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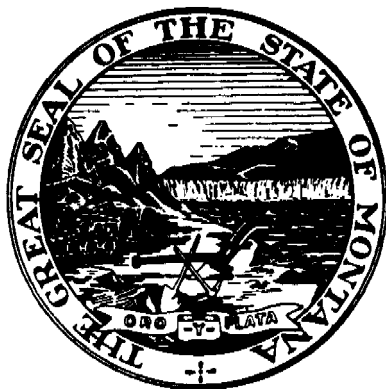
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MONTANA
ADMINISTRATIVE
REGISTER

1985 ISSUE NO. 9
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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 9

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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

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

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of 8.22.612 con-) OF 8.22.612 VETERINARIAN:
cerning the official) OFFICIAL OR TRACK
or track veterinarian)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On June 15, 1985, the Board of Horse Racing proposes to amend the above-stated rule.

2. The amendment will amend subsection (1), delete subsection (2) and renumber each subsection thereafter and will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-656, Administrative Rules of Montana)

"8.22.612 VETERINARIAN: OFFICIAL OR TRACK (1) The board Each track shall contract with or hire persons licensed as veterinarians pursuant to ARM 8.22.502 to perform the duties of veterinarians at horse racing meets. Representatives of the affected racing associations shall be entitled to participate in negotiations for the selection of veterinarians. Contracts (or hires) shall be upon such terms as the board and the veterinarians may mutually agree and may contain differing rates of compensation based upon the experience of the veterinarian.

(2) The board shall assess each racing association as part of its annual fee prior to the start of any race meet for an amount equal to \$100 per race day requested. The funds shall be paid to the board by the associations in equal installments at the end of each week, or partial week of racing. The board may spend these advances as necessary only to meet the requirements of the veterinarians compensation program. The only expenses allowable from these advances are to meet the requirements of the veterinarian compensation program.

(3) (2) The board ..."

Auth: 23-4-202, MCA Imp: 23-4-201, MCA

3. The board is proposing the amendment to alleviate the financial burden on the board, by shifting the responsibility of hiring the official veterinarian back to the licensee. Originally, each track hired and paid the official veterinarian. Approximately 5 years ago, the rule was amended to its current form. The board budget prohibits the expenditure.

4. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Horse Racing, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than June 13, 1985.

5. If a person who is directly affected by the proposed amendments wishes to express his data, views or arguments

orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Horse Racing, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than June 13, 1985.

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

BOARD OF HORSE RACING
HAROLD GERKE, CHAIRMAN

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

Certified to the Secretary of State, May 6, 1985.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF VETERINARY MEDICINE

In the matter of the proposed	)	NOTICE OF PROPOSED AMENDMENTS
amendments of 8.64.101 board	)	of 8.64.101 BOARD ORGANIZATION,
organization, 8.64.201 pro-	)	8.64.201 PROCEDURAL RULES, 8.
cedural rules, 8.64.202	)	64.202 PUBLIC PARTICIPATION
public participation rules,	)	RULES, 8.64.502 TEMPORARY
8.64.502 concerning temporary	)	PERMITS, 8.64.504 ANNUAL
permits, 8.64.504 concerning	)	RENEWAL OF CERTIFICATE OF
annual renewal of certificate	)	REGISTRATION, 8.64.505
of registration, 8.64.505 con-	)	CONTINUING EDUCATION, 8.64.
cerning continuing education,	)	506 FORFEITURE OF LICENSE
8.64.506 concerning forfeit-	)	AND RESTORATION
ure of license and restora-)	
tion)	

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On June 15, 1985, the Board of Veterinary Medicine proposes to amend the above-stated rules.

2. The proposed amendments of 8.64.101, 8.64.201, 8.64.202 will change the name of the board from board of veterinarians to the board of veterinary medicine. Full text of the three rules, which are organization, procedural, and public participation is located at page 8-1777, Administrative Rules of Montana.

3. The board is proposing the change to implement Chapter 43, Laws of Montana 1985, which changed the name of the board.

4. The proposed amendment of 8.64.502 will read as follows: (new matter underlined, deleted matter interlined)

"8.64.502 TEMPORARY PERMITS (1) An applicant for examination requesting a temporary permit must make such in writing submit an application for a temporary permit to the board stating the licensed veterinarian's name and location under whom he will be working-

(2) The licensed veterinarian employing the individual requesting the temporary permit shall file a written request with the board-

(3) Temporary permits shall only be issued after the applicant has and must have on file with the board a completed application for examination, the proper examination fee, and any information as the board may require pursuant to rule ARM 8.64.501."

Auth: 37-18-202, MCA Imp: 37-18-303, MCA

5. The board is proposing the amendment as there is now an application for temporary permit and thus the written requests are obsolete.

6. The proposed amendment of 8.64.504 will change the renewal date and will read as follows: (new matter

underlined, deleted matter interlined)

"8.64.504 ANNUAL RENEWAL OF CERTIFICATE OF REGISTRATION

(1) Notice for annual renewal of certificate of registration and forms for certifying continuing educational hours shall be mailed annually to each licensed veterinarian at his/her last known address at least 30 days prior to the July Novemeber 1st deadline. Notices will be considered properly mailed when addressed to the last known address on file in the board office.

(2) The proper annual renewal of certificate of registration fee and proof of continuing education are, due by July November 1st of each year."

Auth: 37-18-202, MCA Imp: 37-18-307, MCA

7. The board is proposing the amendment to implement Chapter 43, Laws of Montana 1985, which changed the renewal date from July 1 to November 1.

8. The proposed amendment of 8.64.505 will read as follows: (new matter underlined, deleted matter interlined)

"8.64.505 CONTINUING EDUCATION (1) Each veterinarian licensed shall be required to obtain a minimum of 10 credit hours of continuing education approved by the board ~~each~~ fiseat in the year preceding the deadline for renewal before becoming eligible for the annual renewal of certificate of registration. The fiseat year of the board is July 1 to June 30 each year.

(a) A veterinarian may be granted a grace period to include a month prior to July November 1st of the year preceding the application for renewal and three months after the ~~following July November~~ 1st deadline in which to fulfill the continuing educational requirements. This grace period shall be granted only upon written request to the board and upon board approval. This grace period, however, will not allow a veterinarian to use the same continuing educational program for two separate annual renewal of certificate of registrations.

(2) Credit hours shall be earned by 1 hour credit for each hour of attendance at in-depth meetings approved by the Board. Board approved programs include those sponsored by the American Veterinary Medical Association, American Animal Hospital Association, Western States Veterinary Conferences, veterinary college conferences, and state association meetings, and any other affiliated association, society, etc, related to veterinary medicine that have specific seminars for veterinarians. ~~Local veterinary meetings with scientific programs, shall be equal to only 1 credit hour unless otherwise approved for more credit hours by the board.~~

(3) Programs shall be of a professional veterinary nature to qualify. ~~Business, management or other associated subjects will not qualify.~~

(4) (3) Pursuant to section 37-18-307, MCA, those persons exempt under the above provisions are:

(a) new licensees who have secured a license by examination during the 6 months preceding the July 1st renewal date and are applying for their first annual certificate of registration; and

(b) ..."

Auth: 37-18-202, MCA Imp: 37-18-307, MCA

9. The board is proposing the rule amendment to implement Chapter 43, Laws of Montana 1985, which changes the renewal date from July 1 to November 1 and to clarify and delete obsolete continuing education requirements.

10. The proposed amendment of 8.64.506 will change the renewal date from July to November and will read as follows: (new matter underlined, deleted matter interlined)

"8.64.506 FORFEITURE OF LICENSE AND RESTORATION (1)

Annual renewal of certificate of registrations postmarked after July November 1st of each year constitutes a forfeiture of the license held by the person. In order to make restoration of a license, a person shall fulfill the requirements set forth in section 37-18-307 (2), MCA.

(2) Any person failing to make restoration of a license within one year after the July November 1st deadline will be required to submit to examination in order to be relicensed to practice veterinary medicine in this state."

Auth: 37-18-202, MCA Imp: 37-18-307, MCA

11. The board is proposing the amendment to implement Chapter 43, Laws of Montana 1985, which changes the renewal date from July 1 to November 1.

12. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Veterinary Medicine, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than June 13, 1985.

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

14. If the board receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or

from an association having no less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 74 based on the 748 licensees in Montana.

BOARD OF VETERINARY MEDICINE
R. J. BROPHY, DVM, PRESIDENT

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

Certified to the Secretary of State, May 6, 1985.

STATE OF MONTANA
BEFORE THE DEPARTMENT OF COMMERCE

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of 8.80.104 concern-) OF 8.80.104 SEMI-ANNUAL
ing the semi-annual assess-) ASSESSMENT
ments for state banks, trust)
companies, and investment)
companies)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On June 15, 1985, the Department of Commerce proposes to amend the above-stated rule.

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

"8.80.104 SEMI-ANNUAL ASSESSMENT"

Total assets (Million)	Base	Plus rate/ Million	Over (Million)
0-1	0	0.0006 .00085	0
1-10	600 850	0.000075 .000105	1
10-50	<u>1,275 1,795</u>	0.00006 .000085	10
50-100	<u>3,675 5,195</u>	0.00003 .00005	50
over 100	<u>5,175 7,695</u>	0.00002 .00003	100"

Auth: 32-1-213, MCA Imp: 32-1-213, MCA

3. The department is proposing the amendment to implement the legislative changes in section 32-1-213, which establishes a formula for a semi-annual assessment of state chartered banks, trust companies, and investment companies which will allow the Department of Commerce to recover all of its supervisory and examination costs.

4. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to Fred Napier, Commissioner of Financial Institutions, Department of Commerce, 1430 9th Avenue, Helena, Montana, 59620, no later than June 13, 1985.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to Fred Napier, Commissioner of Financial Institutions, Department of Commerce, 1430 9th Avenue, Helena, Montana, 59620, no later than June 13, 1985.

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

DEPARTMENT OF COMMERCE

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

Certified to the Secretary of State, May 6, 1985.
MAR NOTICE NO. 8-80-5

9-5/16/85

STATE OF MONTANA
BEFORE THE DEPARTMENT OF COMMERCE

In the matter of the proposed) NOTICE OF PROPOSED ADOPTION
adoption of a new rule per-) OF A RULE PERTAINING TO
taining to supervisory fees) SUPERVISORY FEES FOR
for building and loan) BUILDING AND LOAN ASSOCIA-
associations) TIONS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On June 15, 1985, the Department of Commerce proposes to adopt a new rule pertaining to the supervisory fees for building and loan associations.

2. The proposed rule will read as follows:

"I. EXAMINATION AND SUPERVISORY FEE (ANNUAL)

Total assets (Million)	Base	Plus rate/ Million	Over (Million)
0-1	0	.0015	0
1-10	1,500	.0002	1
10-50	3,300	.00015	10
50-100	9,300	.00010	50
over 100	14,300	.00006	100"

Auth: 32-2-110, MCA Imp: 32-2-110, MCA

3. The department is proposing the rule adoption to implement the legislative changes in 32-2-110, MCA, passed as Chapter 600, Laws of 1985, which allows the Department of Commerce to establish by rule a fee schedule for building and loan associations to recover all of its supervisory and examination costs.

4. Interested persons may submit their data, views or arguments concerning the proposed adoption in writing to Fred Napier, Commissioner of Financial Institutions, Department of Commerce, 1430 9th Avenue, Helena, Montana, 59620, no later than June 13, 1985.

5. If a person who is directly affected by the proposed adoption wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to Fred Napier, Commissioner of Financial Institutions, Department of Commerce, 1430 9th Avenue, Helena, Montana, 59620, no later than June 13, 1985.

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

DEPARTMENT OF COMMERCE

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

Certified to the Secretary of State, May 6, 1985.

9-5/16/85

MAR Notice No. 8-80-6

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

In the matter of the proposed	)	NOTICE OF PROPOSED AMENDMENTS
amendments of 8.97.701 con-	)	8.97.701 DEFINITIONS,
cerning definitions, 8.97.	)	8.97.702 SCOPE OF SUB-CHAPTER
702 concerning scope of sub-	)	7, 8.97.711 CLOSING REQUIRE-
chapter 7, 8.97.711 concern-	)	MENTS, PROPOSED ADOPTIONS
ing closing requirements and	)	OF NEW RULES, THE MONTANA
proposed adoption of new	)	CASH ANTICIPATION FINANCING
rules concerning the Montana	)	PROGRAM, APPLICATION PROC-
cash anticipation financing	)	EDURE FOR THE MONTANA CASH
program, financial require-	)	ANTICIPATION FINANCING PRO-
ments and covenants, terms,	)	GRAM, FINANCIAL REQUIREMENTS
interest rates, fees and	)	AND COVENANTS, TERMS, INTEREST
charges and closing require-	)	RATES, FEES AND CHARGES AND
ments	)	CLOSING REQUIREMENTS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On June 15, 1985, the Montana Economic Development Board proposes to amend and adopt the above-stated rules.

2. The proposed amendment of 8.97.701 will amend subsection (2) (b) and will read as follows: (new matter underlined, deleted matter interlined) (full text of rule is located at page 8-3509, Administrative Rules of Montana)

"8.97.701 DEFINITIONS (1) ...

(2) ...

(b) 'local government unit' means any municipal corporation or political subdivision of the state, including without limitation any city, town, county, school district, or other taxing district, except with respect to the Montana Cash Anticipation Financing Program in which the term 'local government unit' shall be limited to cities, towns, counties, consolidated city-counties or school districts.

(c) ..."

Auth: 17-5-1605, MCA Imp: 17-5-1606, MCA

3. The proposed amendment of 8.97.702 will read as follows: (new matter underlined, deleted matter interlined)

"8.97.702 SCOPE OF SUB-CHAPTER 7 (1) This sub-chapter shall govern the submittal of and processing of applications to the board for financing and the purchase of obligations under the municipal finance consolidation act of 1983-- hereinafter referred to as the municipal bond program, including the Municipal Bond Program described in section 8.97.704 through 8.97.711 and the Montana Cash Anticipation Financing Program described in rules I through IV."

Auth: 17-5-1605, MCA Imp: 17-5-1606

4. The proposed amendment of 8.97.711 will amend subsection (1) (d) of the rule and will read as follows: (new

matter underlined, deleted matter interlined) (full text of rule is located at page 8-3513, Administrative Rules of Montana)

"8.97.711 CLOSING REQUIREMENTS (1) At the closing of the purchase of an issue of obligations, the local government unit shall provide the board:

(a) ...
(d) a legal opinion of an attorney ~~selected by the local government unit and~~ acceptable to the board as to the validity of the obligations, the security thereof and the exemption of the interest to be paid from federal income taxation; and

(e) ..."

Auth: 17-5-1605, MCA Imp: 17-5-1611, MCA

5. The proposed new rules will read as follows:

"I. THE MONTANA CASH ANTICIPATION FINANCING PROGRAM (1) The board will periodically issue and sell its bonds and use the proceeds thereof to purchase short-term obligations of local governments used in anticipation of taxes or revenues budgeted to be received and appropriated for expenditure during the fiscal year in which such short-term obligations are issued."

Auth: 17-5-1605, MCA Imp: 17-5-1606, MCA

"II. APPLICATION PROCEDURE FOR THE MONTANA CASH ANTICIPATION FINANCING PROGRAM (1) A local government unit may apply to participate in the Montana Cash Anticipation Financing Program by providing to the board in accordance with the time schedule established for the sale of each series of bonds the following documents:

(a) a program data sheet, in a form acceptable to the board, evidencing the applicant's anticipated revenues and expenditures, estimated cumulative cash flow deficits, and the estimated principal amount of short-term obligations to be issued by the applicant;

(b) an executed participation agreement wherein the applicant agrees to participate in the program in accordance with the terms and conditions set forth in the agreement;

(c) any other financial information including the items enumerated in ARM 8.97.705, which the board determines to be necessary to provide for the sale and issuance of its bonds.

