

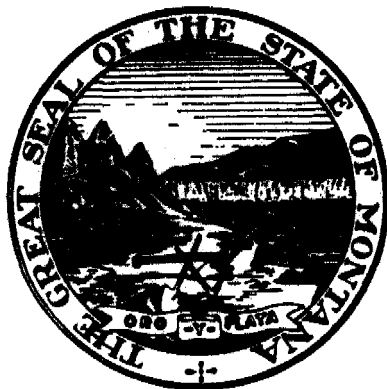
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MONTANA ADMINISTRATIVE REGISTER

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1985 ISSUE NO. 21
NOVEMBER 14, 1985
PAGES 1657-1806



MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 21

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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

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BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amend-)	NOTICE OF PUBLIC HEARING
ment of ARM 2.21.133	)	ON THE PROPOSED AMENDMENT
relating to the administra-	)	OF ARM 2.21.133 RELATING TO
tion of sick leave	)	THE ADMINISTRATION OF SICK
	)	LEAVE

TO: All Interested Persons.

1. On December 11, 1985, at 12:15 p.m. in Room 136, Mitchell Building, Helena, Montana, a public hearing will be held to consider the amendment of ARM 2.21.133 relating to the administration of sick leave.

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

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

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

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

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

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

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

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

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

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

(10) Persons simultaneously employed in two or more positions in the same or in different agencies will accrue sick leave credits in each position according to the number of hours worked. Leave credits will be used only from the position in which the credits are earned and with approval of the supervisor or appropriate authority for that position. Only hours paid at the regular hourly rate will be counted.

Under no circumstances will an employee accrue sick leave credits for more than 40 hours of work in a week, because the employee is employed in two or more positions.

(11) Sick leave credits will not accrue for overtime ~~(those hours exceeding 40 per workweek that are paid at time and-a-half)~~ for an employee regularly scheduled to work 40 hours in a workweek. This includes overtime hours that are paid at time and a half. The full accrual of sick leave credits shall not be reduced where an agency establishes an irregular work schedule and where an employee works an average of at least 40 hours per workweek. Where an agency is averaging hours worked for an employee on an irregular schedule to determine leave accrual, the agency may average work hours for no more than a 28-day work period.

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

(13) When an employee who has not worked the qualifying period for use of sick leave takes an approved continuous leave of absence without pay exceeding 15 working days, the amount of time on leave of absence will not count toward completion of the qualifying period. The approved leave of absence exceeding 15 working days is not a break in service and the employee will not lose any accrued sick leave credits or lose credit for time earned toward the qualifying period. An approved continuous leave of absence without pay of 15 working days or less will be counted as time earned toward the 90-day qualifying period.

(14) Where an employee has been laid off and has been allowed by the agency to maintain sick leave credits, as provided in ARM 2.21.5007(9), the employee shall not take any accrued sick leave credits. The employee may take those sick leave credits if reinstated or reemployed during the preference period by the agency, or if employed during the preference period by another state agency which agrees to accept the sick leave credits. If the employee is not reinstated or reemployed during the preference period by a state agency, the employee shall be cashed out, as provided in ARM 2.21.141, at the salary rate the employee earned at the effective date of lay-off.

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

3. The rule is proposed to be amended to allow employees who work an irregular work schedule and average at least 40 hours per workweek or work period to accumulate full sick leave credits. As a result of a recent U.S. Supreme Court decision in Garcia v. San Antonio Metropolitan Transit Authority (SANTA), the state of Montana is covered by the federal Fair Labor Standards Act (FLSA). For certain types of positions, irregular schedules are permitted under the FLSA without incurring an overtime obligation. However, under current state rules employees working such schedules will not receive full sick leave benefits despite the fact they are working an average of 40 hours per week over the

course of the work period. The amendment is proposed so that employees working irregular schedules will not be penalized in the accrual of leave where they work an average of 40 hours per week over the course of the work period.

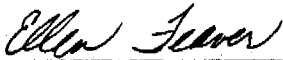
4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to:

Laurie Ekanger, Administrator
State Personnel Division
Department of Administration
Room 130, Mitchell Building
Helena, MT 59620

no later than December 16, 1985.

5. Gale B. Kuglin, Personnel Policy Coordinator, Employee Relations Bureau, State Personnel Division, Department of Administration, Helena, Montana 59620, has been designated to preside over and conduct the hearing.

6. The authority of the agency to make the proposed amendments is based on 2-18-604, MCA, and the rule implements 2-18-617, MCA.


Ellen Feaver, Director
Department of Administration

Certified to the Secretary of State November 4, 1985.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the repeal	)	NOTICE OF PUBLIC HEARING ON
of ARM 2.21.6705, 2.21.6710,	)	THE PROPOSED REPEAL OF ARM
2.21.6711, 2.21.6712,	)	2.21.6705, 2.21.6710,
2.21.6714 through 2.21.6717,	)	2.21.6711, 2.21.6712,
the amendment of ARM	)	2.21.6714 THROUGH
2.21.6702, 2.21.6703,	)	2.21.6717, THE AMENDMENT OF
2.21.6704, 2.21.6706,	)	ARM 2.21.6702, 2.21.6703,
2.21.6707, 2.21.6713, and	)	2.21.6704, 2.21.6706,
2.21.6718, and the adoption	)	2.21.6707, 2.21.6713 and
of a new rule relating to the	)	2.21.6718 AND THE
administration of the Employee	)	ADOPTION OF A NEW RULE
Incentive Awards Program	)	RELATING TO THE ADMINISTRA-
	)	TION OF THE EMPLOYEE INCENT-
	)	IVE AWARDS PROGRAM

TO: All Interested Persons.

1. On December 11, 1985, at 12:15 p.m. in Room 136, Mitchell Building, Helena, Montana, a public hearing will be held to consider the repeal of ARM 2.21.6705, 2.21.6710, 2.21.6711, 2.21.6712, 2.21.6714 through 2.21.6717, the amendment of ARM 2.21.6702, 2.21.6703, 2.21.6704, 2.21.6706, 2.21.6707, 2.21.6713 and 2.21.6718 and the adoption of a new rule relating to the administration of the Employee Incentive Awards Program.

2. The rules proposed to be repealed are on pages 2-1537, 2-1541, and 2-1542 of the Administrative Rules of Montana.

3. The proposed new rule provides as follows:

RULE I PROGRAM ADMINISTRATION As provided in 2-18-1103, MCA, the department of administration shall:

(1) "adopt rules to equitably administer the employee incentive awards program;

(2) provide an opportunity for all employees to participate in the program;

(3) assist agencies in making incentive awards under the program;

(4) grant or deny incentive awards in consultation with the incentive awards advisory council and determine the amount of each incentive award based on first-year savings;

(5) hear appeals from employees on the operation of the program; and

(6) prepare a biennial report to the legislature containing a list of incentive awards and the corresponding savings to the state resulting from each employee's suggestion or invention and providing a general review of any recommendations for improving the program.

(7) The director of the department of administration or his designee shall administer and promote the state employee incentive awards program on a statewide basis and shall:

(a) determine the originality and eligibility of suggestions;

(b) protect a suggester's anonymity within reason until an agency or committee decides to implement or not to implement the suggestion in whole or in part;

(c) refer eligible suggestions to the relevant agencies or committees for investigation and evaluation;

(d) acknowledge receipt of suggestions.

(8) The acceptance of a cash award for any suggestion adopted through the state incentive awards program shall constitute an agreement by the employee that all reasonable claims pertaining to the suggestion, immediate and future, on the state of Montana are waived."

(Auth. 2-18-1103, MCA; Imp. 2-18-1103, MCA)

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

2.21.6702 DEFINITIONS As used in this sub-chapter, the following definitions apply: (1) "Adopted suggestion" means a formal suggestion that has been approved for an award by the program administrator and has been approved for implementation within at least one state agency.

(2) "Advisory council" means the incentive awards advisory council established by the director of the department of administration, as provided in rule ARM 2.21.6704.

(3) "Date of receipt" means the date on which a formal suggestion is postmarked or received, whichever is earlier, and documented as being received by the program administrator.

(4) ~~"Eligible~~ "Employee" means, as provided in 2-18-1101, MCA, "any employee of the executive, legislative, or judicial branch or the Montana university system."

(5) "Formal suggestion" means an employee's suggestion to reduce costs or improve services that is documented on an incentive awards suggestion form prepared by the department of administration.

(6) "Implemented suggestion" means a formal suggestion that has become a function being performed by one or more agencies.

(7) "Incentive award" means a monetary inducement of up to \$500 \$1,500 per suggestion to encourage employees to suggest ways to save costs, and/or improve state services, or both.

(8) "Incentive award committee" means a committee established by an agency head in accordance with rule 2-21-6706 ARM 2.21.6706.

~~{9}--"Personal grievance" means a complaint or dispute initiated by an employee regarding the application, meaning or interpretation of personnel policies or procedures and/or other terms or conditions of employment.~~

~~{10} (9) "Program administrator" means the director of the department of administration or his designee.~~

~~{11} (10) "Recognition certificate" means a certificate of achievement signed by the governor, and the program administrator, and the relevant agency head recognizing an employee for his adopted suggestion and incentive award.~~

~~{12} (11) "Suggestion delayed for further evaluation" means a formal suggestion that has had the adoption decision delayed through a recommendation by an agency. incentive awards committee, as provided in rule 2-21-6705.~~

~~{13} (12) "Suggestion review" means a review conducted by the program administrator in consultation with the incentive awards advisory council at the request of the suggesting employee to reevaluate his a formal suggestion.~~

~~{14} (13) "Unadopted suggestion" means a formal suggestion that has been disapproved by the program administrator for an award and implementation, by the program administrator.~~

(Auth. 2-18-1103, MCA; Imp. 2-18-1101 through 2-18-1106, MCA)

2.21.6703 POLICY AND OBJECTIVES (1) It is the policy for of the state of Montana to provide awards to state employees whose suggestion or inventions result in one or both of the following: that, as provided in 2-18-1103, MCA, "... an employee may be eligible for an incentive award if his suggestion or invention results in:

(a) reduction or elimination of state agency eliminating or reducing an agency's expenditures," in a manner that does not reduce the ability of the agency to meet its program objectives or reduce its ability to serve the public; and or

(b) "improving services to the public by permitting more work to be accomplished within state agencies an agency without increasing the cost of governmental operations."

(2) The director of the department of administration or his designee shall administer and promote the state employee incentive awards program on a statewide basis and shall:

{a}--determine--the--originality--and--eligibility--of suggestions;

{b}--protect a suggestor's anonymity within reason until an agency or committee decides to implement or not to implement the suggestion in whole or in part;

{c}--refer eligible suggestions to the relevant agencies or committees for investigation and evaluation;

{d}--approve/disapprove incentive awards nominated by an agency head after consultation with the incentive awards advisory council; and determine the amount of each incentive

~~award-based-on-incurred-or-reasonably-estimated-first-year monetary-savings;~~

~~(e)--acknowledge-receipt-of-suggestions;~~

~~(f)--hear-appeals-from-employees-on-the-general-operation-and-administration-of-the-program;and~~

~~(g)--publicize-awards-and-the-reasons-awards-are-granted. It is the objective of this policy to establish uniform procedures for the administration of the employee incentive awards program.~~

~~(3)--The-acceptance-of-a-cash-award-for-any-suggestion adopted-through-the-state-incentive-awards-program-shall constitute-an-agreement-by-the-employee-that-all-reasonable claims-pertaining-to-the-suggestion,-immediate-and-future,-on the-state-of-Montana-are-waived.~~

~~(4)--An-employee-may-receive-a-monetary-award-based-on tangible-and/or-intangible-criteria-established-pursuant-to the-provisions-of-these-rules.~~

~~(Auth. 2-18-1103, MCA; Imp. 2-18-1101 through 2-18-1106, MCA)~~

2.21.6704 CREATION OF THE STATE INCENTIVE AWARDS ADVISORY COUNCIL

~~(1)-The-director-of-the-department-of-administration-shall-appoint-eight-members-to-an-incentive-awards advisory-council-under-2-15-122,-MCA.~~

~~(2)--The-composition-of-the-advisory-council-shall consist-of-six-state-employees,-one-member-from-the-general public,-and-one-ex-officio-non-voting-member.~~

~~(3)--Members-shall-be-appointed-for-term-to-end-June-30, 1983.~~

~~(4)---The-program-administrator-will-serve-as-an ex-officio-member-of-the-council-with-no-voting-privileges.~~

~~(5) (1) The incentive awards advisory council shall;~~

~~(a) meet whenever scheduled by the program administrator and consult with the program administrator to review all suggestions evaluated by the agencies and to review employee appeals on the general operation and administration of the program;~~

~~(b) in reviewing suggestions and appeals, the advisory council-shall and evaluate the arguments for and against approval as presented by the agencies and by the employee; and~~

~~(c) recommend to the program administrator which the course of action to be taken on each suggestion and appeal reviewed.~~

~~(6) (2) Recommendations of the council shall be in the form of votes cast by those members present. Five members in attendance shall be necessary to conduct business. since-no action-can-be-taken-unless-two-thirds-of-the-members-are present. The council shall make a concerted effort to~~

resolve the tie votes including and may reschedule consideration of the suggestion or appeal. However, if this is not possible, tie votes shall be recorded as such.

(Auth. 2-18-1103, MCA; Imp. 2-18-1104, MCA)

2.21.6706 COOPERATION REQUESTED OF AGENCIES (1) It is suggested that each agency head:

~~(a) encourage employees to participate in the state incentive awards program;~~

~~(b) consult with relevant subordinate managers before recommending approval/disapproval of a suggestion;~~

~~(c) provide relevant information and advice to the incentive awards advisory council concerning suggestions; and~~

~~(d) carry out or ensure that the provisions of rule 2.21.6705 are properly carried out for each assigned suggestion;~~

assume personal responsibility for the incentive awards program or assign such responsibility to a committee of agency employees or to an individual agency employee. The name, business address, and telephone number of the individual or committee chairman responsible for the incentive awards program in the agency shall be furnished to the incentive awards program administrator in the department of administration.

~~(2) Upon receiving notice that a suggestion has been approved for an award by the program administrator, the agency shall be encouraged to expeditiously implement the suggestion if this has not already been done. Within 15 days of implementation and award approval, whichever is later, the employee shall then be compensated by affected agencies at 10% of the first year savings or value of improved services up to \$500 for each suggestion. If an employee produces significant evidence that the first year savings or value of improved services of his suggestion are underestimated, adjusted compensation may be awarded by the affected agencies. Employees shall not be required to pay back any part of his award if agency cost savings or values are overestimated. The agency head shall notify the program administrator whenever compensation for an award has been paid.~~

(2) It is suggested that the agency head through relevant employees or through an incentive awards committee shall:

(a) investigate and evaluate suggestions;

(b) recommend approval/disapproval of a suggestion being adopted or whether the decision to adopt should be delayed;

(c) send such recommendations to the program administrator in the department of administration within 30 days

after being assigned to evaluate a suggestion, or notify the program administrator that the evaluation will be delayed;

(d) include with such recommendations documentation of the expected cost savings or improved services and any arguments for and/or against adopting the suggestion;

(e) specify in a recommendation to delay the adoption decision, an estimate of the length of the delay and a list of the barriers to be overcome;

(f) encourage agency employees to participate in the state incentive awards program.

(3) A recommendation from an agency head for an award approval shall indicate to the program administrator that the agency has implemented or intends to implement the suggestion and to pay an award based on the agency's anticipated cost savings or value of improved services. Awards are set at 10% of the suggestion's first-year savings or value of improved services up to \$1,500 for each suggestion.

~~(3) (4) The agency head or his designee shall formally present relevant incentive awards in the presence of the employee's co-workers, or be present during such presentations made by the governor. A recognition certificate shall accompany the awarded compensation. The agency head may recommend to the incentive awards advisory council which award recipients should be personally recognized by the governor.~~

(Auth. 2-18-1103, MCA; Imp. 2-18-1103, MCA)

2.21.6707 ELIGIBILITY OF SUGGESTIONS (1) Each suggestion initially shall be submitted to by the program administrator in the department of administration who shall review the suggestion to determine if it is a duplicate, or similar to, a suggestion which has previously been submitted or adopted. If duplicate suggestions are received by the program administrator, the one bearing the earliest date of receipt shall be eligible for consideration and all others shall be ineligible. Similar suggestions may be eligible for consideration to the extent the second suggestion adds to the cost savings or value of improved services realized by the first suggestion.

(2) Formal suggestions shall be submitted on official forms prescribed by the department of administration specifically for this the incentive awards program. Such forms shall be made available to employees through their the agencies.

~~(3) Completed forms shall be sent directly to the program administrator. Failure to complete the required form shall result in its return to the employee submitting the suggestion. No action shall be taken on a suggestion until a completed form is received by the program administrator, in~~

addition to any other materials submitted with the suggestion.

(4) The program administrator shall review suggestions for compliance with the following criteria listed in (5). Following this review, the program administrator shall and then assign the suggestions to be evaluated by potentially affected agencies.

~~Suggestions related to the following subjects are not eligible for awards:~~

- ~~(a) personnel grievances;~~
- ~~(b) classification and pay of positions;~~
- ~~(c) matters recommended for study or review;~~
- ~~(d) matters which are the result of assigned or contracted audits, surveys, studies, reviews, or research; and~~
- ~~(e) matters which are directly related to an employee's assigned duties and responsibilities unless the proposal is so superior or meritorious as to warrant special recognition as determined by the program administrator. (2-18-1105; MGA);~~

(5) As provided in 2-18-1105 (2a), "an employee may not be eligible for an incentive award if his suggestion or invention directly relates to his assigned duties and responsibilities unless the proposal is so superior or meritorious as to warrant special recognition as determined by the department."

(b) Suggestions or inventions relating to the following matters may not be considered for awards:

- (i) personnel grievances;
- (ii) classification and pay of positions;
- (iii) matters recommended for study or review; and
- (iv) proposals resulting from assigned or contracted audits, studies, surveys, reviews, or research." Consideration will not be given to suggestions relating to a specific grievance as that term is defined in ARM 2.21.8002, or to the classification and pay of a specific position. However, suggestions regarding such areas as the procedure used to hear grievances or systems used to manage classification and pay could be considered.

(6) If an agency modifies a suggestion that is subsequently approved by the program administrator, the employee is eligible for an award based only on the savings or value of improved services that directly result from the suggestion. Parts of a suggestion not used or modifications made by management shall not be used as a basis for calculating the amount of an employee's award. Parts of a suggestion may be considered ineligible. ~~According to the above criteria. The remaining parts may be considered eligible and shall be sent to the relevant agencies for investigation and evaluation.~~

(7) Each suggestion shall be reviewed by the program administrator to determine if it has application to agencies other than the one for which it was proposed. If it is determined that a suggestion has interagency application, it shall be referred to each agency to which it applies.

(8) The amount of an award for a suggestion made by a group of employees shall be determined on the same basis as if the suggestion had been submitted by one employee. The amount awarded shall not exceed a total of \$1,500 and shall be equally divided among the employees making the suggestion.

(9) Suggestions which involve patentable or nonpatentable inventions are eligible for awards. Awards for inventions shall be determined on the same basis as awards for other types of suggestions.

(10) If an employee's suggestion is not adopted, the employee may resubmit the suggestion to the program administrator in the department of administration. Resubmitted suggestions shall not be considered by the program administrator or the incentive awards advisory council unless the resubmittal includes specific and new evidence or documentation that sufficiently warrants reconsideration to adopt the suggestion.

(Auth. 2-18-1103, MCA; Imp. 2-18-1103 and 2-18-1105, MCA)

2.21.6713 TIME LIMITS ON IMPLEMENTED SUGGESTIONS (1) An employee who has made an oral or other informal suggestion that has already been implemented shall be eligible for an award only if the suggestion is formally submitted to the program administrator in the department of administration within 30 days from the date the suggestion was implemented by an agency. ~~Suggestions implemented after July 17, 1981, but before April 17, 1982, shall be considered for an award if submitted before May 17, 1982.~~ Suggestions implemented before July 17, 1981, April 1, 1982 are not eligible for an award.

(2) A current or former employee shall be entitled to an award if his previously unadopted suggestion or previously delayed suggestion, as defined by ARM 2.21.6702 (12) and (14), is adopted and implemented within three years of the suggestion being formally submitted under this program. If extenuating circumstances exist, a current employee may still receive an award for a suggestion submitted more than three years before being implemented.

(Auth. 2-18-1103, MCA; Imp. 2-18-1103, and 2-18-1106, MCA)

2.21.6718 SUGGESTIONS REQUIRING LEGISLATIVE ACTION

(1) Suggestions requiring legislative action shall be considered ineligible until the appropriate law is passed to enable feasible implementation of the suggestion. In these cases, the department may assist agencies in drafting the necessary legislation.

(2) Awards in excess of \$1,500 may be proposed by the incentive awards advisory council to the legislature for possible action. If barriers to implementation such as legislative action are not present, the initial \$1,500 may be awarded immediately by the program administrator, while the excess shall be awarded when authorized by the legislature.
(Auth. 2-18-1103, MCA; Imp. 2-18-1103 and 2-18-1106, MCA).

5. There are two reasons for proposing the repeal of the rules indicated, the amendment of others and the adoption of a new rule. The first reason is to incorporate changes to the Employee Incentive Awards Program authorized by the 49th legislature, including the increase from \$500 to \$1,500 in the maximum award. The second reason for proposing these changes comes as the result of an evaluation of how well these rules have served to administer an incentive awards program. The Employee Incentive Awards Advisory Council, agency advisory committee members, the program administrator and agency personnel officers have been involved in this evaluation process and concur with the proposed changes.

6. The proposed new rule, Program Administration, will state the responsibilities of the department of administration for the program within the administrative rules. While these duties are delegated to the department in 2-18-1103, MCA, inclusion within the administrative rules will convey to the agencies and employees interested in submitting suggestions the role of the department.

The content of many of the rules proposed to be repealed will be amended into other existing rules to improve organization. For example, ARM 2.12.6710, 2.21.6711, 2.21.6712, 2.21.6714, 2.21.6715 and 2.21.6716 have been amended into ARM 2.21.6707, Eligibility of Suggestions, because they all deal with some aspect of eligibility.

Overall, the changes proposed would resolve problems with the administration of the incentive awards program which have been identified in the four-year life of the program and as a result of the evaluation process by interested groups mentioned earlier.

7. Interested parties may submit their data, views or arguments concerning the proposed repeal, amendment and adoption in writing to:

Laurie Ekanger, Administrator
State Personnel Division
Department of Administration
Room 130, Mitchell Building
Helena, Montana 59620

no later than December 16, 1985.

8. Gale Kuglin, Personnel Policy Coordinator, State Personnel Division, Department of Administration, Mitchell Building, Helena, Montana, 59620, has been designated to preside over and conduct the hearing.

9. The authority of the agency to make the proposed repeal, amendment and adoption is based on 2-18-1103, MCA, and the rules implement 2-18-1101 through 2-18-1106, MCA.



Ellen Feaver, Director
Department of Administration

Certified to the Secretary of State November 4, 1985.

DEPARTMENT OF ADMINISTRATION
BEFORE THE TEACHERS' RETIREMENT DIVISION
OF THE STATE OF MONTANA

In the matter of the Adoption of)	NOTICE OF PROPOSED
a Rule specifying the procedure)	ADOPTION
to allow a retired member to)	RULE I
designate a different bene-)	CHANGE OF BENEFICIARY
ficiary and select a different)	AND/OR CHANGE OF
retirement option)	RETIREMENT OPTION

NO PUBLIC HEARING
CONTEMPLATED

TO: All Interested Persons.

1. On December 16, 1985, the Teachers' Retirement Board proposes to adopt a rule specifying the procedure to allow a retired member to designate a different beneficiary and select a different retirement option under Section 19-4-702, MCA.

2. The proposed new rule provides as follows:

RULE I CHANGE OF BENEFICIARY AND/OR CHANGE OF RETIREMENT OPTION (1) The retired member shall submit an application form prescribed by the Teachers' Retirement Board which shall contain the name and social security number of any newly designated beneficiary.

(2) If the change in beneficiary is due to the death of the beneficiary of record, the retired member shall submit a copy of the death certificate.

(3) If the change in beneficiary is due to dissolution of marriage, the retired member shall submit a copy of the decree of dissolution or marital property settlement, whichever provides documentation that the current beneficiary of record is not entitled to receive all or part of the optional allowance as part of the judicial decree.

(4) The effective date to change a retirement allowance shall be the first of the month, following the month in which the application is received.

(5) If the member wishes to retain the same retirement option or change options, the member shall so designate on the application form and also furnish a copy of the beneficiary's birth certificate if the option includes the new beneficiary.

AUTH: 19-4-201, MCA

IMP: 19-4-702, MCA

3. Consideration was given to the effect on subsequent retirement benefits by a beneficiary failing to survive a retiree and property settlements incident to dissolution of marriage. With this in mind, CH 493, L 1985 was passed in the 1985 legislative session. It provides for redesignation of beneficiary and/or reselection of retirement benefits by a retiree receiving an optional retirement allowance. The rule carries out this process. Identification, of newly designated beneficiary, is required as the recipients age is a factor in the amount of benefits payable.

21-11/14/85

MAR Notice No. 2-2-149

4. Interested parties may submit their data, views or arguments concerning the proposed rule in writing to Mr. F. Robert Johnson, Administrator, Teachers' Retirement Division, Department of Administration, 1500 6th Avenue, Helena, Montana, 59601, no later than December 12, 1985.

5. If a person who 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 Mr. F. Robert Johnson at the above address, no later than December 12, 1985.

6. If the agency receives requests for a public hearing on the proposed rule from either 10% or 25, whichever is less of the persons who are directly affected by the proposed rule; the Administrative Code Committee of the Legislature; a governmental subdivision or agency; an association having not less than 25 members who will be directly affected, a notice of hearing will be published in the Montana Administrative Register. Ten per cent of those persons directly affected has been determined to be more than 25.

TEACHERS' RETIREMENT DIVISION

BY

F. Robert Johnson
F. ROBERT JOHNSON
ADMINISTRATOR

Certified to the Secretary of State November 4, 1985.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF DENTISTRY

In the matter of the proposed adoption of new rules concerning dental procedures involving the administration of anesthetics, training and monitoring requirements, and inspecting and approving dental practice facilities in which anesthetics are administered)	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION OF NEW RULES - PROHIBITION, PERMIT REQUIRED, MINIMUM TRAINING AND EDUCATIONAL STANDARDS, MINIMUM MONITORING STANDARDS, FACILITY STANDARDS, ON-SITE INSPECTION OF FACILITIES, BASIC LIFE SUPPORT INSTRUCTION, REQUIREMENTS FOR CONTINUING EDUCATION IN ANESTHESIA, REPORTING ADVERSE OCCURRENCES AND FEE SCHEDULE
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TO: All Interested Persons.

1. On December 5, 1985, at 1:00 p.m., a public hearing will be held at Jorgenson's Holiday Inn, Room 56, 1714 11th Avenue, Helena, Montana, to consider the adoption of the above-stated rules.

2. The proposed new rules will read as follows:

"I. PROHIBITION (1) Dentists licensed in this state may not apply general anesthesia or conscious sedation techniques, unless and until they have met all of the requirements set forth in these rules.

(2) Violation of these rules shall constitute grounds for disciplinary actions as provided in sections 2-4-631 (3), 37-1-136, and 37-4-321, MCA.

(3) Performing anesthetic procedures after the effective date of this rule without an appropriate permit or at a nonqualified facility will be interpreted by the Board as unprofessional conduct under ARM Rule 8.16.722 (1)(e). This is an interpretive subsection."

Auth: 37-1-131, 37-4-205 (1), 37-4-511, MCA Imp: 37-4-511, MCA

"II. PERMIT REQUIRED (1) In order to administer general anesthesia or conscious sedation a dentist must possess a permit from the Board to do so. Such a permit must be renewed every year.

(2) In order to obtain a permit the dentist makes application on a form provided by the Board and must meet specific minimum training and educational standards as set forth in the rules.

(3) Permits may be limited as to facilities in which the permit holder may administer general anesthesia or conscious sedation."

Auth: 37-1-131, 37-4-205 (1), 37-4-511, MCA Imp: 37-4-511, MCA

"III. MINIMUM TRAINING AND EDUCATIONAL STANDARDS (1)

No dentist shall be permitted to administer or monitor general anesthesia during a dental procedure or dental-surgical procedure unless he or she:

(a) has a minimum of one year of postgraduate training in the administration of anesthesia and related subjects; or

(b) is a diplomat of the American Board of Oral and Maxillofacial Surgery or has completed an American Dental Association approved residency in Oral and Maxillofacial Surgery; or

(c) is a fellow of the American Dental Society of Anesthesiology; or

(d) employs or works in conjunction with a physician who is licensed to practice medicine in Montana and who has completed an American Medical Association approved residency in Anesthesiology; or

(e) employs or works with a Montana licensed and certified registered nurse anesthetist.

