...does not; a guest is a mere licensee, and not a tenant.

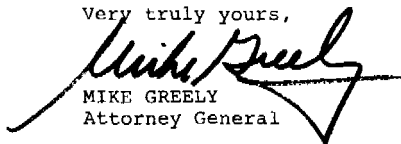
43A C.J.S. Inns, Hotels & Eating Places § 5 (1978) (footnotes omitted). Because no possessory interest in real property passes when a hotel room is rented, construction of a hotel does not constitute a "subdivision" under the Subdivision Act.

THEREFORE, IT IS MY OPINION:

1. The construction of one duplex on a single tract of land for rental or sale purposes constitutes a "subdivision" under the Montana Subdivision and Platting Act unless otherwise excepted from "subdivision" status under section 76-3-207, MCA.
2. The construction of a second dwelling for a family member on a single parcel of land constitutes a "division of land" under the Montana Subdivision and Platting Act if the family member is intended to receive a legally enforceable possessory interest in such dwelling. If a "division of land" has occurred, such construction will constitute a "subdivision" unless otherwise exempted.

3. The construction of an office building, with individual office spaces for rent, constitutes a "subdivision" under the Montana Subdivision and Platting Act.
4. The construction of a hotel does not constitute a "subdivision" under the Montana Subdivision and Platting Act.

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<br>Subject<br>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<br>Number and<br>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 September 30, 1984. This table includes those rules adopted during the period October 1, 1984 through December 31, 1984, and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through September 30, 1984, this table and the table of contents of this issue of the MAR.

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

ADMINISTRATION, Department of, Title 2

I	State Plan of Operation for Distribution of Federal Surplus Property, p. 746, 956
I-IV	and other rules - Moving and Relocation Expenses, p. 735, 957
I-IV	Equal Employment Opportunity and Affirmative Action Program, p. 1533, 1798
I-VII	Discipline Handling Policy, p. 740, 958
I-XVII	Recruitment and Selection of Employees By State Agencies, p. 1199, 1560
2.5.201	and other rules - Definitions - Department of Administration - Delegation of Purchasing Authority - Requisitions from Agencies to the Department - Bidders List - Specifications Public Notice - Competitive Sealed Proposals - Exigency Procurements, p. 1818
2.21.216	and other rules - Administration of Annual Vacation Leave, p. 1656
2.21.6402	and other rules - Minimum Standards for Performance Appraisal, p. 905, 1087
2.23.101	and other rules - Operation of a Merit System, p. 858, 1128
2.32.101	Uniform Building Code - Doors - Health Care Facilities, p. 622, 744, 1024
2.32.210	Review of School Plans in Areas Where There is a Local Government Code Enforcement Program, p. 624, 1024



- 2.32.401 National Electrical Code - Minimum Standards and Requirements for Electrical Installations, p. 626, 1024
- 2.32.501 Standard for Recreational Vehicles - Construction, p. 628, 1025
- (Workers' Compensation Judge)
- 2.52.344 and other rule - Petition for New Trial or Reconsideration of Attorney Fee Award - Attorney Fees, p. 1598

AGRICULTURE, Department of, Title 4

- 4.3.204 Loan Limits Through Junior Agriculture Loans, p. 1082, 1366
- 4.12.1208 Laboratory Fees for Samples of Bees Submitted for Certification, p. 1823
- 4.14.302 and other rules - Loan Powers and Eligible Loan Activities - Loan Maximums - Applicant Eligibility - Tax Deduction, p. 1427, 1752

COMMERCE, Department of, Title 8

- I Incorporation By Reference of Rules for the Implementation of the Montana Environmental Policy Act, p. 859, 1026
- (Board of Cosmetologists)
- 8.14.814 and other rules - General, Initial, Renewal and Late Fees - Fee Schedule p. 548, 861, 1180
- (Board of Dentistry)
- I-IX Interpretive Rules for Advertising - Coverage - Name and Office Information - Fee Information - Specialization Areas - Solicitation, p. 1825
- I-XIX Standards for Dentists Administering Anesthesia, p. 1768, 1861, 912, 1083
- 8.16.602 Allowable Functions for Dental Auxiliaries, p. 1693, 552, 921
- (Board of Horse Racing)
- 8.22.801 General Requirements - Finalist Determination in Thoroughbred Races, p. 1601, 1843
- 8.22.1025 Penalties, Hearings and Appeals, p. 1778
- (Board of Landscape Architects)
- 8.24.409 Fee Schedule, p. 1
- (Board of Nursing)
- 8.32.305 and other rules - Educational Requirements and Other Qualifications Applicable To Specialty Areas of Nursing - Re-examination - Registered Nurse - Re-examination - Practical Nurse, p. 1780
- (Board of Nursing Home Administrators)
- 8.34.418 Fee Schedule, p. 1398, 1753
- (Pharmacy)
- 8.40.404 and other rules - Fee Schedule - Additions, Deletions and Rescheduling of Dangerous Drugs, p. 1208, 1567