(2) An applicant's participation in the program is subject to verification by the board, its counsel and underwriter of the accuracy of the information contained in the program data sheet, the participation agreement and other information submitted hereunder, and the timely submittal of the application materials."

Auth: 17-5-1605, MCA Imp: 17-5-1611, MCA

"III. FINANCIAL REQUIREMENTS AND COVENANTS (1) In agreeing to purchase the short-term obligations of the local governments, the board may prescribe covenants and undertakings necessary to assure compliance with state and federal laws and regulations and to provide for the security and payment of the short-term obligations and bonds."

Auth: 17-5-1605, MCA Imp: 17-5-1611, MCA

"IV. TERMS, INTEREST RATES, FEES AND CHARGES AND CLOSING REQUIREMENTS (1) The terms, interest rates, fees and charges, and the closing requirements for participation in the Montana Cash Anticipation Financing Program shall be set forth in ARM 8.97.709 and 8.97.711."

Auth: 17-5-1605, MCA Imp: 17-5-1611, MCA

6. The board is proposing the amendments and adoptions of these rules to establish the application procedure, financial requirements, and terms of the Montana Cash Anticipation Financing Program to provide guidelines for participation in the program by Montana local government units. This is a new program established by the 1985 Montana legislature and authorized by SB 461, Chapter 481, Laws of 1985.

7. Interested persons may submit their data, views or arguments concerning the proposed amendments and adoptions in writing to the Montana Economic Development Board, 1424 9th Avenue, Helena, Montana, 59620, no later than June 13, 1985.

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

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

MONTANA ECONOMIC DEVELOPMENT
BOARD
D. PATRICK MCKITTRICK
CHAIRMAN

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

Certified to the Secretary of State, May 6, 1985.

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

In the matter of the proposed	)	NOTICE OF PROPOSED AMENDMENT
amendments of 8.97.301 con-	)	OF 8.97.301 DEFINITIONS,
cerning definitions,	)	8.97.306 REVIEW OF APPLICA-
8.97.306 concerning the	)	TION BY ADMINISTRATOR and 8.97.
review of applications by	)	307 BOARD REVIEW OF APPLICA-
administrator and 8.97.307	)	TIONS
concerning board review of)	
applications)	

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On June 15, 1985 the Montana Economic Development Board proposes to amend the above-stated rules.

2. The proposed amendment of 8.97.301 will amend subsection (1)(1)(iii) and will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-3469 through 8-3471, Administrative Rules of Montana)

"8.97.301 DEFINITIONS (1) As used in Sub-Chapters 3 through 8, and unless the context clearly requires another meaning:

(a) ...

(1) 'financial institution' means a person that

(i) ...

(iii) is approved by the board as provided in ARM

8.97.302. However, a financial institution that does not maintain an office in Montana may be approved to do federally guaranteed loans under ARM 8.97.407.

(m) ..."

Auth: 17-5-1521, 17-6-324, MCA Imp: 17-5-1503, 1526, 1527, 17-6-302, 310, MCA.

3. The board is proposing the rule amendment to allow greater flexibility in investing in federally guaranteed loans which benefit an eligible Montana Business.

4. The proposed amendment of 8.97.306 will amend subsection (4) of the rule and will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-3474, Administrative Rules of Montana)

"8.97.306 REVIEW OF APPLICATION BY ADMINISTRATOR

(1) ...

(4) If a completed application is determined by the administrator to be eligible for board investment, the administrator will transmit the application, together with a summary of issues and a recommendation for action, to the board for its decision. If the application has been submitted under 8.97.407, the administrator may, prior to transmitting the application to the board, commit to purchase the

guaranteed portion of the loan. He shall report any such commitment to the board.

(5) ..."

Auth: 17-5-1521, 17-6-32, MCA Imp: 17-5-1504, 17-5-1505, 17-6-310, MCA

5. The board is proposing this amendment to allow it to commit to lenders in a more timely manner on federally guaranteed loans or portions of loans which represent no risk to the board.

6. The proposed amendment of 8.97.307 will amend subsection (1) of that section and will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-3474 and 8-3475, Administrative Rules of Montana)

"8.97.307 BOARD REVIEW OF APPLICATION (1) At a meeting of which notice shall be given, the board shall consider the application transmitted to it by the administrator, except the portions of loans committed to by the administrator under 8.97.306 (4). At that meeting or at a subsequent meeting, the board shall decide whether to participate in the financing proposed in the application.

(2) ..."

Auth: 17-5-1521, 17-6-324, MCA Imp: 17-5-1504, 17-5-1505, 17-6-310, 17-6-315, MCA

7. The board is proposing the amendment to reflect the change proposed in 8.97.306 above.

8. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Montana Economic Development Board, 1424 9th Avenue, Helena, Montana, 59620, no later than June 13, 1985.

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

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

MONTANA ECONOMIC DEVELOPMENT
BOARD
D. PATRICK MCKITTRICK
CHAIRMAN

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

Certified to the Secretary of State, May 6, 1985.

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

1. On June 12, 1985, a public hearing will be held at 7:30 p.m. in the downstairs meeting room at Jorgenson's Restaurant and Lounge, 1714 11th Avenue, Helena, MT to consider the adoption of rules pertaining to the management of recreational use of rivers and streams.

3. The proposed rules implement the direction to the Fish and Game Commission in [section 2(5) of H.B. 265] to adopt rules pursuant to 87-1-303, MCA, in the interest of public health, public safety, or the protection of public and private property, governing recreational use of class I and class II waters. The proposed rules set forth the procedures by which any person may (a) petition the commission to limit, restrict or prohibit the type, incidence, or extent of recreational use of a surface water; (b) petition the commission to alter limitations on recreational use of a surface water imposed by the commission; or (c) with respect to class II waters, petition the commission to identify streams capable of no recreational use or of limited recreational use, and to limit the recreational use to the actual capacity of the stream. The proposed rules also set forth the requirements for petitions, the procedures to be followed by the commission and the department in evaluating petitions, criteria for commission action and definitions.

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

RULE II DEFINITIONS For the purposes of this subchapter:

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

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

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

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

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

(d) are or have been capable of supporting the following commercial activities: log floating, transportation of furs and skins, shipping, commercial guiding using multiperson watercraft, public transportation or the transportation of merchandise.

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

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

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

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

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

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

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

AUTH: 87-1-303, MCA

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

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

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

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

(c) with respect to class II waters, to identify streams capable of no recreational use or of limited recreational use,

and to restrict the recreational use to the actual capacity of the water, as provided in Rule V.

(2) Petitions to the commission under this subchapter must

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

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

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

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

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

(3) Upon receipt of a petition, the commission chairman shall order the department to conduct an investigation of the facts alleged, and may order a physical inspection of the area described in the petition.

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

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

(6) The department shall submit a report and recommendation to the commission within 30 days after the commission directs an investigation. The department shall send a copy of its report and recommendation to the petitioner and to any other party who has requested them at the same time it submits its report to the commission.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

RULE V PETITIONS RELATING TO ALTERING RECREATIONAL USE OF CLASS I OR CLASS II RIVERS AND STREAMS (1) Any person may petition the commission for an order altering limitations, restrictions, or prohibitions on recreational use of class I or class II rivers and streams ordered by the commission pursuant to Rule IV or Rule VI.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) The commission shall process the petition in accordance with Rule III(3) through (9), and may order any restriction it finds necessary to limit recreational use to the actual capacity of the stream, including absolute prohibition of recreational

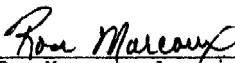
use, provided it confines its action to that which is least disruptive to public recreational use and still provides the necessary protection.

AUTH: 87-1-303, MCA

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

5. Interested parties may submit their data, views or arguments concerning the proposed rules in writing to Department of Fish, Wildlife and Parks, 1420 East Sixth Avenue, Helena, MT 59620, no later than June 21, 1985.

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



Ron Marcoux, Associate Director
Montana Department of Fish,
Wildlife and Parks

Certified to the Secretary of State May 6, 1985.

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

In the matter of the adoption	)	NOTICE OF PUBLIC HEARING
of rules I through XXX [to be	)	FOR PROPOSED ADOPTION
codified 16.10.1501 - 16.10.1530]	)	AND REPEAL OF RULES
and the repeal of rules)	
16.10.1201 through 16.10.1229,)	
all concerning standards for)	
construction and operation of)	
swimming pools and spas, and)	
providing for regulation,)	
inspection and enforcement	)	(Swimming Pools and Spas)

To: All Interested Persons

1. On June 7, 1985, at 9:00 a.m., or as soon thereafter as it may be heard, a public hearing will be held in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the adoption of rules which will comprise a new sub-chapter 15, defining public swimming pools and spas; establishing minimum standards for the construction, maintenance and operation of swimming pools and spas and associated facilities; regulating the inspection of such facilities, and providing for the enforcement of this sub-chapter. The intent of these rules is to assure a safe and sanitary environment in and around the public swimming pool and spa.

2. In addition, the department proposes to repeal rules 16.10.1201 through 16.10.1229, which can be found on pages 16-501 through 16-518 of the Administrative Rules of Montana.

3. The proposed new rules will replace the repealed rules.

4. The proposed rules provide as follows:

RULE I (to be codified 16.10.1501) PURPOSE-APPLICABILITY

(1) This sub-chapter defines public swimming pools and spas; establishes minimum standards for the construction, maintenance and operation of swimming pools and spas and associated facilities; regulates the inspection of such facilities, and provides for the enforcement of this sub-chapter.

(2) The intent of these rules is to assure a safe and sanitary environment in and around the public swimming pool and spa.

(3) All new swimming pools or spas shall be constructed and operated in conformance with these rules. Any existing swimming pool or spa which is remodeled after [THE EFFECTIVE DATE OF THESE RULES] shall, as to each aspect of the pool facility which is remodeled, conform to the requirements of this sub-chapter.

AUTHORITY: Sec. 50-53-103 MCA

IMPLEMENTING: Sec. 50-53-106, 50-53-107, 50-53-108 MCA

RULE II (to be codified 16.10.1502) DEFINITIONS

(1) "Backwash" means the process of thoroughly cleansing the filter media and/or elements by reverse water flow.

(2) "Bather" means any person using a public swimming pool, spa or adjoining deck area for the purpose of water sports, therapy, swimming, sunbathing or related activities.

(3) "Decks" means those areas immediately surrounding and adjoining the pool which are specifically constructed or installed for use by bathers.

(4) "Deep areas" means the portions of the pool having water depths of five feet or more.

(5) "Director" means the director of the Montana Department of Health and Environmental Sciences.

(6) "Filter" means a device that separates solid particles from water by recirculating them through a porous substance.

(7) "Floor" means those portions of the interior pool surface having a slope of no more than 45° from horizontal.

(8) "Lap pool" means any indoor or outdoor pool with a minimum depth exceeding three feet six inches and a maximum depth not exceeding five feet with a minimum length of 40 feet.

(9) "Person" means a person, firm, partnership, corporation, organization, health or fitness club, the state or any political subdivision of the state of Montana.

(10) "Public swimming pool or spa" means any indoor or outdoor structure, basin, chamber or tank containing an artificial body of water intended for recreational bathing, two feet or more in depth at any point, which is used by one or more persons for swimming, bathing, or other recreational activity, operated by a person as owner, licensee, lessee, or concessionaire, whether or not a fee is charged. The term "public swimming pool or spa" does not include:

(a) Swimming pools or spas located on private property used for swimming, bathing, or other recreational activities only by the homeowner, members of his family, or their invited guests; or

(b) medicinal hot water baths for individual use.

(11) "Regulatory authority" means the Department of Health and Environmental Sciences or local boards of health and their authorized representatives.

(12) "Semi-public swimming pool or spa" means any swimming pool or spa operated solely for and in conjunction with lodging facilities, e.g., motels, hotels, campgrounds, apartments and condominiums, provided that the use of the pool is restricted to bona fide occupants and their guests and provided that the pool or spa is within 200 feet, by a normal pedestrian route, of the individual's residence or quarters.

(13) "Shallow area" means any portion of the pool where the water depth ranges from three feet to five feet.

(14) "Spa" means a unit designed for recreational bathing or therapeutic use which is not drained, cleaned or refilled for individual use. It may include, but not be limited to, hydrojet circulation, hot water, cold water, air induction bubbles, or any combination thereof. Industry terminology for a spa includes, but is not limited to, therapeutic pool, hydrotherapy pool, whirlpool, hot spa, or jacuzzi.

(15) "Swimming pool" or "pool" means any structure, basin, chamber, or tank containing an artificial body of water intended for swimming, diving or recreational bathing having a water depth of two feet or more in any portion. This does not include spa pools.

(16) "Turnover" means the period of time, usually expressed in hours, required to circulate a volume of water equal to the spa capacity.

(17) "Wading pool" means a pool in which the water depth is less than two feet.

(18) "Wallis" means the interior pool wall surfaces with slope of no more than 45° from vertical.

(19) "Waterline" means:

(a) the middle point of the operating range of the skimmer system if the pool is so equipped; or

(b) the height of the overflow rim.

AUTHORITY: Sec. 50-53-103 MCA

IMPLEMENTING: Sec. 50-53-106, 50-53-107 MCA

RULE III (to be codified 16.10.1503) REVIEW OF PLANS

(1) Whenever a public swimming pool, spa, or related facility is constructed, remodeled, or altered, plans and specifications for such construction, remodeling or alteration shall be submitted to the regulatory authority for review and approval before construction, alteration or remodeling is initiated.

(2) The pool or spa and facilities shall be built in accordance with the plans as approved unless a modification of the approved plans is approved in writing by the regulatory authority. The plans and specifications shall be drawn to scale and accompanied by proper specifications so as to permit a comprehensive review of the plans including the structural detail and shall include, but not be limited to:

(a) A plan and sectional view of both the pool or spa and surrounding area.

(b) A piping diagram showing all appurtenances including treatment facilities in sufficient detail to permit hydraulic analysis of the system.

(c) Specifications containing details on all treatment equipment, including catalog identification of pumps, disinfection feeders, chemical feeders, filters, strainers, and related equipment.

(d) Materials and the finish of the pool or spa, including decks and walkways and details of their construction.

(e) Construction and design details related to bath-houses and other sanitary facilities.

(3) Before the regulatory authority may approve the plans and specifications, the same must be reviewed and approved by the local or state building official having jurisdiction in the area in which the pool or spa is located.

(4) Whenever plans and specifications are required by subsection (1) of this rule, and prior to the operation of the pool or spa, the regulatory authority shall inspect the pool or spa and related facilities to determine whether it was constructed in compliance with the applicable requirements of this sub-chapter and with the approved plans and specifications.

AUTHORITY: Sec. 50-53-103 MCA

IMPLEMENTING: Sec. 50-53-107 MCA

RULE IV (to be codified 16.10.1504) WATER SUPPLY

(1) Enough potable water for the needs of the pool or spa facility must be provided from a source constructed and operated in accordance with Title 75, chapter 6, MCA, and ARM Title 16, chapter 20, sub-chapters 2 and 4, public water and wastewater systems.

(2) The department hereby adopts and incorporates by reference the rules in Title 16, chapter 20, sub-chapters 2 and 4, which set standards for construction, testing, treatment and operation of public water supplies in order to prevent their contamination. A copy of Title 16, chapter 20, sub-chapters 2 and 4, may be obtained from the Water Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana, 59620.