(2) No dentist shall administer drugs to achieve the state known as conscious sedation during a dental procedure or a dental-surgical procedure unless he or she:

(a) has received formal training in conscious sedation techniques from an institution, organization, or training course approved by the Board consisting of a minimum of forty (40) hours of didactic and twenty (20) hours of additional patient contact. The dentist must furnish evidence of having completed this training.

(b) a dentist licensed to practice in Montana who can demonstrate competence and skill in administering conscious sedation by virtue of experience or comparable alternative training shall be permitted by the Board to use conscious sedation. Applicants under this rule, must have experience in using conscious sedation for the prior three (3) years on a routine basis and without significant anesthetic complications.

(c) this requirement does not apply to the administration of an oral drug for the purpose of dispensing or prescribing a light relaxant drug, provided that the drug dosage is appropriate for the age, physical status and physical condition of the patient.

(3) No person shall use nitrous oxide/oxygen on a patient unless he has completed a course of instruction of at least fourteen (14) hours of didactic and clinical experience. This instruction must include didactic and clinical experience in an accredited dental school, hospital, or dental society sponsored course and must have included instruction in safety and management of emergencies.

(a) A dentist who practices dentistry in Montana who can show evidence of

competence and skill in administering nitrous oxide/oxygen sedation by virtue of experience and/or comparable alternative training shall be presumed by the Montana Board of Dentistry to have appropriate credentials for the use of nitrous oxide/oxygen sedation. In applying for an exemption the dentist must confirm experience in using nitrous oxide/oxygen sedation for the prior one (1) year on a routine basis without significant complications."

Auth: 37-1-131, 37-4-205 (1), 37-4-511, MCA Imp: 37-4-511, MCA

"IV. MINIMUM MONITORING STANDARDS (1) Minimum standards for monitoring patients for general anesthesia shall include the following:

- (a) preoperative:
 - (i) Vital signs - blood pressure, pulse and respiratory rate. Temperature may be necessary, and
 - (ii) Cardiac monitoring.
 - (b) intraoperative:
 - (i) Vital signs - blood pressure, pulse and respiratory rate to be taken and recorded every five (5) minutes, and
 - (ii) Precordial stethoscope used to monitor respiratory rate and pulse rate, and
 - (iii) Continuous cardiac monitoring, and
 - (iv) An intravenous line, and
 - (v) Continuous monitoring of skin and mucosal color, and
 - (vi) Additional monitoring devices as indicated.
 - (c) postoperative:
 - (i) Vital signs - blood pressure, pulse, respiratory rate recorded at the completion of the procedure and prior to discharge, and
 - (ii) Level of consciousness - the patient must not leave the recovery area until the cardiovascular and respiratory stability are assured and the patient is awake and oriented.
- (2) The minimum standards for monitoring conscious sedation patients shall include the following:
- (a) preoperative:
 - (i) Vital signs to include blood pressure, pulse and respiratory rate,
 - (ii) Only appropriate blood pressure monitoring for pediatric patients need be recorded.
 - (b) intraoperative:
 - (i) Vital signs - blood pressure, pulse and respirations to be monitored and recorded at appropriate intervals. Only appropriate blood pressure monitoring for pediatric patients need be recorded,
 - (ii) A precordial stethoscope used to continually monitor respiration and pulse rate, and
 - (iii) continuous monitoring skin and mucosal color.
 - (c) postoperative:

(i) Vital signs, blood pressure, pulse and respirations should be taken at completion of the procedure and prior to discharge,

(ii) Only appropriate blood pressure monitoring for pediatric patients need be recorded,

(iii) Level of consciousness - Prior to discharge the cardiovascular and respiratory stability must be checked. The patient must have returned closely to his or her pre-sedation level of consciousness and responsiveness.

(3) Minimum standards for monitoring nitrous oxide/oxygen sedation shall include the following:

(a) when the dentist who administers the nitrous oxide/oxygen is not in the operator there must be a dental auxiliary who remains with the patient and provides direct observation. The dental auxiliary must have had special instruction in observation of the nitrous oxide/oxygen sedated patient and shall monitor the patient."

Auth: 37-1-131, 37-4-205 (1), 37-4-511, MCA Imp: 37-4-511, MCA

"v. FACILITY STANDARDS (1) A general anesthesia facility under these rules must contain a minimum of equipment, supplies and drugs, including, but not limited to, the following:

- (a) a positive pressure oxygen delivery system;
- (b) stethoscope and sphygmomanometer;
- (c) laryngoscope, endotracheal tubes and a Magill forcep;
- (d) oral pharyngeal and nasopharyngeal airways;
- (e) cardiac monitor and defibrillator;
- (f) appropriate drugs for emergencies to include drugs to provide Advanced Cardiac Life Support;
- (g) a precordial stethoscope; and
- (h) suction devices.

(2) A conscious sedation facility under these rules must contain a minimum of equipment supplies, and drugs, including, but not limited to, the following:

- (a) a positive pressure oxygen delivery system;
- (b) precordial stethoscope;
- (c) stethoscope and sphygmomanometer;
- (d) oral pharyngeal and nasopharyngeal airways;
- (e) appropriate drugs for emergencies including cardiac arrest; and
- (f) suction devices.

(3) During dental procedures the facility must be staffed by supervised monitoring personnel which are capable of handling procedures, problems, and emergency incidents and is certified in basic life support;

(a) with respect to a deep general anesthesia facility, in addition to the dentist and dental assistant, there must be

at least one person present to monitor vital signs. That person, must be either:

- (i) An anesthesiologist licensed to practice medicine in the State of Montana; or
- (ii) A certified registered nurse anesthetist recognized in that specialty by the Montana Board of Nursing; or
- (iii) a trained health professional who has received at least one year of postgraduate training in the administration of general anesthesia.

(b) In addition to the dentist and dental assistant there must be one person present whose duties are to monitor vital signs. This person must be certified in Basic Life Support and have been examined by the Montana Board of Dentistry or its agent in life support skills and demonstrated a satisfactory level of proficiency as established by the Board.

(c) when oral conscious sedation or light levels of parental conscious sedation are used, the dentist should be qualified and permitted to administer the drugs and appropriately monitor the patient.

(4) A nitrous oxide/oxygen facility must contain:

- (a) positive pressure oxygen;
- (b) stethoscope and sphygmomanometer;
- (c) oral or nasopharyngeal airways;
- (d) suction;
- (e) appropriate drugs for emergencies including Cardiac Arrest."

Auth: 37-1-131, 37-4-205 (1), 37-4-511, MCA Imp: 37-4-511, MCA

"VI. ON-SITE INSPECTION OF FACILITIES (1) Each facility where conscious sedation or general anesthesia is to be provided shall be inspected by a team appointed by the Board prior to the initial issuance of any permit to administer anesthesia on the premises, and at intervals not to exceed five (5) years. Adequacy of the facility and competency of the anesthesia team will be evaluated by the inspection team. The inspection team shall consist of at least two (2) individuals, one of whom shall be a dental practitioner who is permitted to use general anesthesia and another of whom shall be a practitioner of the same specialty as the practitioner being inspected. When a general dentist's office is to be inspected, a general dentist who holds the appropriate permit will be on the inspection team. Any dentist whose facility is to be inspected shall be notified at least 30 days prior to the inspection and the names of the inspection team shall be provided to him.

(2) The on-site inspection shall include a test of the applicant and his staff in recognition and management of complications likely to occur considering the techniques being used. Early recognition of complications will be emphasized.

The facility must be inspected for the presence of drugs and equipment appropriate for the level of sedation or anesthesia to be provided. Monitoring assistants shall be examined for their knowledge of their respective roles in normal operating procedures and in various emergency situations. The inspection team shall evaluate office staff in proficiency in handling emergency procedures. The inspection team should evaluate the accuracy of anesthesia record keeping.

(3) If the on-site inspection team finds deficiencies present in the inspected office, the facility shall be given thirty (30) days to comply with the recommendations of the inspection team. If, at the completion of this thirty (30) day period, the deficiencies have not adequately been rectified, the Board will limit the practitioner's permit to apply general anesthesia or conscious sedation only in qualifying facilities.

(4) If serious life-threatening deficiencies are found by the on-site inspection team, the Board will immediately limit the practitioner's permit by refusing to permit the administration of general anesthesia or conscious sedation on the premises."

Auth: 37-1-131, 37-4-205(1), 37-4-511, MCA Imp: 37-4-511, MCA.

"VII. BASIC LIFE SUPPORT INSTRUCTION (1) All dentists licensed to practice dentistry who practice in the state of Montana must have successfully completed a course in Basic Life Support as provided by the American Red Cross or American Heart Association, and submit a copy of their card to the Montana Board of Dentistry each year when applying for annual renewal. Exception to this rule is if the practitioner is physically incapable of providing cardiopulmonary resuscitation. If an exemption is granted there shall be a BLS certified individual in the office any time treatment is being rendered. It shall be the responsibility of each dentist holding a general anesthesia, conscious sedation, or nitrous oxide/oxygen permit to make sure each member of the anesthesia team is BLS certified at all times."

Auth: 37-1-131, 37-4-205 (1), 37-4-511, MCA Imp: 37-4-511, MCA

"VIII. REQUIREMENTS FOR CONTINUING EDUCATION IN ANESTHESIA (1) All dentists holding permits to provide general anesthesia or conscious sedation must submit evidence of having attended a minimum of twenty (20) clock hours of continuing education every two years, in order to qualify to have their permits renewed. The education must be in one or more of the following fields:

- (a) general anesthesia;
- (b) conscious sedation;
- (c) physical evaluation;

	Renewal Fee	
(7)	Conscious Sedation Application Fee	\$ 50.00
(8)	Conscious Sedation Original Permit Fee	\$ 15.00
(9)	Conscious Sedation Permit Renewal Fee	\$ 10.00
(10)	Nitrous Oxide/Oxygen Application Fee	\$ 10.00
(11)	Nitrous Oxide/Oxygen Original Permit Fee	\$ 10.00
(12)	Nitrous Oxide/Oxygen Permit Renewal Fee	\$ 10.00
(13)	Initial Inspection Fee	\$100.00
(14)	Reinspection Fee	\$ 50.00"
Auth: 37-1-131, 37-1-134, 37-4-205 (1), 37-4-511, MCA		
Imp: 37-4-511, MCA		

3. Reason for adoption of new rules: House Bill 235 (Chapter 518 of the Laws of 1985) contained a mandate to the Board of Dentistry to adopt rules to regulate dental procedures involving the administration of anesthetics.

The legislature intended that the Board impose necessary requirements for the training and skill of individuals who administer and monitor general anesthesia, deep conscious sedation, or any anesthetic agent used in pain control.

The legislature also intended that the Board adopt rules for inspecting and approving dental practice facilities in which general anesthesia, conscious sedation, or nitrous oxide/oxygen analgesia is administered.

4. Interested persons may submit their data, views or arguments concerning the proposed adoptions either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Dentistry, 1424 9th Avenue, Helena, Montana 59620, no later than December 12, 1985.

5. The Board or its designee will preside over and conduct the hearing.

BOARD OF DENTISTRY
DR. BYRON J. GREANY
PRESIDENT

BY: 

ROBERT J. WOOD, COUNSEL
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, November 4, 1985.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BUILDING CODES BUREAU

In the matter of the proposed amendments 8.70.101 concerning the uniform building code, 8.70.102 concerning the uniform housing code, 8.70.103 concerning the uniform code for the abatement of dangerous buildings, 8.70.104 concerning the model energy code, 8.70.105 concerning the uniform mechanical code, 8.70.302 concerning the uniform plumbing code, 8.70.601 concerning the safety code for elevators and escalators, and proposed adoption of new rules concerning the incorporation by reference of CABO one and two family dwelling code, incorporation by reference of Part II, uniform federal accessibility standards, and a new rule concerning temporary installations of carnivals, fairs, outdoor concerts and similar amusement establishments, and other public assemblies of a temporary nature)	NOTICE OF PUBLIC HEARING ON 8.70.101 INCORPORATION BY REFERENCE OF UNIFORM BUILDING CODE, 8.70.102 INCORPORATION BY REFERENCE OF UNIFORM HOUSING CODE, 8.70.103 INCORPORATION BY REFERENCE OF UNIFORM CODE FOR THE ABATEMENT OF DANGEROUS BUILDINGS, 8.70.104 INCORPORATION BY REFERENCE OF MODEL ENERGY CODE, 8.70.105 INCORPORATION BY REFERENCE OF UNIFORM MECHANICAL CODE, 8.70.302 INCORPORATION BY REFERENCE OF UNIFORM PLUMBING CODE, 8.70.601 INCORPORATION BY REFERENCE OF SAFETY CODE FOR ELEVATORS AND ESCALATORS, ANSI/ASME A17.1 - 1981, and PROPOSED ADOPTION OF NEW RULES, INCORPORATION BY REFERENCE OF CABO ONE & TWO FAMILY DWELLING CODE, INCORPORATION BY REFERENCE OF PART II, UNIFORM FEDERAL ACCESSIBILITY STANDARDS, and CARNIVALS, FAIRS, OUTDOOR CONCERTS AND SIMILAR AMUSEMENT ESTABLISHMENTS AND OTHER PUBLIC ASSEMBLIES OF A TEMPORARY NATURE
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TO: All Interested Persons.

1. On December 6, 1985 at 9:30 a.m., a public hearing will be held in the downstairs conference room, Department of Commerce building, 1430 9th Avenue, Helena, Montana, to consider the amendment and adoption of the above-stated rules.

2. The proposed amendment of 8.70.101 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-1991 through 8-1993, Administrative Rules of Montana)

"8.70.101 INCORPORATION BY REFERENCE OF UNIFORM BUILDING CODE (1) The building codes bureau of the department of commerce adopts and incorporates by reference herein the Uniform Building Code, 1982 1985 Edition, together with the Appendix Chapter 7 (Part I, Covered Mall Buildings) (Part II, Aviation Control Towers), Appendix Chapter 12 (Requirements for Group R, Division 3 Occupancies) as amended by rule I., Appendix Chapter 23 (Division I - Alternate Snow Load Design),

Appendix Chapter 32 (Re-Roofing), Appendix Chapter 49 (Patio Covers), Appendix Chapter 53 (Energy Conservation in New Building Construction), and Appendix Chapter 55 (Membrane Structures), with the following amendments thereto:

(a) Add a new paragraph to Section 304 of the Uniform Building Code to read, "~~(f)~~ (g) Requested Inspection Fee - \$30 \$45, provided that such service is not in excess of 1 hour in duration, and then \$15 \$25 for each 30 minutes or fractional part thereof in excess of 1 hour. Travel and per diem will be charged as per the state of Montana's existing rates for these items."

(b) ...

(d) Subsection ~~(a)~~ (b) of section 304 of the Uniform Building Code, 1982 1985 Edition, is amended to read as follows:

Sec. 304. ~~(a)~~ (b) Permit Fees. The fee for each permit shall be as set forth in Table No. 3-A.

The determination of value or valuation under any of the provisions of this code shall be made by the building official. The value to be used in computing the building permit and building plan review fees shall be the total value of all construction work for which the permit is issued as well as all finish work, painting, roofing, electrical, plumbing, heating, air conditioning, elevators, fire-extinguishing systems and any other permanent equipment. Whenever the building official is in the state of Montana, acting through the department of commerce, building codes bureau, the value or valuation of a building or structure under any of the provisions of this code will be determined using the cost per square foot method of valuation and the cost per square foot figures for the type and quality of construction listed in the most current "Building Valuation Data" table published by "International Conference of Building Officials Building Standards" magazine, the trade magazine published by the International Conference of Building Officials, as modified by the regional modifiers set forth in said "Building Valuation Data" table. As provided by in rule ARM 8.70.208, local governments certified to enforce the state building code may establish their own permit fees. Local governments may also establish their own method of building valuation."

(e) ...

(2) ...

(3) The Uniform Building Code, 1982 1985 Edition, adopting by reference in subsection (1) of this rule, is a nationally recognized model code setting forth minimum standards and requirements for building construction. A copy of the Uniform Building Code, 1982 1985 Edition, may be obtained from the Department of Commerce, Building Codes Bureau, Capitol Station, Helena, Montana 59620 at cost plus postage and handling. A copy may also be obtained by writing

the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601.

(4) ...

(5) Appendix Chapter 1 (Division I - Life Safety Requirements for Existing Buildings other than High-rise Buildings), Appendix Chapter 1 (Division II - Life Safety Requirements for Existing High-rise Buildings), Appendix Chapter 11 (Agricultural Buildings), Appendix Chapter 12 (Requirements for Group R, Division 3 Occupancies), Appendix Chapter 23 (Division II - Earthquake Instrumentation, Appendix Chapter 35 (Sound Transmission Control), Appendix Chapter 38 (Basement Pipe Inlets), Appendix Chapter 57 (Regulations Governing Fallout Shelters), Appendix Chapter 70 (Excavation and Grading) are adopted for use by local governments specifically adopting them. However, the department will not be enforcing them."

Auth: 50-60-104, 203, MCA Imp: 50-60-103, 104, 203, MCA

3. The bureau is proposing this amendment to the rule to keep the state standard current with modern technology by adopting the latest available edition of the Uniform Building Code. The requirements to maintain current codes is referenced in Section 50-60-201, MCA.

4. The proposed amendment of 8.70.102 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-1993 and 8-1994, Administrative Rules of Montana)

"8.70.102 INCORPORATION BY REFERENCE OF UNIFORM HOUSING CODE (1) The building codes bureau of the department of commerce adopts and incorporates by reference herein the Uniform Housing Code, 1982 1985 Edition, with the following amendments thereto:

(a) ...

(3) The Uniform Housing Code, 1982 1985 Edition, is a nationally recognized model code setting forth minimum standards and requirements for maintenance of residential buildings. A copy of the Uniform Housing Code, 1982 1985 Edition, may be obtained from the Department of Commerce, Building Codes Bureau, Capitol Station, Helena, Montana 59620 at a cost plus postage and handling. A copy may also be obtained by writing to the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601."

Auth: 50-60-203, MCA Imp: 50-60-203, MCA

5. The bureau is proposing the amendment to the rule to keep the state standard current with modern technology by adopting the latest available edition of the Uniform Housing Code. The requirements to maintain current codes is

referenced in Section 50-60-201, MCA

6. The proposed amendment of 8.70.103 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-1994 and 8-1995, Administrative Rules of Montana)

8.70.103 INCORPORATION BY REFERENCE OF UNIFORM CODE FOR THE ABATEMENT OF DANGEROUS BUILDINGS (1) The building codes bureau of the department of commerce adopts and incorporates by reference herein the Uniform Code for the Abatement of Dangerous Buildings, 1982 1985 Edition, with the following amendments thereto:

(a) ...

(3) The Uniform Code for the Abatement of Dangerous Buildings, 1982 1985 Edition, is a nationally recognized model code setting forth minimum standards and requirements for dangerous buildings. A copy of the Uniform Code for the Abatement of Dangerous Buildings, 1982 1985 Edition, may be obtained from the Department of Commerce, Building Codes Bureau, Capitol Station, Helena, Montana 59620 at cost plus postage and handling. A copy may also be obtained by writing to the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601."

Auth: 50-60-203, MCA Imp: 50-60-203, MCA

7. The bureau is proposing this amendment to the rule to keep the state standard current with modern technology by adopting the latest available edition of the Uniform Code for the Abatement of Dangerous Buildings. The requirements to maintain current codes is referenced in Section 50-60-201, MCA.

8. The proposed amendment of 8.70.104 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-1995, Administrative Rules of Montana)

8.70.104 INCORPORATION BY REFERENCE OF THE MODEL ENERGY CODE FOR ENERGY CONSERVATION IN NEW BUILDING CONSTRUCTION

(1) The building codes bureau of the department of commerce adopts and incorporates by reference herein the Model Code for Energy Conservation in New Building Construction Energy Code, 1983 Edition with the following change:

(a) "Section 103-0 104.1 Plans and Specifications General. With each application for a building permit, and when required by the Building Official, plans and specifications shall be submitted. The Building Official may require plans and specifications be prepared by an engineer or architect licensed to practice by the State, except for owner-occupied, single-family dwelling houses. All designs submitted under the provisions of Section 4 shall be prepared

by an engineer or architect licensed to practice by the State."

(2) ..."

Auth: 50-60-203, MCA Imp: 50-60-103, 201, 203, MCA

9. The bureau is proposing this amendment to the rule to keep the state standard current with modern technology by adopting the latest available edition of the Model Energy Code. The requirement to maintain current codes is referenced in Section 50-60-201, MCA.

10. The proposed amendment of 8.70.105 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-1995 through 8-1998, Administrative Rules of Montana)

"8.70.105 INCORPORATION BY REFERENCE OF UNIFORM MECHANICAL CODE (1) The building codes bureau of the department of commerce adopts and incorporates by reference herein the Uniform Mechanical Code, 1982 1985 Edition, as amended, with the following amendments thereto:

(a) The fees contained in section 304 shall be deleted and replaced with the following:

- | | |
|--|----------|
| --for the issuance of each permit | \$ 10-00 |
| --for the installation or relocation of each forced-air or gravity-type furnace or burner, including ducts and vents attached to such appliance, up to and including 100,000 Btu/h | 11-00 |
| --for the installation or relocation of each forced-air or gravity-type furnace or burner, including ducts and vents attached to such appliance over 100,000 Btu/h | 12-00 |
| --for the installation or relocation of each floor furnace, including vents | 10-00 |
| --for the installation or relocation of each suspended heater, recessed wall heater, or floor-mounted unit heater | 10-00 |
| --for the installation, relocation, or replacement of each appliance vent installed and not included in an appliance permit | 4-00 |
| --for the repair of, alteration of, or addition to each heating appliance, refrigeration unit, cooling unit, absorption unit, or each heating, cooling, absorption, or evaporative cooling system, including installation of controls regulated by this code | 7-00 |
| --for the installation or relocation of each boiler or compressor to and including three horsepower, or each absorption system to | |

and including 100,000 Btu/h	7-00
--for the installation or relocation of each boiler or compressor over three horsepower to and including 15 horsepower, or each absorption system over 100,000 Btu/h and including 500,000 Btu/h	13-00
--for the installation or relocation of each boiler or compressor over 15 horsepower to and including 30 horsepower, or each absorption system over 500,000 Btu/h to and including 1,000,000 Btu/h	20-00
--for the installation or relocation of each boiler or compressor over 30 horsepower to and including 50 horsepower, or for each absorption system over 1,000,000 Btu/h to and including 1,750,000 Btu/h	27-00
--for the installation or relocation of boiler or refrigeration compressor over 50 horsepower, or each absorption system over 1,750,000 Btu/h	67-00
--for each air handling unit to and including 10,000 cubic feet per minute, including ducts attached thereto	7-00
NOTE- This fee shall not apply to an air handling unit which is a portion of a factory assembled appliance; cooling unit; evaporative cooler; or absorption unit for which a permit is required elsewhere in this code.	
--for each air handling unit over 10,000 cfm	13-00
--for each evaporative cooler other than portable type	7-00
--for each ventilation fan connected to a single duct	3-00
--for each ventilation system which is not a portion of any heating or air conditioning system authorized by a permit	7-00
--for the installation of each hood which is served by mechanical exhaust, including the ducts for such hood	7-00
--for the installation or relocation of each domestic type incinerator	13-00
--for the installation or relocation of each commercial or industrial type incinerator	47-00
--for each appliance or piece of equipment regulated by this code but not classed in other appliance categories,	

or for which no other fee is listed in this code 7-99
--requested inspection fee - \$30, provided that such service is not in excess of 1 hour in duration, and then \$15 for each 30 minutes or fractional part thereof in excess of 1 hour. Travel and per diem will be charged as per the state of Montana's existing rates for these items.

MECHANICAL PERMIT FEES

The mechanical cost shall be the cost to the owner of all labor charges and all mechanical materials and equipment installed as part of the mechanical system. The cost of the plumbing system, which is covered by the Uniform Plumbing Code, is not to be included.

<u>Cost of Mechanical System</u>	<u>Mechanical Permit Fee</u>
<u>0 - \$1,000</u>	<u>\$30</u>
<u>\$1,001 - \$10,000</u>	<u>\$30 for first \$1,000 plus</u> <u>\$10 for each additional</u> <u>\$1,000 or fraction thereof,</u> <u>to and including \$10,000</u>
<u>\$10,001 - \$50,000</u>	<u>\$120 for first \$10,000 plus</u> <u>\$5 for each additional \$1,000</u> <u>or fraction thereof, to and</u> <u>including \$50,000.</u>
<u>\$50,001</u>	<u>\$320 for first \$50,000</u> <u>plus \$3 for each additional</u> <u>\$1,000 or fraction thereof</u>

(b) ...

(d) Chapter 21, Appendix B, pages 264-280 297-315 titled "Steam and Hot-water Boilers, Steam and Hot-water Piping (Hydronics)" shall be adopted as part of the Uniform Mechanical Code except as follows:

(i) ...

(3) The Uniform Mechanical Code, 1982 1985 Edition, adopted by reference in subsection (1) of this rule, is a nationally recognized model code setting forth minimum standards and requirements for certain mechanical installations. A copy of the Uniform Mechanical Code, 1982 1985 Edition, may be obtained from the Department of Commerce, Building Codes Bureau, Capitol Station, Helena, Montana 59620 at cost plus postage and handling. A copy may also be obtained by writing to the International Association of Plumbing and Mechanical Officials, 5032 Alhambra Avenue, Los Angeles, California 90032, or the International Conference of

Building Officials, 5360 South Workman Mill Road, Whittier, California 90601."

Auth: 50-60-104, 203, MCA Imp: 50-60-103, 104, 203, MCA

11. The bureau is proposing this amendment to the rule to keep the state standard current with modern technology by adopting the latest available edition of the Uniform Mechanical Code. The requirements to maintain current codes is referenced in Section 50-60-201, MCA.

12. The proposed amendment of 8.70.302 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-2025 through 8-2026, Administrative Rules of Montana)

8.70.302 INCORPORATION BY REFERENCE OF UNIFORM PLUMBING CODE (1) The building codes bureau of the department of commerce adopts and incorporates by reference herein the Uniform Plumbing Code, 1982 1985 Edition, as amended by this rule. The Uniform Plumbing Code, 1982 1985 Edition, is a nationally recognized model code setting forth minimum standards and requirements for plumbing installations. A copy of the Uniform Plumbing Code, 1982 1985 Edition, may be obtained from the Department of Commerce, Building Codes Bureau, Capitol Station, Helena, Montana 59620 at cost plus postage and handling. A copy may also be obtained by writing to the International Association of Plumbing and Mechanical Officials, 5032 Alhambra Avenue, Los Angeles, California 90032. The Uniform Plumbing Code, 1982 Edition, adopted herein by reference, is amended as follows:

(a) ...

(b) The following amendments are listed according to section and page number of the Uniform Plumbing Code:

(i) ...

(iii) Sec. 20.7, Cost of Permit, page 4a. Delete the Schedule of Fees and replace with the following schedule:

--for issuing each permit	\$ 10.00 <u>15.00*</u>
--for each plumbing fixture or trap or set of fixtures on one trap (including water, drainage piping, and backflow protection therefore)	4.00 <u>6.00</u>
--water service - domestic or commercial	4.00 <u>6.00</u>
--for each building sewer and each trailer park sewer	7.00 <u>10.00</u>
--storm drains and storm drainage	4.00 <u>6.00</u>
--for each water heater <u>(both new and replacement)</u>	4.00 <u>6.00</u>
--for each gas piping system of one to four outlets	4.00 <u>6.00</u>
--for each gas piping system of five or more per outlet	1.00 <u>2.00</u>

- for each industrial water pre-treatment interceptor, including its tray and vent, excepting kitchen type grease interceptors functioning as fixture traps 5-00 7.00
- for installation, alteration, or repair of water piping and/or water treatment equipment 4-00 6.00
- for repair or alteration of drainage or vent piping 4-00 6.00
- for each lawn sprinkler system and fire protection system or any one meter, including backflow protection devices therefore 4-00 6.00
- for vacuum breakers or backflow protective devices on tanks, vats, etc., or for installation on unprotected plumbing fixtures, including necessary water piping--
 - one to four 4-00 6.00
 - five or more, each 1-00 2.00
- requested plumbing inspection fee 30-00 45.00
 - provided that such service is not in excess of 1 hour in duration, and then \$15 25.00 for each 30 minutes or fractional part thereof in excess of 1 hour. Travel and per diem will be charged as per the state of Montana's existing rate for these items.
- reinspection (provided the \$20 30 does not exceed the original permit fee, in which case the original fee will be charged) 20-00 30.00

*except for replacement of water heaters

(iv) ...