- (Plumbers)  
8.44.403 and other rules - Applications - Examinations - Renewals - Duplicate and Lost Licenses - Fee Schedule, p. 748, 948, 1181
- (Professional Engineers and Land Surveyors)  
8.48.1105 Fee Schedule, p. 630, 922
- (Board of Psychologists)  
8.52.613 Code of Professional Conduct, p. 1666, 5
- (Board of Public Accountants)  
8.54.401 and other rules - Definitions - Professional Conduct - Positive Enforcement - Examinations - Licenses - Fees - Records, p. 632, 961  
8.54.402 and other rules - Examinations - Expiration - Renewal - Grace Period, p. 1832
- (Board of Radiologic Technologists)  
8.56.402 and other rules - Applications - Licenses - Temporary Permits - Definitions - Permit Examinations - Regional Hardship - Requirements for Approval of Physician Specializing in Radiology - Verification of Evidence that Temporary Permit Applicant Can Perform X-ray Exams Without Endangering Public Health - Unethical Conduct - Permit Examinations - Regional Hardship, p. 1210, 1629
- (Social Work Examiners)  
8.61.404 Fee Schedule, p. 1783
- (Milk Control Bureau)  
8.79.101 Transactions Involving the Purchase and Resale of Milk Within the State, Rule Definitions, p. 752, 969
- (Financial Bureau)  
I Amount to Which Finance Charges are Applied by a Licensed Consumer Loan Company, p. 665, 922
- (Board of Milk Control)  
8.86.301 Pricing Rules, Class I Price Formula, p. 411, 969
- (Montana Economic Development Board)  
I-XII Municipal Finance Consolidation Act Program, p. 862, 1466  
8.97.301 and other rules - Definitions - Rates, Service Charges and Fee Schedules - Board In-State Investment Policy - Eligibility Criteria - Economic Development Linked Deposit Program - Loan Participation - Montana Economic Development Bond Program, p. 667, 869, 922, 1026  
8.97.308 and other rules - Rates, Service Charges and Fee Schedule - Criteria for Determining Eligibility - Application Procedure - Terms, Rates, Fees and Charges - Interim Funding of Pooled Industrial Revenue Bond Loans, p. 1784, 3  
8.97.410 and other rules - Guaranteed Loan Program - Definitions - Description of Economic Development Bond Program - Eligibility Requirements - Applications - Financing Fees, p. 1430, 1754

(Hard-Rock Mining Impact Board)

- 8.104.203 and other rules - Format of Impact Plans - Notification and Submission of Plan - Ex Parte Communications with Board Members and Staff - Objections Filed During 30-day Extension of a Review Period, p. 1602

(Aeronautics Division)

- I-IX Airport Certification and Licensing, p. 1538

EDUCATION, Title 10

(Superintendent of Public Instruction)

- I Obligation of Debts Incurred for the Purchase of Property, p. 754, 972  
I Additional Procedures for Evaluating Specific Learning Disabilities, p. 1673  
10.6.103 Initiating School Controversy Procedure Process, p. 1668, 1833A  
10.16.1101 and other rules - Special Education Evaluation Procedures and the Child Study Team Process, p. 1670

(Board of Public Education)

- I Gifted and Talented Children, p. 756, 1182  
I Educational Media Library, p. 1168, 1474  
I School Program Evaluation, p. 1437  
10.55.205 and other rules - Supervisory and Administrative Time - Policy Governing Pupil Instruction-Related Days Approved for Foundation Program Calculations, p. 1163, 1441  
10.55.302 Certificates - First Aid Training for Personnel Coaching Athletics, p. 871, 1161, 1471  
10.55.402 Minimum Units Required for Graduation, p. 758, 1439  
10.57.106 Life Certificates, p. 1166, 1472  
10.57.207 and other rules - Correspondence Extension and In-Service Credits - Reinstatement - Class 2 Standard Teaching Certificate, p. 1435  
10.62.101 and other rules - Certification of Fire Services Training Schools, p. 760, 1473  
(Montana State Library)  
10.101.203 and other rules - General Policy and Public Library Development and Organizational and Procedural Rules, p. 1676