AUTHORITY: Sec. 50-53-103 MCA

IMPLEMENTING: Sec. 50-53-106, 50-53-107 MCA

RULE V (to be codified 16.10.1505) SEWAGE All sewage, including liquid waste, must be disposed of by a public sewerage system or by a sewage disposal system constructed and operated in accordance with Title 75, chapter 6, MCA, and ARM Title 16, chapter 20, sub-chapter 4, plans for public water and wastewater systems.

(2) The department hereby adopts and incorporates by reference the rules in Title 16, chapter 20, sub-chapter 4, which set construction and operation standards for public sewerage systems. A copy of Title 16, chapter 20, sub-chapter 4, may be obtained from the Water Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana, 59620.

AUTHORITY: Sec. 50-53-103 MCA

IMPLEMENTING: Sec. 50-53-106, 50-53-107 MCA

RULE VI (to be codified 16.10.1506) CONSTRUCTION AND DESIGN (1) Outdoor swimming pools and spas shall be located where they will not be exposed to excessive dust or other materials which would be deleterious to human health or hazardous to the operation or use of the pool or spa.

(2) Swimming pools and spas shall be constructed of concrete, steel or other approved materials with an impervious finish. No wooden spa units are permitted.

(a) The inside surface of the swimming pool or spa shall be constructed of an impervious material which will retain a smooth finish with no cracks or open joints.

(b) Where the water depth is less than five feet, the floor surface shall be smooth to facilitate cleaning and the movement of bottom deposits to a main drain.

(c) Where the water depth is greater than five feet, the floor surface shall be as smooth as practical while having a non-slip finish.

(d) The walls and floor shall be light-colored.

(e) Sand or earth floors shall not be allowed for public swimming pools or spas.

(3) The swimming pool shall be designed and constructed in such shape or contour that efficient and safe control of the swimming pool and bathers can be accomplished and so that the recirculation of water in the swimming pool is not impeded.

(a) The slope of the floor of all pools shall not exceed one foot vertical drop for every 12 feet, as measured horizontally in the shallow areas, and one foot vertical to three feet horizontal, as measured in the deep area. These slopes shall be uniform except at the transition point from shallow to deep areas (five foot depth).

(b) Walls of a swimming pool shall be vertical for a water depth of six feet, and shall not have a slope greater than 45°.

(c) Safety ledges or offset ledges when provided on vertical walls in the deep areas of the swimming pool shall be at least 30 inches below the water surface and have a slip-resistant surface. The ledge shall slope one-half inch in four inches toward the pool. Ledges shall have a maximum width of eight inches.

(d) Underwater seat benches when provided shall not be over 20 inches below the waterline and shall be:

(i) visually set apart from the surrounding pool surfaces by either a contrasting color or visual image; and

(ii) completely recessed in either a separate alcove or walls indentation especially designed to accept the same when located in the deep areas of the pool; and

(iii) provided with slip-resistant surfaces.

(e) The main drain outlet or outlets of the swimming pool shall be plainly visible and located at the deepest portion of the pool.

(f) The depth of the water shall be plainly marked at or above the water surface on the vertical pool wall and on the edge of the deck or walk next to the pool, at maximum and minimum points and at the points of break between the deep and the shallow areas and at intermediate one foot increments of depth, spaced at not more than 25 feet intervals measured peripherally. The depth in the diving areas will be appropriately marked. Lap pools must have depth markers at 25 foot intervals and at the ends. Depth markers shall be in numerals of four inch minimum height and a color contrasting with the background. Where depth markers cannot be placed on the vertical walls above the water level, other means shall be used, said markings to be plainly visible to persons in the pool.

(g) Public swimming pools and semi-public swimming pools having diving equipment shall be designed and provide for a minimum water depth as called for in Table I and Diagram 1, copies of which follow this rule and by this reference are made a part hereof.

(h) There shall be an unobstructed clear vertical distance of 13 feet above any diving board measured from the center of the front end of the board. This area shall extend horizontally at least eight feet behind, eight feet to each side, and 16 feet forward from the horizontal location of the tip of the diving equipment.

(i) A horizontal separation of 10 feet shall be provided between diving boards except this may be reduced to eight feet for surface boards of less than one-half meter in height.

(j) The minimum depth of water in the swimming pool shall be three feet except for special-purpose swimming pools, special instructional pools, or restricted or recessed areas, which shall be separated from the shallow portion of the pool by safety lines supported by buoys attached to the side walls.

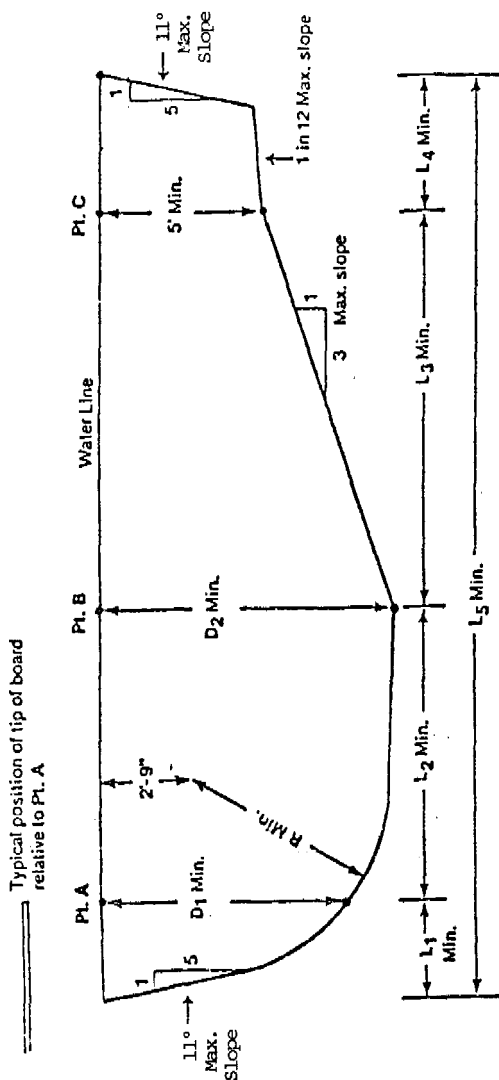
(k) The maximum depth of the water at the shallow end of the swimming pool shall not exceed three feet six inches, except in lap pools where a maximum of four feet is allowed.

AUTHORITY: Sec. 50-53-103 MCA

IMPLEMENTING: Sec. 50-53-107 MCA

DIAGRAM 1

(This drawing does not show the shallow portion of the pool)



NOTE: L₄ is a minimum dimension to allow sufficient length opposite the board. This may of course be lengthened to form the shallow portion of the pool

TABLE 1

RELATED DIVING EQUIPMENT		MINIMUM DIMENSIONS										MINIMUM WIDTH OF POOL AT:		
MAX. DIVING BOARD LENGTH	MAX. BOARD HGT. OVER WATER	D ₁	D ₂	R	L ₁	L ₂	L ₃	L ₄	L ₅	PT. A	PT. B	PT. C		
10'	26" (¾ meter)	(2.13m) 7'-0"	(2.59m) 8'-6"	(1.68m) 5'-6"	(.76m) 2'-6"	(2.44m) 8'-0"	(3.20m) 10'-6"	(2.13m) 7'-0"	(8.53) 28'-0"	(4.89m) 16'-0"	(5.49m) 18'-0"	(5.49m) 18'-0"		
12'	30" (¾ meter)	(2.29m) 7'-5"	(2.74m) 9'-0"	(1.83m) 6'-0"	(.91m) 3'-0"	(2.74m) 9'-0"	(3.66m) 12'-0"	(1.22m) 4'-0"	(8.53m) 28'-0"	(5.49m) 18'-0"	(6.10m) 20'-0"	(6.10m) 20'-0"		
16'	1 Meter	(2.59m) 8'-6"	(3.05m) 10'-0"	(2.13m) 7'-0"	(1.22m) 4'-0"	(3.05m) 10'-0"	(4.57m) 15'-0"	(.61m) 2'-0"	(9.45m) 31'-0"	(6.10m) 20'-0"	(6.71m) 22'-0"	(6.71m) 22'-0"		
16'	3 Meter	(3.35m) 11'-0"	(3.66m) 12'-0"	(2.59m) 8'-6"	(1.83m) 6'-0"	(3.20m) 10'-6"	(6.40m) 21'-0"	0	(11.43m) 37'-6"	(6.70m) 22'-0"	(7.32m) 24'-0"	(7.32m) 24'-0"		

L₂, L₃ and L₄ combined represent the minimum distance from the lip of board to pool wall, opposite diving equipment.

RULE VII (to be codified 16.10.1507) AREA REQUIREMENTS, DECK AREAS, HANDHOLDS (1) All pools and spas shall be designed and constructed to withstand all anticipated bather loads. Consideration shall be given to the shape of the pool or spa from the standpoint of safety, the need to facilitate supervision of bathers using the pool or spa, and maintaining adequate recirculation of the pool or spa waters.

(2) The decks of all swimming pools shall have a minimum width of six feet of unobstructed deck area except that semi-public pools may have a minimum width of four feet of unobstructed deck area, measured from the pool edge.

(3) The deck surface shall be impervious, easily cleanable and entirely surround the swimming pool. Use of deck carpet is not permitted within six feet of the pool or spa. If deck carpet is used six feet away, it must be clean and be maintained in good repair.

(4) The decks of all spas shall be a minimum of four feet wide and shall extend around fifty percent of the unit.

(5) A fence or barrier shall be provided on the outside of the deck area of all outdoor public swimming pools. All such barriers shall:

(a) be at least 60 inches in height,

(b) have no openings larger than four inches in width, except for doors and gates,

(c) be located beyond the minimum deck space requirements, but shall be located so that the area intended for swimmers can be isolated,

(d) be constructed so that the pool shall be visible through the barrier, and

(e) be constructed so that all openings in the barrier are large enough to permit entry and are equipped with self-closing gates or doors with positive latching closers and locking mechanism at a height of at least four feet six inches above the ground.

(6) The deck area shall have a slope of not less than one-fourth inch per foot directed away from the swimming pool or spa edge. The deck area shall have a non-slip finish.

(7) Foreign material such as grass or dirt shall not be allowed in areas adjacent to public swimming pools or spas unless properly fenced off to prevent access on the part of the bathers. If access is allowed to such areas, facilities shall be provided for the proper cleaning of the bathers' feet before they again enter the bathing areas.

(8) Drains shall be provided on all indoor pools and spas and shall be so located that the deck drain will not service more than 400 square feet of the deck. Outdoor pools shall utilize either deck or perimeter drain systems.

(9) The deck area drains shall not be connected to the recirculation piping system.

(10) Every pool shall be provided with handholds.

(11) The use of undrained wood deck material or of clear glass around the swimming pool deck is prohibited.

AUTHORITY: Sec. 50-53-103 MCA

IMPLEMENTING: Sec. 50-53-107 MCA

RULE VIII (to be codified 16.10.1508) OVERFLOW GUTTERS

(1) Overflow gutters shall be provided on all swimming pools having a surface area over 1600 square feet unless it is demonstrated to the regulatory authority that skimmers will do an equivalent recirculation job. Swimming pools having a surface area less than 1600 square feet may be provided with either overflow gutters or skimmers.

(2) Overflow gutters shall extend around the entire perimeter of the swimming pool, except at steps or recessed ladders.

(3) The overflow gutter shall be capable of continuously removing 50% or more of the recirculated water and returning it to the filter.

(4) All overflow gutters shall be connected to the recirculation system through a surge tank. The gutter, drains, and return piping to the surge tank shall be designed to rapidly remove overflow water caused by recirculation displacement, wave action, or other causes.

(5) The opening into the gutter beneath the coping shall not be less than four inches and the interior of the gutter shall not be less than three inches wide with a depth of at least three inches. Where large gutters are used they shall be designed to prevent entrance or entrapment of the bathers' arms or legs.

(6) The overflow edge or lip shall be rounded and must not exceed two and one-half inches in thickness for the top two inches. The overflow edge or lip shall also be designed to serve as a handhold.

(7) The overflow gutters shall be provided with outlet pipes which shall in any case be at least one and one-half inches in diameter and shall drain at least 15 lineal feet of gutter.

AUTHORITY: Sec. 50-53-103 MCA

IMPLEMENTING: Sec. 50-53-107 MCA

RULE IX (to be codified 16.10.1509) SKIMMERS

(1) Skimmers may be used in place of overflow gutters as a means of skimming and recirculating the water. Skimmers are permitted on public swimming pools if at least one skimming device is provided for each 500 square feet of water surface area or fraction thereof, with a minimum of two skimmers required. The skimmers shall be located at least 30 feet apart. Skimming devices shall be built into the pool wall, shall develop sufficient velocity on the pool water surface to induce floating oils and wastes into the skimmer from the water surface of the entire pool area, and shall meet the following general specifications:

(a) The piping and other pertinent components of the skimmers shall be designed for a total capacity of at least 80% of the required filter flow of the recirculation system and no skimmer shall be designed for a flow-through rate of less than 30 gallons per minute.

(b) The skimmer weir shall be automatically adjustable and shall operate freely with continuous action to variations in water level over a range of at least four inches. The weir shall be of such buoyancy and design so as to develop an effective velocity.

(c) An easily removable and cleanable basket or screen through which all overflow water must pass shall be provided to trap large solids. The skimmer shall be constructed of sturdy corrosion-resistant materials.

(2) All swimming pools shall be equipped for adding make-up water to the swimming pool as necessary for proper operation of skimmers and gutters.

(3) Spa pools require a minimum of one skimmer per unit.

AUTHORITY: Sec. 50-53-103 MCA

IMPLEMENTING: Sec. 50-53-107 MCA

RULE X (to be codified 16.10.1510) STEPS, LADDERS AND HANDRAILS (1) Steps and ladders shall be of an impervious material easily cleanable and sloped to drain.

(2) Steps or ladders shall be provided at the shallow end of the swimming pool if the vertical distance from the bottom of the pool to the deck or walk is over two feet. Recessed steps or ladders shall be provided at the deep portion of the swimming pool, and if the pool is over 30 feet wide, such steps or ladders shall be installed on each side. Ladders shall be so located that divers do not need to turn back in order to reach them.

(3) Steps leading into the swimming pool or spa shall be of non-slip design, have a minimum tread of eight inches and a maximum rise or height of 10 inches.

(4) Swimming pool and spa ladders shall be corrosion-resistant and shall be equipped with non-slip treads. All ladders shall be so designed as to provide a handhold and shall be securely attached to the side of the pool or spa. There shall be a clearance of not more than five inches nor less than three inches between any ladder and the pool wall. If steps are inserted in the walls or if stepholes are provided, they shall be of such design that they may be cleaned readily and shall be arranged to drain into the pool to prevent the accumulation of dirt thereon. Step holes shall have a minimum tread of five inches and a minimum width of 14 inches.

(5) When steps, stepholes, or ladders are provided in the swimming pool or spa, handrails extending over the coping or edge of the deck are required.

(6) Supports, platforms, and steps for diving boards shall be of sufficient structural strength to safely carry the maximum anticipated loads. Steps shall be of corrosion-resistant material, easily cleanable and of non-slip design. Handrails shall be provided at all steps and ladders leading to diving boards. Diving boards more than one meter high shall be protected with guard railings.

(7) A low diving board shall not be located below a high diving board.

AUTHORITY: Sec. 50-53-103 MCA

IMPLEMENTING: Sec. 50-53-107 MCA

RULE XI (to be codified 16.10.1511) HOSE CONNECTIONS

(1) Hose connections shall be provided to enable all parts of the swimming pool and spa area to be reached with easily manipulated hose length.