(vii) See: 401 (a), Materials, Item 2, page 37. Amend to read as follows: "(2) ABS and PVC DWV piping installations shall be limited to residential, commercial, institutional, and industrial construction not more than two stories in height, provided that ABS and PVC DWV may be used for horizontal branch lines regardless of the number of stories."

(viii) (vii) Sec. 406 (a), Cleanouts, page 40. Line 4 shall be changed to read as follows: "... shall be provided with a cleanout for each 50 feet . . .", rather than "... 100 feet. . ." Also add: "Lines 6 inches in size and larger shall be provided with a cleanout for each 100 feet, or fraction thereof, in length of such piping."

(ix) (viii) ...

(xi) See: 503 (a), Materials, Item 2, page 45. Amend to read as follows: "(2) ABS and PVC DWV piping installations shall be limited to residential, commercial, institutional, and industrial construction not more than two stories in height, provided that ABS and PVC DWV may be used for horizontal branch lines regardless of the number of stories."

(xiii) (x) ...

(xiv) (xi) Sec. 1004 (a), Materials, page 75, amend to read as follows: "Sec. 1004 - Materials (a) Water pipe and fittings shall be of brass, copper, cast iron, galvanized malleable iron, galvanized wrought iron; galvanized steel, lead or other approved materials. Asbestos-cement, CPVC, PB, PE, or PVC water pipe manufactured to recognized standards may be used for cold water distribution systems outside a building; provided however, that this same material may extend to a point immediately inside the building when a sleeve for all pipe passing through or under concrete construction and valve are provided at the point of entrance. PB water pipe and tubing may be used for hot and cold water distribution systems within a building. All materials used in the water supply system, except valves and similar devices shall be of a like material, except where otherwise approved by the Administrative Authority."

(xv) (xii) ...

(xvi) (xv) Appendix E, Mobile Home Parks, pages 163-175 165-177. Delete.

(xviii) Appendix G, Swimming Pools, pages 176-177. Delete.

(xix) (xvi) Appendix C, Minimum Plumbing Facilities, pages 151-154 153-156. Delete. Rule ARM 8.70.303 will be used in lieu of Appendix C.

(xx) (xvii) Appendix I, Private Sewage Disposal Systems, pages 180-194 181 - 196. Delete.

(2) ..."

Auth: 50-60-203, 504, MCA Imp: 50-60-203, 504, 508, MCA

13. The bureau is proposing this amendment to the rule to keep the state standard current with modern technology by adopting the latest available edition of the Uniform Plumbing Code. The requirements to maintain current codes is referenced in Section 50-60-201, MCA.

14. The proposed amendment of 8.70.601 will amend the catchphrase of the rule, as well as the rules and will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-2137, Administrative Rules of Montana)

8.70.601 INCORPORATION BY REFERENCE OF SAFETY CODE FOR ELEVATORS AND ESCALATORS, ANSI/ASME A 17.1 - 1901 1984 AND ANSI/ASME A17.1a - 1985 SUPPLEMENT TO SAFETY CODE FOR ELEVATORS AND ESCALATORS (1) The building codes bureau of the department of commerce adopts and incorporates by reference herein the Safety Code for Elevators and Escalators, ANSI/ASME A 17.1 - ~~1901~~ 1985 Edition, along with ANSI/ASME A 17.1a - 1985 Supplement to Safety Code for Elevators and Escalators as amended. A copy of the Safety

Code for Elevators and Escalators ANSI/ASME A 17.1 - 1981 1984 can be obtained from The American Society of Mechanical Engineers, United Engineering Center, 345 East 47th Street, New York, N.Y. 10017.

(2) ...

(3) The following amendment is made to ANSI/ASME A 17.1, Section 1001, Rule 1001-6B, p. 126: The test period shall be changed from 12 months to 36 months. Inspection, code compliance, and enforcement of hoistway (shaft) standards shall be the responsibility of the jurisdiction inspecting and enforcing the building code for the building itself.

(4) ..."

Auth: 50-60-203, 702, MCA Imp: 50-60-203, 207, MCA

15. The bureau is proposing this amendment to the rule to keep the state standard current with modern technology by adopting the latest available edition of the ANSI/ASME A 17.1, Safety Code for Elevators and Escalators. The requirements to maintain current codes is referenced in Section 50-60-201, MCA.

16. The proposed new rules will read as follows:

"1. (under sub-chapter 1) INCORPORATION BY REFERENCE OF CABO ONE & TWO FAMILY DWELLING CODE (1) The building codes bureau of the department of commerce adopts and incorporates by reference herein the CABO One & Two Family Dwelling Code, 1983 Edition together with the 1984 amendments, with the following amendments thereto:

(a) Delete Part IV - Mechanical, Part V - Plumbing, Part VI - Electrical, and Part VII - Energy Conservation.

(2) The purpose of this code is to provide minimum standards for the protection of life, limb, health, property, environment and for the safety and welfare of the consumer, general public and the owners and occupants of residential buildings regulated therein.

(3) The CABO One & Two Family Dwelling Code, 1983 Edition together with the 1984 amendments, adopted by reference in subsection (1) of this rule, is a nationally recognized model code setting forth minimum standards and requirements for the construction, prefabrication, alteration, repair, use, occupancy and maintenance of detached one or two family dwellings not more than three stories in height, and their accessory structures. A copy of the CABO One & Two Family Dwelling Code, 1983 Edition together with the 1984 amendments, may be obtained from the Department of Commerce, Building Codes Bureau, Capitol Station, Helena, Montana, 59620, at cost plus postage and handling. A copy may also be obtained by writing the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601."

Auth: 50-60-203, 401, MCA Imp: 50-60-103, 402, MCA

"II. (to be located in sub-chapter 1) INCORPORATION BY REFERENCE OF PART II, UNIFORM FEDERAL ACCESSIBILITY STANDARDS

(1) The building codes bureau office of the department of commerce adopts and incorporates by reference herein Part II, Uniform Federal Accessibility Standards, as it reads in the Federal Register dated August 7, 1984, to ensure that any new buildings constructed with public funds are accessible to and functional for physically handicapped persons.

(2) The purpose of this document is to provide design and construction standards for facility accessibility by physically handicapped persons.

(3) Part II, Uniform Federal Accessibility Standards, as it reads in the Federal Register dated August 7, 1984, is a nationally recognized standard setting forth minimum standards and requirements for the design and construction for facility accessibility by physically handicapped persons. A copy of the standard can be obtained from the Department of Commerce, Building Codes Bureau, Capitol Station, Helena, Montana 59620, at cost plus postage and handling. A copy may also be obtained by writing the United States Architectural and Transportation Barriers Compliance Board, Washington, D.C. 20201."

Auth: 50-60-201, 203, MCA Imp: 50-60-103, 201, MCA, (Auth. Extension: Chapter 65, section 50-60-201 (4), Laws of 1985.)

"III. (To be located in Sub-Chapter 4) CARNIVALS, FAIRS, OUTDOOR CONCERTS AND SIMILAR AMUSEMENT ESTABLISHMENTS, AND OTHER PUBLIC ASSEMBLIES OF A TEMPORARY NATURE (1)

Temporary electrical power and lighting installations may be permitted for a period not to exceed 30 days. The installation must comply with Article 305 of the National Electrical Code.

(2) The electrical inspection fee for each temporary installation shall be \$40 for the entirety of the temporary installation, provided that such inspection can be completed within one hour. If additional inspection time is required, it will be charged at the rate of \$20 for each additional 30 minutes or fractional parts thereof.

(3) Each time a temporary amusement or public assembly electrical installation is erected or relocated, another electrical inspection will be required.

(4) The major areas of concern include but are not limited to:

(a) All exterior boxes, cabinets, panels, controls, outlets, switches shall be weather proof.

(b) All cords, wire, etc. shall be approved by a recognized testing agency and in good repair.

(c) All grounding shall comply with articles 250 and 445 of the National Electrical Code.

(d) All cords, caps and plugs shall be of the grounding type.

(e) All panels, boxes, and cabinets shall have all unused openings plugged.

(f) All panels, boxes, cabinets, outlets, and switches shall have covers, dead fronts or doors.

(g) All electrical equipment shall have physical protection where necessary.

(h) All splices in electrical wires must occur in approved boxes, apparatus or equipment.

(i) All open conductors, open front panels, boxes, switches, etc. must be adequately protected from pedestrian and vehicular traffic, or made inaccessible to the public."

Auth: 50-60-203, 603, 604, MCA Imp: 50-60-203, 603, 604, MCA

17. The bureau is proposing rule I to keep the state standard current with modern technology by adopting the latest available construction standard, as required by Section 50-60-201, MCA. In addition, the relative clarity and simplicity of the CABO One & Two Family Dwelling Code contributes to the ease of understanding, interpretation and compliance by owners, builders, inspectors, and building officials.

Rule II is proposed to comply with the legislative change to section 50-60-201, MCA, passed during the 49th legislature, through Senate Bill No. 59. (Chapter No. 65, Montana Session Laws of 1985, Auth. Extension 50-60-201 (4), MCA)

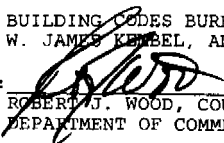
Rule III. is proposed to safeguard persons from the hazards of temporary electrical systems used in connection with amusement establishments of temporary nature. The subject facilities expose numerous members of the public to direct contact with temporary electrical system components which if not properly installed can expose persons to high potential electrical hazards. Currently the bureau has no policy concerning such installations or useages.

18. 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 Department of Commerce, Building Codes Bureau, Capitol Station, Helena, Montana 59620, no later than December 13, 1985.

6. Ray Brault, Attorney, Helena, Montana, will preside over and conduct the hearing.

BUILDING CODES BUREAU
W. JAMES KEMBEL, ADMINISTRATOR

BY:


ROBERT J. WOOD, COUNSEL
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, November 4, 1985.

21-11/14/85

MAR Notice No. 8-70-130

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BUILDING CODES BUREAU

In the matter of the proposed) NOTICE OF PUBLIC HEARING
amendment of 8.70.407 concern-) ON THE PROPOSED AMENDMENT
ing electrical inspection fees) OF 8.70.407 ELECTRICAL
) INSPECTION FEES

TO: All Interested Persons.

1. On December 6, 1985, at 9:30 a.m., a public hearing will be held in the downstairs conference room, Department of Commerce building, 1430 9th Avenue, Helena, Montana, to consider the amendment of the above-stated rule.

2. The proposed amendment will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-2043 through 8-2045, Administrative Rules of Montana)

8.70.407 ELECTRICAL INSPECTIONS FEES (1) The following is the schedule of electrical inspection fees:

<u>Type of Installation</u>	<u>Permit Fee</u>
--temporary construction service	no separate charge
--single-family dwellings (includes garage wired at the same time as the house)	
100 to 200 amp service	\$ 65
201 100 to 300 amp service	\$100 130
301 or more amp service	125 200*
*three inspections maximum	
--private property accessory buildings (garages, barns, sheds, etc.)	
up to 200 amp panel	30 40
201 to 300 amp panel	75 100
301 or more amp panel	100 130
--multi-family dwellings (duplex through 12 units)	
\$100 per building plus per dwelling unit	30 40*
*For buildings containing more than 12 units, use the commercial schedule that follows.	
--interior rewire only or new addition to a home	35 40
--change of service	20 25
--mobile home installations (in a court)	20 25
--mobile home installation (outside a court)	30 40
--modular homes	
no basement	30 40
with a basement and/or garage	50 65
--mobile home courts and/or recreational vehicle parks (new, rewire, or addition)	
first 3 spaces (per space)	10 15
additional spaces over 3 spaces (per space)	3 5

--new service only (livestock well, irrigation well, etc.) 30 40
 --irrigation pumps or machines
 per unit (one pump and/or one pivot) 25 35
 --all other installations (commercial, industrial, institutional, or for public use):

Cost of Electrical
Installation

Fee

\$ 0 - \$ 1,000	\$30 60
\$ 1,001 - \$10,000	\$30 60 for 1st \$1,000 plus 1-5 2.0% of balance of construction cost
\$10,001 - \$50,000	\$165 240 for 1st \$10,000 plus .5% of balance of construction cost
\$50,001 or more	\$365 440 for 1st \$50,000 plus .3% of balance of construction cost

--temporary construction service (for commercial, industrial, institutional, or public use jobs only) 20 25
 NOTE: this additional \$20 25 fee is required in addition to the above inspection fees if a temporary service will be used, and is to be paid at the same time as the regular permit fee before construction begins.

(2) ...

(3) The fee for a requested electrical inspection is \$30 40, provided that such service is not in excess of 1 hour in duration, and then \$15 20 for each 30 minutes or fractional part thereof in excess of 1 hour. Travel and per diem will also be charged at the rates established under Title 2, chapter 18, part 5, MCA."

Auth: 50-60-104, 203, 603, MCA Imp: 59-60-104, 203, 603, MCA

3. The bureau is proposing the amendment to the rule to obtain adequate funding to meet the budget needs.

4. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Building Codes Bureau, Department of Commerce, Capital

Station, Helena, Montana 59620, no later than December 13, 1985.

6. Ray Brault, Attorney, Helena, Montana will preside over and conduct the hearing.

BUILDING CODES BUREAU
W. JAMES KEMBEL, ADMINISTRATOR

BY: 

ROBERT J. WOOD, COUNSEL
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, November 4, 1985.

BEFORE THE MONTANA FISH AND GAME COMMISSION

IN THE MATTER OF THE)	NOTICE OF PROPOSED
PROPOSED AMENDMENT OF)	AMENDMENT OF 12.9.207
RULE 12.9.207)	SEELEY LAKE GAME PRESERVE

NO PUBLIC HEARING CONTEMPLATED

To: All Interested Persons.

1. On January 10, 1986, the Montana Fish and Game Commission proposes to amend Rule 12.9.207, relating to the establishment of Seeley Lake Game Preserve.

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

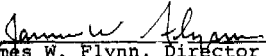
12.9.207 SEELEY LAKE GAME PRESERVE (1) The Seeley Lake Game Preserve is created as follows: Beginning--at--the southwest-corner-of-section-32,-township-17-north,-range-15 west,-M.P.M.-thence-north-following-section-line-to-the northwest-corner-of-section-20,-the-same-township-and-range, thence-east-following-section-line-to-the-northeast-corner-of section-22,-same-township-and-range,-thence-south-along section-line-to-the-southeast-corner-of-section-34,-same township-and-range,-thence-east-along-township-line-to-the northeast-corner-of-said-section-3,-township-16-north,-range 15-west,-thence-south-along-section-line-to-the-southeast corner-of-said-section-3,-thence-west-along-section-line-to the-southwest-corner-of-section-5,-same-township-and-range, thence-north-along-section-line-to-the-northwest-corner-of said-section-5,-thence-west-along-township-line-to-the southwest-corner-of-section-32,-township-17-north,-range-15 west,-the-place-of-beginning,-all-of-which-is-in-Missoula County,-Montana. Beginning at a point where Forest Service land and private land meet next to the Boy Scout road in Section 20, T17N, R15W, east on boundary between Forest Service and private land, then north on same boundary to section line between Section 17 and 20, east on said section line and east on north line of Section 21, T17N, R15W to Highway #83, south on Highway #83 to Riverview Drive in Section 3, T16N, R15W, west on Riverview Drive to Snowmass Drive in Section 9, T16N, R15W, north on Snowmass Drive to section line between Sections 4 and 5, T16N, R15W, north on said section line to Clearwater River, north along west shore of Clearwater River, to Boy Scout road in Section 33, T17N, R15W, west and north on Boy Scout road to where Forest Service land and private land meet next to Boy Scout road in Section 20, T17N, R15W, the point of beginning.

3. This rule is being amended to more accurately describe the appropriate boundaries for the preserve, as expressed by landowners within the preserve.

4. Interested persons may submit their data, views, or comments concerning this amendment to Stan Bradshaw, Montana Department of Fish, Wildlife and Parks, 1420 E. 6th, Helena, MT 59620 by December 31, 1985.

5. If a person who is directly affected by the proposed amendments wishes to express data, views, or comments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request to Stan Bradshaw no later than December 16, 1985.

6. If the Department receives requests for a public hearing from 10% or 25, whichever is fewer, of the persons who will be directly affected by the proposed amendment, by a governmental subdivision or agency, by the administrative code committee, or by an association having not fewer than 25 members who will be directly affected, a hearing will be scheduled. Notice of Hearing will be published in the Montana Administrative Register.



James W. Flynn, Director
Department of Fish, Wildlife
and Parks

Certified to Secretary of State November 4, 1985.

BEFORE THE DEPARTMENT OF JUSTICE

OF THE STATE OF MONTANA

In the Matter of the Adoption	)	NOTICE OF THE PROPOSED
of a Rule Regarding Completion	)	ADOPTION OF A RULE
and Filing of Final Disposition	)	ON FINAL DISPOSITION
Reports.	)	REPORTS
)	
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons.

1. On December 14, 1985, the Department of Justice proposes to adopt new Rule I which provides for the completion and filing of Final Disposition Reports on all persons fingerprinted and photographed under section 44-5-202, MCA. [The proposed rule has been approved by the Montana Supreme Court, as per section 44-5-213(7), MCA.]

2. The proposed rule is as follows:

RULE I FINAL DISPOSITION REPORTS (1) Whenever a person charged with a crime is photographed and fingerprinted under section 44-5-202, MCA, a (1) State of Montana final disposition report, and (2) Federal Bureau of Investigation (FBI) final disposition report shall be completed by the originating criminal justice agency, and filed with the charging documents. The originating agency shall provide fingerprints and the charge(s) against the accused.

(2) When the administrative office of the court receives a new criminal file, it shall check to insure that it contains the State and FBI final disposition reports, and that both final disposition reports bear the fingerprints of the accused.

(3) If the criminal charges are resolved in a formal court proceeding, the administrative office of the court shall list the final disposition of all charges against the accused, and send the State and FBI final disposition reports to the state repository within 15 days.

(4) If the criminal charges are resolved outside a formal court proceeding, the originating agency shall provide the final disposition of all charges against the accused, and send the final disposition reports to the state repository within 30 days.

AUTH: 44-5-213(7), MCA; IMP: 44-5-213, MCA.

3. Under the current criminal justice information system, no one has specific responsibility for completing final disposition reports after a formal court proceeding. Thus, the Identification Bureau often receives fingerprint cards, with a

list of charges, but is never notified of the final disposition of the criminal charges. The purpose of this rule is to make the court administrative office responsible for completing a final disposition report after formal court proceedings are completed. If charges are resolved outside a formal court proceeding, the originating agency is responsible for filing a final disposition report.

4. Interested parties may submit their data, views or arguments concerning the proposed rule in writing to Michael J. Miller, Chief, Identification Bureau, Department of Justice, 303 North Roberts, Helena, Montana 59620, no later than December 16, 1985.

5. If a person who is directly affected by the proposed adoption wishes to express his data, views and arguments orally or in writing at a public hearing, he must make a written request for a hearing and submit this request along with any written comments he has to Michael J. Miller, Chief, Identification Bureau, Department of Justice, 303 North Roberts, Helena, Montana, 59620, no later than December 16, 1985.

6. If the Identification Bureau 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 more than 25 persons, based on the fact that well over 250 persons are fingerprinted and photographed each year in Montana, under section 44-5-202, MCA.

7. The authority of the Department to make the proposed rule is based on section 44-5-213(7), MCA, and the rule implements section 44-5-213, MCA.


MIKE GREELY
Attorney General

Certified to the Secretary of State 2/16/85, 1985.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PROPOSED ADOPT-
adoption of new rules for the	)	TION OF NEW RULES FOR THE
use of the Computer Election	)	USE OF THE COMPUTER ELEC-
Systems Optech I Voting Device	)	TION SYSTEMS OPTECH I
		VOTING DEVICE

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On December 14, 1985, The Secretary of State proposes to adopt new rules for the use of the Computer Election Systems Optech I Voting device.

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

3. The rules provide as follows:

RULE I USE AND SCOPE - COMPUTER ELECTION SYSTEM OPTECH I

(1) The Computer Election System Optech I is approved for sale and use in Montana as a single precinct ballot counter only. It has not applied for or received approval for use as a "central" or even "multi-precinct" counting system.

(2) These rules establish procedures for using the Optech I only when it is physically located at a precinct polling place and is used exclusively for counting the ballots of the precinct in which it is located.

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

RULE II DEFINITIONS - COMPUTER ELECTION SYSTEMS OPTECH I

(1) Unless the context clearly indicates otherwise, the following terms shall have the following meanings:

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

(b) "Ballot chute" is the card reader slot on the device.

(c) "Control card" means a pre-printed card which specifies election parameters such as ballot size, type of election, number and location of folds, printing on one or two sides, handling of over voted/write-in ballots and other ballot errors.

(d) "Device" - means an Optech I unit which functions both as a vote counter and a ballot box.

(e) "Memorypack" means a small "cassette" placed in each Optech device which is programmed to contain all

information pertinent to an election such as Precinct identification, ballot positions, votes allowed and party codes, as well as specific election processing requirements.

(f) "Microprocessor" means the part of the Optech I which runs ballot tabulation, handles error conditions, self-diagnostic, and alpha-numeric printing.

(g) "Printer tape" means the report printed by each individual Optech I which creates the complete audit trail of the precinct voting.

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

(i) "Spoiled ballot" means any ballot that is folded, creased, torn or which in any other way cannot be read by the device, and requires the elector to vote a new ballot card. This definition shall also include those ballots spoiled by the elector who requests a new one.

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

RULE III BALLOT PREPARATION - COMPUTER ELECTION SYSTEMS - OPTECH I (1) Ballots shall be prepared in accordance with the provisions of Title 13, MCA, except that, in the event of a partisan primary election it is not required to prepare and print a completely separate primary ballot card for any nonpartisan offices or ballot issues which may be appearing.

(2) For ballots used by the Optech I, it is permissible to print nonpartisan offices and ballot issues on the same ballot card as partisan offices so long as:

(a) they are printed on the individual ballot card for each political party entitled to participate in the primary election;

(b) the layout is identical on the partisan ballot for each political party;

(c) there is sufficient room on the ballot card of each political party for all the nonpartisan ballot offices and ballot issues;

(d) ballot layout is such that it is clearly apparent to the voter the point at which the partisan primary ends and the nonpartisan primary begins; and

(e) an instruction to the voter is printed at the end of the partisan offices telling them to go on to where the nonpartisan primary begins and vote that primary.

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

RULE IV PROCEDURES FOR USE OF COMPUTER ELECTION SYSTEMS OPTECH I - ACCURACY TESTING AND CERTIFICATION (1) The election administrator shall arrange for the memorypack and control card for each precinct device to be tested to

ascertain that equipment will correctly count the votes cast for all offices and on all ballot issues prior to any election. Before the date of the public test, the election administrator shall use a test deck to check every ballot office and issue in every precinct for accuracy, then sign an affidavit certifying that such testing was successfully completed. The public test, which shall be advertised according to Section 7-5-2411 MCA, shall be observed by the Observation Board and shall be open to representatives of the political parties, candidates, the press and the general public.

(2) The election administrator shall consult with the county chairman of each political party having ballot access for appointment of members to the Observation Board. The duties to be performed by the board during the public test are as follows:

(a) To process a pre-audited deck of test ballots so marked as to record a pre-determined number of valid votes for each candidate and on each issue for randomly selected precinct devices, at least one in each legislative district in the county, and no fewer than five precincts total. It shall include one or more ballots which have votes in excess of the number allowed by law in order to test the ability of the device to reject such votes. The Board shall verify that the election administrator has pre-tested all precinct devices in the county and signed an affidavit so swearing.

(b) If an error is detected in any test, it shall be corrected. A correct totals test must be conducted before a device is approved by the Observation Board.

(c) The Observation Board should be familiar with the correct procedures for processing ballots as well as general Optech I operating procedures.

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

RULE V PROCEDURES FOR USE OF COMPUTER ELECTION SYSTEMS
OPTECH I - BEFORE THE POLLS OPEN (1) The election judges shall open the Optech I and prepare it for use as directed by manufacturer instructions and insert the memorypack, if not already in place.

(2) The election judges shall determine that the device is ready to receive and count ballots as follows:

(a) Have the device print out a message providing the precinct number and a 0000 cards counted number.

(b) Have the device print a "systems test" - O.K. message. If the message does not print the judges shall call the election administrator for assistance.

(c) Have the device print a report showing that the total for each candidate is zero. Without tearing off the tape the judges shall check that all totals are in fact zero

and that all offices and issues on the official ballot are shown and that all candidates are in the same order. If the machine prints anything other than zero, the judges shall call the election administrator for assistance.

(d) Have the device print a message that the "Ballot Reader is Unlocked".

(e) When the public counter shows all zeros and says "Insert Ballot", the optech is then operational and ready to accept ballots, and the judges may proceed.

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

RULE VI PROCEDURES FOR USE OF CES OPTECH I - WHILE THE POLLS ARE OPEN (1) After the elector signs the precinct register, the pollbook judge shall write the elector's name in the pollbook, along with the stub number of the ballot/s issued to him.

(2) The ballot judge shall then stamp the ballot/s in the area designated for that purpose and issue it/them to the elector while demonstrating the proper insertion of the ballot/s into the secrecy sleeve/envelope.

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

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

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

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

(6) A voter may request that his ballot be hand-counted. If so, the ballot judge shall receive the ballot from the voter in the secrecy sleeve/envelope, tear off the stub/s, and insert the ballot in the manual slot located on the rear panel of the Optech I.

(7) Unless the elector has requested a hand count, the device judge shall remove the stub/s, place it in the stub box and feed the ballot/s into the ballot chute for tabulation in full view of the elector.

(8) If a power failure occurs the device judge shall accept ballots from the electors and deposit in the sealed, manual slot located on the rear panel of the device. These ballots will be manually counted after the polls close.

(9) If a ballot contains a write-in it will be automatically diverted to the proper storage location within the device for manual tabulation of the write-in upon close of the polls.

(10) If an error message is displayed at any time during the ballot reading/counting process the election judges shall determine and resolve the reason for such error message using instructions provided by the election administrator, maintaining at all times the secrecy of the ballot and totals.

(11) If upon reinserting the ballot in the device it still will not accept it, then the spoiled ballot is marked as such and the elector shall be given a new ballot to vote. The spoiled ballot shall be placed in the envelope provided by the election administrator for that purpose.

(12) If a ballot becomes stuck in the path of the ballot reader, the public counter will give an error message, and the tape will read either, re-enter card or card processed. In either case, the judges shall ask the voter to remain until the ballot is recovered and counted.

(a) The judges shall unlock the top of the ballot reader and raise it. They shall turn off the ballot reader and locate the ballot using instructions supplied by the election administrator maintaining the secrecy of the ballot at all times.

(b) The judges shall turn on the ballot reader and if the message reads "re-enter ballot", then they shall reinsert ballot for counting.

(c) If the message reads "ballot processed", then the judges shall place the ballot in an envelope and close and lock front door and top of device.

(d) The judges shall mark the envelope "stuck ballot - counted" and place the envelope in slot at rear of device.

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

RULE VII PROCEDURES FOR USE OF COMPUTER ELECTION SYSTEMS
OPTECH I - AFTER THE POLLS CLOSE (1) The election judges shall first take the absentee ballots, which were processed according to law throughout the day, and insert them in the ballot chute for counting.

(2) Two judges from opposite parties shall prepare the Optech I for totalling of ballots processed by the device by unlocking and lifting the keypad cover.

(a) The judges shall proceed by pressing the proper key to obtain a status report and tear off the printer tape.

(b) The printer tape totals shall be entered in the tally book.

(3) Election judges, two from opposite parties, shall be appointed for tallying the total votes cast as follows:

(a) Open the device, remove ballots keeping them separated by compartment, and reclose device.

(b) Determine number of ballots in each storage location keeping them separated by compartment and reconcile with total number of voters shown in poll book.

(i) While counting, each ballot from the "voted ballot" compartment shall be viewed for the improper placement of any write-in labels.

(ii) If a label has been placed over the printed name of a candidate, the judges shall, on the tally sheet, deduct a vote from the machine total of the candidate whose name was printed in the position covered by the label.

(iii) They shall then add the ballot, with the improper label, to the stack for write-in ballots for tabulation.