FISH, WILDLIFE AND PARKS, Department of, Title 12

- 12.3.104 Establishment of Landowner Priority in Issuance of Antelope or Deer Hunting Licenses, p. 1021, 1411  
12.5.401 Oil and Gas Leasing Policy for Department-Controlled Lands, p. 1594, 762, 1084, 1475  
12.6.201 and other rules - Field Trial Regulations, p. 1023  
12.6.901 Water Safety Regulations - 25-Horsepower Limit on Portions of Bighorn River During Part of the Waterfowl Season, p. 1443

HEALTH AND ENVIRONMENTAL SCIENCES, Department of, Title 16

- I and other rule - Certificates of Need for Long-term Care Facilities, p. 1400
- 16 16.101 and other rules - Sanitation in Subdivisions, p. 765, 1027, 1104, 1568
- 16.16.304 Individual Sewage Treatment Systems, p. 1402, 1801
- 16.20.401 Submission and Review of Plans and Specifications for Public Water and Wastewater Systems, p. 1789
- 16.20.605 and other rules - Water Quality Classifications and Standards, p. 1447, 1802
- 16.20.701 and other rules - Extension of Water Quality Non-degradation Rules to Groundwater, p. 1453, 1804
- 16.20.914 and other rule - Issuance of General Permits for Montana Pollutant Discharge Elimination Systems and Groundwater Pollution Control Systems, p. 1459, 1805
- 16.32.301 and other rules - Health Care Facilities - Adult Day Care Centers - Personal Care Facilities, p. 556, 973
- 16.32.302 and other rules - Chemical Dependency Treatment Centers - Minimum Construction Standards - Licensing and Certification, p. 558, 918, 929, 973, 1090
- 16.38.301 and other rules - Fees Charged by the Department's Chemical Laboratory for the Performance of Laboratory Analyses, p. 873, 1092

INSTITUTIONS, Department of, Title 20

- 20.11.108 and other rules - Reimbursement Policies, p. 790, 1367

JUSTICE, Department of, Title 23

- I-III Child Safety Restraint System Standards and Exemptions, p. 571, 1040

LABOR AND INDUSTRY, Department of, Title 24

(Human Rights Commission)

- I-VII Maternity Leave, p. 482, 949, 1369

(Workers' Compensation Division)

- I-VIII Employer's Insurance Requirements - Independent Contractor Exemption Procedures, p. 486, 983
- 24.29.3201 Corporate Officers - Election Not to be Bound, p. 488, 983
- 24.29.3801 Attorney Fee Regulation, p. 1795

STATE LANDS, Department of, Title 26

- I-IV Certification of Coal or Uranium Mine Blasters, p. 1901, 420, 1373

LIVESTOCK, Department of, Title 32

- 32.3.406     Brucellosis Test Performed on Cattle Before Change  
                 of Ownership or Movement Within the State, p. 1807

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

(Board of Natural Resources and Conservation)

- 36.7.101     and other rules - Administration of the Montana  
                 Major Facility Siting Act - Long-Range Plans -  
                 Waivers - Notice of Intent to File an Application -  
                 Application Requirements - Decision Standards,  
                 Centerlines - Monitoring, p. 1216, 1844

(Board of Oil and Gas Conservation)

- I             Emergency Rule - Workable Ignitor Systems on Wells  
                 Producing Hydrogen Sulfide Gas, p. 324, 932  
I             Burning of Waste Gas and Ignitor Systems on Wells  
                 Producing Hydrogen Sulfide Gas, p. 877, 1042  
36.22.307     and other rules - Forms - Submittal Date of  
                 Reports, p. 683, 931

PUBLIC SERVICE REGULATION, Department of, Title 38

- I-VII        Charges Related to Utility Line Moves Associated  
                 with Movement of Structures, p. 360, 1131, 1185  
38.3.201     and other rules - Motor Carrier, Railroad and  
                 Utility Fees, p. 950, 1129