(2) Water volume and pressure shall be sufficient to provide effective cleaning and care should be taken so that deck wash material is not drained or sprayed into the pool or spa.

AUTHORITY: Sec. 50-53-103 MCA

IMPLEMENTING: Sec. 50-53-107 MCA

RULE XII (to be codified 16.10.1512) RECIRCULATION SYSTEM

(1) The recirculation system shall consist of pumping equipment, hair and lint catcher and filters, together with all necessary pipe connections to the inlets and outlets of the swimming pool and spa and a valve system for backwashing the filters. As an integral part of the recirculation system, equipment shall be provided for disinfecting the water and adding any necessary chemicals and make-up water. The entire system and all of its component parts shall be capable of producing a six-hour turnover of the entire volume of the swimming pool throughout the normal filter cycle. The main drain or drains in the deep end of the pool shall be clearly visible at all times. Spa pools require a 30 minute turnover rate of the entire volume of the unit.

(2) All recirculation equipment furnished shall be provided with installation and operation instructions.

(3) Inlets are features of the swimming pool or spa which return water to the pool or spa from the filters as a part of the recirculation system. Inlets shall be submerged and shall be located to produce uniform circulation of water throughout the swimming pool without the existence of dead spots and to carry away pool bottom deposits to the outlets. The minimum number of inlets shall be based on either one inlet per 600 square feet or portion thereof of pool area, or one inlet per 15,000 gallons, whichever is greater. A minimum of two inlets is required on swimming pools and spas.

(4) Where the distance across the shallow portion of the

swimming pool is more than 15 feet, multiple inlets shall be provided, so spaced that each inlet will serve a linear distance of not more than 15 feet. Inlets shall be placed at 15 foot intervals around the entire perimeter. In any case, an adequate number of inlets shall be provided, properly spaced and located to accomplish complete and uniform recirculation of water and maintenance of uniform disinfectant residual at all times.

(5) All inlets shall be designed to have adjustable orifices.

(6) All inlets shall discharge at a depth of at least 12 inches below the swimming pool or spa overflow level.

(7) Floor inlets when used shall be placed at 15 foot intervals and the distance from these inlets to the wall shall not exceed 15 feet.

(8) Outlets, or main drains, are features of the swimming pool and spa that are part of the recirculation system and also serve as the pool or spa drains, when necessary. The grated areas shall be of sufficient size to decrease the possibility of clogging or creating suction dangerous to the safety of the bathers.

(9) All swimming pools and spas shall be provided with a main drain outlet or outlets at the deepest point to permit the pool to be completely and easily emptied.

(10) Drains must be covered by a grating which is not readily removable by bathers.

(11) The grating openings of the main drain outlet in the floor of the pool or spa shall be sufficient so that no suction hazard exists.

(12) Multiple main drain outlets shall be provided where the width of the pool is more than 30 feet. In such cases, these outlets shall be spaced not more than 20 feet apart, nor more than 15 feet from side walls.

(13) The hair and lint catcher device shall be installed on the suction side of the pump. The strainer shall be constructed of non-corrosive material and shall be so located as to be easily accessible for regular cleaning.

(14) Vacuum equipment shall be provided to remove sediment and other accumulations from the bottom of the swimming pool or spa.

(15) Where water from the public water system is added to the pool or spa, cross connections between the public water system and the pool or spa water shall be eliminated by pumping make-up water from a pump suction well or admitting water to the pool or spa by means of an air-gapped supply, preferably located under a low diving board.

(16) No direct connections to sewers shall be permitted and all pool and spa drains to sewers shall be broken at a point where any sewage, which may back up from the sewer, will not enter the pool or spa piping.

(17) No more than two spa units may utilize one recirculation, disinfection system and no spa may utilize the recirculation/disinfection system of a swimming pool.

AUTHORITY: Sec. 50-53-103 MCA

IMPLEMENTING: Sec. 50-53-107 MCA

RULE XIII (to be codified 16.10.1513) DISINFECTANT AND CHEMICAL FEEDERS The swimming pool or spa shall be equipped with a chlorinator or other continuous disinfectant feeder which meets the following applicable requirements:

(1) All chemical feeders shall be approved by the National Sanitation Foundation.

(2) When compressed chlorine gas is used, the following additional features shall be provided:

(a) The chlorine and chlorinating equipment shall be in a separate, well-ventilated room. Such rooms shall not be below ground level and shall be provided with vents near the floor which terminate out-of-doors. The door of the room shall not be open to the swimming pool, and shall open to the outside.

(b) Chlorine cylinders shall be anchored to prevent their falling over. A valve stem wrench shall be present on the chlorine cylinder so that supply can be shut off quickly in case of an emergency. A valve protection hood shall be kept in place except when the cylinder is connected.

(c) During accidents or interruptions of the water supply, the chlorine feeding device shall be designed so that leaking chlorine gas will be conducted to the outdoors.

(d) The gas mask designed for use in a chlorine atmosphere and of a type approved by the U. S. Bureau of Mines shall be provided. In addition, replacement canisters shall be provided and a record shall be kept of gas mask usage to ensure that the mask will be serviceable when needed. The gas mask shall be kept in a closed cabinet, accessible without a key, located outside of the room in which the chlorinator is maintained.

(e) Chlorination equipment shall be installed and operated by or under the supervision of personnel experienced with installation and operation of such equipment.

(f) Chlorine use must also meet all local or other state requirements.

(3) A change in method or type of disinfection must be approved in writing by the regulatory authority.

AUTHORITY: Sec. 50-53-103 MCA

IMPLEMENTING: Sec. 50-53-107 MCA

RULE XIV (to be codified 16.10.1514) FILTRATION EQUIPMENT

(1) Filtration equipment shall be provided on all swimming pools and spas and shall be installed and maintained in accordance with the manufacturer's specifications.

(2) The filter system shall be designed with necessary valves and piping to permit:

- (a) filtering to swimming pool or spa,
- (b) isolation of individual filters for repair while other units are in service,
- (c) complete drainage of all part of the system, and
- (d) necessary maintenance, operation, and inspection in a convenient manner.

(3) Filters will be backwashed at least once per week at swimming pools and daily at public spas, with the exception of cartridge filters which are discussed in subsection (5) of this rule.

(4) A rate of flow indicator shall be provided and installed in such manner as to show the recirculation rate of the pool or spa water. The indicator shall measure the rate of flow through the filtering system with an appropriate range readable in gallons per minute accurate within 10% actual flow.

(5) All cartridge type filters must be approved by the National Sanitation Foundation or shall be approved as equivalent thereto by the regulatory authority. A minimum of three filters must be present at the facility, one in use, one which has been cleaned and is ready for use, and one which is being cleaned.

(6) All sand-type filters, whether of the gravity or pressure type, and including high-rate filters, shall be approved by the National Sanitation Foundation or shall be approved as equivalent thereto by the regulatory authority.

(a) The filter system shall be provided with influent and effluent pressure indicators as are required to indicate the condition of the filters. The filter system shall be provided with an air relief device at or near the high point of the filter. A sight glass shall be provided on the backwash discharge line.

(b) Each pressure type filter tank shall be provided with an access opening of not less than a standard 11 inch by 15 inch manhole and cover.

(c) Devices with reasonably accurate dosage control features shall be provided for adding coagulants ahead of the filters.

(7) All diatomaceous earth type filters, whether of the vacuum or pressure type, shall be approved by the National Sanitation Foundation or shall be approved as equivalent thereto by the regulatory authority.

(a) Filtration areas shall be determined on the basis of effective filtering surfaces as created by the septum supports with no allowances for areas of impaired filtration such as broad supports, folds, or portions which may bridge.

(b) The filter and all component parts shall be of such materials, design, and construction to withstand normal continuous use without significant deformation, deterioration,

corrosion, or wear which could adversely affect filter operation.

(c) The filter shall be so designed and constructed, or provision made, to preclude the introduction of appreciable quantities of filter-aid into the pool or spa during precoat-ing operations.

(d) The filters shall be designed and installed in such a manner that they may be easily disassembled with allowances made for adequate working space above and around the filter to allow the removal and replacement of any part and for proper maintenance.

AUTHORITY: Sec. 50-53-103 MCA

IMPLEMENTING: Sec. 50-53-107 MCA

RULE XV (to be codified 16.10.1515) CROSS-CONNECTIONS

(1) No piping arrangement shall exist under any conditions which will permit sewage or waste water to enter the recirculation system or water from the recirculation system or swimming pool or spa to enter the make-up water supply.

(2) No pipe furnishing water for the make-up supply shall be physically connected to the recirculation system regardless of valve arrangement.

(3) The make-up water line discharging directly to the swimming pool shall have its point of discharge at least six inches above the swimming pool overflow level.

(4) The make-up water line discharging to a surge or balancing tank shall have its point of discharge at least six inches above the rim of the tank.

(5) All other accessories to the recirculation system, such as chemical solution feeders and water-fed chlorinators shall be protected by air gap against back-siphonage into the water supply system.

AUTHORITY: Sec. 50-53-103 MCA

IMPLEMENTING: Sec. 50-53-107 MCA

RULE XVI (to be codified 16.10.1516) PIPING SYSTEM

(1) The piping system shall be designed to reduce friction losses so that adequate flows are maintained in the piping system. The piping system of the pool shall be painted in distinguishing colors to determine filtered water, make-up water, waste water, vacuum lines and heating lines. The color system for distinguishing the different piping systems in a swimming pool or spa shall be as follows:

- | | | |
|------------|----|----------------------|
| (a) green | -- | filtered water |
| (b) yellow | -- | raw or make-up water |
| (c) black | -- | waste water |
| (d) red | -- | heating lines |
| (e) blue | -- | vacuum lines |

AUTHORITY: Sec. 50-53-103 MCA

IMPLEMENTING: Sec. 50-53-107 MCA

RULE XVII (to be codified 16.10.1517) EQUIPMENT ROOM

(1) The equipment room shall be so located that it cannot be entered directly from shower rooms. If entry is gained through the pool or spa deck area, the equipment room must be kept secure.

(2) The recirculation equipment shall be conveniently located for inspection and servicing. Adequate headroom shall be provided above pressure filters.

(3) The floor shall have a minimum slope of one-fourth inch per foot toward the drains with no low spots which would allow the water to stand.

AUTHORITY: Sec. 50-53-103 MCA

IMPLEMENTING: Sec. 50-53-107 MCA

RULE XVIII (to be codified 16.10.1518) WATER TESTING EQUIPMENT

(1) An approved test kit for determining the pH range of 6.8 to 8.2 shall be provided. The kits shall be capable of measuring pH accurately to the nearest 0.2 pH units.

(2) A test kit for the determination of total alkalinity shall be provided.

(3) An approved test kit for the determination of chlorine residuals in the range of 0 to 2.0 parts per million shall be provided. When testing kits for chlorine utilize comparative color standards, the standards shall be accurate to within plus or minus 0.1 ppm. The test kit shall test for free and total chlorine residual. DPD test method is the required procedure.

(4) Whenever cyanurates are used as a stabilizer, a test kit shall be provided which is capable of accurately measuring the cyanurate concentration to 150 parts per million in increments of 25 parts per million. Cyanurate concentrations in the pool or spa shall not be higher than 150 parts per million.

(5) Equivalent test kits for other approved disinfectant residuals shall be provided.

AUTHORITY: Sec. 50-53-103 MCA

IMPLEMENTING: Sec. 50-53-107 MCA

RULE XIX (to be codified 16.10.1519) HEATING, VENTILATION AND LIGHTING

(1) Bathhouses, dressing rooms, shower rooms, and toilet rooms shall be adequately ventilated. Ventilation of indoor swimming pools and spas shall be so designed that bathers will not be subjected to drafts and no buildup of condensation will occur.

(2) All indoor pools or spas and all outdoor pools or spas operated at night shall have artificial lighting sufficient to permit a six inch black disc on a white field to be visible in the deepest part of the pool or spa. Such lights shall be spaced to provide illumination so that all portions

of the pool or spa, including the bottom, may be readily seen without glare.

(3) No overhead wiring shall pass within 10 feet of the pool or spa enclosure.

AUTHORITY: Sec. 50-53-103 MCA

IMPLEMENTING: Sec. 50-53-107 MCA

RULE XX (to be codified 16.10.1520) DRESSING ROOMS, TOILETS, AND SHOWER AREAS (1) The ceilings, walls and floors of dressing rooms, toilet and shower areas shall be constructed of smooth, impervious, easily cleanable material, not adversely affected by steam, water, or disinfectant.

(2) The floors shall be smooth, non-slip to bare feet, shall have no open cracks or joints, and shall have a minimum slope of one-fourth inch per foot toward the drains with no low spots which will allow water to stand.

(3) Deck carpet will not be permitted within six feet of shower areas or in hallways in or leading to dressing rooms which will normally be traveled by individuals wearing shoes.

(4) Partitions shall have a minimum clearance of six inches above the floor.

(5) Dressing rooms, toilet and shower areas shall be lighted so that all parts are easily visible for cleaning and maintenance.

(6) Public swimming pools and spas shall be equipped with dressing rooms located adjacent to the locker or check-room and showers.

(7) Toilet facilities shall be provided for each sex. Flush water closets and urinals shall be provided and shall be kept clean and properly maintained. The ratio of water closets shall be one closet and one urinal for each 70 men or portion thereof and one water closet for each 40 women or portion thereof.

(a) All fixtures shall be properly protected against back siphonage.

(b) All fixtures shall be so designed that they may be readily cleaned and maintained.

(c) Hand washing facilities must be provided and shall include either soap and disposable towels or hand blowers.

(8) Separate shower facilities shall be provided for men and women, and shall be so located that bathers must pass from the shower room directly into the swimming pool or spa area. The minimum number of showers provided shall be in proportion of one to 40 bathers or portion thereof.

(a) All showers must be equipped with a mixing valve.

(b) Soap shall be provided for each shower unit.

(c) Where shower booths are provided, the booth partitions shall be of a material which will not be damaged by shower water and shall have a minimum clearance of six inches above the floor.

(d) Shower curtains are not permitted.

(9) The requirements of this rule do not apply to semi-public swimming pools or spas.

AUTHORITY: Sec. 50-53-103 MCA

IMPLEMENTING: Sec. 50-53-107 MCA

RULE XXI (to be codified 16.10.1521) WASTE DISPOSAL

(1) There shall be no direct physical connection between the sewer system and any drain from the swimming pool or spa recirculation system. Any swimming pool or gutter drain or overflow from the recirculation system when discharged to the sewer system, storm drain, or other approved drainage source shall connect through a suitable air break so as to preclude the possibility of backflow of sewage or other contaminant into the swimming pool piping system.

(2) Toilet room sewage and shower drainage shall be discharged to an approved municipal sanitary sewage system or to a sewage disposal system as lawfully approved by the regulatory authority.

AUTHORITY: Sec. 50-53-103 MCA

IMPLEMENTING: Sec. 50-53-107 MCA

RULE XXII (to be codified 16.10.1522) BACTERIOLOGICAL AND CHEMICAL QUALITY

(1) Public swimming pool and spas waters shall be maintained with a chemical quality sufficient to prevent levels of bacteria from exceeding 200 bacteria per milliliter as determined by the total standard (35° C) agar plate count, or the presence of more than four coliform bacteria per 100 milliliters by the millipore filter method, or show a positive test (confirmed test) for coliform organisms in any of five 10-milliliter portions of a sample when the pool is in use. All samples shall be collected, dechlorinated, and examined in accordance with the procedures outlined in Standard Methods for the Examination of Water and Wastewater (APHA, AWA, WPCA). Not more than two consecutive samples in a one-month period shall exceed the levels specified.