(c) The election judges shall tally the ballots from the "hand-count" compartment except for those in envelopes which were previously counted and placed in sealed envelopes under Rule VI (iv) & (v). The tally shall include those ballots requested by electors to be hand counted and those which were deposited during any power failure. The procedures to be used for hand counting shall be those set out in Section 13-15-202, MCA and methods established by the election administrator. These ballots may not be inserted in the device for counting.

(i) The tally sheets shall be compared and their correctness ascertained.

(ii) ~~The election judges shall enter the total of hand counted ballots on the return sheet.~~

(iii) The judges shall rubber band the hand count ballots and place them in the envelope provided for this purpose.

(d) Two election judges from opposite parties shall check all ballots from the write-in/over-vote compartment individually for write-in votes and overvoted ballots. The write-in ballots shall be set aside for later tabulation.

(e) Two judges from opposite parties shall inspect the ballots which have been overvoted.

(i) If any smudge, tear, or mark of some kind is able to be identified as clearly an unintentional mark made by the voter, but had the effect of registering too many votes for an office, the judges shall tally a vote on the tally sheet for the candidate who they determine the elector intended to vote.

(ii) If the inspection of the overvote indicates actual votes for more candidates than allowable, the ballot shall be

placed in an envelope provided for that purpose by the election administrator. No tally shall be made for any candidate for the office where the overvote occurred.

(f) Two judges from opposite parties shall read/tally and determine the validity of write-in votes listing on the tally sheet the candidates name as voted and the office for which the vote was cast.

(i) Judges shall enter the write-in votes on the return sheet.

(ii) The judges shall rubber-band the write-in ballots and place in the envelope provided for this purpose.

(4) The precinct totals, including the device totals, the hand count ballot totals, and the write-in vote totals, shall be listed in the tally book and on the unofficial return sheet for each candidate and issue on the ballot.

(a) The judges shall place the printer tape, including the morning test results and precinct vote in the envelope provided for that purpose.

(b) The judges shall add together the number from the public counter (checking that the public counter and the printer tape totals agree), the hand count ballots and write-in ballots to arrive at the total votes cast number which is to be entered on the back of the pollbook.

(c) The judges shall copy onto two final return forms provided by the election administrator the total votes cast for each candidate and ballot issue. Return one form to the election administrator and post one as provided by law.

(d) The judges shall seal all unvoted ballots as indicated by the election administrator.

(e) The judges shall sign all certificates as required and place with other election items to be returned to the election administrator in the envelopes provided for that purpose.

(f) The judges shall close and lock the device as directed by the manufacturer instructions and the election administrator.

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

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

5. Interested parties may submit their data, views, or arguments concerning the proposed rules to Alan D. Robertson, Chief Counsel, Office of Secretary of State, Room 225, State Capitol, Helena, MT 59620, no later than December 12, 1985.

6. If a person who is directly affected by the proposed 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 Alan D. Robertson, Chief Counsel, Office of the Secretary of State, Room 225, State Capitol, Helena, MT 59620, no later than December 12, 1985.

7. If the agency receives requests for a public hearing on the proposed adoption from either 10% or 25, which ever 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 6 persons based on 56 county election administrators.


JIM WALTERMIRE, SECRETARY OF STATE

Certified to the Secretary of State November 4, 1985

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amend-) NOTICE OF PROPOSED AMENDMENT
ment of rule pertaining to) OF RULE 1.2.419 FILING,
scheduled dates - Montana) COMPILING, PRINTER PICKUP AND
Administrative Register.) PUBLICATION FOR THE MONTANA
ADMINISTRATIVE REGISTER.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On December 31, 1985, the Secretary of State proposes to amend the rule pertaining to the scheduled dates for the Montana Administrative Register.

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

1.2.419 FILING, COMPILING, PRINTER PICKUP AND PUBLICATION
SCHEDULE FOR THE MONTANA ADMINISTRATIVE REGISTER (1) The scheduled filing dates, time deadlines, compiling dates, printer pickup dates and publication dates for material to be published in the Montana Administrative Register are listed below:

19856 Schedule			
Filing	Compiling	Printer Pickup	Publication
January 76	January 87	January 98	January 1716
January 2120	January 2221	January 2322	January 3130
February 43	February 54	February 65	February 1413
February 1514	February 1918	February 2019	February 2027
March 43	March 54	March 65	March 1413
March 1017	March 1518	March 2019	March 2027
April 11			
March 31	April 21	April 32	April 1110
April 1514	April 1615	April 1716	April 2524
May 65	May 76	May 87	May 1615
May 2019	May 2120	May 2221	May 3029
June 32	June 43	June 54	June 1312
June 1716	June 1817	June 1918	June 2726
July 17	July 28	July 39	July 1117
July 1521	July 1622	July 1723	July 2531
August 54	August 65	August 76	August 1514
August 1918	August 2019	August 2120	August 2928
August 29			
September 3	September 42	September 53	September 1211
September 1615	September 1716	September 1817	September 2625
October 76	October 87	October 98	October 1716
October 2120	October 2221	October 2322	October 3130
November 43	November 5	November 6	November 14
November 1817	November 1918	November 2019	November 2928
December 21	December 32	December 43	December 1211
December 1615	December 1716	December 1817	December 26

21-11/14/85

MAR Notice No. 44-2-46

(2) All material to be published must be submitted by 5:00 p.m. ~~of~~ on the scheduled filing date. All material submitted after the scheduled filing date will not be published until the next scheduled filing date.

AUTH: 2-4-312, MCA

IMP: 2-4-312, MCA

3. The rule is proposed to be amended to set dates pertinent to the publication of the Montana Administrative Register during 1986.

4. Interested parties may submit their date, views or arguments concerning the proposed amendment in writing to Kathy Lubke, Office of the Secretary of State, State Capitol, Helena, Montana, 59620 no later than December 12, 1985.


JIM WALTERMIRE
Secretary of State

Dated this 4th day of November, 1985.

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

In the matter of the) NOTICE OF PUBLIC HEARING ON
amendment of Rule 46.12.3803) THE PROPOSED AMENDMENT OF
pertaining to the medically) RULE 46.12.3803 PERTAINING
needy income standard for) TO THE MEDICALLY NEEDY INCOME
one person) STANDARD FOR ONE PERSON

TO: All Interested Persons

1. On December 4, 1985, at 9:00 a.m., a public hearing will be held in room 107 of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of Rule 46.12.3803 pertaining to the medically needy income standard for one person.

2. The rule as proposed to be amended effective January 1, 1986, provides as follows:

46.12.3803 MEDICALLY NEEDY INCOME STANDARDS (1) Notwithstanding the provisions found in subchapter 2, the following table contains the amount of net income protected for maintenance by family size. The table applies to SSI and AFDC-related individuals and families.

MEDICALLY NEEDY INCOME LEVELS
FOR SSI and AFDC-RELATED INDIVIDUALS
AND FAMILIES

<u>Family Size</u>	<u>Monthly Income Level</u>	<u>Quarterly Income Level</u>
1	\$325.00 336.00	\$ 975.00 1,008.00
2	383.00	1,125.00
3	404.00	1,200.00
4	426.00	1,275.00
5	501.00	1,503.00
6	570.00	1,692.00
7	642.00	1,872.00
8	713.00	2,055.00
9	785.00	2,232.00
10	857.00	2,412.00
11	929.00	2,592.00
12	1,001.00	2,796.00
13	1,073.00	2,949.00
14	1,145.00	3,126.00
15	1,217.00	3,306.00
16	1,289.00	3,486.00

Subsection (1)(a) remains the same.

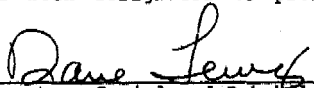
AUTH: Sec. 53-6-113 MCA

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

3. The regulation for the Medically Needy Program found at 42 CFR 435.812(b)(1) mandates that our medically needy income standard for one (1) must at least equal the highest amount paid for a related cash assistance program. That related cash assistance program is Supplemental Security Income (SSI). The cash assistance maximum for SSI increases January 1, 1986. Based on this mandate, the department is raising its medically needy income level for one (1).

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 December 12, 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 November 4, 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 46.8.102 and	)	THE PROPOSED AMENDMENT OF
the adoption of rules per-	)	RULE 46.8.102 AND THE
taining to the utilization	)	ADOPTION OF RULES PERTAIN-
of aversive training	)	ING TO THE UTILIZATION OF
procedures in developmental	)	AVERSIVE TRAINING PROCE-
disabilities services	)	DURES IN DEVELOPMENTAL
	)	DISABILITIES SERVICES

TO: All Interested Persons

1. On December 5, 1985, at 1:00 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 proposed amendment of Rule 46.8.102 and the adoption of rules pertaining to the utilization of aversive training procedures in developmental disabilities services.

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

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

Subsections (1) through (6) remain the same.

(7) "Area manager" means a person employed by the developmental disabilities division in one of three field-based supervisory positions.

Present subsections (7) through (9) remain the same in text but will be renumbered (8) through (10).

(11) "Developmentally disabled person" means a person who has a developmental disability as defined in 53-20-202(3).

Present subsections (10) through (23) remain the same in text but will be renumbered (12) through (25).

AUTH: Sec. 53-20-204 MCA

IMP: Sec. 53-20-203 and 53-20-205 MCA

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

RULE I AVERSIVE PROCEDURES, PURPOSE (1) These rules are adopted to provide a system for the review, approval and implementation of safe, humane and efficient training procedures for developmentally disabled persons in programs funded through the developmental disabilities division of the department of social and rehabilitation services. It is not the purpose of these rules to advocate the use of aversive procedures. Rather the purpose is to acknowledge that such procedures may be necessary when other less restrictive procedures have failed to significantly modify a person's

behavior.

AUTH: Sec. 53-20-204 MCA

IMP: Sec. 53-20-203 and 53-20-205 MCA

RULE II APPLICABILITY (1) A person in a program of developmental disabilities services, funded entirely or in part by the state of Montana, shall be afforded the protections imposed by these rules. Any provider contracting with the department to provide services to developmentally disabled persons shall conduct its activities in accordance with these rules.

AUTH: Sec. 53-20-204 MCA

IMP: Sec. 53-20-203 and 53-20-205 MCA

RULE III USE OF AVERSIVE PROCEDURES (1) Aversive procedures may be used in the habilitation of a developmentally disabled person in accordance with the provisions of these rules.

(2) Aversive procedures may be designed and implemented only for the benefit of the person and may never be used merely as punishment or for the convenience of the staff or as a substitute for an efficient nonaversive program.

AUTH: Sec. 53-20-204 MCA

IMP: Sec. 53-20-203 and 53-20-205 MCA

RULE IV DEFINITIONS FOR AVERSIVE PROCEDURES For purposes of this sub-chapter, the following definitions apply:

(1) "Advocacy/consumer" means a trained advocate or the parent/guardian of a developmentally disabled person.

(2) "Aversive" means any stimulus or event from which a person will escape, avoid or terminate, if given an opportunity to do so.

(3) "Contingent exercise" means a method of decreasing behavior by requiring a person who engages in the undesired behavior to perform exercises or movements for thirty (30) seconds or less. The movement or exercise is not topographically similar to the target behavior.

(4) "Contingent observation" means a method of decreasing behavior by asking a person who engages in the undesired behavior to remove himself from the ongoing activity for a short period of time, be seated nearby and observe others engaging in that ongoing activity who are behaving appropriately. The trainer concurrently attends to and reinforces those persons behaving appropriately. The person who is observing the behavior may rejoin the activity group after a few minutes of observation and after indicating that he will behave appropriately.

(5) "Differential reinforcement" means a procedure for

providing systematic reinforcers for behaviors so that these behaviors occur more frequently than the maladaptive target behaviors. Variations include:

(a) "Differential reinforcement of other behaviors (D.R.O.)" means reinforcement that follows the lapse of a specific period of time provided that the maladaptive target behavior has not occurred during the interval.

(b) "Differential reinforcement of incompatible behaviors (D.R.I.)" means reinforcement that follows an alternative response that is topographically incompatible with the maladaptive target behavior.

(6) "Educational fine" means a system of decreasing behavior based upon a token or point system. A small fine is levied contingent upon the occurrence of a target behavior. Each fine must be accompanied by a teaching episode which includes a description of the inappropriate behavior, the amount of the fine, instruction on the appropriate form of the behavior, and the opportunity for the person to "earn back" a portion of the fine for practicing the appropriate behavior.

(7) "Exclusion time out" means a method of decreasing behavior by requiring a person to leave an ongoing reinforcing situation for a period of time, contingent on the occurrence of some previously specified maladaptive target behavior. Unlike contingent observation, the person is not instructed to observe the appropriate behavior of others.

(8) "Individual program plan (IPP)" means a written set of procedures designed to meet a specific behavioral objective relating to a person's adaptive behavior and which for the purposes of decelerating behaviors includes at least the following components:

(a) Target behavior - a clear objective description of the behavior to be reduced or eliminated.

(b) Incompatible behavior - a clear objective description of the incompatible appropriate responses which will be reinforced.

(c) Baseline - a measure of the level of the target behavior before intervention.

(d) Reinforcement procedures which specify:

(i) the reinforcers to be employed;

(ii) the schedule for delivering the reinforcers;

(iii) a detailed description of the procedure for delivering the reinforcers;

(iv) the names of persons who will carry out these procedures.

(e) Deceleration procedures which specify:

(i) the name of the procedure which will be employed to consequence the target behavior;

(ii) a detailed description of the procedure;

(iii) the names of persons who will carry out the procedure;

(iv) the name of the person who will supervise the

implementation of the procedure;

(v) a limit on the use of any aversive procedure (e.g., maximum number of applications in any one time period).

(f) Data collection procedures which include:

(i) the kind of data which will be collected;

(ii) when the data will be taken;

(iii) who will collect the data;

(iv) who will review the data;

(v) at what point the person will graduate from the program;

(vi) at what point the program will be changed if the procedure is not effective;

(vii) graphs of the data;

(viii) at what point the program will be terminated if it is not effective.

(9) "Maladaptive target behavior" means the inappropriate behavior the individual program plan is designed to control or eliminate.

(10) "Mechanical restraint" means physically restricting a person's movement through the use upon the person of any mechanical or restricting device.

(11) "Modeling with positive reinforcement" means a procedure whereby the appropriate behavior of one person is reinforced in the hopes that another person will imitate it therefore increasing the appropriate behavior.

(12) "Overcorrection" means a technique used to decrease a maladaptive target behavior. There are three (3) main types of overcorrection:

(a) "Restitutional overcorrection" means a form of overcorrection requiring a person engaging in a maladaptive target behavior to restore the environment to its previous state and improve on the previous conditions.

(b) "Positive practice overcorrection" means a form of overcorrection requiring a person engaging in a maladaptive target behavior to intensely practice appropriate alternative behavior.

(c) "Required relaxation" means a form of overcorrection requiring a person to lie quietly (i.e., on a bed) for a period of time after the occurrence of some previously identified maladaptive target behavior.

(13) "Physical restraint" means the restriction of a person's movement by one or more persons holding or applying physical pressure.

(14) "Positive practice" - see overcorrection.

(15) "Required relaxation" - see overcorrection.

(16) "Response cost" means a procedure reducing accumulated reinforcement upon the occurrence of a maladaptive target behavior, thus making the behavior less likely to occur.

(17) "Restitution" means procedures used to decrease a specified maladaptive behavior. Variations include:

(a) "Restitution overcorrection" - see "overcorrection".

(b) "Simple restitution" means restoring the environment to the state that existed before a disruptive event occurred. (e.g., cleaning up spilled milk).

(18) "Restriction of rights/privileges" means procedures which involve withdrawal, delay, or curtailment of rights or privileges which a person may ordinarily exercise. Such withdrawal is usually in connection with a program through which the person may exercise such rights and/or privileges by performing specified behaviors.

(19) "Satiation" means a condition in which a person is continuously presented with a reinforcer to the extent that it loses its reinforcing effect.

(20) "Seclusion time out" means a method of decreasing behavior by requiring a person to leave an ongoing reinforcing activity and go to a closed room for a period of time contingent on the occurrence of some previously specified maladaptive target behavior. Time out is predicated upon the assumption that the environment to which the person must go is not reinforcing.

(21) "Token system" means a system of increasing appropriate behavior while decreasing inappropriate behavior by contingently applying conditioned generalized reinforcers (e.g., tokens or points). A token system must have at least three (3) components:

(a) A medium of exchange (the conditioned generalized reinforcer).

(b) At least one (1) back-up reinforcer.

(c) A specification of the contingencies.

AUTH: Sec. 53-20-204 MCA

IMP: Sec. 53-20-203 and 53-20-205 MCA

RULE V SYSTEMATIC PROGRAM REVIEW (1) Aversive procedures must be implemented by systematic program review.

(2) Systematic program review serves two functions. First, it ensures that any proposed aversive procedure is professionally justified. Second, it ensures that a person's right to be free from aversive, intrusive procedures is balanced against his or her right to treatment whenever a decision regarding the use of aversive procedures is made.

(3) In order for review functions to be adequately carried out, and at the same time ensure a responsive system, the generally accepted procedures for modifying behavior are divided into the following four classifications:

(a) Nonaversive procedures;

(b) Level I procedures;

(c) Level II procedures; and

(d) Level III procedures.

(4) Each classification consists of a list of procedures

as well as a mechanism for review and approval. The classifications are ranked in order of restrictiveness.

AUTH: Sec. 53-20-204 MCA

IMP: Sec. 53-20-203 and 53-20-205 MCA

RULE VI APPROVAL CRITERIA FOR AVERSIVE PROGRAMS (1) In general, the following criteria are relied upon in approval of proposed programs incorporating aversive procedures:

(a) that the proposed individual program plan meets the minimum requirements specified in these rules;

(b) that previous attempts to modify behavior using less restrictive procedures have been made, or the situation is so serious that a restrictive procedure is immediately warranted;

(c) that the proposed procedure is a reasonable response to the person's behavior in that:

(i) there is evidence of the use of similar procedures in the current, relevant, published professional literature;

(ii) in general, the procedure is constructed in such a way as to be consistent with procedures of the same type as found in the current, relevant, published professional literature; and

(iii) the behavior is so serious that the person's right to treatment outweighs the right to the least restrictive training procedures and as a result the procedure is warranted.

AUTH: Sec. 53-20-204 MCA

IMP: Sec. 53-20-203 and 53-20-205 MCA

RULE VII CLASSIFICATION AND CONDITIONS GOVERNING USE OF PROCEDURES (1) Nonaversive procedures.

(a) Nonaversive procedures are appropriate for use during daily interactions and as such require no prior approval. When used to systematically address a specific inappropriate behavior, these procedures must be incorporated into an individual program plan (I.P.P.) and must address an objective specified in the person's individual habilitation plan.

(b) Nonaversive procedures include:

(i) schedule or antecedent stimulus modification;

(ii) differential reinforcement of other behaviors;

(iii) differential reinforcement of incompatible behaviors;

(iv) simple restitution where the client does not physically resist. The duration of the restitution may not exceed twenty (20) minutes per day; and

(v) modeling with positive reinforcement.

(c) Nonaversive procedures must not pose substantial health risks to the client.

(2) Level I aversive procedures.

(a) Level I aversive procedures include:

(i) contingent observation where manual guidance or restraint are not necessary and the duration does not exceed 20 minutes per episode or 60 minutes total in a 24 hour period from midnight to midnight.

(ii) restriction of social activities; and

(iii) token/point systems which are not inclusive of response cost or educational fines.

(b) Level I aversive procedures are considered aversive/deprivation procedures and as such may only be used under the following conditions:

(i) as part of a written I.P.P. developed in accordance with the provisions of this subchapter;

(ii) with the approval of the person's individual habilitation planning team as provided for in this chapter; and

(iii) with the written consent of the person's parent, if the person is under eighteen (18) years of age, or the person's legal guardian, if one has been appointed by the court.

(c) Level I aversive procedure approval is as stated in subsection (b) above.

(3) Level II aversive procedures.

(a) Level II aversive procedures include:

(i) overcorrection where the duration does not exceed 20 minutes each episode or 60 minutes total per 24 hour period;

(ii) contingent exercise where the duration does not exceed 20 minutes each episode or 60 minutes total per 24 hour period;

(iii) exclusion time-out where the duration does not exceed 30 minutes each episode or 90 minutes total per 24 hour period;

(iv) seclusion time-out where the duration does not exceed 30 minutes each episode or 90 minutes total per 24 hour period;

(v) required relaxation where the duration does not exceed 30 minutes each episode or 90 minutes total per 24 hour period;

(vi) response cost;

(vii) educational fines;

(viii) contingent observation with manual guidance or restraint or over twenty (20) minutes duration each episode;

(ix) physical restraint where the duration does not exceed 30 minutes each episode or 90 minutes total per 24 hour period; and

(x) contingent use of personal money and personal possessions.

(b) Level II aversive procedures are more restrictive than level I aversive procedures and as such they may only be used under the following conditions:

(i) as part of a written I.P.P. developed in accordance with the provisions of this chapter;

(ii) with the approval by the person's I.H.P. team including a DD division representative;

(iii) with the approval by the area manager;

(iv) with the review and approval by the area program review committee at a regularly scheduled meeting; and

(v) with the written consent of the person's parent if the person is under eighteen (18) years of age, or the person's legal guardians, if one has been appointed by the court.

(c) Level II aversive procedure approval.

(i) The area manager must approve or disapprove proposed level II aversive procedures in accordance with the provisions of this rule.

(ii) The area manager will respond to a request in writing for level II aversive procedures approval.

(iii) The following information must accompany any request for level II aversive procedures approval in order to be considered:

(A) documentation of I.H.P. team approval of the procedure;

(B) a copy of the proposed individual program plan which conforms to the requirements specified in these rules;

(C) documentation of the failure of less restrictive procedures including data from previous individual program plans and a brief summary of each procedure that has been used. In the absence of such documentation, strong justification for the use of aversive or deprivation procedures must be supplied;

(D) written endorsement from a physician for any procedure which might affect the person's health; and

(E) written consent from the person's parent if the person is under eighteen (18) years of age, or the person's legal guardian, if one has been appointed by the court.

(iv) The area manager will submit the program to the area program review committee for review as provided for in Rule VIII.

(v) The area manager may request that the Developmental Disabilities Program Review Committee review a level II procedure, if a more thorough review may be warranted.

(4) Level III aversive procedures.

(a) Level III aversive procedures include:

(i) mechanical restraint;

(ii) satiation;

(iii) overcorrection where the duration exceeds 20 minutes each episode or 60 minutes total in a 24 hour period;

(iv) contingent exercise where the duration exceeds 20 minutes each episode or 60 minutes total per 24 hour period;

(v) exclusion time-out where the duration exceeds 30 minutes each episode or 90 minutes total in a 24 hour period;

(vi) seclusion time-out where the duration exceeds 30 minutes each episode or 90 minutes total in a 24 hour period;

(vii) required relaxation where the duration exceeds 30

minutes each episode or 90 minutes total in a 24 hour period;
(viii) noxious substances used to provide aversive stimulation to any of the senses (sight, hearing, smell, taste, touch) and all procedures which elicit a startle response; and
(ix) physical restraint where the duration exceeds 30 minutes each episode or 90 minutes total in a 24 hour period.

(b) Level III aversive procedures are the most restrictive employed in the habilitation process and, as such, they may only be used under the following conditions:

(i) as part of a written individual program plan developed in accordance with the requirements specified in this chapter;

(ii) with the approval by the person's individual habilitation planning team including a D.D. division representative;

(iii) With the review and approval by the developmental disabilities program review committee (DDPRC); and

(iv) with the written consent of the person's parent if the person is under eighteen (18) years of age, or the person's legal guardian, if one has been appointed by the court.

(c) Level III aversive procedures approval.

(i) The D.D.P.R.C. will respond in writing at its regularly scheduled meeting regarding requests for level III aversive procedures approval. The following information must accompany any request for level III approval in order to be considered:

(A) documentation of I.H.P. team approval of the procedure;

(B) a copy of the proposed individual program plan which conforms to the requirements specified in this chapter;

(C) documentation of the failure of less restrictive procedures, including data from previous I.P.P.'s and a brief summary of each procedure that has been employed. In the absence of such documentation, strong justification for the use of aversive procedures must be supplied;

(D) written endorsement from a physician for any procedure which might affect the person's health; and

(E) written consent from the person's parent if the person is under eighteen (18) years of age or the person's legal guardian if one has been appointed by the courts.

AUTH: Sec. 53-20-204 MCA

IMP: Sec. 53-20-203 and 53-20-205 MCA

RULE VIII AREA PROGRAM REVIEW COMMITTEES (1) The area program review committees (A.P.R.C.) shall be standing committees, appointed by, and responsible to, the division administrator. One committee will be established in each of the three administrative areas of the state. Each committee shall represent the following disciplines/positions:

(a) legal - a person with a degree in jurisprudence

from an accredited law school;

(b) advocacy/consumer - a trained advocate or the parent/guardian of a developmentally disabled person; and

(c) habilitation - a person with extensive education and experience in the use of the principles of applied behavior analysis in the habilitation of persons with developmental disabilities.

(2) The function of the A.P.R.C.'s is to:

(a) conduct meetings as necessary, but at least monthly;

(b) review the decisions of the area managers and recommend to the division administrator, in accordance with the provisions of this sub-chapter, the continuation or revocation of level II aversive procedures approved by the area manager; and

(c) conduct periodic ongoing review of currently approved level II aversive procedures.

AUTH: Sec. 53-20-204 MCA

IMP: Sec. 53-20-203 and 53-20-205 MCA

RULE IX DEVELOPMENTAL DISABILITIES PROGRAM REVIEW

COMMITTEE

(1) The developmental disabilities program review committee (D.D.P.R.C.) shall be a standing committee appointed by, and responsible to, the division administrator. The make-up of the committee shall represent the following three disciplines:

(a) legal - a person with a degree in jurisprudence from an accredited law school;

(b) advocacy/consumer - a trained advocate or the parent/guardian of a developmentally disabled person; and

(c) habilitation - a person with extensive education and experience in the use of the principles of applied behavior analysis in the habilitation of persons with developmental disabilities.

(2) The function of the D.D.P.R.C. is to:

(a) recommend to the division administrator approval or disapproval of proposed level III aversive procedures in accordance with the provisions of these rules;

(b) conduct periodic ongoing reviews of currently approved level III aversive procedures in accordance with its own published guidelines;

(c) review a sample of the level II approval decisions made by area managers in order to provide feedback to the division administrator regarding reliability and appropriateness; and

(d) publish guidelines for the use of aversive procedures.

(3) The D.D.P.R.C. shall publish, maintain and disseminate the following information:

(a) a list of the current members of the D.D.P.R.C.;

- (b) a schedule of the routine time and place of meetings;
- (c) the name and mailing address of a contact person for the committee;
- (d) a set of descriptors which specifies guidelines for minimum elements of each type of aversive procedure in levels II & III. Each descriptor shall be based on a review of the professional literature and contain a justification for each element specified;
- (e) a set of operating procedures for the committee;
- (f) a set of reliability procedures for the review of a sample of the level II aversive procedures approved by each area manager;
- (g) guidelines for the periodic review of ongoing level II and level III aversive procedures;
- (h) a brief application form to accompany all requests for program review; and
- (i) a description of the process for resolving appeals.

AUTH: Sec. 53-20-204 MCA

IMP: Sec. 53-20-203 and 53-20-205 MCA

RULE X RESTRICTION OF ANY CLIENT RIGHTS (1) The following rights may not be restricted for the purposes of an aversive program:

- (a) the right to education and training services;
 - (b) the right to reside, work and receive treatment in a safe environment;
 - (c) the right to an individual habilitation plan;
 - (d) the right to prompt medical and dental care;
 - (e) the right to a nourishing, well-balanced diet;
 - (f) the right to acquire the assistance of an advocate;
 - (g) the right to the opportunity for religious worship;
- and
- (h) the right to just compensation for work performed.

AUTH: Sec. 53-20-204 MCA

IMP: Sec. 53-20-203 and 53-20-205 MCA

RULE XI EMERGENCY PROCEDURES (1) Emergencies are those situations for which no approved individual program plan exists and which if not dealt with may result in injury or significant amounts of property destruction.

(2) If an emergency occurs the service provider may apply the following techniques as necessary to bring a person's behavior under control:

- (a) Physical restraint;
 - (b) Exclusion time-out; or
 - (c) Seclusion time-out (time-out room must conform to the minimum requirements established by the D.D.P.R.C.).
- (3) All instances of the use of emergency procedures

must be reported, in writing, to the area manager within 48 hours. Such reports shall include at a minimum the time and date of the incident, the persons involved, the type and duration of the incident, a description of the cause(s) leading to it, any witnesses to the incident, the procedures employed, and other significant details. If an emergency procedure is used three (3) times in a six (6) month period, a written individual program plan must be developed.