REVENUE, Department of, Title 42

- I             Use of Montana Adjusted Gross Income When  
                 Calculating Itemized Deductions, p. 1617, 2033  
I             Failure to Furnish Requested Information on  
                 Returns, p. 1619, 2033  
I             Elderly Homeowner Credit Returns, p. 1621, 2034  
I             Tax Status of Federal Obligations, p. 1623, 2034  
I-II        Payment of Interest on Refunds, p. 1610, 2031  
I-VI        Implementation of Alcohol Tax Incentive and  
                 Administration Act, p. 1698  
I-XIV       Waiver of Penalty and Interest by the Department of  
                 Revenue, p. 1702  
42.11.201     and other rules - Liquor Vendors - Vendor's  
                 Employment of Representatives and Brokers, p. 1732  
42.12.101     and other rules - Liquor Division Licenses and  
                 Permits, p. 1712  
42.13.101     and other rules - Liquor Division Regulation of  
                 Licensees - Beer Wholesaler and Table Wine  
                 Distributor Recordkeeping Requirements, p. 1741  
42.15.504     Investment Tax Credit, p. 1615, 2032  
42.16.105     Penalties for Failure to File Return, Pay Tax or  
                 Pay a Deficiency, p. 1608, 2031

- 42.17.103 and other rules - Wages - Forms to File after Termination of Wage Payments, p. 1612, 2032
- 42.21.101 and other rules - Market Value of Personal Property - Oil Field Machinery and Supplies - Leased and Rented Equipment - Abstract Record Valuation - Property Reporting Time Frames, p. 1550, 2036
- 42.22.101 and other rules - Assessment and Taxation of Centrally Assessed Companies, p. 1543, 2041
- 42.27.102 and other rule - Gasoline Distributor's Bonds and Statements, p. 1343, 1631
- 42.27.211 Nonexemption from Gasoline Tax, p. 1341, 1632
- 42.28.105 and other rule - Special Fuel User Tax, p. 1348, 1632
- 42.28.301 and other rules - Special Fuel Permits, p. 1350, 1632
- 42.28.402 and other rules - Special Fuel Dealers, p. 1345, 1631

SECRETARY OF STATE, Title 44

- 1.2.419 Scheduled Filing, Compiling and Publication Dates for Montana Administrative Register, p. 1625, 2046

SOCIAL AND REHABILITATION SERVICES, Department of, Title 46

- I Determination of When Food Stamp Eligibility Begins, p. 1464, 1755
- I Youth Foster Home, Foster Parents, p. 1834
- I-IV Participation of Rural Hospitals in the Medicaid Program as Swing-Bed Facilities, p. 798, 996
- 46.2.201 and other rules - Overall Departmental Rules - Definitions - Fair Hearings, p. 1358, 1633
- 46.5.116 Protective Services, Information System Operator, p. 1525, 1838, 1108, 1412
- 46.5.501 and other rules - Procedure for Obtaining Substitute Care Services - Eligibility Requirements - Services Provided - Foster Care Maintenance Payments, p. 1110, 1412
- 46.5.604 and other rules - Licenses - License Revocation and Denial - Confidentiality of Records and Information, p. 1364, 1635
- 46.5.904 and other rules - Day Care For Children of Recipients in Training or in Need of Protective Services, p. 1355, 1635
- 46.5.909 and other rules - Registration of Family - Group Day Care Homes and Licensing of Day Care Centers, p. 1838
- 46.6.2510 and other rules - Blind Vendors Program - Certification - Transfer and Termination - Vendor Responsibilities - Set Aside Funds - Contracts with Vending Companies - Vendor Rights and Responsibilities, p. 691, 991

- 46 10.308 and other rules - Eligibility Requirements  
Regarding AFDC Program, p. 1170, 1478
- 46.11.101 Food Stamp Program, p. 1713, 294, 1085
- 46.11.101 Food Stamp Program, p. 1748
- 46.11.101 Food Stamp Program - Thrifty Food Plan, p. 1750
- 46.11.111 and other rules - Food Stamps, Determining  
Eligibility For the Food Stamp Program - Reporting  
Requirements - Determining Benefits - Certification  
Periods, p. 687, 993
- 46.12.304 and other rule - Third Party Liability for Medical  
Assistance, p. 1409, 1637
- 46.12.401 and other rules - Medical Assistance; Provider  
Sanctions, p. 1404, 1639
- 46.12.513 Reimbursement for Swing-Bed Hospitals, Medical  
Assistance, p. 1627, 2047
- 46.12.3002 Determination of Eligibility for Medical  
Assistance, p. 1842
- 46.12.3803 Medically Needy Income Standards, p. 1916, 1933,  
328, 998, 1836
- 46.13.106 and other rules - Low Income Energy Assistance  
Program - Benefit Award Matrices - Income  
Standards, p. 1113, 1481