(2) The chemical quality of the swimming pool or spa water shall not cause irritation of the eyes, skin or mucous membranes of the bathers.

(3) All swimming pools and spas, when open or in use, shall be continuously disinfected by a chemical which imparts a residual effect and shall be maintained in an alkaline condition. Disinfection must be handled by mechanical means. A chlorine residual of 1.0 - 3.0 ppm must be maintained in the pool at all times. A difference of .5 ppm between free and total chlorine readings in swimming pools requires superchlorination. Spa pools shall be superchlorinated daily.

(4) If halogens other than chlorine are used, residuals of equivalent disinfectant strength shall be maintained.

(5) The regulatory authority may accept other disinfecting materials or methods when they are demonstrated to provide

a readily measurable residual and to otherwise be equally effective to the chlorine concentration required herein, and not be dangerous to the public health. Regulatory authority approval must be given prior to utilizing other disinfecting materials.

(6) Chemicals used in controlling algae growth shall not pose a risk to public health or contribute toxic properties to the water.

(7) The water shall have sufficient clarity at all times so that a black disc, six inches in diameter, is readily visible when placed on a white field at the deepest point of the swimming pool or spa.

(8) Swimming pool and spa waters shall be maintained at a pH of not less than 7.2 and not greater than 7.8.

(9) The total alkalinity of the water should be at least 80 ppm and no greater than 200 ppm.

(10) The department hereby adopts and incorporates by reference Standard Methods for the Examination of Water and Wastewater by the American Public Health Association, the American Waterworks Association, and the Water Pollution Control Association (APHA, AWA, WPCA), 15th Edition, 1980, which establishes test procedures and what to test for in swimming pools. Copies of Standard Methods for the Examination of Water and Wastewater (APHA, AWA, WPCA) may be obtained from the Food and Consumer Safety Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana, 59620.

AUTHORITY: Sec. 50-53-103 MCA

IMPLEMENTING: Sec. 50-53-107 MCA

RULE XXIII (to be codified 16.10.1523) OPERATION, CLEANING AND MAINTENANCE (1) An accurate report showing the daily operation of the swimming pool or spa shall be maintained at the facility. This report shall include information regarding the sanitation and safety aspects of the pool or spa, including but not limited to disinfectant residuals, pH, maintenance records, and bather load. These reports shall be kept on file for six months for review by the regulatory authority.

(2) All swimming pools and appurtenances thereto shall be maintained in a clean and sanitary condition at all times.

(3) Visible dirt on the bottom of the swimming pool or spa shall be removed once daily, or more often if necessary to keep the pool or spa bottom clean.

(4) Visible scum or floating material on the surface of the swimming pool shall not be permitted and shall be removed by flushing or skimming or other effective means.

(5) The swimming pool or spa operator shall be responsible for maintaining the sanitary quality of the swimming pool water at all times.

(6) The swimming pool or spa operator shall immediately correct any condition which is not in compliance with these rules and if unable to do so shall notify the regulatory authority.

(7) Spa pools are not to be operated at a water temperature exceeding 105° F. as determined by use of an inline thermometer.

(8) Spa pools shall be drained and thoroughly cleaned weekly.

AUTHORITY: Sec. 50-53-103 MCA

IMPLEMENTING: Sec. 50-53-106, 50-53-107 MCA

RULE XXIV (to be codified 16.10.1524) SAFETY

(1) Swimming pool and spa safety regulations shall be conspicuously posted at every swimming pool or spa stating:

(a) Spitting, spouting of water, or blowing the nose in the swimming pool or spa shall be strictly prohibited.

(b) Boisterous or rough play or running shall not be permitted in the swimming pool or spa, the walk area, in dressing rooms, in shower rooms, or in toilet rooms.

(c) Bottles, crockery, glassware, or other hazardous objects shall not be permitted in the swimming area.

(d) Smoking shall not be permitted in the swimming or bathing area.

(3) An individual certified in cardiopulmonary resuscitation shall be on premises at all times.

(4) The operator or owner of a public swimming pool or spa shall not allow the pool to be used:

(a) when the personnel and equipment requirements set forth in RULE XXV (to be codified 16.10.1525) are not met, or

(b) when ordered closed by the regulatory authority.

AUTHORITY: Sec. 50-53-103 MCA

IMPLEMENTING: Sec. 50-53-107 MCA

RULE XXV (to be codified 16.10.1525) EQUIPMENT AND PERSONNEL

(1) All equipment used in conjunction with the operation of the swimming pool or spa shall be approved by the regulatory authority. An experimental installation may be permitted by the regulatory authority, but should the development fail to produce satisfactory results it shall be replaced with accepted design, equipment, and materials.

(2) Every public swimming pool shall have a trained lifeguard or lifeguards in complete charge of bathing facilities who shall have authority to enforce all rules of safety. The number of lifeguards required shall be based on one per 1,500 square feet of pool area or fraction thereof, with a minimum of one lifeguard at all public pools regardless of size. Semi-public swimming pools greater than 1,500 square feet in area shall also employ and maintain a lifeguard or

lifeguards on duty. Lifeguards shall be currently trained in American Red Cross methods of first aid and water safety or its equivalent. Each lifeguard shall be at least 16 years of age. Lifeguards shall be on duty at all times when a swimming pool or bathing place is open for use by the bathers.

(3) Where no lifeguard service is required to be provided to a semi-public pool, warning signs shall be placed in plain view and shall state "WARNING - NO LIFEGUARD ON DUTY" with clearly legible letters at least four inches high. In addition, the sign shall state "CHILDREN SHOULD NOT USE THE POOL WITHOUT AN ADULT IN ATTENDANCE."

(4) Owners and operators of each public and semi-public swimming pool or spa shall have a designated individual in charge of maintaining safe and sanitary pool conditions.

(5) Every swimming pool shall be equipped with one back-board and one or more ring buoys and one S-hold hook having a maximum of 15 to 16 inches diameter with a one-fourth inch manila line at least equal in length to the maximum width of the swimming pool attached securely to it and kept in good repair. In small swimming pools no more than 15 feet in width, a ring buoy may be substituted for a shepherd's crook or for a reaching pole with a minimum length of 14 feet. Such safety equipment must be accessible for immediate use in the pool area.

(6) When a lifeguard is required, an elevated seat for the lifeguard shall be provided in areas between the five feet depth and the deep water and within two feet of the edge of the swimming pool and shall be high enough to give the lifeguard a complete and unobstructed view of the water.

(7) A guard line separating the shallow portion from the deep portion of the swimming pool shall be provided across the pool at the five foot depth.

AUTHORITY: Sec. 50-53-103 MCA

IMPLEMENTING: Sec. 50-53-107 MCA

RULE XXVI (to be codified 16.10.1526) DISEASE CONTROL

(1) Any person with a disease in a known communicable form shall not be permitted to use the swimming pool or spa. The designated individual in charge of maintaining safe and sanitary conditions shall make reasonable effort to inspect bathers for evidence of skin disease or open lesions. Persons having any considerable area of exposed sub-epidermal tissues, cuts or the like shall be warned that these may become infected and advised not to use the swimming pool or spa.

(2) Before entering the pool or spa, all bathers shall be required to take a cleansing shower in the nude, using warm water and soap.

AUTHORITY: Sec. 50-53-103 MCA

IMPLEMENTING: Sec. 50-53-107, 50-53-107 MCA

RULE XXVII (to be codified 16.10.1527) FLOW-THROUGH POOLS

(1) All flow-through pools built, remodeled or altered after [EFFECTIVE DATE OF THIS RULE] shall be equipped with an approved disinfection system.

(2) Pools in existence on [EFFECTIVE DATE OF THIS RULE] which rely on a flow-through water exchange mechanism shall:

(a) provide sufficient water volume exchange that will produce a four-hour turnover of the entire volume of pool water to waste, and

(b) meet all bacteriological standards as set forth in subsection (1) of RULE XXII (to be codified 16.10.1522). If standards cannot be met, a disinfection device must be installed and utilized.

(3) Flow-through pools in existence on [EFFECTIVE DATE OF THIS RULE], especially hot water mineral pools, shall be maintained to prevent corrosion, algae growth and other mineral accumulation on the pool walls, floor and equipment.

(4) Discharge of pool waste water may be subject to the provisions of the Montana Pollutant Discharge Elimination System (MPDES), ARM Title 16, Chapter 20, sub-chapter 9. Persons whose discharges of pool waste water are subject to MPDES shall comply with ARM 16.20.901 et seq.

AUTHORITY: Sec. 50-53-103 MCA

IMPLEMENTING: Sec. 50-53-107 MCA

RULE XXVIII (to be codified 16.10.1528) WADING POOLS

(1) Wading pools for children shall be physically separated from swimming pools by means of at least a four-foot fence or barrier.

(2) A fence or barrier shall be provided on the outside of the deck area of all outdoor wading pools.

(3) Wading pools shall have a maximum water depth of 24 inches. The water depth at the perimeter shall not exceed 18 inches.

(4) Wading pools must:

(a) be connected to the pool, recirculation, disinfection system, or

(b) have a recirculation, disinfection system of its own capable of a one hour turnover rate, or

(c) operate as a flow-through system with a one hour turnover rate.

(5) Floors of wading pools shall be uniform slip-resistant finish, sloped to drain completely with a maximum slope of one foot in 12 feet.

(6) The water in all wading pools shall be kept sufficiently clear so that the bottom of the wading pool is visible at all times.

AUTHORITY: Sec. 50-53-103 MCA

IMPLEMENTING: Sec. 50-53-107 MCA

RULE XXIX (to be codified 16.10.1529) INSPECTIONS

(1) The regulatory authority, after showing proper identification, shall be permitted to enter any public swimming pool or spa at any reasonable time for the purpose of making inspections to determine compliance with the requirement of this sub-chapter. The agent shall be permitted to examine any records pertaining to the operation, maintenance or personnel employed at the pool or spa, and to collect such samples of water as necessary to determine that every public swimming pool or spa complies with the requirements of this sub-chapter.

(2) Whenever an inspection of a public swimming pool or spa is made, the findings shall be recorded on an inspection form. The inspection form shall summarize the requirements of this sub-chapter. If one or more violations are determined to exist, the inspectional remarks shall be marked to reference the violations and shall specify the correction to be made and the date by which the correction is to be made. A copy of the completed inspection report form shall be furnished to the person in charge of the public swimming pool or spa at the conclusion of the inspection. The completed inspection form is a public document that shall be available for public review or distribution upon payment of copying cost to any person on request.

AUTHORITY: Sec. 50-53-103 MCA

IMPLEMENTING: Sec. 50-53-106, 50-53-107 MCA

RULE XXX (to be codified 16.10.1530) MISCELLANEOUS

(1) No food or drink shall be consumed or served in the area restricted to swimmers or bathers.

(2) No animals or fowl shall be permitted in the area restricted to swimmers or bathers.

(3) A means of contacting emergency medical services shall be provided on the premises. Instructions regarding emergency calls shall be prominently posted.

AUTHORITY: Sec. 50-53-103 MCA

IMPLEMENTING: Sec. 50-53-107 MCA

5. The Department is proposing these rules because current rules adopted in 1972 have become outdated due to advances in the industry, and new evidence in regard to disease transmission, as well as a greater awareness of safety and bather control by operators and patrons. In addition, the 1972 rules did not address spa pools, which have become popular in recent years and for which operational safety and health parameters are necessary. Finally, legislative clarification in the 1985 session of the department's authority to adopt enforceable safety rules has necessitated review and revision of department safety standards.

6. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Robert L. Solomon, Cogswell Building, Capitol Complex, Helena, Montana, no later than June 13, 1985.

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



JOHN J. DRYMAN, M.D., Director

By 

WILLIAM J. OPITZ, Deputy Director

Certified to the Secretary of State May 6, 1985

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

In the matter of the amendment)	NOTICE OF PUBLIC HEARING
of rules 16.10.634, structural)	ON PROPOSED AMENDMENT OF
requirements for public)	ARM 16.10.634, 16.10.635,
accommodations; 16.10.635,)	16.10.636, 16.10.637,
water supply system standards;)	and 16.10.638
16.10.636, sewage system)	
standards; 16.10.637, laundry)	
facility requirements; and)	(Hotels, Motels, Tourist
16.10.638, housekeeping and)	Homes, Roominghouses,
maintenance standards)	Retirement Homes)

TO: All Interested Persons

1. On June 7, 1985, at 9:00 a.m., a public hearing will be held in Room C209 of the Cogswell Building, Helena, Montana, to consider the amendment of rules 16.10.634 through 16.10.638.

2. The proposed amendments replace present rules 16.10.634 through 16.10.638 found in the Administrative Rules of Montana. The proposed amendments would move water temperature requirements from the rule setting structural standards to the more logical water supply rule and set a minimum as well as maximum temperature; eliminate a general requirement to have inside locks on sleeping rooms because it is of periferal importance to environmental safety and not advisable in some retirement homes; update the standards for wells and sewage systems; require non-public systems used by establishments built after the amendments go into effect to meet either the new well standards or have an equivalent system designed by an engineer; allow establishments using a non-public system and existing prior to the effective date of these amendments to use, in the alternative, a spring or cistern meeting prior standards; add more specific standards to preclude contamination of ice supplied to patrons; require any laundry used by, as well as operated by, an establishment to meet existing laundry standards; require towels and washcloths, as well as bedding, to be clean and in good repair; allow an establishment to supply clean bed linen, washcloths, and towels to patrons upon request, rather than require it to do so on a set schedule; allow used bar soap to be left for subsequent guests; and eliminate the requirement that certain kinds and sizes of bedding be provided.

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

16.10.634 STRUCTURAL REQUIREMENTS (1) An establishment must comply with the following structural requirements:

(a) In addition to the requirements of this sub-chapter, compliance with the state building code and fire code is required.

(b) At least one storage room sufficient in size for the storage of extra bedding and furnishings must be provided.

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

(d) All rooms and hallways must be provided with at least 10 foot candles of light.

(e) Floors and walls in toilet and bathing rooms, laundries, janitorial closets, and similar rooms subject to large amounts of moisture must be smooth and non-absorbent.

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

(g) Water provided to hand sinks and bathing facilities may not exceed a temperature of 120° F.

(h) (g) Bathing facilities must be provided with anti-slip surfaces.

(i) Sleeping room doors must be equipped with locks operable from inside of the room.

AUTHORITY: Sec. 50-51-103 MCA

IMPLEMENTING: Sec. 50-51-103 MCA

16.10.635 WATER SUPPLY SYSTEM (1) The department hereby adopts and incorporates by reference ARM 16.20.207, stating maximum microbiological contaminant levels for public water supplies, and the following department publications setting construction, operation, and maintenance standards for spring, wells, and cisterns, respectively:

(a) Circular #11, "Springs";

(b) Circular #12, "Sanitary Features of Water Wells"; Circular #84-11, "Minimum Design Standards for Small Water Systems";

(c) Circular #17, "Cisterns for Water Supplies". Copies of ARM 16.20.207 and Circulars #11, #12, #84-11 and #17 may be obtained from the Water Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana, 59620.