AUTH: Sec. 53-20-204 MCA

IMP: Sec. 53-20-203 and 53-20-205 MCA

RULE XII REIMPOSITION OF DECELERATION PROGRAM (1) A deceleration program for a level I or II behavior may be reimposed upon the reoccurrence of the subject behavior if the following conditions are met:

(a) the behavior was the subject of a prior deceleration program;

(b) the behavior occurs within six months of graduation from the prior program;

(c) the prior program was at the time of graduation approved by the appropriate reviewing authority;

(d) the current staff administering and delivering the deceleration program are trained in the administration and delivery of the program;

(e) the deceleration program being reimposed is submitted within 48 hours to the appropriate reviewing authority for reapproval; and

(f) the deceleration program may be utilized only as an interim program, and once submitted to the appropriate reviewing authority, may only be continued in accordance with the direction of that authority.

(2) Level III deceleration program may not be reimposed upon the reoccurrence of a subject behavior.

AUTH: Sec. 53-20-204 MCA

IMP: Sec. 53-20-203 and 53-20-205 MCA

RULE XIII APPEAL PROCESS (1) Any decision to recommend approval or disapproval of a proposed level II or level III procedure may be appealed by a member of the person's IHP team.

(a) Upon receipt of an appeal notice, the division administrator will conduct an administrative review of the matter. If the appellant remains dissatisfied, the matter will be considered by the department director who will render a final decision.

(b) The director will review the committee's decision and may request briefs or oral arguments from the committee and the appellant. The director's decision shall be the final administrative decision.

AUTH: Sec. 53-20-204 MCA
IMP: Sec. 53-20-203 and 53-20-205 MCA

RULE XIV STAFF CERTIFICATION (1) Any provider employee who implements a level II or level III aversive procedure must be able to carry out the procedure as it is written. A person's ability to implement a procedure must be documented in one of the following ways:

(a) A DDD staff person may observe each person in a role play situation in order to document their ability to implement the procedure as written.

(b) Supervisory personnel from the provider may provide documentation of employees' ability to implement a procedure if the following conditions are met:

(i) The supervisor's ability to implement the procedure has been documented by a DDD staff person.

(ii) The supervisor observes each employee in a role play situation and documents his or her ability to implement the procedure; and

(iii) The corporation maintains a list of those employees who have been observed and are considered capable of implementing the procedure.


AUTH: Sec. 53-20-204 MCA
IMP: Sec. 53-20-203 and 53-20-205 MCA

RULE XV UNCLASSIFIED PROCEDURES Proposed aversive procedures which have not been classified will be reviewed by the DDPRC. The DDPRC will classify the aversive procedure as either nonaversive, level I, II or III for purpose of review in the future.

4. The adoption of rules governing the utilization of aversive training procedures is necessary to assure that the training and service programs for persons eligible for developmental disabilities services are conducted only where necessary for the benefit and protection of the client and others. The rules further assure that aversive training procedures utilized are the most appropriate and least aversive. The rules mandate a comprehensive and integrated system for review and approval of aversive training proposed for client habilitation.

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 December 12, 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 November 4, 1985.

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

In the matter of the adoption	)	NOTICE OF PUBLIC HEARING ON
of rules; the repeal of Rule	)	THE PROPOSED ADOPTION OF
46.5.912; and the amendment	)	RULES; THE REPEAL OF RULE
of Rules 46.5.902, 46.5.908,	)	46.5.912; AND THE AMENDMENT
46.5.909, 46.5.910, 46.5.913,	)	OF RULES 46.5.902, 46.5.908,
46.5.914, 46.5.915, 46.5.916,	)	46.5.909, 46.5.910, 46.5.913,
46.5.917, 46.5.918, 46.5.919,	)	46.5.914, 46.5.915, 46.5.916,
46.5.920, 46.5.921, 46.5.922,	)	46.5.917, 46.5.918, 46.5.919,
46.5.923, 46.5.924, 46.5.930,	)	46.5.920, 46.5.921, 46.5.922,
46.5.931, 46.5.933, 46.5.935,	)	46.5.923, 46.5.924, 46.5.930,
46.5.936, 46.5.937, 46.5.938,	)	46.5.931, 46.5.933, 46.5.935,
46.5.943, 46.5.944 and	)	46.5.936, 46.5.937, 46.5.938,
46.5.946 pertaining to day	)	46.5.943, 46.5.944 AND
care facilities	)	46.5.946 PERTAINING TO DAY
	)	CARE FACILITIES

TO: All Interested Persons

1. On December 4, 1985, at 1:00 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 proposed adoption of rules; the repeal of Rule 46.5.912; and the amendment of Rules 46.5.902, 46.5.908, 46.5.909, 46.5.910, 46.5.913, 46.5.914, 46.5.915, 46.5.916, 46.5.917, 46.5.918, 46.5.919, 46.5.920, 46.5.921, 46.5.922, 46.5.923, 46.5.924, 46.5.930, 46.5.931, 46.5.933, 46.5.935, 46.5.936, 46.5.937, 46.5.938, 46.5.943, 46.5.944 and 46.5.946 pertaining to day care home centers and facilities.

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

RULE I DAY CARE FACILITIES, JOINT PROGRAMS (1) Any day care facility which operates a day care program in connection with another program on the same premises must have separate staff and separate space for each program. However, staff and space may be shared for janitorial, maintenance, cooking, or other support services.

(2) Children attending the facility for day care shall not come in contact with other persons who are receiving care in the facility unless the provider can prove to the department's satisfaction that those persons will not pose any threat to the health, safety and well-being of the children in day care.

AUTH: Sec. 53-4-503 MCA
IMP: Sec. 53-4-504 MCA

21-11/14/85

MAR Notice No. 46-2-458

RULE II DAY CARE CENTERS, HEALTH CARE REQUIREMENTS

(1) No staff member shall give medication to the children unless the center has a medical request signed by the parents on file.

(2) No child shall be admitted to a day care center, except in an emergency, until the "Medical Record of Children Receiving Day Care" form is completed by the parent. No child shall be admitted to a day care center unless he is free from communicable disease and he has been immunized or is in the process of being immunized against diphtheria, tetanus, polio, measles, rubella, and, if under five years of age, whooping cough. Any child with a history of measles is considered immunized.

(a) These requirements may be waived only if there is a statement signed by a physician indicating that immunizations would be contra-indicated for health reasons or if the parent(s) have certified that immunization is contrary to their religious beliefs.

(b) The above described medical records concerning immunization shall be on file at the center for each child.

(3) The name of the physician the parents wish to be called for their child and a release authorizing the provider to call said physician in case of an emergency will be obtained from the parent(s) of each child admitted.

(4) If a child becomes ill or is suspected of having a communicable disease reportable to the health department while in care, the parent shall be notified by the provider. The parent is responsible for arranging to have the child taken home.

(5) When a child is absent, the day care provider shall obtain the reasons for the absence so the interest of the other children may be properly protected. If the reason for the absence is a suspected reportable communicable disease, the provider shall inform the health officer. No child shall be re-admitted after an absence until the reason for the absence is known and there is assurance that his return will not harm him or the other children. Disease charts that identify the reportable diseases are available from the health department.

(6) All staff members shall not be in contact with the children in care if the staff member has any reportable communicable disease or contagious illness.

(7) Each center shall develop policies for first aid. These policies must include directions for calling parents or someone else designated as responsible for the child when a child is sick or injured.

(8) Standard Red Cross first aid supplies shall be kept on hand.

(9) A notation of all injuries must be made in the child's medical record including the date, time of day, nature of the injury, treatment, and whether the parent was notified.

(10) All new children shall be accompanied to the toilet, taught to use and flush it, and to wash hands after using the toilet. Young children should have help in toileting.

AUTH: Sec. 53-4-503 MCA
IMP: Sec. 53-4-504 MCA

RULE III DAY CARE CENTERS, RECORDS (1) The center shall keep a daily attendance record of the children for whom care is provided.

(2) The center shall have a master list of the name, address and phone number of all children in care and their parents.

(3) All records of the center shall be made available to the department upon request.

AUTH: Sec. 53-4-503 MCA
IMP: Sec. 53-4-504 MCA

RULE IV DAY CARE CENTERS, SAFETY REQUIREMENTS

(1) Cleaning materials, flammable liquids, detergents, aerosol cans, and other poisonous and toxic materials must be kept in their original containers and in a place inaccessible to children. They must be used in a way that will not contaminate play surfaces, food, food preparation areas, or constitute a hazard to the children.

(2) All medication must be kept in a place inaccessible to children, in their original containers, and labeled with the original prescription label.

(3) No extension cord shall be used as permanent wiring and all appliance and lamp cords must be suitably protected to prevent pulling or chewing by children.

AUTH: Sec. 53-4-503 MCA
IMP: Sec. 53-4-504 MCA

RULE V DAY CARE CENTERS, TRANSPORTATION (1) The provider shall obtain written consent from the parent(s) for any transportation provided.

(2) The operator of the vehicle shall be at least 18 years of age and possess a valid driver's license.

(3) All doors on vehicles must be locked whenever the vehicle is in motion.

(4) No vehicle shall begin moving until all children are seated and secured in age appropriate safety restraints, which must remain fastened at all times the vehicle is in motion.

(5) Children shall never be left unattended in a vehicle.

(6) The back of pickup trucks must not be used to transport children.

AUTH: Sec. 53-4-503 MCA

IMP: Sec. 53-4-504 MCA

3. The Department proposes to repeal Rule 46.5.912 pertaining to day care centers, licensing services and general eligibility. The rule as proposed to be repealed may be found on page 46-282 of the Administrative Rules of Montana.

AUTH: Sec. 53-4-503 MCA

IMP: Sec. 53-4-505, 53-4-506 and 53-4-507 MCA

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

46.5.902 DEFINITIONS AND--STANDARDS Subsections (1) and (2) remain the same.

(3) "Day care center" means a place in which supplemental parental care is provided to 13 or more children on a regular basis including the provider's own children who are less than 6 years of age. It may include facilities known as nursery schools, and day nurseries, ~~and--centers--for--the~~ mentally-retarded.

Subsection (4) remains the same.

(5) "Supplemental parental child care" means the provision of ~~food, shelter,--and--learning--experiences--commensurate~~ with--a--child's--age--and--capabilities--so--as--to--safeguard--the ~~child's--growth--and--development--on--a--supplemental--basis~~ child care outside of the child's home by an adult other than a parent, guardian, person in loco parentis, or relative on a regular basis for daily periods of less than 24 hours.

(6) "Regular basis" means providing supplemental parental care to children of separate families for ~~any--daily~~ periods--of--less--than--24--hours--and--within 3 or more consecutive weeks.

(7) "Registration" means the process whereby the department maintains a ~~record list~~ of all family day care homes and group day care homes, ~~prescribes--standards,~~ promulgates rules, ~~for registration,~~ and requires the day care provider operator of--a--family--day--care--home--or--a--group--day--care--home to certify that ~~he--has--completed~~ the provider is in compliance with the ~~registration prescribed--standards--and--promulgated rules.~~

Subsection (8) remains the same.

(9) "Registration certificate" means a written ~~instrument document~~ issued by the department to ~~publicly--document~~ show that the ~~certificate--holder~~ registrant has, in writing, certified to the department ~~his~~ the registrant's compliance with ~~this--part--and~~ the applicable standards rules for ~~either a~~ family day care homes ~~and or~~ a group day care homes.

(10) "License" means a written document issued by the department to show that the license holder has complied with

this part and the applicable standards and licensing rules for day care centers.

(11) "Registrant" means the holder of a registration certificate issued by the department in accordance with the provisions of this part.

(12) "Licensee" means the holder of a license issued by the department in accordance with the provisions of this part.

(13) "Department" means the department of social and rehabilitation services, provided for in Title 2, chapter 15, part 22.

(14) "Back-up care" or "substitute care" means care provided by a person in their home by a person not designated as the primary care person and for the purpose of substituting during the primary care person's illness, temporary absence, emergency absence, or for the purpose of isolating an ill child from other children receiving care in the same facility.

(15) "Secondary child care" means care provided in exceptional cases to provide additional care to a child beyond that care provided by a primary care person (day care operator who provides majority of care or is determined to be the basic child care person), i.e., the mother is employed or in training for an extensive period of time each day, resulting in the need for care during day and part of the night. A secondary child care situation may be appropriate and could be approved to provide evening care.

(16) "Full day care" means care given to a child (ren) in a center, group day care home or family day care home facility licensed or registered by the agency for such, and provided department which is provided for a continuous period of not less than 56 hours per day to 10 hours per day. This care includes one main meal, which may be breakfast, lunch, or dinner/supper, and two snacks during the period of care.

(17) "Part-time care" means care given to a child in a center or home day care facility licensed or registered by the agency, whether day or night care, and provided department which is provided for a period of less than 56 hours per day, paid on an hourly basis.

(18) "Drop-in care program" or "family day care program" providing care to any child for less than 5 consecutive hours.

(19) "Overlap care" means care provided at a day care facility and approved by the department for a designated period of time not to exceed two hours per day when the number of children in care may exceed the authorized capacity of the facility.

(20) "Night care" program or "family day care home program" means care providing care for a child between the hours of 7 p.m. and 7 a.m. in which the parent(s) desires a child to sleep. If the parent(s) desires the child to sleep, the night care program requirements as specified shall apply for that child during these hours. If the parent(s) desires the child

~~to nap only, no night care program requirement shall apply for that child.~~

(1918) "Infant" means a child 6 weeks to under the age of 24 18 months of age.

(2019) "Preschooler" means a child between 24 18 months of age ~~to approximately~~ and the age the child will be when he or she initially enters the first grade of a public or private school system.

(2120) "School age child" means a child ~~from the date the child initially enters the first grade of a public or private~~ who attends school system ~~to~~ and who is between 5 and 12 years of age.

(21) "Caregiver" means a licensee, registrant, employee, aid or volunteer who is responsible for the direct care and supervision of children in a day care facility.

AUTH: Sec. 53-4-503 MCA

IMP: Sec. 53-4-501 and 53-4-504 MCA

46.5.908 FAMILY DAY CARE HOME AND GROUP DAY CARE HOME
REGISTRATION SERVICES, DAY CARE CENTER FACILITIES,
REGISTRATION OR LICENSING APPLICATION SERVICES,
PROCEDURES FOR OBTAINING SERVICES

(1) Any individual may apply for a registration certificate to operate a family day care home or group day care home. ~~er~~ Any individual, agency or group may apply for a license to operate a day care center. However, an applicant who has had a previous day care application denied or who has had a day care license or registration certificate revoked may not reapply for licensure or registration within six months of the denial or revocation. Applications may be obtained from any ~~department, county, or~~ district office of the department. ~~in the county in which the applicant lives.~~

Subsection (2) remains the same.

~~(3) Within 30 days of receipt of the application, the department shall investigate to determine whether a license should be issued or shall investigate the application for registration or licensure for completeness and veracity.~~

(3) Before a license may be granted, the following shall be submitted by the applicant at the time of application and annually thereafter:

(a) a certificate of approval from the state fire marshal or his official designee indicating the fire safety rules have been met;

(b) a certificate from public health authorities certifying the satisfactory completion of training or a certificate of approval following inspection by local health authorities;

(c) proof of current fire and liability insurance coverage for the day care center;

(d) a schedule of daily activities;

(e) a sample weekly menu;
(f) a CSD 33 personal statement of health for licensure form for each caregiver, aide or volunteer who has direct contact with the children in care;

(g) evidence of compliance with local zoning ordinances, if applicable;

(h) list of current staff with ages, addresses and telephone numbers;

(i) names, addresses, and telephone numbers of three personal references not related to the applicant who have knowledge of the applicant's character, experience and ability; and

(j) Such other information which may be requested by the department to determine compliance with the licensing requirements.

(4) Before a registration certificate may be granted, the following shall be submitted by the applicant at the time of application and annually thereafter:

(a) A CSD 33 personal statement of health form for each caregiver;

(b) Names, addresses and telephone numbers of three personal references not related to the applicant(s) who have knowledge of the applicant's character, experience and ability;

(c) Proof of current fire and liability insurance coverage for the provision of day care in the home;

(d) Such other information which may be requested by the department to determine compliance with registration requirements.

(5) Applications for renewal shall be made by the provider at least thirty (30) days prior to expiration of the license or registration certificate.

(46) Any individual, group or other agency may request that the agency department determine whether or not a home facility should be licensed or registered according to law. Referral may be either in writing or by telephone.

~~45) --An individual must be a minimum of 18 years of age to apply for a registration certificate or license.~~

~~46) --An individual must be a minimum of 16 years of age to be employed as an assistant caregiver or helper in a family day care home, group day care home or day care center.~~

AUTH: Sec. 53-4-503 MCA

IMP: Sec. 53-4-504 and 53-4-507 MCA

46.5.909 FAMILY--DAY--CARE--HOME--GROUP--DAY-CARE--HOME
REGISTRATION--GENERAL--ELIGIBILITY--REQUIREMENTS,--AND
PROGRAM--REQUIREMENTS DAY CARE FACILITIES, REGISTRATION
AND LICENSING PROCEDURES

~~41) --General eligibility requirements.~~

(a1) A family day care home or group day care home must be registered. A day care center must be licensed.

(b2) No registrant or licensee shall discriminate in child admissions ~~or demissions~~, or employment of staff on the basis of race, sex, religion, creed, color or national origin. ~~No registrant shall discriminate on the basis of physical and/or mental handicap when the handicap does not prevent fulfillment of normal job responsibilities.~~

(c3) Upon receipt of the signed and completed application forms, the ~~social worker~~ department will evaluate the application for registration or licensure based upon the standards requirements found in these rules.

(a) A prospective family day care home or group day care home that meets ~~minimum standards~~ these requirements as evidenced by the application shall be ~~recommended to the social worker supervisor for issuance of~~ issued a registration certificate. The registration certificate may be either provisional or regular.

(b) A prospective day care center will be visited and the program and facility inspected by a licensing worker within 30 days of receipt of the completed application. If the applicant meets the requirements for licensure the department will issue a license to the applicant. ~~This The certificate~~ license may be either provisional or regular.

(+4) A provisional registration certificate ~~shall or~~ license may be issued for a period of up to three months when the ~~family day care home or group day care home~~ facility does not ~~fully comply with~~ meet all of the standards requirements if the facility is attempting to comply. A second three month provisional certificate or license may be issued in special circumstances, at the discretion of the social worker supervisor III, the total not to exceed six months.

(+1a) A plan for full compliance with standards requirements for registration or licensure must be submitted by the ~~family day care home or group day care home~~ facility to the department before issuance of a provisional certificate or license.

(+1b) Written notification of the granting of a provisional certificate or license by the department must be made to the ~~child care operator~~ licensee, registrant or applicant specifying the reason, duration and conditions for continuing and/or terminating the provisional certificate or license.

(c) The department may not issue a provisional license to any day care center which has not been approved by the state fire marshal and the department of health and environmental sciences.

(d) The department may not issue a provisional certificate or license to any day care facility which does not have current public liability insurance and fire insurance.

(d5) Regular Registration certificates and licenses are issued from an SRS district ~~or regional~~ office for periods not to exceed one year.

~~(e)--Denial-and-revocation-of-registration:~~

(i6) The department, after written notice to the applicant, licensee or registrant, may deny, suspend, restrict, revoke or reduce to a provisional status a registration certificate or license upon finding that:

(a) The applicant has not met the requirements for licensure or registration set forth in these rules, and

(Ab) the provider licensee or registrant has received 3 warnings of non-compliance with the registration standards, or licensing requirements. However, should any one non-compliance place a child in danger of harm, suspension or revocation will be immediate; or ~~Where a warning of non-compliance is issued, the provider shall be given 30 days to correct the area of non-compliance, or~~

(Bc) the provider has made any misrepresentations to the department, either negligent or intentional, regarding any information requested on the application form or necessary for registration or licensing purposes; or

(Ed) the provider, or a member of the provider's household or staff has been named as the perpetrator in a substantiated report of child abuse or neglect as defined in ARM 46.5.116.

(#7) The provider shall maintain all policies, records, and reports that are required by the department. These policies, records and reports must be reviewed and updated annually.

~~(g)--The provider shall report immediately any child suspected of being abused or neglected to their local county welfare department or the child abuse hotline, 1-800-332-6100.~~

~~(h)--The provider shall submit a report to the appropriate district office for the department within 24 hours after occurrence of an accident, such as the death or serious injury of a child while at the facility or when a fire occurs which requires the services of a fire department. A serious injury is defined as one requiring inpatient hospitalization.~~

(#8) The registration certificate or license is not transferable to another operator or site.

(#9) The department must be notified of any changes that would affect the terms of the registration, or licensure.

(#10) Separate registration certificates and licenses shall be required for programs maintained on separate premises even when operated under the same auspices.

~~(i)--Public support will not be provided to children of compulsory school age during regular school hours as established by the local education agency.~~

~~(m)--Family day care home and group day care home operators must have a signed medical request, on file if the child~~

~~is receiving any medication. This form can be obtained from any SRS office.~~

~~(1) Family day care and group day care homes must have fire and public liability insurance coverage. This requirement may not be waived.~~

AUTH: Sec. 53-4-503 MCA

IMP: Sec. 53-4-504 and 53-4-508 MCA

46.5.910 FAMILY DAY CARE HOME AND GROUP DAY CARE HOME

REGISTRATION SERVICES PROVIDED (1) The department will

provide the following:

(1a) assistance to the applicant to meet registration standards requirements;

(2b) counseling services concerning children's problems;

(3c) assistance consultation to the day care provider in providing enrichment experiences for the children, proper environment and nutrition; and,

(4) supplying the provider with the proper forms to obtain agency payment.

(5) Each month the provider must submit a voucher for child care services to an SRS district office before deadline date, as established by the SRS district office.

(62) The department may investigate and inspect the conditions and qualifications of any family day care home and group day care home holding a registration certificate.

(63) The department must will visit and inspect at least 15% of all registered family day care homes and group day care homes in each of the governor's planning regions annually.

(74) Upon request of the department, the state department of health and environmental sciences or the state fire marshal or his designee shall inspect any family day care home or group day care home for which a registration certificate is applied for or is issued and shall report its findings to the department.

(8) Upon request, the department shall give consultation to every registrant who desires to upgrade the services of his program.

AUTH: Sec. 53-4-503 MCA

IMP: Sec. 53-4-504 MCA

46.5.913 DAY CARE CENTERS, LICENSING SERVICES PROVIDED

(1) The department will may provide the following:

(1a) assistance to the applicant to meet licensing standards requirements;

(2b) counseling services around concerning child problems;

(3c) assistance consultation to the day care center in providing programs which contribute to the development of

enrichment experiences for the children, proper environment and nutrition;

~~(4) supplying the operator with the proper forms to obtain agency payment; each month the operator must submit a voucher for child care services to an SRS district office before deadline date, as established by the SRS district office; and~~

(5d) technical assistance to day care centers for staff training;

(62) ~~The department or its authorized representative shall make periodic visits to all licensed day care centers to ensure that minimum standards are maintained, and continued compliance with licensing requirements.~~

(73) ~~The department may investigate and inspect the conditions and qualifications of any day care center and/or any person seeking or holding a license.~~

AUTH: Sec. 53-4-503 MCA

IMP: Sec. 53-4-504, 53-4-508 and 53-4-511 MCA

46.5.914 DAY CARE CENTERS, PROGRAM REQUIREMENTS

(1) The program conducted in a day care ~~facility~~ center shall be written and shall provide experiences which are responsive to the individual child's pattern of chronological, physical, emotional, social and intellectual growth and well-being. ~~Both active and passive learning experiences which promote the development of skills and social competence based on enhanced self-esteem and positive self-identity and shall be conducted in consultation with parents, to provide experiences in harmony with the life style and cultural background of the children.~~

(a) This requirement shall be deemed to have been satisfied if the licensing representative has been able to observe the daily program in operation and approves the program based upon the criteria below:

(i) ~~the program operation reflects~~ center maintains an on-going process of parent-staff cooperation in development and modification of program goals;

(ii) ~~the program operation reflects~~ center provides a diversity of experiences during the day for each child with opportunity for quiet and active experiences, group and individual activities, the exercise of choice and ~~for~~ experience with different types of equipment and materials;

(iii) ~~there are~~ the center provides opportunities during the day when the child can take responsibility, such as getting ready for snacks or meals, getting out or putting away materials, taking care of his own clothing;

(iv) ~~the program includes numerous firsthand~~ center provides experiences for children to learn about the world in which they live, ~~at least once a month including~~ opportunities ~~are provided~~ for field trips visits to places of interest in

the community and/or presentations by family and other community people are utilized as resources to further expand the exposure and experiences of the children. Caregivers are required to secure a release form from parents before children are taken on field trips; and/or taken to a doctor;

(v) the center provides learning experiences for the children regarding the value of food in relation to growth and development is provided for children;

(vi) the center provides opportunities are provided for children to develop language and mathematical skills; and to receive improve readiness for reading and writing, for spontaneous conversations in a variety of situations and for by regularly exposing the children to books, drama, poetry, music and other forms of verbal expression; in multilingual communities; the children are exposed to the languages of the community.

AUTH: Sec. 53-4-503 MCA

IMP: Sec. 53-4-504 and 53-4-508 MCA

46.5.915 DAY CARE CENTERS, DISCIPLINE (1) Caregivers shall use appropriate forms of discipline but must not use spanking or other forms of corporal punishment or any other technique which is humiliating, shaming, frightening, or otherwise damaging to children.

~~(a) This requirement shall be deemed to have been satisfied when:~~

~~(i) the provider shall require each caregiver has to participated in an in-service training session regarding discipline and guidance techniques appropriate for children;~~

~~(ii) the caregiver demonstrates knowledge and understanding of guidance techniques in using them in the day care setting;~~

~~(iii) the caregiver contacts parents to determine the discipline used in the child's home in hopes of establishing some consistency in discipline between the home and the day care setting; although corporal punishment is not to be utilized in a day care setting even when such practices are employed in the home;~~

AUTH: Sec. 53-4-503 MCA

IMP: Sec. 53-4-504 and 53-4-508 MCA

46.5.916 DAY CARE CENTERS, SCHEDULING (1) A daily schedule must be established for each group of children in care which will promote physical, emotional, intellectual and social development, provide regularity in the routines of program activities and physical care with sufficient flexibility to respond to individual differences in children's needs and interests, and The schedule shall provide a balance of

quiet and active, small and large group and individual activities.

(a2) This requirement shall be deemed to have been satisfied if the licensing representative has been able to observe the program in operation and approves the program based on the criteria below:

(1a) Each caregiver in charge of a group of children follows a written schedule of daily activities which includes time for meals, snacks, sleep, toileting, and indoor and outdoor play;

(1b) The schedule is followed without rigidity in order to respond to individual needs of children. Children not participating in group activities will have adult supervision; and

(1c) A nap period is provided for children who need it, and ~~for children unable to sleep, time, space and appropriate activities allowing for rest and quiet play are available.~~ Time, space and appropriate activities for rest and quiet play are provided for children who are unable to sleep.

AUTH: Sec. 53-4-503 MCA

IMP: Sec. 53-4-504 and 53-4-508 MCA

46.5.917 DAY CARE CENTERS, SPACE AND EQUIPMENT (1) A day care center must have sufficient indoor and outdoor space ~~and equipment in relationship to~~ for the number and ages of children in care, to accommodate the full range of developmental needs of children, particularly those needs most affected by space limitations such as physical development.

(a2) This requirement shall be deemed to have been satisfied if:

(1a) the facility ~~must have~~ has a minimum of 35 square feet per child of indoor space, exclusive of floor area devoted to fixed equipment or support functions such as kitchens, offices, etc. as well as 75 square feet per child of outdoor play space; and

(1b) the equipment and furniture arrangement permits unobstructed floor area sufficient to allow vigorous play appropriate for each group of children in care, as well as arrangements of sleeping equipment which permit easy access to every child and unobstructed exits, ~~or.~~

(1c3) The center can obtain a variance from the above for the following reasons:

(Aa) limited outdoor space is offset by a greater amount of indoor space, such as a gym, permitting an equivalent activity program;

(Bb) limited indoor space is offset by sheltered outdoor space, where climate permits; reliance on outdoor space for activities normally conducted indoors; or

~~(C) scheduling for use of limited space or equipment provided the availability to each group of children is not unreasonably short;~~

~~(B) part-day programs which can demonstrate that children can reasonably be expected to have naps or rest periods when they are away from the facility need not provide space or equipment for napping; and~~

(Bc) scheduling for the use of an adjacent school playground, nearby public or parks, land, cleared vacant safe lots, and/or a street blocked off by local authorities.