(2) In order to ensure an adequate and potable supply of water, an establishment must either:

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

(b) if the establishment is not utilized by more than 25 persons daily at least 60 days out of the calendar year, including guests, staff, and residents; and an adequate public water supply system is not accessible; utilize a non-public system:

(i) whose construction and use meet those standards set in one of the following circulars published by the department: circular #84-11; or

- {i} Circular #11 for springs
- {ii} Circular #12 for water wells
- {iii} Circular #17 for cisterns-

(ii) if construction of the establishment was commenced on or after [THE EFFECTIVE DATE OF THIS AMENDMENT], which is designed by an engineer registered in Montana and determined by the department or the local health authority to provide assurance of an adequate and potable water supply equivalent to that in circular #84-11; or

(iii) if construction of the establishment was commenced prior to [THE EFFECTIVE DATE OF THIS AMENDMENT] and utilizes a spring or cistern, which is operated and maintained in accordance with the standards set in either department circular #11 (for a spring) or circular #17 (for a cistern), whichever is applicable.

(3) If a non-public water supply system is used in accordance with subsection (2)(b) above, an establishment must:

(a) ~~Submit~~ submit a water sample at least quarterly to a laboratory licensed by the department to perform microbiological analysis of the public water supplies in order to determine that the water does not exceed the maximum microbiological contaminant levels stated in ARM 16.20.207, incorporated by reference in subsection (1) above.

(4) An establishment must replace or repair the water supply system serving it whenever the water supply:

(a) contains microbiological contaminants in excess of the maximum levels contained in ARM 16.20.207, as incorporated by reference in subsection (1) of this rule, or

(b) does not have the capacity to provide adequate water adequate in quantity for drinking, cooking, personal hygiene, laundry, and water-carried waste disposal.

(5) Ice must be:

(a) obtained from a licensed supplier if it is not made from an approved the establishment's water supply; and

(b) must be manufactured, stored, handled, transported and served in a manner which is approved by the department or local health authority as preventing contamination of the ice, and which meets the following specific standards:

(i) Ice must be stored in an automatic dispenser if:

(A) construction of the establishment was commenced on or after [EFFECTIVE DATE OF THIS AMENDMENT] and dispensing of the ice is not under the direct control of the establishment's management; or

(B) in an establishment whose construction commenced prior to [THE EFFECTIVE DATE OF THIS AMENDMENT] and in which dispensing of ice is not under the direct control of the establishment's management, the ice storage equipment fails and is replaced.

(ii) Where open bin ice storage is provided, an ice scoop must be readily available for use by guests or the

management and stored either inside the bin or in a closed container protected from contamination.

(6) Ice storage bins may not be connected directly to any trap, drain, receptacle sink or sewer which discharges waste or to any other source of contamination.

(7) Handsinks and bathing facilities must be provided with water at a temperature of at least 100° F. and not more than 120° F.

AUTHORITY: Sec. 50-51-103 MCA

IMPLEMENTING: Sec. 50-51-103 MCA

16.10.636 SEWAGE SYSTEM. (1) The department hereby adopts and incorporates by reference Bulletin 332, "Septic Tanks", published by the Montana State University Cooperative Extension Service, which contains standards for the following department publications setting construction and operation of adequate individual standards for sewage systems:

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

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

A copy of Bulletin 332 Copies of the above circulars may be obtained from the Water Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana, 59620.

(2) In order to ensure sewage is completely and safely disposed of, an establishment must:

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

(b) if the establishment is not utilized by more than 25 persons daily at least 60 days out of the calendar year, including guests, staff, and residents; and an adequate public sewage system is not available; utilize a non-public system whose construction and use meet the construction and operation standards contained in Bulletin 332, "Septic Tanks", published by the Montana State University Cooperative Extension Service, and department circular #84-10, incorporated by reference in subsection (1) of this rule, with the proviso that the necessary size of the system be determined utilizing the following:

(i) Sewage flow must be determined using a rate of 50 gallons per day per guest, 25 gallons per day per staff member, and 75 gallons per day per resident.

(ii) A septic tank must have a minimum of 1000 gallons liquid capacity and be sufficient in size to provide for a minimum of 24 hours of retention time.

(iii) The rate of sewage application for standard trenches must be calculated using the formula Q equals 5 divided by the square root of t , where Q equals the rate of sewage application in gallons per square foot per day and t equals the percolation rate in minutes per inch.

(3) A 4-foot vertical separation must exist between the bottom of the drainfield trench and both the highest groundwater level and the bedrock level.

(4) The maximum slope of an area used for subsurface sewage disposal may not exceed 15%.

(5) (3) A sewage system design, other than the type described in this rule, may be utilized only if it is designed by an engineer registered in Montana and offers equivalent sanitary protection as determined by the department or local health authority.

(6) (4) An establishment must replace or repair its sewage system whenever:

(i) it fails to accept sewage effluent at the rate of application;

(ii) seepage of effluent from, or ponding of effluent on or around, the system occurs;

(iii) contamination of a potable water supply or state waters is traced to effluent from the sewage system; or

(iv) a mechanical failure occurs, including electrical outage, or collapse or breakage of septic tank, ~~lead~~ inlet lines, or drainfield lines.

AUTHORITY: Sec. 50-51-103 MCA

IMPLEMENTING: Sec. 50-51-103 MCA

16.10.637 LAUNDRY FACILITIES (1) Laundries operated in conjunction with, or utilized by, an establishment must be provided with:

(a) mechanical washer and hot air tumble dryer. Manual washing and line drying of bed linen, towels and washcloths is prohibited. Dryers must be properly vented to prevent maintenance problems.

(b) A hot water supply system capable of supplying water at a temperature of 54° C. (130° F.) to the washer during all periods of use.

(c) Separate area for sorting and storing soiled laundry and folding and storing clean laundry.

(d) Separate carts for transporting soiled and cleaned laundry.

(e) Handwashing facilities including sink, soap, and disposable towels. A soak sink may double as a handwashing sink.

(2) Sheets, pillow covers, towels and washcloths must be machine washed at a minimum temperature of 54° C. (130° F.) for a minimum time of 8 minutes and dried in a hot air tumble dryer or ironed at a minimum temperature of 150° C. (300° F.).

AUTHORITY: Sec. 50-51-103 MCA

IMPLEMENTING: Sec. 50-51-103 MCA

16.10.638 HOUSEKEEPING AND MAINTENANCE (1) An establishment must comply with the following housekeeping and maintenance requirements:

(a) In each establishment daily housekeeping and maintenance services must be provided.

(b) Each janitor room must be kept clean, ventilated and free from odors.

(c) Mop heads, when used, must be changed frequently using laundered replacements.

(d) Toilets, bathtubs, lavatories, and showers may not be used for washing and rinsing of mops, brooms, brushes, or any other cleaning devices.

(e) The transporting, handling and storage of clean bedding must be done in such a manner as to preclude contamination by soiled bedding or from other sources.

(f) Cleaners used in cleaning bathtubs, showers, lavatories, urinals, toilet bowls, toilet seats, and floors must contain fungicides or germicides.

(g) Deodorizers and odor-masking agents may not be used unless the room in which used is clean to sight and touch.

(h) Cleaning devices must be kept separate and used only as follows: Toilet bowl brushes, mops, sponges, must be only for cleaning toilet bowl and urinals. Cleaning devices used for lavatories, showers and bathtubs may not be used for any other purpose.

(i) Dry dust mops and dry dust cloths for cleaning purposes are prohibited. Dusting and cleaning shall be accomplished using treated mops, wet mops, treated cloths, and moist cloths or other means approved by the department or health authority which will not serve to spread soil from one place to another.

(j) Establishments must be kept free of harborage for insects, rodents and other vermin.

(k) All bedding, towels, and wash cloths provided by management must be clean and in good repair. At least weekly, clean bed linens must be provided for made available to each guest. At least daily, clean wash cloths and towels must be provided for made available to each guest. Soiled linens, soiled wash cloths, or soiled towels, or used bar soap are not to be left in units for subsequent guests.

(l) All furnishings, fixtures, floors, walls, and ceilings must be clean and in good repair.

(m) Each sleeping unit in an establishment must be provided with a bed with mattress, mattress pad or covering, pillow, pillow slip, bottom and top sheets, blankets and spread. Bottoms sheets must be large enough to be able to be tucked under the mattress on both sides and ends. Top sheets must be large enough to be able to be folded over the blanket by at least 4 inches.

(n) (m) Cleaning compounds and pesticides must be stored, used, and disposed of in accordance with the manufacturer's instructions.

(e) (n) Glasses, pitchers, ice buckets, and other utensils used for food or drink provided in units for use by guests may not be washed or sanitized in any lavatory or janitor sink. Approved facilities for washing, rinsing, and sanitizing glasses, pitchers, ice buckets, and other utensils must be provided. In absence of approved washing facilities, single service utensils must be used.

(*) (o) All utensils used for food or drink provided in units for use by guests must be stored, handled, and dispensed in a manner which precludes contamination of the utensil prior to use by a guest.

AUTHORITY: Sec. 50-51-103 MCA

IMPLEMENTING: Sec. 50-51-103 MCA

4. The Department is proposing these amendments to the rules because they are needed to utilize the most up-to-date standards for water and sewer systems, to add standards found necessary to protect public health and safety, and to delete others which are irrelevant to public health and safety.

5. Interested persons may present their data, views or arguments, either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana, no later than June 13, 1985.

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


JOHN J. DRYNAN, M.D., Director

By 
WILLIAM J. OPITZ,
Deputy Director

Certified to the Secretary of State May 6, 1985

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

In the matter of the adoption) NOTICE OF PUBLIC HEARING
of new RULES I through XVII,) FOR PROPOSED ADOPTION
(to be codified 16.10.1110) AND REPEAL OF RULES
through 16.10.1126), and the)
repeal of rules 16.10.1101)
through 16.10.1109, relating)
to health and safety in schools) (Schools)

To: All Interested Persons

1. On June 7, 1985, at 9:00 a.m., or as soon thereafter as it may be heard, a public hearing will be held in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the adoption of rules which establish standards and criteria relating to health, safety and physical well-being in schools, and the repeal of rules 16.10.1101 through 16.10.1109.

2. The rules will replace rules 16.10.1101 - 16.10.1109, found at pages 16-481 through 16-491 of the Administrative Rules of Montana.

3. The proposed rules provide as follows:

RULE I (to be codified 16.10.1110) DEFINITIONS

(1) "Department" means the department of health and environmental sciences.

(2) "School" means a building or structure or portion thereof occupied or used at least 180 days per year for the teaching of individuals, the curriculum of which satisfies the basic instructional program approved by the board of public education for pupils in any combination of kindergarten through grade 12, but excludes home schools as that term is defined in 20-5-102(f), MCA.

(3) "Fixtures" means a shower, toilet, toilet seat, urinal, lavatory, drinking fountain, kitchen sink, janitor and custodial sink, utensil sink and all exposed plumbing integral to them.

(4) "Floors" means floor covering of all rooms including stairways, hallways, and lobbies.

(5) "Furnishings" means draperies, curtains, blinds, light fixtures, chairs, tables, desks, shelves, and bookcases.

(6) "Local health authority" means a local health officer, local sanitarian, or their authorized agents.

(7) "Sanitarian" means the person who is qualified under Title 37, Chapter 40, part 3, MCA, and represents the health officer.

(8) "School site" means the ground immediately adjacent to a school used on a regular basis for school-related activity.

AUTHORITY: Sec. 50-1-206 MCA

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

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

(a) location and detail of classrooms used for science or science laboratories, home economics, and shop, including location and venting detail of lockable storage area of chemicals and other hazardous products;

(b) location and detail of janitorial facilities;

(c) specifications for the sewage treatment and disposal system to serve the school, except as provided in subsection (2);

(d) specifications for the water supply to serve the school, except as provided in subsection (2);

(e) location and detail of laundry facilities including description of equipment and a flow chart indicating the route of laundry through sorting, washing, drying, ironing, folding, and storage;

(f) specifications for the final finishes of floors, walls and ceilings in toilet, locker and shower rooms, laundries, and janitorial closets.

(g) a statement from the designer of the facilities that lighting capable of meeting the minimum requirements of [RULE IX, to be codified 16.10.1118] will be provided;

(h) location and detail of the solid waste storage facilities;

(i) name of department-approved sanitary landfill which will receive solid waste from the school;

(j) specifications for a food service to serve the school unless the food service has been previously approved by the department;

(k) any other information requested by the department or local health authority relating to the health, sanitation, safety and physical well-being of the teachers, staff and students.

(2) If the sewage treatment or disposal system or water supply has been previously approved by the department and is designed to handle any increased load necessitated by the school's use, the applicant need not submit system specifications, but must submit written certification that the owner of the system has agreed to provide service.

(3) Construction may not commence until all plans required by subsection (1) of this rule have been approved by the department or local health authority. Construction must be in accordance with the plans as approved unless permission is granted in writing by the department or local health authority to make changes.

(4) Approval will be granted for a period not to exceed

three years, after which, if construction has not been completed, plans must again be submitted to the department or local health authority for re-evaluation.

AUTHORITY: Sec. 50-1-206 MCA

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

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

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

AUTHORITY: Sec. 50-1-206 MCA

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

RULE IV (to be codified 16.10.1113) STATE-LOCAL COORDINATION (1) If plans for a new or existing building are submitted for review to the local health authority pursuant to [RULES II or III, to be codified 16.10.1111 or 16.10.1112] and the local health authority determines that it will be unable to conduct the review within a reasonable period of time, the local authority shall transmit the plans to the department within ten days after receipt, and shall notify the applicant that the review will be conducted by the department.

(2) If a local health authority conducts a plan review pursuant to [RULES II or III, to be codified 16.10.1111 or 16.10.1112] and approves the plans, the local health authority shall submit written certification of such approval to the department no later than thirty days following such approval.

AUTHORITY: Sec. 50-1-206 MCA

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

RULE V (to be codified 16.10.1114) INSPECTION

(1) Representatives of the department or local health authority must be permitted to enter any school at any reasonable time for the purpose of making inspections to determine compliance with this sub-chapter. Such inspections should be conducted as frequently as possible and appropriate, ideally at least once in every twelve months. The department or local health authority may determine that special circumstances or local conditions warrant inspections with greater or less frequency.

(2) Immediately following each inspection, representatives of the department or local health authority shall give the school administration a copy of an inspection report which notes any deficiencies and sets a time schedule for compliance.

AUTHORITY: Sec. 50-1-206 MCA

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

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

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

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

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

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

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

AUTHORITY: Sec. 50-1-206 MCA

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

RULE VII (to be codified 16.10.1116) SAFETY REQUIREMENTS

(1) Janitorial and other storage areas that contain toxic or hazardous materials must be kept locked between periods of use.

(2) All cleaning compounds and other toxic chemicals not stored in the product container or package in which it was obtained must be stored in a labeled container that clearly identifies the product by name.

(3) Water provided to handsinks and shower facilities may not exceed a temperature of 120° F.

(4) Gas supply lines serving science laboratories, home economics, shops and other rooms utilizing multiple outlets must have a master shutoff valve that is readily accessible to the instructor or instructors in charge.

(5) Home economics, shops, offices and other rooms using electrically operated instruction equipment must be supplied with a master electric switch readily accessible to the instructor or instructors in charge.

(6) The school site must be free of objects or conditions which create unreasonable or unnecessary dangers to health or safety.

(7) The topography of the site must permit good drainage of surface water.

(8) Playground equipment must be maintained in a clean and safe condition.

AUTHORITY: Sec. 50-1-206 MCA

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

RULE VIII (to be codified 16.10.1117) HEALTH SUPERVISION AND MAINTENANCE (1) Soap and disposable towels or other hand-drying devices must be available at all handwashing sinks. Common-use cloth towels are prohibited.

(2) A sanitary napkin dispenser and disposal must be provided for girls of age 10 or older and in teachers' toilet rooms and nurses' toilet rooms.

(3) If a child develops symptoms of illness while at school, the responsible school officials shall do the following:

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

(b) Inform the parent or guardian as soon as possible about the illness and request him or her to pick up the child.

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

(4) Schools shall develop and enforce policies on first aid which include, at a minimum, the following:

(a) obtaining emergency phone numbers for parents or guardians,

(b) procedures to be followed in the event of accidents or injuries, and

(c) emergency coverage during school-sponsored activities, including field trips, athletic, and other off-campus events. Recommendations for first aid supplies and policies may be secured from the Department of Health and Environmental Sciences, Health Services Division, Cogswell Building, Capitol Station, Helena, Montana, 59620.

(5) Smoking must be prohibited in areas, rooms and school vehicles used by children, and no smoking signs must be posted in such areas.

(6) In addition to the requirements of this rule, school officials should also be aware of the need to comply with the laws and rules relating to immunization of children (20-5-402 et seq. MCA; ARM 16.28.701 et seq.), health certification of teachers (20-4-104(b), MCA; ARM 16.28.1005), and reporting of communicable diseases (ARM 16.28.601 et seq.) Copies of these requirements may be obtained from the Health

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

AUTHORITY: Sec. 50-1-206 MCA

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

RULE IX (to be codified 16.10.1118) LIGHTING

(1) Sources of illumination, both natural and artificial, must be provided with light diffusion means, or must be of a type and design which limits excessive glare.

(2) The following minimum lighting, measured in footcandles, must be maintained during all periods of use:

(a) Hallways, corridors, storerooms, locker rooms, shower rooms, auditoriums (not for study) -- 10

(b) Cafeterias, reception rooms, swimming rooms, gymnasiums, toilet rooms, laundry rooms -- 20

(c) Classrooms, study halls, lecture rooms, art rooms, libraries -- 50

(3) In shops, laboratories, drafting rooms, typing rooms, home economics rooms or other areas where pupils use specific machines or equipment, a minimum of 100 footcandles must be maintained on such machinery or equipment while in use.

AUTHORITY: Sec. 50-1-206 MCA

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

RULE X (to be codified 16.10.1119) HEATING (1) Space heating systems must be designed to be capable of providing the following minimum space ambient temperatures:

(a) Classrooms, offices, music rooms, auditoriums, multipurpose rooms, libraries, cafeterias, toilet and similar rooms -- 68° F. at four feet from the floor.

(b) Locker rooms and showers -- 75° F. at four feet from the floor.

(c) Gymnasiums -- 65° F. at four feet from the floor.

AUTHORITY: Sec. 50-1-206 MCA

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

RULE XI (to be codified 16.10.1120) WATER SUPPLY SYSTEM

(1) The department hereby adopts and incorporates by reference ARM Title 16, chapter 20, sub-chapters 2, 3 and 4, which set forth standards for design, operation and maintenance of public water supplies; and Circular #84-11, "Minimum Design Standards for Small Water Systems," published by the department, which sets construction, operation, and maintenance standards for small water systems. Copies of ARM Title 16, chapter 20, sub-chapters 2, 3 and 4, and Circular #84-11 may be obtained from the Water Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana, 59620.

(2) In order to ensure an adequate and potable supply of water, a school must either:

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

(b) if the school is not utilized by more than 25 persons daily at least 60 days out of the calendar year, including staff and students, and an adequate public water supply system satisfying the requirements of ARM Title 16, chapter 20, sub-chapters 2, 3, and 4, is not accessible, utilize a non-public system whose construction and use meet the standards set in circular #84-11 published by the department.

(3) A water supply system of a type other than described in this rule may be utilized only if it is designed by a professional engineer and offers equivalent sanitary protection as determined by the department or local health authority.

(4) If a water supply system is used other than described in subsection (2)(a) above, a school must submit a water sample at least quarterly to a laboratory licensed by the department to perform microbiological analysis of the water supplied in order to determine that the water does not exceed the maximum microbiological contaminant levels stated in ARM 16.20.207.

(5) A school must replace or repair the water supply system serving it whenever the water supply:

(a) contains microbiological contaminants in excess of the maximum levels contained in ARM 16.20.207, or

(b) does not have the capacity to provide adequate water for drinking, cooking, personal hygiene, laundry, and water-carried waste disposal.

(6) Common drinking cups or containers are prohibited.

(7) Where water under pressure cannot be made available, the drinking water from an approved source must be stored in a clean container having a tight-fitting lid and a suitable faucet apparatus for filling individual cups. Single service drinking cups must be provided.

AUTHORITY: Sec. 50-1-206 MCA

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

RULE XII (to be codified 16.10.1121) SEWAGE SYSTEM

(1) The department hereby adopts and incorporates by reference the following department publications setting construction and operation standards for sewage systems:

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

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

Copies of circulars #84-10 and #13 may be obtained from the Water Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana, 59620.

(2) The department hereby adopts and incorporates by reference Arm Title 16, chapter 20, sub-chapter 4, which sets

forth standards for design, maintenance and operation of public sewer systems. Copies of Arm Title 16, chapter 20, sub-chapter 4 may be obtained from the Water Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana, 59620.

(3) In order to ensure sewage is completely and safely disposed of, a school must:

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

(b) if the school is not utilized by more than 25 persons daily at least 60 days out of the calendar year, including staff and students, and an adequate public sewage system satisfying the requirements of ARM Title 16, chapter 20, sub-chapter 4 is not available, utilize a non-public system whose construction and use meet the construction and operation standards contained in Circular #84-10 incorporated by reference in subsection (1) of this rule.

(4) Where pit privies are currently in use, the privies must be operated and maintained in compliance with the standards specified in Circular #13, "The Sanitary Pit Privy."

(5) A sewage system design of a type other than described in this rule may be utilized only if it is designed by a professional engineer and offers equivalent sanitary protection as determined by the department or local health authority.

(6) A school must replace or repair its sewage system whenever:

(a) it fails to accept sewage effluent at the rate of application;

(b) seepage of effluent from, or ponding of effluent on or around the system occurs;

(c) effluent from the sewage system causes contamination of a potable water supply or state waters; or

(d) a mechanical failure occurs, including electrical outage, or collapse or breakage of septic tank, inlet lines, or drainfield lines.

AUTHORITY: Sec. 50-1-206 MCA

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

RULE XIII (to be codified 16.10.1122) LAUNDRY FACILITIES

(1) Laundries operated in conjunction with or utilized by a school must be provided with:

(a) a mechanical washer and hot air tumble dryer. Manual washing and line drying of towels and other laundry items is prohibited. Dryers must be properly vented to prevent maintenance problems.

(b) a hot water supply system capable of supplying water at a temperature of 130° F. to the washer during all periods of use.

(c) a separate area for sorting and storing soiled laundry and folding and storing clean laundry.

(d) separate carts for transporting soiled and clean laundry.

(e) handwashing facilities including sink, soap, and disposable towels. A soak sink may double as a handwashing sink.

(2) Towels and other laundry items must be machine washed at a minimum temperature of 130° F. for a minimum time of eight minutes and dried in a hot air tumble dryer.

AUTHORITY: Sec. 50-1-206 MCA

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

RULE XIV (to be codified 16.10.1123) CLEANING AND MAINTENANCE (1) A school must comply with the following cleaning and maintenance requirements:

(a) Daily cleaning and maintenance services must be provided.

(b) Each janitor room must be kept clean, ventilated and free from odors.

(c) Mop heads, when used, must be changed frequently using laundered replacements.

(d) Toilets, lavatories, and showers may not be used for washing and rinsing of mops, brooms, brushes, or any other cleaning device.

(e) Cleaners used in cleaning showers, lavatories, urinals, toilet bowls, toilet seats, and floors must contain fungicides or germicides.

(f) Deodorizers and odor-masking agents may not be used unless the room in which used is clean to sight and touch.

(g) Toilet bowl brushes, mops and sponges may be used only for cleaning toilet bowls and urinals and must be stored separately from other cleaning devices. Cleaning devices used for lavatories and showers may not be used for any other purposes.

(h) Dry dust mops and dry dust cloths for cleaning purposes are prohibited. Only treated mops, wet mops, treated cloths, moist cloths or other means approved by the department or health authority which will not spread soil from one place to another may be used for dusting and cleaning.

(i) All furnishings, fixtures, floors, walls, and ceilings must be clean and in good repair.

(j) Cleaning compounds and pesticides must be stored, used, and disposed of in accordance with the manufacturer's instructions.

(k) Whenever therapeutic whirlpools are used, they must be constructed and maintained for easy cleaning. Whirlpools must be drained and an effective disinfectant applied to the interior surfaces between individual uses.

AUTHORITY: Sec. 50-1-206 MCA

IMPLEMENTING: Sec. 50-1-203, 5-1-206 MCA

RULE XV (to be codified 16.10.1124) FOOD SERVICE REQUIREMENTS (1) Whenever a food service is operated as an integral part of a school, compliance with ARM Title 16, chapter 10, sub-chapter 2, rules for food service establishments is required.

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

(2) The department hereby adopts and incorporates by reference ARM Title 16, chapter 10, sub-chapter 2, which sets forth rules and standards for food service establishments. Copies of ARM Title 16, chapter 10, sub-chapter 2 may be obtained from the Food and Consumer Safety Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana, 59620.

AUTHORITY: Sec. 50-1-206 MCA

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

RULE XVI (to be codified 16.10.1125) SOLID WASTE In order to ensure that solid waste is safely stored and disposed of a school must:

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

(2) clean all solid waste containers with sufficient frequency to maintain them in sanitary condition;

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

(4) transport, or utilize a private or municipal hauler to transport, the solid waste at least weekly to a landfill site approved by the department in a covered vehicle or covered containers.

AUTHORITY: Sec. 50-1-206 MCA

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

RULE XVII (to be codified 16.10.1126) NOXIOUS PLANT AND ANIMAL CONTROL (1) The school and school site must be maintained free of harborage for insects, rodents, and other vermin. Extermination methods and other measures to control insects and rodents must conform with the requirements of the department or the local health authority.

(2) All areas must be maintained free of accumulation of debris or standing water which may provide rodent harborage or breeding places for flies, mosquitoes and other pests.

(3) Whenever potential for rodent infestation exists, storage areas must be maintained so as to prevent rodent harborage. Lumber, pipe and other building materials must be stored neatly at least one foot above the ground.

(4) Whenever the potential for insect and rodent infestation exists, building construction must be of a type which will not provide harborage. The growth of brush, weeds and grass must be controlled to prevent harborage of noxious insects and other vermin. School grounds must be maintained to prevent the growth of noxious weeds considered detrimental to health.

AUTHORITY: Sec. 50-1-206 MCA

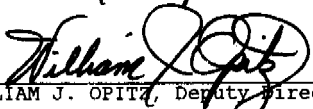
IMPLEMENTING: Sec. 50-1-203, 50-1-206 MCA

4. The Department is proposing these rules because the existing rules, which have not been revised since 1972, have become obsolete. The new rules eliminate obsolete requirements, standards which are covered by other agencies, and requirements which do not pertain to health and safety. Reference is made to new rules, standards and technical information which have become available since 1972. The new rules also eliminate administrative and enforcement difficulties which were experienced by local health authorities under the old rules.

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Robert L. Solomon, Cogswell Building, Capitol Complex, Helena, Montana, no later than June 7, 1985.

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


JOHN J. DRYNAN, M.D., Director

By 
WILLIAM J. OPITA, Deputy Director

Certified to the Secretary of State May 6, 1985

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

In the matter of the adoption) NOTICE OF PUBLIC HEARING
of rules I through VII [to be) FOR PROPOSED ADOPTION OF
codified 16.10.801 - 16.10.807]) RULES
setting health and sanitation)
standards for youth camps) (Youth Camps)

To: All Interested Persons

1. On June 7, 1985, at 9:00 a.m., or as soon thereafter as it may be heard, a public hearing will be held in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the adoption of rules which set standards for youth camps to ensure sanitary conditions there and to protect the health of those using them.

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

3. The proposed rules provide as follows:

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

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

AUTHORITY: Sec. 50-52-102 MCA

IMPLEMENTING: Sec. 50-52-102 MCA

RULE II (to be codified 16.10.802) USE BY NON-LICENSEE -- LICENSEE RESPONSIBILITY (1) Whenever the licensee of a camp rents, leases, or otherwise relinquishes control of the camp facilities to a private organization which manages the camp and restricts its availability to members of that private organization, the licensee:

(a) Will be responsible only for the standards contained in this subchapter which relate to structural and equipment requirements, and for any other requirements which remain under the control of the licensee; and

(b) Must supply the private organization with an operation and maintenance manual which includes instructions

for operation and maintenance of the water, sewage, heating/cooling, and ventilation systems, and any other facilities necessary for the safe and sanitary operation of the camp.

(2) If the licensee allows use of the camp by an organization which is either public or will allow access to the camp by individuals who are not organization members, the licensee will be responsible for compliance with all of the standards in this sub-chapter.

AUTHORITY: Sec. 50-52-102 MCA

IMPLEMENTING: Sec. 50-52-102 MCA

RULE III (to be codified 16.10.803) NON-PERMANENT HOUSING MAINTENANCE Non-permanent structures used for housing of campers or employees, such as tents, awnings, teepees, or similar shelters, must be maintained in good repair.

AUTHORITY: Sec. 50-52-102 MCA

IMPLEMENTING: Sec. 50-52-102 MCA

RULE IV (to be codified 16.10.804) TOILETS Toilet facilities must be:

(1) Located within 300 feet of all sleeping quarters.

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

AUTHORITY: Sec. 50-52-102 MCA

IMPLEMENTING: Sec. 50-52-102 MCA

RULE V (to be codified 16.10.805) SAFETY The operator of a youth camp must:

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

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

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

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

AUTHORITY: Sec. 50-52-102 MCA

IMPLEMENTING: Sec. 50-52-102 MCA

RULE VI (to be codified 16.10.806) ILLNESS OR INJURY

The operator of the camp must:

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

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

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

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

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

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

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

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

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

AUTHORITY: Sec. 50-52-102 MCA

IMPLEMENTING: Sec. 50-52-102 MCA

RULE VII (to be codified 16.10.807) INSECT, RODENT, AND WEED CONTROL The operator of the camp must ensure that:

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

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

(3) The growth of brush, weeds, grass, and other plants in the area customarily frequented by campers is restricted to the extent necessary to eliminate harborage for ticks, chiggers, and similar insects of danger to public health.

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

AUTHORITY: Sec. 50-52-102 MCA

IMPLEMENTING: Sec. 50-52-102 MCA

4. The Department is proposing these rules because section 50-52-102 of the Montana Code Annotated requires the department to adopt construction and operation standards for youth camps which insure sanitation and protect public health.

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Robert L. Solomon, Cogswell Building, Capitol Complex, Helena, Montana, no later than June 13, 1985.

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


JOHN F. DRYNAN, M.D., Director

By 
WILLIAM J. OPITZ, Deputy Director

Certified to the Secretary of State May 6, 1985

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption)	NOTICE OF PUBLIC
of rules pertaining to fees)	HEARING FOR PROPOSED
for filing documents and)	ADOPTION OF RULES -
issuing certificates.)	Fees for Filing
	Uniform Commercial
	Code Documents and
	Issuing Certificates
	related to agriculture

TO: All Interested Persons:

1. On June 5, 1985, at 10:00 a.m., a public hearing will be held in Room 104, Capitol Building, Helena, Montana, to consider the adoption of rules pertaining to fees for filing documents and issuing certificates for agricultural financing statements, continuation statements, amendments, assignments, and releases; for certifications by the county clerk and recorder; and for filing notice of refiling with the county clerk and recorder.