AUTH: Sec. 53-4-503 MCA

IMP: Sec. 53-4-504 and 53-4-508 MCA

46.5.918 DAY CARE CENTERS, STAFF SUPPORT SERVICES SPACE AND EQUIPMENT

(1) A day care center must have sufficient space and appropriate furniture and equipment to provide for support functions necessary to the program for children and to provide for the reasonable comfort and convenience of staff and parents.

Subsections (1)(a) through (1)(a)(i)(F) remain the same.

AUTH: Sec. 53-4-503 MCA

IMP: Sec. 53-4-504 and 53-4-508 MCA

46.5.919 DAY CARE CENTERS, MATERIALS AND EQUIPMENT

Subsections (1) and (1)(a) remain the same.

(i) ~~in-service training regarding the relationship of equipment and materials to the developmental needs of children is provided; special emphasis should be placed on how children learn. At a minimum, centers will~~ shall maintain a housekeeping area, table activities (manipulative toys) area, block building area, library corner or other quiet area, ~~science area, music area and a creative arts area.~~ Arrangement of these areas ~~should~~ shall be such that quiet and active zones are separated and not conflicting;

(ii) the quantity and quality of materials and equipment ~~is shall be~~ sufficient to permit multiple use of the same item by several children so that excessive competition and long waits are avoided;

(iii) materials and equipment ~~are~~ shall be of sufficient quantity and quality to provide for a variety of experiences and appeal to the individual interests of the children in care;

(iv) furniture ~~is shall be~~ durable, safe, and clean and ~~is be~~ child size or appropriately adapted for children's use;

(v) storage shelves ~~must~~ shall be provided to children at their level.

(2) Toys, play equipment, and any other equipment used by the children must be of substantial construction and free from rough edges, sharp corners, splinters, unguarded ladders on slides, and must be kept in good repair and well maintained.

(3) Toys and objects with a diameter of less than 1 inch (2.5 centimeters), objects with removable parts that have a diameter of less than 1 inch (2.5 centimeters), plastic bags, and styrofoam objects must not be accessible to children under 3 years of age and those children who are still placing objects in their mouths.

(4) Outdoor equipment, such as climbing apparatus, slides, and swings, must be anchored firmly, and placed in a safe location according to manufacturer's instructions.

(5) Play equipment and materials must include items from each of the following six categories: dramatic role playing, cognitive development, visual development, auditory development, tactile development and large-muscle development.

(6) High chairs, when used, must have a wide base and a safety strap.

(7) Each child, except school-age children who do not take naps, shall have clean, age-appropriate rest equipment, such as a crib, cot, bed or mat. Seasonably appropriate covering, such as sheets or blankets, must be provided.

(8) Each facility must have a telephone.

(9) Telephone numbers of the parents, the hospital, police department, fire department, ambulance, and poison control center must be posted by each telephone.

AUTH: Sec. 53-4-503 MCA

IMP: Sec. 53-4-504 and 53-4-508 MCA

46.5.920 DAY CARE CENTERS, CHILDREN'S ACTIVITIES AFTER-SCHOOL CARE

(1) A day care center serving school-age children shall supplement and augment, but not duplicate, the child's activities at school and at home, enable the child to develop his sense of independence, responsibility, identity and of mastering the skills of problem solving, helping him to achieve a place among his peers in his own neighborhood, and staff is provided in-service training regarding aspects of child development through the early and middle school years.

(a2) This requirement shall be deemed to have been satisfied if the licensing representative has observed the program in operation and approved the program based on the criteria below:

(#a) provision-is-made adult supervision is provided for special-interest individual and groups in the center, or

for individual pursuit, in the areas of crafts, sewing, cooking, art, music, etc., where a skilled adult is available, or other activities;

(iib) provision is made for individual children to participate in classes, clubs, or other groups holding meetings in other locations in the community and to engage in activities outside the center which may be simply riding a bike or roller skating around the block, or playing with neighborhood children in the school playground, with appropriate adult supervision;

(iit) children have regular chores appropriate for their age that they are expected to perform, and, where feasible, older children have a chance to earn money either within the center or in the community;

(iic) children have the opportunity appropriate to the child's age to participate in making rules and have opportunities to express objections to them;

(iid) parents have participated in planning and approving the after-school activities, and have participated in approving rules and agree on the management handling of infractions of the rules.

AUTH: Sec. 53-4-503 MCA

IMP: Sec. 53-4-504 and 53-4-508 MCA

46.5.921 DAY CARE CENTERS, NIGHT CARE AND-SHIFT (1) A day care center offering night care or shift-care must develop a set of plans for program, staff, use, equipment and space, usage, and program modifications for that aspect of their service, which will provide appropriately for the personal safety as well as for the emotional and physical care of children away from their families at night.

(a2) This requirement shall be deemed to have been met if the licensing representative is satisfied that:

(ia) special attention is given by the caregiver with and the parents to provide for a transition into this type of care appropriate to the child's emotional needs;

(iit) children are left for care and picked up before and after their normal sleeping period so that there is minimal disturbance of the child during sleep;

(iib) a selection of toys for quiet activities which can be used with minimal adult supervision is available provided for children prior to bedtime;

(iic) bathing facilities, are provided; comfortable beds or cots, and complete bedding, and night clothes are available; provided;

(iid) sufficient staff are available to assist children during eating and pre-bedtime hours and during the morning period when dressing;

(e) during sleeping hours, staff shall be awake and in the immediate vicinity of sleeping children in order to

provide for the needs of children and respond to any emergency;

(wif) a nutritious meal ~~shall be~~ is served to children and a bedtime snack ~~shall be~~ is offered.

AUTH: Sec. 53-4-503 MCA

IMP: Sec. 53-4-504 and 53-4-508 MCA

46.5.922 DAY CARE CENTERS, STAFFING REQUIREMENTS

(1) Child/staff ratio.

(a) 4:1 for infants 0-2 ~~years~~ to 18 months;

(b) 8:1 for children 2-3 18 months to 4 years;

(c) 10:1 for children 4-6 years;

(d) 14:1 for children over 6 years

~~(e) --centers may have only one provider whenever the number of children in attendance is less than seven.~~

~~(#e)~~ only the provider, primary caregiver(s) and aides may be counted as staff in determining the staff ratio.

(2) Qualifications of staff.

(a) The director shall have an associate degree in a related field plus one year experience in child care or child development associate certification (CDA) or three years experience in child care. ~~Existing~~ Directors employed before April, 1982 are exempt from this requirement. If the director also acts as a caregiver, he must meet the qualifications of a primary caregiver.

(b) The A primary caregiver must be at least 18 years of age and shall meet all of the qualifications of an aide plus the following:

(i) two years experience as a licensed or registered group or family day care home provider or day care center staff person or a bachelor of arts in education or a related field.

(ii) trained in cardio-pulmonary resuscitation or multi-media first aid.

(3) An aide is directly supervised by a primary caregiver and shall be at least 16 years of age and meet the following qualifications:

(a) sufficient language skills;

(b) ~~mobility,~~ good mental and physical health;

~~(c) --submit annually personal statement of health for licensure or certification;~~

~~(#c)~~ one day of on-the-job orientation;

~~(#d)~~ eight hours of training, within the first year, in at least two separate sessions provided either by the department or center operator or other equivalent trainer in the following areas:

(i) 4 hours - to include emotional, cognitive, physical and social development, ~~self-esteem~~ of children, and creative activities, ~~for children;~~

(ii) 1 hour - appropriate discipline;

(iii) 1 hour - first aid;
(iv) 1.5 hours - nutrition and sanitation;
(v) .5 hours - fire safety.
(4) The provider must assure that members of the staff are in good physically, and mentally health and emotionally competent to care for children and free from communicable disease.

(a) The provider shall maintain written records regarding each employee which includes:

(i) a record of training and experience,
(ii) three references from persons unrelated to the employee attesting to the employee's character and suitability for the job.

(b) Each employee must meet the requirements set forth in ARM 46.5.924 (3) and (4) (a) through (d). The provider is responsible for assuring that the employees have met these requirements before being hired.

(5) No staff member, aide, volunteer or other person having direct contact with the children in the center shall conduct themselves in a manner which poses any potential threat to the health, safety and well-being of the children in care.

(6) The licensee shall submit a report to the appropriate district office of the department within 24 hours after the occurrence of an accident causing injury to a child which resulted in the child being hospitalized or any fire in the facility when the services of the fire department were required.

(7) The provider and all staff members of the day care center shall report immediately any child suspected of being abused or neglected to the county welfare department or the child abuse hotline, 1-800-332-6100.

(8) The provider shall keep personal information about the child and his family confidential.

AUTH: Sec. 53-4-503 MCA

IMP: Sec. 53-4-504, 53-4-506 and 53-4-508 MCA

46.5.923 DAY CARE CENTERS, PARENT INFORMATION (1) The following written information shall be available to all parents: a typical daily schedule of activities, admission requirements, enrollment procedures, hours of operation, meals and snacks served, fees and payment plan, regulations concerning sick children, transportation and trip arrangements, discipline policies, religious activities and department day care licensing standards requirements.

AUTH: Sec. 53-4-503 MCA

IMP: Sec. 53-4-504, 53-4-506 and 53-4-508 MCA

46.5.924 GROUP DAY CARE HOMES, PROVIDER RESPONSIBILITIES AND QUALIFICATIONS (1) The provider and all persons responsible for children in the day care ~~provider's absence~~ home must be at least 18 years of age and must be in good mental and physical health.

~~(2) The applicant for registration shall be required to 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 or whether the applicant or any member of the household has been involved in an incident of child abuse or neglect in the past.~~

(32) The provider shall be responsible for the direct care, protection, supervision, and guidance of the children within a group day care home.

(43) The providers shall have experience in the care and supervision of children.

~~(5) Family relatives in the day care home shall assure a safe and stable environment for the child.~~

~~(6) Personal information about the child or his family must be kept confidential.~~

(4) The providers and all persons responsible for children in the group day care home shall be physically, mentally and emotionally competent to care for children and free from communicable disease. No provider, caregiver or other person present in the home while the children are in care shall:

(a) have been convicted of a crime involving harm to children or physical or sexual violence. Any provider, caregiver or other person charged with a crime involving children or physical or sexual violence and awaiting trial may not provide care or be present in the home pending the outcome of the trial;

(b) be currently diagnosed or receiving therapy or medication for a serious mental illness which might create a risk to children in care. Serious mental illness which might create a risk to children in care shall be determined by a licensed psychologist or psychiatrist. The department may request a provider, caregiver or other person to obtain a psychological or psychiatric evaluation at his or her own expense if there is reasonable cause to believe a serious mental illness exists;

(c) be chemically dependent upon drugs or alcohol. Chemical dependence on drugs or alcohol shall be determined by a licensed physician or certified chemical dependency counselor. The department may request the provider, caregiver or other person to obtain an evaluation at his or her own expense if there is reasonable cause to believe chemical dependence exists; and

(d) have been named as a perpetrator in a substantiated report of child abuse or neglect.

(5) The provider shall report immediately any child suspected of being abused or neglected to the county welfare department or the child abuse hotline, 1-800-332-6100.

(6) The provider shall cooperate with the department regarding all aspects of registration and shall allow department workers access to their homes for on-site visits.

(7) The provider shall submit a report to the appropriate district office of the department within 24 hours after the occurrence of an accident causing injury to a child which resulted in the child being hospitalized or any fire in the home when the services of the fire department were required.

(8) The provider shall keep personal information about the child and his family confidential.

(9) The provider shall attend a basic day care orientation or its equivalent within the first 60 days of certification.

(10) It is strongly recommended that the provider have training in cardio-pulmonary resuscitation or multi-media first aid and be familiar with standard Red Cross first aid procedure.

AUTH: Sec. 53-4-503 MCA

IMP: Sec. 53-4-504 MCA

46.5.930 GROUP DAY CARE HOMES, PROGRAM REQUIREMENTS

(1) A written plan of daily activities and routines, in addition to free play, must be established. The plan must be flexible to accommodate the ages and needs of individual children and the group as a whole. It is must be designed with intervals of stimulation and relaxation, and a balance between periods of active play and quiet play or rest.

(2) The provider shall provide:

(a) will include daily activities for the children which foster sound social, intellectual, emotional and physical growth;

(b) offers children opportunities for individual and small group activities;

(c) offers time and opportunity for creative experiences for children through art, music, books and stories, and dramatic play;

(d) offers outdoor play each day except when precluded by severity of weather.

(3) Supervision of children.

(a) The provider or someone other caregiver at least 18 years of age shall be on the premises at all times children are in care.

(b) Providers shall not use any appropriate forms of physical punishment, including discipline, but must not use spanking or other forms of corporal punishment or any other

disciplinary technique which is humiliating, shaming, frightening or otherwise damaging to the children.

(c) Television watching during the hours children are in care shall be limited to child-appropriate programs.

AUTH: Sec. 53-4-503 MCA

IMP: Sec. 53-4-504 MCA

46.5.931 GROUP DAY CARE HOMES, HEALTH CARE REQUIREMENTS

Subsections (1) through (4) remain the same.

(5) The provider shall not give medication to the children unless the provider has a medical request signed by the parent on file.

(56) When a child is absent, the day care provider shall obtain the reasons so the interest of the other children may be properly protected. If it is a suspected, reportable communicable disease is suspected, the provider shall so inform a the health officer. No child shall be re-admitted after an absence until the reason for the absence is known and there is assurance that his return will not harm him or the other children. Disease charts that identify the reportable diseases are available from the health department of health and environmental sciences.

(67) All Any adults at the home shall not be in contact with the children in care whenever if the adult has any reportable, communicable condition of their own exists or is suspected of existing disease or contagious illness.

(78) Each provider shall develop policies for first aid. These policies must include directions for calling parents or someone else designated as responsible for the child when a child is sick or injured.

(89) Standard Red Cross first aid supplies shall be kept on-hand in the home.

(910) A notation of all injuries must be made on the child's medical record including the date, time of day, nature of the injury, treatment, and whether the parent was notified.

(101) All new children shall be accompanied to the toilet, taught to use it and flush it, and to wash hands after using the toilet, and before eating. Young children should have help in toileting.

[Present subsections (11) through (15)(b) remain the same in text but will be renumbered as (12) through (16)(b).]

AUTH: Sec. 53-4-503 MCA

IMP: Sec. 53-4-504 MCA

46.5.933 GROUP DAY CARE HOMES, NUTRITION Subsection (1) remains the same.

(2) The above requirement shall be deemed to have been met if the provider provides nutritious meals and snacks as follows:

(a) children in care for a continuous period of five hours to ten hours shall be provided at least one meal appropriate to the time of day and two snacks; or

(b) children in care for a continuous period of ten hours or more shall be provided at least one meal every six hours and one snack between meals. The six hours requirement does not apply during the hours that the child is sleeping when night care is provided; or

(c) children in care for two to six hours shall be provided one snack every two and one half hours.

(23) Special diet orders must be kept on file by the provider as submitted to the provider in writing by parents.

[Present subsections numbered (3) through (8) remain the same in text but will be renumbered as (4) through (9).]

AUTH: Sec. 53-4-503 MCA

IMP: Sec. 53-4-504 MCA

46.5.935 GROUP DAY CARE HOMES, SPECIAL PROGRAM REQUIREMENTS

(1) Night care-program. The following requirements apply only to group day care homes providing night care programs and are in addition to all other requirements contained in these rules. ~~except, an outdoor play area is not required, outdoor play is not required, and only a bedtime snack need be provided.~~

(a) ~~Appropriately timed nutritional snacks must be provided to children in attendance for more than 2 1/2 hours prior to bedtime.~~ A nutritious meal shall be served to children and a bedtime snack shall be offered.

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

(2) ~~Drop-in~~ Overlap care. program.

~~(a) All regulations for full-time care apply for drop-in care.~~

(ba) ~~No more than a two-hour overlap period of more than the number of children for which a facility is registered. This is to allow the home to care for children during after school hours. At no time during the hours of drop-in shall the number of children in a group day care home exceed sixteen. There may be situations, such as before and after school, when the number of children in care over two (2) years of age would exceed for a short period of time the licensed or registered capacity. Overlap of children under two (2) years of age shall not be permitted. The number of children in care, in these overlap situations, shall never be more than one quarter (1/4) over the number authorized by the registration certificate. Overlap care shall not exceed two (2) hours total in any child-care day.~~

(b) If a provider wishes to have an overlap situation, the provider shall file with the department a written plan for this care stating the specific hours in which the overlap will occur and the arrangements for providing adequate activities

and supervision to all children during this period.

(c) Overlap care shall not occur until the provider has received written approval of this plan from the department.

AUTH: Sec. 53-4-503 MCA

IMP: Sec. 53-4-504 MCA

46.5.936 GROUP DAY CARE HOMES, APPLICATION-AND-ADMISSION
PARENT INVOLVEMENT Subsections (1) through (2)(a) remain

the same.

(b) The parent shall be given a copy of the day care regulations by the provider, ~~which shall be in the form of a parent handbook.~~

~~(c3) A daily attendance record shall be kept by the provider.~~ The provider shall provide opportunities for the parent(s) to participate in activity planning and individual meetings.

AUTH: Sec. 53-4-503 MCA

IMP: Sec. 53-4-504 MCA

46.5.937 GROUP DAY CARE HOMES, ADDITIONAL REQUIREMENTS

~~(1) Provider/child ratio~~

(a1) There shall be at least two caregivers caring for the children at all times when there are more than six children present at the home.

(b2) There shall be no more than six infants in a group day care home at any one time.

~~(2) Program for children~~

~~(a) A written plan of daily activities and routines, in addition to free play, shall be established. The plan must be flexible to accommodate the needs of individual children and the group as a whole.~~

~~(3) Parent involvement~~

~~(a3) The provider shall provide opportunities for the parent(s) to participate in activity planning and individual meetings. In cases where the parents cannot or will not participate, documentation of written notification of meetings and activities must be placed in the child's records. The provider may not accept admission of a child if the child's admission would require the provider to exceed the number of children the provider is authorized to care for on the registration certificate.~~

(4) The provider shall keep a daily attendance record of the children for whom care is provided.

(5) The provider shall have a master list of the name, address and phone number of all children in care and their parents.

(6) All records of the group day care home shall be made available to the department upon request.

AUTH: Sec. 53-4-503 MCA
IMP: Sec. 53-4-504 MCA

46.5.938 FAMILY DAY CARE HOMES, PROVIDER RESPONSIBILITIES AND QUALIFICATIONS (1) The provider and all persons responsible for children in the day care ~~provider's absence~~ home must be at least 18 years of age and must be in good mental and physical health.

~~(2) The applicant for registration shall be required to 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 or whether the applicant or any member of the household has been involved in an incident of child abuse or neglect in the past.~~

(32) The provider shall be responsible for the direct care, protection, supervision, and guidance of the children within a family day care home.

(43) The provider shall have experience in the care and supervision of children.

~~(5) Family relatives in the day care home shall assure a safe and stable environment for the child.~~

~~(6) Personal information about the child or his family must be kept confidential.~~

(4) The provider and all persons responsible for children in the day care home shall be physically, mentally and emotionally competent to care for children and free from communicable disease. No provider, caregiver or other person present in the home while the children are in care shall:

(a) have been convicted of a crime involving children or physical or sexual violence. Any provider, caregiver or other person charged with a crime involving children or physical or sexual violence and awaiting trial may not provide care or be present in the home pending the outcome of the trial.

(b) be currently diagnosed or receiving therapy or medication for a serious mental illness which might create a risk to children in care. Serious mental illness which might create a risk to children in care shall be determined by a licensed psychologist or psychiatrist. The department may request a provider, caregiver or other person to obtain a psychological or psychiatric evaluation at his or her own expense if there is reasonable cause to believe a serious mental illness exists;

(c) be chemical dependent upon drugs or alcohol. Chemical dependency on drugs or alcohol shall be determined by a licensed physician or certified chemical dependency counselor. The department may request the provider, caregiver or other person to obtain an evaluation at his or her own

expense if there is reasonable cause to believe chemical dependency exists.

(d) have been named as a perpetrator in a substantiated report of child abuse or neglect.

(5) The provider shall report immediately any child suspected of being abused or neglected to their county welfare department or the child abuse hot line, 1-800-332-6100.

(6) The provider shall cooperate with the department regarding all aspects of registration and shall allow department workers access to their homes for on-site visits.

(7) The provider shall submit a report to the appropriate district office of the department within 24 hours after the occurrence of an accident causing injury to a child which resulted in the child being hospitalized or any fire in the home when the services of the fire department were required.

(8) The provider shall keep personal information about the child and his family confidential.

(9) The provider shall attend a basic day care orientation or its equivalent within the first 60 days of certification.

(710) It is strongly recommended that the provider have training in cardio-pulmonary resuscitation or multi-media first aid and be familiar with standard Red Cross first aid procedure.

AUTH: Sec. 53-4-503 MCA

IMP: Sec. 53-4-504 MCA

46.5.943 FAMILY DAY CARE HOMES, PROGRAM REQUIREMENTS

(1) The provider or other person at least 18 years of age shall be on the premises at all times children are in care.

(2) Providers shall not use any appropriate forms of ~~physical punishment~~, including discipline and must not use spanking or other forms of corporal punishment or any other disciplinary technique which is humiliating, shaming, frightening or otherwise damaging to the children.

(3) The provider shall keep a list of the name, address and phone number of each child in care and his or her parents. The list shall be made available to the department upon request.

(4) The provider may not accept admission of a child if the child's admission would require the provider to exceed the number of children the provider is authorized to care for on the registration certificate.

(5) Television watching during the hours children are in care shall be limited to child-appropriate programs.

AUTH: Sec. 53-4-503 MCA

IMP: Sec. 53-4-504 MCA

46.5.944 FAMILY DAY CARE HOMES, HEALTH CARE REQUIREMENTS
Subsections (1) through (3) remain the same.

(4) The provider shall not give medication to the children unless the provider has a medical request signed by the parent on file.

(45) All Any adults at the home shall not be in contact with the children in care whenever if the adult has any contagious-or-infectious-condition reportable to-the-health-department-of-their-own-exists-or-is-suspected-of-existing, communicable disease or contagious illness.

(56) Standard Red Cross first aid supplies shall be kept on-hand in the home.

[Present subsections (6) through (8)(h) remain the same in text but will be renumbered (7) through (9)(h).]

AUTH: Sec. 53-4-503 MCA

IMP: Sec. 53-4-504 MCA

46.5.946 FAMILY DAY CARE HOMES, DROP-IN OVERLAP CARE

(1)--Drop-in-care-program,

(a)--All-regulations-for-full-time-care-apply-for-drop-in care-

(b)--No-more-than-a-two-hour-overlap-period-of-more-than the-number-of-children-for-which-a-facility-is-registered. This-is-to-allow-the-home-to-care-for-children-during-after school-hours.--At-no-time-during-the-hours-of-drop-in-shall the-number-of-children-in-a-family-day-care-home-exceed-eight.

(1) There may be situations, such as before and after school, when the number of children in care over two (2) years of age would exceed for a short period of time the registered capacity. Overlap of children under two (2) years of age shall not be permitted. The number of children in care, in these overlap situations, shall never be more than one quarter (1/4) over the number of children authorized by the registration certificate. Overlap care shall not exceed two (2) hours total in any child-care day.

(2) If a provider wishes to have an overlap situation, the provider shall file a written plan for this care stating the specific hours in which the overlap will occur and the arrangements for providing adequate activities and supervision to all children during this period.

(3) Overlap care shall not occur until the provider has received written approval of this plan from the department.

AUTH: Sec. 53-4-503 MCA


IMP: Sec. 53-4-504 MCA

5. The proposed rule changes are necessary to clarify the meaning of existing rules, provide internal consistency of rules relating to the various types of day care facilities and

establish rules for the operation of joint programs in the same facility. Several of the rule clarifications are in response to questions raised during monitoring and inspection visits.

6. 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 December 12, 1985.

7. 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 November 4, 1985.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF NURSING

Amended notice of amendment) AMENDED NOTICE OF 8.32.408
of 8.32.408 concerning tempor-) TEMPORARY WORK PERMIT
ary work permits)

TO: All Interested Persons:

1. On August 15, 1985, the Board of Nursing published a notice of amendment of the above-stated rule at page 1057, 1985 Montana Administrative Register, issue number 15. The statement ", and for which they are eligible" should have been interlined rather than underlined in the original notice. The reason for this amendment is stated in number 5 on page 1057 of the original notice.

2. The board made this change effective October 18, 1985.

BOARD OF NURSING
THERESE SULLIVAN, R.N.
PRESIDENT

BY: 
ROBERT J. WOOD, COUNSEL

Certified to the Secretary of State, November 4, 1985.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF REALTY REGULATION

In the matter of the amendment) NOTICE OF AMENDMENT OF 8.58.
of 8.58.406 concerning general) 406 GENERAL LICENSURE REQUIRE-
licensure requirements and 8.58.) MENTS and 8.58.411 FEE
411 concerning the fee schedule) SCHEDULE

TO: All Interested Persons:

1. On September 12, 1985, the Board of Realty Regulation published a notice of amendment of the above-stated rules at pages 1277 through 1278, 1985 Montana Administrative Register, issue number 17.

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

3. No comments or testimony were received.

BOARD OF REALTY REGULATION
GEORGE PIERCE, CHAIRMAN

BY: 

ROBERT J. WOOD, COUNSEL

Certified to the Secretary of State, November 4, 1985.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE HEALTH FACILITY AUTHORITY

In the matter of the amendments) NOTICE OF AMENDMENTS OF 8.
of 8.120.201 concerning defini-) 120.201 DEFINITIONS and 8.
tions, 8.120.206 concerning) 120.206 FEES
fees

TO: All Interested Persons:

1. On September 12, 1985, the Health Facility Authority published a notice of amendments of the above-stated rules at pages 1279 through 1281, 1985 Montana Administrative Register, issue number 17.
2. The board has amended the rules exactly as proposed.
3. No comments or testimony were received.

HEALTH FACILITY AUTHORITY
MARY D. MUNGER, CHAIRMAN

BY: 

ROBERT A. WOOD, COUNSEL

Certified to the Secretary of State, November 4, 1985.

BEFORE THE MONTANA ARTS COUNCIL
OF THE STATE OF MONTANA

In the matter of the)	NOTICE OF ADOPTION
ADOPTION OF RULES speci-)	OF 10.111.701-708
fyng the criteria applied))	SPECIFYING CRITERIA FOR
by the Cultural and Aes-)	GRANTS EVALUATION
thetic Projects Advisory)	
Committee in the evalua-)	
tion of grant proposals)	

TO: All Interested Persons.

1. On September 12, 1985, the Montana Arts Council published notice of a proposed adoption of rules specifying the manner and procedure to be followed by the Cultural and Aesthetic Projects Advisory Committee in submission and recommendation of grant proposals to the state legislature from coal tax funds for cultural and aesthetic projects, at page 1282 M.A.R. Issue number 17.

2. The rules provide as follows:

10.111.701 RULE I ELIGIBLE APPLICANTS Adopted as proposed.

10.111.702 RULE II APPLICATION FORM FOR GRANT PROPOSALS II(1)(a)-II(1)(j)(v) and II(1)(j)(vii)((A)-II(1)(k) were adopted as proposed. II(1)(j)(vi)-II(1)(j)(vii) were adopted with the following changes:

(vi) Effective July 1, 1985 and pursuant to 22-2-308 MCA and these rules, government units may apply on behalf of private museums, art centers and cultural facilities may apply for and receive the first grant without local governmental funds, but are encouraged to seek mill levy, general fund or other local governmental financial or in-kind support.

(A) For all subsequent grants, private museums, art centers or other cultural facilities must receive county or municipal financial or in-kind support to be eligible for funds.

(vii) A cultural facility is defined as a building or number of buildings operated significantly for the purpose of presenting public programs and activities in one or more of the arts-or-humanities eligible projects.

10.111.703 RULE III APPLICATION DEADLINE Adopted as proposed.

10.111.704 RULE IV ELIGIBLE PROJECTS Adopted with the following changes: (1) Grant proposals must be for the purpose of protecting works of art in the state capitol or other cultural and aesthetic projects, including but not limited to the visual performing, literary and media arts, history, archaeology, folk-lore, archives, libraries, historical preservation and the renovation of cultural facilities. Applicants may apply for funds in one or more of the following categories:

(a) Special projects: Specific activities, services or events of limited duration and the expansion of on-going programs to meet defined needs and support for grants which generate new sources of revenue.

~~(i) Generally it is required that there be one dollar in matching cash or in-kind goods and services for each grant dollar.~~ Generally each dollar in project grants should be matched with one dollar in cash or in-kind goods and services.

(ii) Applicants will be required to submit a project budget and an organizational operations budget for the grant period. If grant funds are being requested for a project which has been conducted in prior years, financial statements of the project from the most recent two full years must be provided.

(b) Operational support for cultural institutions that have been in existence for at least two years.

(i) It is not the intention for operational support grants to ~~replace~~ reduce the applicant's fund raising efforts or to support program expansion.

(ii) In special circumstances, applications for operational support may be considered.

(iii) The applicant will be required to demonstrate a need which may include ~~but not be limited to:~~

(A) the development of emerging cultural institutions (i) an emerging cultural institution is in the early stages of development, i.e., formally organized for at least two years with an on-going program and generally with paid professional staff;

(B) organizations with unusually high expenses without available local funding sources;

(C) organizations which serve the entire state or a significant sub-state region;

(D) well managed and established organizations in ~~confronting unforeseen~~ emergency situations, e.g., a reduction of substantial funding sources;

(E) organizations which are recognized as essential to Montana's cultural life because of their excellence of programming and longevity of service to the state;

(F) organizations which provide a high ratio of cash match to grant request.

~~(ii) Generally it is required that there be one dollar in matching cash or in-kind goods and services for each grant dollar.~~ (iv) Generally each dollar in general support grants should be matched with one dollar in cash or in-kind goods and services.

~~+++~~ (v) Applicants will be required to submit financial statements for:

- (A) the prior two fiscal years
- (B) actual and budgeted expenses and income for the current year and
- (C) budgets for the grant period.

~~++++An unaudited financial review signed by an independent accountant will be required to be submitted by an organization requesting \$20,000 or more in operational support.~~ (vi) For organizations applying for \$20,000 or more in operational support, submission of a current audit is requested. If none exists, an unaudited financial review signed by an independent accountant will suffice.

(A) A financial review consists principally of inquiries of organization personnel and analytic procedures applied to financial data. It is substantially less in scope than an audit and thereby no opinion is expressed.

(B) The accompanying report should state that the accountant is not aware of any material modifications that should be made to the financial statements in order for them to be in conformance with generally accepted principles, other than those modifications, if any, indicated in the report.

(c) Capital expenditure projects for additions to a collection or acquisition of works of art, artifacts or historical documents; historic preservation or the construction or renovation of cultural facilities.

(i) Any applicant for funds which may in any way affect prehistoric or historic ~~sites or historic buildings~~ properties must cooperate with the State Historic Preservation Office in evaluating the possible impact on ~~these sites or buildings properties~~ and the appropriateness of plans for project activity.

(ii) A letter from the State Historic Preservation Office, stating their recommendations and any agreements reached with the applicant ~~must accompany the application for funds is necessary.~~ No funds will be released until such a letter is received by the Montana Arts Council.

(iii) Applicants will be required to provide three dollars in cash or in-kind donations of goods and services specifically for the capital expenditure project for each grant dollar.

(iv) Those applicants requesting funds for facility acquisition, construction or renovation will need to provide:

(A) a financial statement of the operational costs of the facility from the most recently completed fiscal year prior to the date of application deadline;

(B) operational budgets of the facility for the ~~two fiscal years~~ first full year after the completion of the project;

(C) a budget of costs of renovation or construction;

(D) information about sources and amounts of funds already committed and anticipated to be received;

(E) plans for obtaining the balance of funds based on prior fund raising efforts;

(F) the expected duration of the facility renovation or construction;

(d) Challenge grants for permanent endowment development to benefit cultural nonprofit grant applicants may be recommended for funding.

AUTH: 22-2-303 MCA

IMP: 22-2-301 and 22-2-308 MCA

10.111.705 RULE V CHALLENGE GRANTS FOR PERMANENT

ENDOWMENT DEVELOPMENT V(2)(c)(v)(A)-V(3)(d)(iv) and

V(3)(e)(1)-V(3)(e)(N) adopted as proposed.

V(1)-V(2)(c)(v) and V(3)(e) adopted with the following changes:

(1) The Committee may recommend for funding those organizations which:

~~(a) have been in existence for five years or more;~~

~~(b) request a grant of at least \$5,000;~~

(a) provide verification of the inviolability of the endowment funds;

(b) are able to document their ability to match the grant from private or other sources or have a reasonable chance of doing so within the grant period and

(c) demonstrate a significant need and purpose for the challenge grant.

(2) Applicants ~~will need to~~ must provide three dollars in cash or irrevocable planned or deferred gifts for each grant dollar.

(a) For purposes of qualifying as match, a deferred or planned gift must be:

(i) specifically designated for the endowment or unrestricted purposes

(ii) executed during the grant period and

(iii) not currently held in the an endowment trust account.

(b) All forms of deferred or planned giving will be valued according to IRS practices and principles. Deferred and planned gifts will qualify as matching funds only to the extent that they are legally irrevocable on the date of their valuation for such matching purposes.

(c) Donations of irrevocable trusts (e.g., pooled life income funds, charitable gift annuity trusts, unitrusts, etc.) will be eligible as match to the extent that their value can be determined in accordance with generally accepted accounting principles. It will be necessary to provide the Montana Arts Council with copies of the trust agreements and documentation of the value of such gifts.

(i) Charitable lead trusts: The income from these trusts will be counted as match when placed in the permanent endowment account.

(ii) Gifts of marketable securities will be valued as of the date of transfer from the donors to the grant recipient, eligible as match when they have been converted to cash and deposited in the grant recipient's permanent endowment trust account. Documentation of this deposit must be furnished to the Montana Arts Council.

(iii) Revocable planned gifts, e.g., codicils to wills, bequests, life insurance and retirement plans can be used to meet one-third of the total match requirement. Documentation of these gifts must be submitted to the Montana Arts Council and must:

(A) include the date of the gift;
(B) include the name of the person making the gift;
(C) include the amount or specific property and valuation
----- of the gift;

(D) identify the beneficiary of the gift;
(E) state that the gift will be deposited directly in the trust account of the beneficiary;

(F) state that if the beneficiary no longer is in existence, the gift will go to an organization in the State of Montana which is organized and operated exclusively for charitable, educational, religious or scientific purposes which shall at the time qualify as an exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue law and

(i) that the organization serves a similar purpose and geographic area as the original beneficiary;

(ii) that if no organization meets V(2)(c)(iii)(F)(i), then an appropriate beneficiary is an organization which serves a purpose similar to the original beneficiary;

(iii) if no organization meets V(2)(c)(iii)(F)(ii), then an appropriate beneficiary is an organization which is organized and operated exclusively for arts or cultural purposes;

(iv) Gifts of real estate will be eligible as match when the property has been converted to cash and deposited in the grant recipient's permanent endowment trust account. Documentation of this deposit must be furnished to the Montana Arts Council.

(v) Income producing property: The annual average net income from the five years preceding the date of the application may be used to estimate the match for the grant period.

(e) Endowments are intended to be permanent, with only earnings from investment for use in operations and programs or to add to the principal of the endowment. Grants and matching funds must be invested held in trust in Montana financial institutions, and the challenge grant must be invested in fully insured investment instruments. Trustees will have the powers and duties as specified in the Montana Trustees' Powers Act (72-21-101 through 72-21-104 and 72-21-201 through 72-21-206) MCA.

(B) that the grant will be invested in fully insured investment instruments;

10.111.706 RULE VI EVALUATION CRITERIA Adopted as proposed.

10.111.707 RULE VII CRITERIA FOR RECOMMENDATIONS Adopted as proposed.

10.111.708 RULE VIII INCREMENTAL DISBURSEMENTS OF GRANTS VIII(1)(a)-VIII(1)(b) and VIII(1)(f) adopted as proposed. VIII(1)(c)-VIII(1)(e) adopted with the following changes:

(1) Grant funds will be disbursed as follows:

(c) Proper allowable costs will be determined by from the budget accompanying the application, contingencies specified by the legislature or the revised budget provided ~~if~~ when the grant award was less than the request.

(d) Decisions on fund disbursements will be determined by the amount of unexpended prior cultural and aesthetic grant balances and justification of future project costs.

(e) Five percent of the total grant award must be held withheld pending receipt of final reports by the Montana Arts Council.

3. The rules are adopted for the purpose of providing notice to the public of objective criteria applied by the Cultural and Aesthetic Projects Advisory Committee in making funding recommendations to the state legislature from coal tax funds. The rules are necessary to provide the committee and grant applicants with criteria and procedures not specified in the law.

4. No comments have been received by the Montana Arts Council. Changes in the rules have been made at the recommendation of the Legislative Council and the Cultural and Aesthetic Projects Advisory Committee.

MONTANA ARTS COUNCIL
35 South Last Chance Gulch
Helena, Montana 59620

BY: 
DAVID E. NELSON
Executive Director

Certified to the Secretary of State November 4, 1985

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

In the matter of the adoption) NOTICE OF THE ADOPTION
of Rules I through X,) OF RULES 12.8.501 THROUGH
resource policy and regulations) 12.8.510 FOR THE
) PRESERVATION OF CULTURAL
) RESOURCES ON LANDS
) CONTROLLED BY THE DEPARTMENT

TO: All Interested Persons.

1. On September 12, 1985, the Department of Fish, Wildlife and Parks published notice of the proposed adoption of rules described above at p. 1293 of the 1985 Montana Administrative Register, issue number 17.

2. The Department has adopted 12.8.501 through 12.8.503 (rules I through III) and 12.8.507 through 12.8.509 (rules VII through IX) as proposed.

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

12.8.504 (RULE IV) RESPONSIBILITY FOR COMPLIANCE

Subsection (1) remains as proposed.

Subsection (2) reads as follows:

(2) The administrator of each department division is responsible for assuring compliance with this part when projects involving his division may affect heritage properties on paleontological remains. Each division shall bear routine costs of administration related to compliance with this rule.
AUTH: 22-3-424, IMP: 22-3-424

12.8.505 (RULE V) IDENTIFICATION OF HERITAGE PROPERTIES

The department shall identify all heritage properties that are located on department lands within the area affected by a proposed project. The department shall use the following procedure to determine what known historic, architectural, or prehistoric properties exist within a project area and how unknown or unevaluated resources should be discovered:

Subsection (1) remains as proposed.

Subsection (2) reads as follows:

(2) If a project affects vacant land, the SHPO shall provide the department with information on known historic, architectural, and prehistoric resources in the area, the likelihood of unknown historic, architectural, and prehistoric resources in the area, and whether a previous cultural

resource survey has occurred in the impact area. The SHPO shall recommend as to the need for, kind of, and appropriate methods for survey. If a project involves a building, the SHPO shall inform the department about whether any building has been recorded previously or if its historic and architectural value has been assessed. If recordation and evaluation have not occurred, the SHPO shall recommend and describe the historical information, photographs, or description to be used to assess the building. The SHPO shall provide its recommendation to the department within ten working days of the SHPO's receipt of a request for it. Assessment comment period may be extended an additional five working days to a maximum total of 15 working days upon request by SHPO and concurrence by the department.

Subsection (3) and (4) remain as proposed.

12.8.506 (RULE VI) EVALUATION OF HERITAGE PROPERTIES

Subsection (1) reads as follows:

(1) In consultation with the SHPO, the department shall assure that any historic, prehistoric or architectural property identified in a project's area of potential impact has been professionally assessed to determine whether it is a heritage property. That assessment shall include the following:

(a) The department shall seek the SHPO's written assessment of whether the property qualifies as a heritage property.

(b) The SHPO shall provide the department with a written assessment of any site's value as a heritage property within ten working days of receipt of a request for the assessment. Assessment comment period may be extended an additional five working days to a maximum total of 15 working days upon request by SHPO and concurrence by the department.

Subsection (2) remains as proposed.

12.8.510 (RULE X) ANTIQUITIES PERMITS The department will not permit anyone to ~~survey~~, excavate, or remove any heritage property or paleontological remains on lands owned or controlled by the department until the person seeking to ~~survey~~, excavate or remove materials secures an antiquities permit from the SHPO and the department.

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

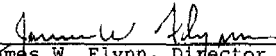
Subsection (3) reads as follows:

(3) The department may allow surveys of department lands for the purpose of identifying possible heritage property or paleontological remains without requiring the securing of an

antiquities permit. Such surveys will not remove or disturb heritage properties or paleontological remains. The results of such surveys will be made available to the department and SHPO.

AUTH: 22-3-424, IMP: 22-3-424

The Department received one comment on the rule from the State Historic Preservation officer. The Department has adopted the suggestion embodied in that comment.


James W. Flynn, Director
Department of Fish, Wildlife
and Parks

Certified to the Secretary of State November 4, 1985.

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

EMERGENCY AMENDMENT OF RULES
16.28.201 AND 16.28.202

1. Statement of reasons for emergency: Acquired immune deficiency syndrome (AIDS) is emerging as one of this country's most profound public health threats. As yet, there is no cure for those who develop AIDS and it is ultimately fatal in all cases. Development of a cure for the disease and minimization of its spread while the search for a cure continues requires nationwide collection of data from those who develop AIDS (medical history, life style, age, sex, etc.) and those who have been exposed to the virus. A large body of knowledge on the subject has already been developed, but the search for more definitive information must continue. Montana does not currently include AIDS or exposure to the AIDS-causing virus in the list of communicable diseases which must be reported to public health authorities, meaning that the department cannot collect the Montana data needed to help develop adequate control measures. The emergency rules add both conditions to the list of reportable diseases, specify the type of information to be reported, require the reports to be submitted by any physician or laboratory either diagnosing AIDS or performing a test to determine whether a person has been exposed to the AIDS-causing virus, and require confirmation of the test or diagnosis by the department's laboratory.

The department is presently working on a complete revision of the communicable disease rules, including AIDS control and reporting measures, but needs to have AIDS-related information reported in the interim in order to ascertain the degree of threat the disease currently represents in Montana and to contribute to the nation-wide data collection necessary for development of adequate control measures. Consequently, the department adopts these emergency rules pending adoption of permanent rules. They will be effective immediately upon filing with the Secretary of State.

2. The emergency rules amend 16.28.201 and 16.28.202 and provide as follows:

16.28.201 REPORTERS (1) A person, including but not limited to a physician, dentist, nurse, medical examiner, other practitioner, administrator of a health care facility, public school superintendent, or headmaster or administrator of a private school, who knows or has reason to believe that a category A, B, C, or D reportable disease, as specified in 16.28.202, exists shall report as required in ARM 16.28.202 to a local health officer or the department.

(2) A person administering a clinical laboratory in which a laboratory examination of any specimen derived from the human body yields microscopic, cultural, immunological,

serological, or other evidence indicative of a disease listed in subsection (2)(c) of this rule shall notify the local health department or the department.

(a) A notification must include the name, date and result of the test performed; the name and age of the person from whom the specimen was obtained; and the name and address of the physician for whom the test was performed. Notification may be by telephone, submission of a legible copy of the laboratory report, or submission of a department reporting form which may be obtained from the Preventive Health Services Bureau.

(b) A laboratory notification submitted in accordance with this rule is confidential and is not open to public inspection.

(c) The diseases subject to notification under subsection (2) of this rule are:

Brucella
Chancroid
Diphtheria
Gonorrhea
Granuloma inguinale
Hepatitis A or B
Leptospirosis
Lymphogranuloma venereum
Rubella (non-immune persons only)
Salmonellosis
Shigellosis
Syphilis
Tuberculosis

Typhoid or Paratyphoid Fever or any other disease listed in ARM 16.28.202(1) through (4).

(3) A physician who diagnoses a case of acquired immune deficiency syndrome (AIDS) must submit to the department and the local health officer the report required by 16.28.202(5)(c).

(4) A physician or laboratory performing a blood test which shows the presence of the antibody to the human T-lymphotropic virus type III must:

(a) Submit to the department the report required by 16.28.202(5)(d); and

(b) Obtain, if possible, and submit to the department laboratory a second blood specimen in order to confirm the test results.

(5) The administrator of a laboratory in which a test of blood is made to determine whether the antibody to the human T-lymphotropic virus type III is present must submit to the department by the 15th day following the month in which the test was performed a report on a form supplied by the department indicating the number of tests with negative results for

that antibody which were done during that month.

AUTHORITY: 50-1-202, 50-17-103, 50-18-105 MCA

IMPLEMENTING: Sec. 50-1-202, 50-2-118, 50-17-103, 50-18-102, 50-18-106 MCA

16.28.202 REPORTABLE DISEASES Reportable communicable diseases include:

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

(5)(a) Category E diseases and conditions are:

(i) Acquired immune deficiency syndrome (AIDS)

(ii) Potential AIDS, as indicated by the presence of the human T-lymphotropic virus type III antibody.

(b) A category E disease or condition must be reported to the department and, in the case of AIDS, the local health officer of the county from which the report is made by 5:00 p.m. Friday of the week in which the diagnosis of AIDS is made or the test showing potential AIDS is performed.

(c) The report for AIDS must include the information required by the department's communicable disease confidential case report form available from the department.

(d) The report of potential AIDS must include:

(i) the date the test identifying the antibody was performed;

(ii) the name and address of the reporter; and

(iii) the initials of the person tested.

(e) The name of any category E case and the name and street address of the reporter of any such case are confidential and not open to public inspection.

AUTHORITY: Sec. 50-1-202, 50-17-103, 50-18-105, 50-18-106 MCA

IMPLEMENTING: Sec. 50-1-202, 50-2-118, 50-17-103, 50-18-102, 50-18-106 MCA

3. The foregoing amendments are effective November 4, 1985.


JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State November 4, 1985

BEFORE THE DEPARTMENT OF INSTITUTIONS
OF THE STATE OF MONTANA

In the matter of the)	
adoption of Rules	)	NOTICE OF AMENDMENT OF
20.3.202, 20.3.208	)	ARM 20.3.202, 20.3.208
20.3.209, 20.3.212	)	20.3.209, 20.3.212
20.3.213, 20.3.214	)	20.3.213, 20.3.214
20.3.215, 20.3.216	)	20.3.215, 20.3.216
20.3.401, 20.3.403	)	20.3.401, 20.3.403
20.3.404, 20.3.405	)	20.3.404, 20.3.405
20.3.407, 20.3.408	)	20.3.407, 20.3.408
20.3.410, 20.3.411	)	20.3.410, 20.3.411
20.3.412, 20.3.416	)	20.3.412, 20.3.416
AND REPEAL OF 20.3.415	)	AND REPEAL OF 20.3.415
Certification and evaluation	)	Certification and evaluation
of alcohol programs	)	of alcohol programs

TO All Interested Persons

1. On August 29, 1985, the Department of Institutions gave notice of proposed adoption of amendments to ARM 20.3.202, 20.3.208, 20.3.209, 20.3.212, 20.3.213, 20.3.214, 20.3.215, 20.3.216, 20.3.401, 20.3.403, 20.3.404, 20.3.405, 20.3.407, 20.3.408, 20.3.410, 20.3.411, 20.3.412, 20.3.416, AND REPEAL OF 20.3.415, certification and evaluation of alcohol programs, on page 1192 of The Montana Administrative Register, issue No. 16.

2. A public hearing was conducted by the Department of Institutions on the proposed rules on September 27, 1985. Robert Anderson, Administrator of the Alcohol and Drug Abuse Division, appeared on behalf of the Department. David J. Campbell, of the Rimrock Foundation of Billings, MT, presented a memorandum and further testified in support of the changes.

3. The principal reasons for the adoption of these rules is to clear up outdated language and to more accurately delineate who may do counseling in alcohol programs. No comments were received that urged the non-adoption of these rules. Comment was received from the Rimrock Foundation regarding certain requested changes in the proposed rules. Rimrock commented on 5 of the proposed changes.

Regarding the definition of "eligible counselor" at 20.3.202(b), Rimrock voiced a concern that this change would result in an inability to hire non-eligible individuals for training purposes. The Department feels the adoption of this rule will not result in such a situation. Trainees may still be hired.

Rimrock's comments concerning 20.3.208 relate to a perceived lack of clarity in the definition of "effectiveness indicators."

It is the Department's opinion that this term is adequately defined within the context of the rule.

The term "cross referenced tools" in 20.3.214 was said to be unclear by Rimrock's comments. After consideration, the Department feels that the meaning is clear within the context of the rules.

Rimrock commented on 20.3.216 regarding the requirement that all indicators of program effectiveness be collected. Citing the language "and/or vocational placements," Rimrock argued that this would not apply to all programs. The Department feels that the language, "and/or vocational placements," is outdated and is now inapplicable. As a result of Rimrock's comments, the Department will delete that language.

Rimrock's last comment was on 20.3.405(c) and its credit for local inservice training. Rimrock argued that training credit should be given for one or one and a half hour local inservice training. The Department feels this is inadequate from a training standpoint, when work experience credit is given for such programs.

4. Based on the foregoing pursuant to the rulemaking authority of 53-24-105 MCA, the Department has amended the rules with the following changes:

20.3.202 DEFINITIONS Same as proposed but will be renumbered.

20.3.213 INPATIENT - HOSPITAL COMPONENT REQUIREMENTS

(1) remains the same.

(2) Inpatient services shall include:

(a) Admission and screening services in accordance with admission criteria which substantiate the appropriateness of treatment and include a comprehensive assessment by a certified counselor, based on at least 3 cross-referenced diagnostic/assessment tools. INSTRUMENTS.

(b) through (e) ~~(7)(c)(iv)~~ remain the same.

(f) One session of documented individual counseling per week with certified OR ELIGIBLE counseling staff.

(2)(g) through (7)(c)(iv) remain the same.

20.3.214 INPATIENT - FREE STANDING CARE COMPONENT REQUIREMENTS (1) remains the same.

(2) Inpatient-free standing care services shall include:

(a) Admission and screening services in accordance with admission criteria, which substantiate the appropriateness of treatment and include a comprehensive assessment by a certified counselor, based on at least 3 cross-referenced diagnostic/assessment tools. INSTRUMENTS.

(2)(b) through (f) ~~(7)(b)(ii)~~ remain the same.

(g) One session of documented individual counseling per week with certified OR ELIGIBLE counseling staff.

(2)(h) through (5)(i) remain the same.

(6) Client recordkeeping and reporting requirements specific to the ~~short-term-intermediate~~ INPATIENT FREE-STANDING care component shall include:

(6)(a) through (7)(b)(ii) remain the same.

(7)(b)(iii) and (iv) same as proposed

20.3.215 INTERMEDIATE CARE (TRANSITIONAL LIVING)
COMPONENT REQUIREMENTS (1) through (2)(d) ~~(7)(a)(iii)~~ remain the same.

(2)(e) Two sessions per month of documented individual counseling with certified OR ELIGIBLE counseling staff.

(f) Other supportive services as deemed necessary by the program.

(g) Periodic assessment by certified OR ELIGIBLE COUNSELING staff.

(2)(h) through (2)(m) remains the same.

(3) Staff requirements.

(a) Staff shall consist of a director, certified OR ELIGIBLE chemical dependency counselor(s) and house manager(s).

(3)(b) through (7)(a)(iii) remain the same.

(7)(b)(i) same as proposed.

20.3.216 OUTPATIENT COMPONENT REQUIREMENTS (1) remains the same.

(2) Outpatient services shall include:

(a) Admission and screening services in accordance with admission criteria--~~which substantiate the appropriateness of treatment and include a comprehensive assessment by a certified counselor, based on at least 3 cross-referenced diagnostic/assessment tools.~~ Services which are provided on a regular basis to clients residing outside the program.

(2)(b) through (2)(d) remain the same.

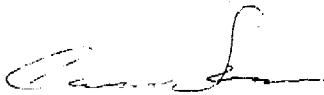
(2)(e) Assessments and evaluations shall be conducted by a certified or eligible chemical dependency counselor based on at least 3 cross-referenced diagnostic instruments.

(3) through (6)(a)(ii) remains the same.

(6)(b) Program effectiveness:

(i) Shall ensure the collection, development and utilization of information which demonstrates program effectiveness. This ~~can~~ shall include, but not be limited to, completion of goals and objectives, average monthly caseloads, average contacts per client per month, completion ratios, employment ~~and/or vocational~~ placements and follow-up data.

5. The department has amended 20.3.202, 20.3.208, 20.3.209, 20.3.212, 20.3.401, 20.3.403, 20.3.404, 20.3.405, 20.3.407, 20.3.408, 20.3.410, 20.3.411, 20.3.412 and 20.3.416 and repealed 20.3.415 as proposed.



CARROLL V. SOUTH, Director
Department of Institutions

CERTIFIED TO THE SECRETARY OF STATE October 25, 1985.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION) NOTICE OF THE ADOPTION of Rule
of Rule I (42.15.115) relating) I (42.15.115) relating to dis-
to disability income exclusion.) ability income exclusion.


TO: All Interested Persons:

1. On September 12, 1985, the Department published notice of the proposed adoption of Rule I (42.15.115) relating to disability income exclusion at pages 1316 and 1317 of the 1985 Montana Administrative Register, issue no. 17.

2. The Department has adopted rule I (42.15.115) as proposed.

3. No comments or testimony were received.

4. The authority for the rule is 15-30-305, MCA, and Ch. 364, L. 1985, and the rule implements 15-30-111, MCA.


JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 11/4/85

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

In the matter of the amend-) NOTICE OF THE AMENDMENT OF
ment of Rule 46.10.407) RULE 46.10.407 PERTAINING TO
pertaining to AFDC transfer) AFDC TRANSFER OF PROPERTY
of property)

TO: All Interested Persons

1. On September 26, 1985, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rule 46.10.407 pertaining to AFDC transfer of property at page 1380 of the 1985 Montana Administrative Register, issue number 18.

2. The Department has amended Rule 46.10.407 as proposed with the following changes:

46.10.407 TRANSFER OF PROPERTY (1) THE PROCEDURES SET FORTH IN ARM 46.12.3207 MUST BE FOLLOWED TO DETERMINE THE IMPACT OF TRANSFERS OF PROPERTY BY AFDC APPLICANTS.

~~41)(a) Public~~ AFDC assistance shall not be granted to any person who has deprived himself directly or indirectly of any property for the purpose of qualifying for assistance. Any person who has transferred ~~real~~ ANY property or interest in ~~real~~ ANY property within ~~five~~ two years of the date of application without receiving adequate consideration in money or money's worth, shall be presumed to have made such transfer for the purpose of qualifying for assistance.

~~(a)--The applicant or recipient may submit evidence that he did not make the transfer of property for the purpose of qualifying for assistance.~~

~~(b)--It is the responsibility of the applicant to submit this evidence.~~


AUTH: Sec. 53-2-601 and 53-4-212 MCA

IMP: Sec. 53-2-601 and 53-4-211 MCA

3. The amendment originally proposed was intended to make ARM 46.10.407 and section 53-2-601 MCA consistent. No comments or testimony were received from any persons other than department staff.

Since publication of notice of the proposed amendment the department has concluded that the rule would be better clarified by discarding subsections (a) and (b) in favor of direct reference to ARM 46.12.3207, the Medicaid transfer of property rule. Because recipients qualify categorically for Medicaid through AFDC eligibility, direct reference to ARM 46.12.3207 emphasizes the procedural consistency needed between Medicaid and AFDC transfer of property rules. References to "real" property have been changed to "any" property to conform the rule to section 53-2-601 MCA.

There will be no impact on AFDC recipients since the the current practice already conforms with the rule as adopted.



Director, Social and Rehabilitation Services

Certified to the Secretary of State November 4, 1985.

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

In the matter of the adoption	) NOTICE OF THE ADOPTION OF
of rules pertaining to	) RULES (I) 46.5.1701, (II)
licensing requirements for	) 46.5.1702, (III) 46.5.1703,
community group homes for	) (IV) 46.5.1704, (V)
physically disabled persons.	) 46.5.1705, (VI) 46.5.1706,
	) (VII) 46.5.1707, (VIII)
	) 46.5.1708, (IX) 46.5.1709,
	) (X) 46.5.1710, (XI)
	) 46.5.1711, (XII) 46.5.1712,
	) (XIII) 46.5.1713, (XIV)
	) 46.5.1714, AND (XV)
	) 46.5.1715 PERTAINING TO
	) LICENSING REQUIREMENTS FOR
	) COMMUNITY GROUP HOMES FOR
	) PHYSICALLY DISABLED PERSONS

TO: All Interested Persons

1. On September 26, 1985, the Department of Social and Rehabilitation Services published notice of the proposed adoption of rules pertaining to licensing requirements for community group homes for physically disabled persons at page 1382 of the 1985 Montana Administrative Register, issue number 18.

2. The Department has adopted Rules 46.5.1701, PHYSICALLY DISABLED GROUP HOMES, PURPOSE; 46.5.1702, PHYSICALLY DISABLED GROUP HOMES, DEFINITIONS; 46.5.1703, PHYSICALLY DISABLED GROUP HOMES, LICENSE REQUIRED; 46.5.1704, PHYSICALLY DISABLED GROUP HOMES, LICENSING PROCEDURES; 46.5.1705, PHYSICALLY DISABLED GROUP HOMES, LICENSE REVOCATION, DENIAL OR SUSPENSION; 46.5.1706, PHYSICALLY DISABLED GROUP HOMES, FAIR HEARING; 46.5.1709, PHYSICALLY DISABLED GROUP HOMES, PHYSICAL SITE REQUIREMENTS; 46.5.1710, PHYSICALLY DISABLED GROUP HOMES, RESIDENT SUPPLIES AND EQUIPMENT; 46.5.1713, PHYSICALLY DISABLED GROUP HOMES, HEALTH CARE; 46.5.1714, PHYSICALLY DISABLED GROUP HOMES, RESIDENT'S MONEY AND PERSONAL PROPERTY; and 46.5.1715, PHYSICALLY DISABLED GROUP HOMES, RECORD KEEPING, as proposed.

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

46.5.1707 PHYSICALLY DISABLED GROUP HOMES, FIRE SAFETY CERTIFICATION (1) A community home will only be licensed by the department if there is written certification from the state fire marshal's office that the home meets uniform fire code, group R, division 3, of the uniform building

code and the following requirements:

(a) Smoke detectors listed by a recognized testing laboratory shall be located at stairways and in any areas requiring separation as set forth in the uniform building code.

(i) Smoke detectors in homes with hearing impaired or deaf residents shall be equipped with strobe lights to be activated when the smoke detector goes into the alarm mode.

(b) A fire extinguisher listed by a recognized testing laboratory with a minimum rating of 2A10BC shall be readily accessible to the kitchen area.

(c) The date and signature of the person(s) checking both ~~the batteries in~~ the smoke detector, ~~monthly~~, and the fire extinguisher, ~~quarterly~~ monthly, shall be recorded and filed at the home.

Subsections (1) (d) through (1) (f) remain as proposed.

AUTH: Sec. 53-19-112 MCA; AUTH Extension, Sec. 7, Ch. 713, L. 1985, Eff. 10/1/85

IMP: Sec. 53-19-112 and 53-19-113 MCA

46.5.1708 PHYSICALLY DISABLED GROUP HOMES, HEALTH AND SAFETY CERTIFICATION

Subsections (1) through

(1) (d) (iv) (A) remain as proposed.

(B) one tub ~~and or~~ shower for every four residents;

Subsections (1) (d) (iv) (C) through (2) remain as proposed.

AUTH: Sec. 53-19-112 MCA; AUTH Extension, Sec. 7, Ch. 713, L. 1985, Eff. 10/1/85

IMP: Sec. 53-19-112 and 53-19-113 MCA

46.5.1711 PHYSICALLY DISABLED GROUP HOMES, STAFFING; STAFF RESPONSIBILITIES AND QUALIFICATIONS

(1) The provider shall have a sufficient number of appropriately qualified staff to supervise, care for, and train residents.

(a) During the hours of 7:00 a.m. to 10:00 p.m. there shall be a minimum of 1 ~~awake~~ staff member for every 8 residents.

Subsections (1) (c) through (7) remain as proposed.

AUTH: Sec. 53-19-112 MCA; AUTH Extension, Sec. 7, Ch. 713, L. 1985, Eff. 10/1/85

IMP: Sec. 53-19-112 MCA

46.5.1712 PHYSICALLY DISABLED GROUP HOMES, RIGHTS

Subsections (1) through (3) remain as proposed.

(4) The utilization in training of aversive procedures or of procedures infringing upon individual rights must ~~meet the approval of the department and must~~ be presented in writing to the licensing worker and meet with the approval of the community staffing team and the department prior to implementation for each client.

AUTH: Sec. 53-19-112 MCA; AUTH Extension, Sec. 7, Ch. 713, L. 1985, Eff. 10/1/85
IMP: Sec. 53-19-112 MCA

4. The Department has thoroughly considered all commentary received:

COMMENT: Some clients in Community Homes for the Physically Disabled may receive services under the home and community based Medicaid Program yet the proposed rules define a Community Home for the Physically Disabled as one that "does not provide skilled or intermediate nursing care".

RESPONSE: While some clients who are residing in such homes may receive intermediate nursing care those services required by the client(s) will be provided by home health nurses or group home staff supervised by a registered nurse. The statutory authority, while precluding delivery of nursing care by the group home entity, does allow for its delivery to residents by other entities.

COMMENT: A provider requested that the word "awake" be dropped from the night time staffing rule. There is an awake staff member during the week; however, the home is staffed by a live-in person on the week-end who does sleep at night.

RESPONSE: While it is desirable to have an awake staff member on duty at all times, the Department realizes that the facility staffing may at times not provide for an awake staff person. The word "awake" has been deleted from ARM 46.5.1711/Rule XI.

COMMENT: A provider asked that the requirement of one tub and one shower for every four (4) residents be changed to one tub or one shower for every four (4) residents.

RESPONSE: Although there should be both a tub and shower(s) in the facility for resident use, it is not necessary that there be both for every four (4) residents; therefore, the rule has been changed to tub or shower for every four (4) residents.

COMMENT: A provider requested clarification on the procedure for approval by the Department of restrictions on client rights and the use of aversive/deprivation procedures.

RESPONSE: The procedure will be a part of the social services policy manual and will not be incorporated in the licensing rules. The rules require that the group home submit its procedures to the licensing worker. The policy manual will

require that the licensing worker submit the request from the provider to the SRS Legal Unit via the Social Worker Supervisor (SWS) III. The SRS Legal Unit will review the request and will inform the SWS III in writing of its decision. The SWS III will then notify the provider. For further clarification, ARM 46.5.1712/Rule XII has been changed to reflect that any restriction of client rights or any use of aversive procedures must be approved by the staffing team and the Department. The rule now reads, "The utilization in training of aversive procedures or of procedures infringing upon individual rights must be presented in writing to the licensing worker and meet with the approval of the community staffing team and the department prior to implementation for each client".

COMMENT: One respondent requested that doctors be permitted by rule to restrict some activities that the client is doing recognizing that "persons with physical disabilities may react adversely to various chemicals, drugs or participation in some activities".

RESPONSE: The doctor's orders may state that a client's activities be restricted where potentially of harm to the client or others. If the order involves a restriction of client's rights, it must be approved by the staffing team and the Department.

COMMENT: A comment was received suggesting that the Department require strobe lights to be activated when the smoke detector goes into the alarm mode in homes with hearing impaired or deaf residents.

RESPONSE: The Department has adopted the proposed addition to the rules.

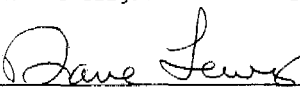
COMMENT: One respondent suggested deleting "the batteries" and "quarterly" from ARM 46.5.1707/Rule VII(1)(c).

RESPONSE: The Department has made the recommended changes.

COMMENT: A respondent inquired about the difference between an "intermediate level of care" and "intermediate nursing care".

RESPONSE: The determination of whether the person requires a skilled or intermediate "level of care" is based on several criteria contained in the Administrative Rules of Montana at rule 46.12.1303. [A copy of this rule was sent to the respondent]. A person may have need of a nursing service which is of an intermediate nature and yet not be in need of an "intermediate level of nursing care". Need for the intermediate level of nursing care is predicated on several

factors. Need for one or more particular intermediate nursing care services may not per se make one eligible for the intermediate level of nursing care.



Director, Social and Rehabilitation Services

Certified to the Secretary of State November 4, 1985.

VOLUME NO. 41

Opinion No. 31

COUNTY GOVERNMENT - Lack of jurisdiction in county tax appeal board for appeals of taxes on centrally assessed property;

STATE TAX APPEAL BOARD - Jurisdiction for appeals of taxes on centrally assessed property;

TAXATION AND REVENUE - Appeals of taxes on centrally assessed property;

MONTANA CODE ANNOTATED - Sections 15-1-403(2), 15-2-302(1)(a), 15-8-601(3)(c), 15-15-101 to 15-15-104, 15-23-101, 15-23-102(2)(c);

SESSION LAWS OF 1977 - Chapter 98, section 2; chapter 155, section 2.

HELD: A county tax appeal board does not have jurisdiction to hear appeals of taxes on centrally assessed property.

30 October 1985

James C. Nelson
Glacier County Attorney
Glacier County Courthouse
Cut Bank MT 59427

Dear Mr. Nelson:

You have asked my opinion on the question of whether a county tax appeal board has jurisdiction over appeals of taxes on centrally assessed property.

Centrally assessed property is that property listed in section 15-23-101, MCA, which is assessed each year by the State Department of Revenue. By contrast, property which is not listed in section 15-23-101, MCA, is locally assessed property. The assessment procedure is set forth in chapter 8 of Title 15, MCA.

The proper jurisdiction for appeals from property tax assessments is the subject of several statutory sections. Sections 15-1-403(2) and 15-15-101 to 104, MCA, address the procedures to be followed for property

tax appeals in general. These statutes provide that the county tax appeal board is the first jurisdictional level for considering protests by taxpayers to assessments, classifications, or appraisals. See also Department of Revenue v. Countryside Village, 40 St. Rptr. 1090, 1098-99, 667 P.2d 936, 942 (1983); Butte Country Club v. Department of Revenue, 186 Mont. 424, 432, 608 P.2d 111, 115 (1980).

Special procedures apply, however, to appeals from taxes on centrally assessed property. A direct appeal to the State Tax Appeal Board is authorized by sections 15-2-302(1)(a) and 15-23-102(2)(c), MCA. Section 15-2-302(1)(a), MCA, states:

(1) A person may appeal to the state tax appeal board any action of the department of revenue involving:

(a) property centrally assessed under chapter 23 of this title....

Section 15-23-102(2), MCA, provides:

(2)(a) After assessing property under 15-23-101, the department shall notify the owner and any purchaser under contract for deed of such property, in writing, of the assessed value it has determined.

....

(c) Appeals from the final decision may be taken to the state tax appeal board.

Your inquiry concerns whether the use of the word "may" in these two statutes permits an appellant to appeal either to the county tax appeal board or to the State Tax Appeal Board.

The above-quoted provisions were enacted in 1977 as chapter 155 (House Bill 19) and chapter 98 (House Bill 25), respectively. Both bills were part of a package intended to consolidate property tax procedures for centrally assessed property, as is reflected by the titles of the bills. A summary provided by the Legislative Council to members of the Senate Committee on Taxation for House Bill 25 states that section 2

(subsequently codified as section 15-23-102(2)(c), MCA) provides "a grievance procedure in the form of an assessment review conference at the department followed by a formal STAB [State Tax Appeal Board] hearing." The Legislative Council's summary of House Bill 19 notes:

This [bill] represents an effort to rationalize administrative procedures in tax disputes upon the premises that (1) the department would have a single procedure for revising assessments and inserting omitted assessments, with opportunity for an informal conference at the department followed by a formal hearing before STAB, and (2) appeal procedure would be spelled out in cases going directly from department to STAB, i.e., not via the county tax appeal boards. These cases comprehend centralized utility and mine assessments, Class 7 determinations, and all nonproperty tax matters. [Emphasis added.]

The statements quoted above suggest that the 1977 legislation was intended to streamline the procedure for appeals of taxes on centrally assessed property by means of eliminating appeals to the local boards. Additional support for this interpretation of the 1977 legislation is also found in another section of House Bill 19 which changed the procedure for assessment revision when property either escaped assessment, was erroneously assessed, or was omitted from taxation. Section 15-8-601(3)(c), MCA, originally considered as section 4 of House Bill 19, states:

Following an assessment review conference or expiration of opportunity therefor, the department shall order such assessment as it considers proper. Any party to the conference aggrieved by the action of the department may appeal directly to the state tax appeal board within 30 days or, if the property is locally assessed, may appeal to the county tax appeal board at its next meeting. [Emphasis added.]

The underlined language supports the conclusion that assessment by the Department of Revenue of centrally assessed property may only be appealed to the State Tax Appeal Board.

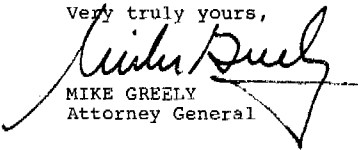
As already noted, the appeals procedure for property taxes in general as outlined in sections 15-15-101 to 104 and 15-1-403(2), MCA, provides for appeal to a local appeal board. Sections 15-23-102(2)(c) and 15-2-302(1)(a), MCA, which provide for direct appeal to the State Tax Appeal Board, apply only to certain types of property, including centrally assessed property, and thus are more specific in nature. A more specific statute will control over a more general statute. Dolan v. School District No. 10, 195 Mont. 340, 346, 636 P.2d 825, 828 (1981). Applying the ruling in this decision, the statutes that provide an appeals procedure for centrally assessed property prevail over the statutes for property tax appeals in general.

The argument that the use of the word "may" in sections 15-2-302(1)(a) and 15-23-102(2)(c), MCA, means that appeals may be taken either to the state or local appeal board is not persuasive. The ordinary import of the word "may" is a grant of discretion. See County of Chouteau v. City of Fort Benton, 181 Mont. 123, 128, 592 P.2d 504, 507 (1979). However, the discretion allowed by the use of the word "may," as used in the phrases "appeals may be taken to the State Tax Appeals Board" and "a person may appeal to the state tax appeal board," relates to the taxpayer's initial decision as to whether to appeal a tax assessment. Once the taxpayer exercises that discretion and decides to appeal the taxes on centrally assessed property, I conclude that the appeal must be taken to the State Tax Appeal Board rather than to a local appeal board. My conclusion is based upon the existence of the two distinct statutory procedures for locally assessed property and centrally assessed property as discussed above.

THEREFORE, IT IS MY OPINION:

A county tax appeal board does not have jurisdiction to hear appeals of taxes on centrally assessed property.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 41

OPINION NO. 32

COUNTIES - Maintenance of county roads;
COUNTY COMMISSIONERS - Maintenance of county roads;
LOCAL GOVERNMENT - Maintenance of county roads;
MONTANA CODE ANNOTATED - Sections 7-14-2101 to
7-14-2103, 60-1-102.

- HELD: 1. A county is required to maintain county roads which were petitioned for by freeholders. A county has the power and discretion to maintain all other county roads as necessary for the best interest of the county roads and the road districts.
2. A county is not required by law to maintain a county road created by dedication to the public in 1913 and maintained by the county from 1952 until 1981.

31 October 1985

Mike Salvagni
Gallatin County Attorney
Law and Justice Center
615 South 16th Street
Bozeman MT 59715

Dear Mr. Salvagni:

You have requested an opinion on the following questions:

1. Is a county required to maintain all county roads?
2. Is a county required by law to maintain a county road created by dedication to the public in 1913 and maintained by the county from 1952 until 1981?

In order to allocate its road maintenance budget and to determine the priority of road maintenance projects within Gallatin County, the Gallatin County board of

county commissioners is attempting to identify those roads which the county is legally required to maintain. The board has received a specific request for maintenance of certain roads within a subdivision in the county. The roads at issue were dedicated to the public and accepted by the county commissioners in 1913, and were maintained by the county from 1952 until 1981.

The general statutory provisions related to county roads are contained in Title 7, chapter 14, part 21, MCA. Section 7-14-2101, MCA, provides:

(1) The board of county commissioners, under such limitations and restrictions as are prescribed by law, may:

(a) (i) lay out, maintain, control, and manage county roads and bridges within the county;

(ii) levy taxes therefor as provided by law;

....

Section 7-14-2102, MCA, further provides: "Each board of county commissioners may in its discretion do whatever may be necessary for the best interest of the county roads and the road districts." And section 7-14-2103, MCA, states:

(1) Each board of county commissioners has general supervision over the county roads within the county.

(2) Each board shall survey, view, lay out, record, open, work, and maintain county roads which are petitioned for by freeholders. Guideposts shall be erected.

(3) Each board shall discontinue or abandon county roads when freeholders properly petition therefor. [Emphasis added.]

Thus, the board of county commissioners has general supervision over, and the power to maintain, all county roads.

Section 7-14-2103(2), MCA, provides the board shall maintain county roads which were petitioned for by

freeholders. The language is mandatory. State ex rel. Palmer v. Hart, ___ Mont. ___, 655 P.2d 965, 968-69 (1982); State ex rel. McCabe v. District Court, 106 Mont. 272, 76 P.2d 634, 637 (1938). The statutes regarding general powers relating to county roads, §§ 7-14-2101 to 2102, MCA, provide the board of county commissioners may maintain county roads. This language is permissive, id., and indicates county maintenance of county roads other than those established through the petition process is discretionary.

This conclusion is consistent with the legislative policy and intent set forth in section 60-1-102, MCA, where the Legislature states its intention:

(1) to place a high degree of trust in the hands of those officials whose duty it is, within the limits of available funds, to plan, develop, operate, maintain, and protect the highway facilities of this state for present as well as for future use;

(2) to make the department of highways custodian of the federal-aid and state highways and to impose similar responsibilities upon the boards of county commissioners with respect to county roads and upon municipal officials with respect to the streets under their jurisdiction;

(3) that the state shall have integrated systems of highways, roads, and streets and that the department of highways, the counties, and municipalities assist and cooperate with each other to that end;

(4) to provide sufficiently broad authority to enable the highway officials at all levels of government to function adequately and efficiently in all areas of their respective responsibilities, subject to the limitations of the constitution and the legislative mandate hereinafter imposed.

Clearly, the Legislature intended to invest broad authority and discretion in county officials. Ingram-Clevenger, Inc. v. Lewis and Clark County, ___ Mont. ___, 636 P.2d 1372, 1376 (1981).

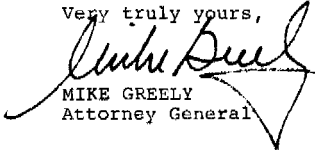
Therefore, it is my opinion that, while the county is statutorily required to maintain county roads established through the petition process, other county roads are maintained at the discretion of the board of county commissioners. The board has the power and discretion to maintain these county roads as necessary for the best interest of the county and the road districts. This opinion does not address any question of liability with regard to maintenance of county roads since that question is outside the scope of inquiry. However, it may be appropriate for the county commissioners to consider liability factors in the exercise of their discretion concerning county roads.

As explained above, a county is required to maintain petitioned-for county roads, but is not legally required to maintain other county roads, which include county roads created by dedication to the public. The board of county commissioners exercised its discretion to authorize maintenance of a county road created by dedication to the public from 1952 until 1981. It is my opinion that the county is not required by law to maintain the road, but has the power and discretion within the limits of available funds to do so.

THEREFORE, IT IS MY OPINION:

1. A county is required to maintain county roads which were petitioned for by freeholders. A county has the power and discretion to maintain all other county roads as necessary for the best interest of the county roads and the road districts.
2. A county is not required by law to maintain a county road created by dedication to the public in 1913 and maintained by the county from 1952 until 1981.

Very truly yours,



MIKE GREELEY
Attorney General

BEFORE THE DEPARTMENT
OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

IN THE MATTER of the Petition)
of Big Horn Energy Partners)
and Montana Power Company for) DECLARATORY RULING
a Declaratory Ruling Re Com-)
mission Order No. 5017.)

BACKGROUND

1. On or about September 10, 1984, Big Horn Energy Partners, a Montana Limited Partnership (hereinafter Big Horn), petitioned the Commission for a Declaratory Ruling under Section 2-4-501, MCA, and ARM 38.2.101 and 1.3.227 of the Commission's procedural rules.

2. In its Petition, Big Horn was seeking a declaratory ruling that the proposed security provision in its power purchase agreement with the Montana Power Company (hereinafter MPC) adequately protected the interests of MPC's ratepayers, and was therefore an acceptable form of security under Commission Order No. 5017, Docket No. 83.1.2.

3. In the Petition, it was further alleged by Big Horn that the Commission's assumption in Order No. 5017 of the availability of "project failure" insurance was no longer valid, as said insurance was either not available, or was economically prohibitive.

4. The overall Big Horn proposal involved the revitalization of the Holly Sugar Co. plant, north of Hardin, Montana. Originally, Big Horn proposed to spend approximately \$55-60 million to construct a 10 million gallon ethanol refinery and cogeneration facility, capable of producing 15 MW of electricity. The bulk of the electricity produced would be sold to MPC and the proceeds would be used to secure the debt on the project. The project would also produce brewers dried grains to be used as a high protein feed supplement for dairy cattle. Later in the proceedings, the construction figures were revised to \$35 million. In addition, and in recognition of the uncertainty surrounding the future of the ethanol market, the projected ethanol production was reduced to one million gallons per year.

5. During the proceedings held in this matter, many alternative security provisions were discussed as potential options. All of the options considered had one common thread: The cogeneration facility itself was to be used as part of the security for performance under the fully leveled power purchase agreement. The final proposal by Big Horn is the subject of this ruling. For security purposes, Big Horn would grant to MPC a second lien on the facility. The lien would be subordinate to that of a primary lender. The value of that second lien would be determined by further negotiation between the parties, although a preliminary study of the replacement value of the facility over the life of the contract was provided by Big Horn. The level of security required to fully protect the ratepayers during the term of the

power purchase agreement was generally agreed to be approximately \$40 million. Any additional security beyond the value of the second lien which was needed to reach this level would be provided by Big Horn through the use of a cash escrow.

6. On September 24, 1984, MPC filed its response to Big Horn's Petition. Briefly, it was the position of MPC that use of the cogeneration facility for the purposes of security in the fully levelized power purchase agreement did not comply with the requirements of Order No. 5017, Docket No. 83.1.2. According to MPC, the terms of that order required full ratepayer security in a fully levelized power purchase agreement. Since Big Horn was unable to provide other security deemed acceptable under Order No. 5017, the only remaining option was a cash escrow for the full level of security required.

7. Although initially raised as an issue, during the proceedings Big Horn essentially dropped its challenge of the validity of the Commission's assumptions surrounding the availability of project failure insurance. The need for further consideration of this issue was eliminated when Big Horn agreed to accept MPC's interpretation of Order No. 5017 as requiring full (100%) ratepayer security in a fully levelized power purchase contract.

8. Essentially, the parties were requesting an interpretation of Order No. 5017, Docket No. 83.1.2 as it applied to their proposed power purchase agreement. Specifically, whether the security proposal of Big Horn, as outlined above, was sufficient to meet the requirement of full (100%) ratepayer security as required in a fully levelized power purchase agreement.

9. Because of the potential broad application of this ruling, an opportunity for comment was offered to all interested developers of qualifying facilities who were then involved with MPC. Comments were received from several developers of small hydropower, including Mitex, Inc., Potosi Power, Inc., Montana Natural Energy, Inc., and Hydro-Dynamics, Inc. In general, all of the comments were supportive of the Big Horn proposal, although some of the comments were careful to draw clear distinctions between the risks associated with Big Horn's cogeneration project and those risks inherent with a small hydropower project.

10. In addition, comments were received from several local residents and businesses in the area of Hardin, Montana, where Big Horn's proposed cogeneration facility would be located. All of the comments were in support of the Big Horn proposal, generally citing the need for economic development and positive growth in the Hardin area.

11. At request of the parties, an informal hearing was held by the Commission on August 26, 1985. With the consent of the parties, and at the request of the Commission, an additional informal hearing was held on October 4, 1985. At these hearings, both parties were given the opportunity to present

testimony and evidence in support of their position. Both parties agreed to be bound by any Commission decision arising out of these hearings.

Analysis and Finding

I. The Positions of the Parties

12. The Big Horn security proposal at issue in these proceedings consists of two parts. The first part of the security is the granting of a second lien on the cogeneration facility to MPC. The second part consists of a substantial cash escrow, containing an amount sufficient to make up the difference between the value of the second lien, and the level of security required to provide full ratepayer security under the agreement (\$40 million).

13. MPC did not contest the use of the cash escrow portion of the security proposal. It was the use of the cogeneration facility for security purposes that was questioned. With all of the risks attendant with that facility, MPC asserted that it did not represent "risk free" security to the ratepayer, as required in Order No. 5017.

14. It was Big Horn's position that the cogeneration facility was of substantial value to MPC's ratepayers over the term of the contract as a source of electricity. Accordingly, it was appropriate to use the facility itself and its corresponding value for security purposes.

15. MPC responded by contending that there were too many factors which could adversely affect the long-term value of the plant as a source of electricity. If any one of the various by-product markets experienced a substantial decline, it could be uneconomical to continue operation of the cogeneration facility. Further, should MPC be required to operate the plant in the event of default, the costs of operation then become part of MPC's system costs, and all benefits from the Big Horn contract would be lost. Further, there may be other sources available which would be more economical. Finally, MPC argued that as a second lien holder, their rights, and by extension, the rights of the ratepayers, would be subordinate to the first lien holder. There would be a distinct possibility that, in the event of default by Big Horn of its first obligation, the second lien would be of no value.

II. The Commission's Decision

16. It is correct to interpret Order No. 5017, Docket No. 83.1.2 as requiring full, or 100 percent, ratepayer security in a fully levelized power purchase contract. This strict interpretation is supported by the fact that the avoided cost prices of Docket No. 83.1.2 do not reflect risk allocation. Instead, that issue was left for negotiation between the parties on a case-by-case basis. If the avoided cost prices of Docket No. 83.1.2 would have reflected risk allocation, then in all likelihood, they would have been much lower. See

Superior Energy, Inc. v. Pacific Power & Light Co., Docket No. 84.8.46, Order Nos. 5137 and 5137a.

17. This Commission has rejected the notion that policy considerations warrant encouragement of cogeneration and small power production at any cost. See Docket No. 81.2.15, Order No. 4865.

18. For the parties involved, a long-term leveled power purchase contract is a gamble. The small power producer accepts a fixed rate contract. Under levelization, they receive payment for services to be rendered in the future. In return, they agree to sell their product at a fixed rate over the long-term of the contract, regardless of what their product may actually be worth. For the purchasing utility, and by extension its ratepayers, the small power producer is subsidized in the short run, for the promise of cheaper power in the later years of the contract. Assuming that the cost of power will increase in the future, the production of power by a collective group of small power producers over the full term of their respective contracts would prove beneficial to the ratepayers.

19. The question faced by the Commission in this Docket has been characterized as a security issue. In reality, it is the proper allocation of the burden of performance of the terms of the power purchase contract.

20. A central issue in this Docket has been the effect of Big Horn's default under the power purchase agreement in the later years of the contract. Big Horn has stated that in the event of its default, the ratepayers will still benefit if someone else operates the plant through the remainder of the contract.

21. The Commission rejects that argument. It is clear that if Big Horn defaults under the terms of its power purchase agreement with MPC, all benefits to the ratepayers from that contract will be lost. Accordingly, the Commission strives to prevent default altogether, not to merely mitigate its effects upon the ratepayers.

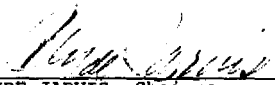
22. Big Horn's proposal places the burden of assuring its performance of the terms of its power purchase contract on MPC, and thus upon the ratepayers. Clearly, only Big Horn should bear the responsibility associated with its performance under the terms of the power purchase contract. If the facility is not accepted as security, and other means of security are provided, the burden has been properly placed on Big Horn to perform throughout the life of the contract. In the event of default, Big Horn will have something to lose. To accept anything less would be a disservice to MPC's ratepayers, and in contradiction to the express direction of Order No. 5017, Docket No. 83.1.2.


23. Accordingly, the Commission finds and declares by law that Big Horn's security proposal, as described herein, does not satisfy the "full ratepayer security" standards of

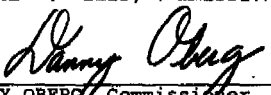
Order No. 5017, Docket No. 83.1.2. The relief requested by Big Horn in its Petition for Declaratory Ruling is Denied.


APPROVED BY THE COMMISSION October 11, 1985.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION


CLYDE JARVIS, Chairman

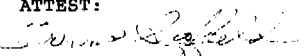

HOWARD L. ELLIS, Commissioner


DANNY OBERG, Commissioner


JOHN B. DRISCOLL, Commissioner
(Voting to Dissent)


TOM MONAHAN, Commissioner
(Voting to Dissent)

ATTEST:


Trena Scofield
Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.

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 the 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 statutes and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

- | | |
|-------------------------------------|---|
| Known
Subject
Matter | 1. Consult ARM topical index, volume 16. Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute
Number and
Department | 2. Go to cross reference table at end of each title which list 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 June 30, 1985. This table includes those rules adopted during the period July 1, 1985 through September 30, 1985, and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 1985, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1985 Montana Administrative Register.

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