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

3. The proposed rules provide as follows:

RULE I FEES FOR FILING NEW UNIFORM COMMERCIAL CODE
SECURED TRANSACTIONS DOCUMENTS COVERING AGRICULTURAL
PROPERTY

After June 30, 1985, the secretary of state shall charge and collect fees in amounts determined pursuant to 30-9-403, MCA, for the filing of new Uniform Commercial Code secured transactions documents covering farm products or accounts, livestock, general intangibles arising from or relating to the sale of farm products by a farmer, crops growing or to be grown, or equipment used in farming operations.

AUTH & IMP: Sec. 5, Senate Bill 129, 49th Legislature

RULE II FEES FOR REFILEING EXISTING UNIFORM COMMERCIAL
CODE SECURED TRANSACTIONS DOCUMENTS COVERING AGRICULTURAL
PROPERTY

(1) The secretary of state shall charge and collect a fee of \$2.00 per document for the refiling of any financing or continuation statement, release, assignment or amendment covering farm products or accounts, livestock, general intangibles arising from or relating to the sale of farm products by a farmer, crops growing or to be grown, or equipment used in farming operations which was filed with a county clerk and recorder prior to July 1, 1985.

9-5/16/85

MAR Notice No. 44-2-38

(2) The county clerks and recorders shall charge and collect for:

(a) each certification of secured transactions documents filed prior to July 1, 1985 covering agricultural property in a form prescribed by the secretary of state, \$2.00;

(b) filing a notice of refiling of secured transactions documents filed prior to July 1, 1985 covering agricultural property in a form prescribed by the secretary of state, \$1.00.

AUTH & IMP: Sec. 5, Senate Bill 129, 49th Legislature


4. The rules are being proposed to establish fees for filing documents and issuing certificates as required by Title 30, Chapter 9. Records to support the fee charged for the filing requirements are maintained in the Office of the Secretary of State and are available to the public.

5. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Bobby June Day, Room 225, Capitol Building, Helena, Montana 59620, no later than June 13, 1985.

6. Bobby June Day, Room 225, Capitol Building, Helena, Montana, has been designated to preside over and conduct the hearing.

7. The authority and implementing sections are listed at the end of each proposed rule.

Dated this 6th day of May, 1985.


JIM WALTERMIRE
Secretary of State

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 Rules	)	THE PROPOSED AMENDMENT OF
46.12.1201, 46.12.1202,	)	46.12.1201, 46.12.1202,
46.12.1203, 46.12.1204,	)	46.12.1203, 46.12.1204,
46.12.1205, 46.12.1206,	)	46.12.1205, 46.12.1206,
46.12.1207, 46.12.1208, and	)	46.12.1207, 46.12.1208, AND
46.12.1209 pertaining to the	)	46.12.1209 PERTAINING TO
reimbursement for skilled	)	THE REIMBURSEMENT FOR
nursing and intermediate	)	SKILLED NURSING AND
care services	)	INTERMEDIATE CARE SERVICES

TO: All Interested Persons

1. On June 5, 1985, at 9:30 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of Rules 46.12.1201, 46.12.1202, 46.12.1203, 46.12.1204, 46.12.1205, 46.12.1206, 46.12.1207, 46.12.1208, and 46.12.1209 pertaining to the reimbursement for skilled nursing and intermediate care services.

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

46.12.1201 TRANSITION FROM RULES IN EFFECT SINCE JULY 1, 1983 (1) These rules shall be effective July 1, 1983.

(2) Includable costs for cost reports with ending dates before July 1, 1983, will be determined in accordance with rules for allowable costs then in effect.

~~(3) Each facility shall be required to submit a cost report for the period from the first day of their 1982 fiscal year through June 30, 1982. Administrative rules in effect on June 30, 1982, shall govern the preparation, submission and audit of this cost report as well as settlement for this period.~~

~~(4) Operating and property rates determined in accordance with ARM 46.12.1204 shall be subject to a phase-in process to yield a payment rate. The payment rate is the result of computing the formula:~~

~~R=RO+PP~~

~~RO=T+((A-T)divided by 3), if A-T is greater than zero, for the period July 1, 1982 through June 30, 1983, or~~
~~RO=T+(2 times ((A-T) divided by 3)), if A-T is greater than zero, for the period July 1, 1983 through June 30, 1984, or~~
~~RO=A, if A-T is greater than zero, for the period July 1, 1984 through June 30, 1985, or~~
~~RO=T, if A-T is equal to or less than zero, for the~~

period-July-1, 1982-through-June-30, 1985, and
 $RP = S + \frac{(M-S)}{3}$, if M-S is greater than zero,
 for the period-July-1, 1982-through-June-30, 1983, or
 $RP = S + \frac{(2 \text{ times } (M-S))}{3}$, if M-S is greater
 than zero, for the period-July-1, 1983-through-June-30,
 1984, or
 $RP = M$, if M-S is greater than zero, for the period-July-1,
 1984-through-June-30, 1985, or
 $RP = S$, if M-S is equal to or less than zero, for the
 period-July-1, 1982-through-June-30, 1985,

(3) The payment rate is a result of computing the
 formula:

$R = RO + RP$

For facilities purchased prior to June 30, 1982:

$RO = T$, if A-T is less than 0

$RO = A$, if A-T is equal to or greater than 0

$RP = S$, if M-S is equal to or less than 0

$RP = M$, if M-S is equal to or greater than 0

For facilities purchased after June 30, 1982:

$RO = A$

$RP = M$

where:

R is the payment rate for the respective rate periods
 current year,

S is the interim property rate in effect on June 30,
 1982,

T is the interim operating rate plus estimated incentive
 factor in effect on June 30, 1982,

A is the operating rate effective July 1, 1984, of the
 current year in accordance with ARM 46.12.1204(2), and
 revised annually in accordance with ARM 46.12.1204(5),

M is the property rate effective July 1, 1984, of the
 current year in accordance with ARM 46.12.1204(3), and
 revised annually in accordance with ARM 46.12.1204(5).

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-141 MCA

46.12.1202 PURPOSE AND DEFINITIONS (1) The purpose of
 the following rules is to define the basis and procedures the
 department will use to pay for long-term care facility ser-
 vices provided to medicaid recipients from July 1, 1985
 forward.

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

(d) The rules for determining rates and the rate-setting
 methodology may be amended or revised from time to time, but
~~such amendments or revisions will become effective only after~~
~~members of the public have had adequate opportunity to review~~
~~and comment~~ according to procedures established under Montana
 state law. ~~The department reviews provider cost report data,~~
~~patient assessment data, and inflation indicators periodically~~

~~ty--Should any of this information indicate a material change in the assumptions used to develop these rules, the department, at its discretion, will amend these rules accordingly.~~

(2) As used in these rules governing long-term care facility services, the following definitions apply:

(a) "Long-term care facility services" means skilled nursing facility services provided in accordance with 42 CFR 405 Subpart K, intermediate care facility services provided in accordance with 42 CFR 442 Subpart F, and intermediate care facility services for the mentally retarded provided in accordance with 42 CFR 442 Subpart G. The department hereby adopts and incorporates herein by reference 42 CFR 405 Subpart K, and 42 CFR 442 Subparts F and G, which define the participation standards for providers, copies of which may be obtained through the Department of Social and Rehabilitation Services, P. O. Box 4210, 111 Sanders, Helena, Montana 59604. These services include, but are not limited to, a medically necessary room, dietary services including dietary supplements used for tube feeding or oral feeding such as high nitrogen diet, nursing services, minor medical and surgical supplies, and the use of equipment and facilities. Examples of long term care facility services are:

(i) all general nursing services including but not limited to administration of oxygen and related medications, hand-feeding, incontinent care, tray service, nursing rehabilitation services, and enemas;

(ii) items furnished routinely and relatively uniformly to all patients without charge, such as patient gowns, water pitchers, basins and bed pans;

(iii) items stocked at nursing stations or on the floor in gross supply and distributed or used individually in small quantities without charge, ~~such as alcohol applicators, cotton balls, band-aids, antacids, aspirin (and other non-legend drugs ordinarily kept on hand), suppositories, and tongue depressors~~; including but not limited to:

(A) anti-bacterial/bacteriostatic solutions, including betadine, hydrogen peroxide, 70% alcohol, merthiolate, zephiran solution;

(B) cotton;

(C) denture cups;

(D) deodorizers (room-type);

(E) diagnostic agents used to measure sugar and acetones in urine; blood glucose; and occult blood;

(F) disposable diapers;

(G) distilled water;

(H) enema equipment and/or solutions;

(I) facial tissues and paper toweling;

(J) finger cots;

(K) first aid supplies;

(L) foot soaks;

(M) gloves (sterile and unsterile);

(N) hot water bottles;
(O) hypodermic needles (disposable and non-disposable);
(P) ice bags;
(Q) incontinent pads;
(R) linens for bed and bathing;
(S) lotions (for general skin care);
(T) medication - dispensing cups and envelopes;
(U) ointments for general protective skin care;
(V) ointments (anti-bacterial);
(W) personal hygiene products;
(X) safety pins;
(Y) sanitary pads;
(Z) sterile water and normal saline for irrigating;
(AA) sheepskins and other fleece-type pads;
(AB) soaps (hand or bacteriostatic);
(AC) supplies necessary to maintain infection control,
including those required for isolation-type services;
(AD) surgical dressings;
(AE) surgical tape;
(AF) stock medications including the following items (or
their equivalents):
(I) acetaminophen (regular and extra-strength);
(II) aspirin (regular and extra-strength);
(III) milk of magnesia;
(IV) mineral oil;
(V) suppositories for evacuation (dulcolax and
glycerine);
(VI) maalox;
(VII) mylanta;
(AC) straw/tubes for drinking;
(AH) suture removal kits;
(AI) swabs (including alcohol swab);
(AJ) syringes (disposable or non-disposable hypodermic;
insulin; irrigating);
(AK) thermometers, clinical;
(AL) tongue blades;
(AN) water pitchers;
(AN) waste bags;
(AO) wound-cleansing beads or paste;
(iv) items which are used by individual patients which
are reusable and expected to be available, such as--tee--bags,
bed-rails,--canes,--crutches,--walkers,--wheelchairs,--traction
equipment,--and other durable medical equipment, including but
not limited to:
(A) bathtub accessories (seat, stool, rail);
(B) beds, mattresses, and bedside furniture;
(C) bedboards, foot boards, cradles;
(D) bedside equipment, including bedpans, urinals,
emesis basins, water pitchers, serving trays;
(E) bedside safety rails;
(F) blood-glucose testing equipment;

- (G) blood pressure equipment, including stethoscope;
- (H) canes, crutches;
- (I) cervical collar;
- (J) commode chairs;
- (K) enteral feeding pumps;
- (L) geriatric chairs;
- (M) handheld nebulizer;
- (N) heat lamps, including infrared lamps;
- (O) humidifiers;
- (P) infusion pumps;
- (Q) isolation cart;
- (R) IV poles;
- (S) mattress (foam-type and water);
- (T) patient lift apparatus;
- (U) physical examination equipment;
- (V) postural drainage board;
- (W) raised toilet seat;
- (X) respirator;
- (Y) sitz bath;
- (Z) suction machines;
- (AA) tourniquets;
- (AB) traction equipment;
- (AC) trapeze bars;
- (AD) vaporizers, steam-type;
- (AE) walkers (regular and wheeled);
- (AF) waterpik;
- (AG) wheelchairs (standard);
- (AH) whirlpool bath (portable);
- (v) special dietary supplements used for tube-feeding or oral feeding such as elemental high-nitrogen diet; and
- (vii) laundry services whether provided by the facility or by a hired firm, except for patients' personal clothing which is dry cleaned outside of the facility;
- (vi) transportation of patients for routine services as defined in ARM 46.12.1202(2) (v); and
- (vii) any items not specifically included in these rules which are allowed on an individual basis by the department.
- (b) "Provider" means any person, agency, corporation, partnership or other entity that furnishes long-term care facility services and has entered into an agreement with the department for providing those services.
- (c) "Department" means the Montana department of social and rehabilitation services or its agents.
- (d) "Medicaid recipient" means a person who is eligible and receiving assistance through Title XIX of the Social Security Act for long-term care facility services.
- (e) "Patient day" means a whole 24-hour period that a person is present and receiving long-term care facility services, regardless of the payment source. Even though a person may not be present for a whole 24-hour period on day of admission or day of death, such day will be considered a

patient day. When department rules provide for the reservation of a bed for a patient who takes a temporary leave from a provider to be hospitalized or make a home visit, such whole 24-hour periods of absence will be considered patient days.

(f) "Average nursing care hourly wage" means the weighted sum of the hourly wages, including benefits, for ~~registered nurses, licensed practical nurses, and~~ nursing aides employed by providers, identified by the department in its most recent survey of providers, divided by the total number of ~~personnel~~ facilities surveyed.

(g) "Average nursing care time" means the sum of management hours of care for medicaid recipients identified by the department in its most recent patient assessment survey, divided by the total number of medicaid recipients surveyed. ~~For fiscal years beginning July 1, 1983, the~~ The most recent survey shall include a survey period of not less than three months nor more than six months.

(h) "Provider's average nursing care time" means the sum of management hours of care for medicaid recipients in a specific facility as identified by the department in its most recent patient assessment survey, divided by the number of medicaid recipients in that facility. subject to the provisions of ARM 46.12.1206(4). ~~For fiscal years beginning July 1, 1983, the~~ The most recent survey shall include a survey period of not less than three months nor more than six months.

(i) "Average wage" means 50% of the sum of starting salaries for job openings in the 300-series in the dictionary of occupational titles identified by the department in its most recent survey of jobs opened in Montana's job service offices during a twelve-month-or-more period, divided by the number of job openings surveyed, plus 50% of the sum of the average starting nursing care salaries identified by the department in its most recent wage survey, divided by the number of facilities surveyed.

(j) "Wage area" means the geographic area serviced by the Montana job service office in which a provider is located.

~~(k) "Extensive remodeling" means a renovation or refurbishing of all or part of a provider's physical facility, in accordance with certificate of need requirements, when the project's total cost depreciable under generally accepted accounting principles exceeds, in a twelve-month period, \$2,400 times the number of licensed beds in the facility. "Extensive remodeling" does not include the construction of additional beds.~~

~~(l) "Adjusted age of facility", for any given facility during any given rate year, means the addition prorated age of the facility, in whole years, possibly further adjusted first by age limitations (as described in ARM 46.12.1204(3)) and finally by remodeling allowances (as described in ARM 46.12.1204(3)), if any. For facilities with no additions built subsequent to initial construction, the addition pro-~~

~~rated age of the facility is simply the age of the facility, the number of whole years from the year of construction to the rate year. For facilities with additions built subsequent to initial construction, the addition prorated age of the facility is determined by weighting the ages of the original structure and all subsequent additions by their square footage.~~

(mk) "Wood frame construction" means the use of wood or steel studs in most bearing walls, with an exterior covering of wood siding, shingles, stucco, brick, or stone veneer, or other materials. "Wood frame construction" is defined to include all pre-engineered steel or aluminum buildings.

(nl) "Non-wood frame construction" means all types of construction not included as wood-frame construction.

(em) "Owner" means any person, agency, corporation, partnership or other entity which has an ownership interest, including a leasehold or rental interest, in assets used to provide long-term care facility services pursuant to an agreement with the department.

(pn) "Administrator" means the person, including an owner, salaried employee, or other provider, with day-to-day responsibility for the operation of the facility. In the case of a facility with a central management group, the administrator, for the purpose of these rules, may be some person (other than the titled administrator of the facility), with day-to-day responsibility for the long-term care portion of the facility. In such cases, this other person must also be a licensed nursing home administrator.

(go) "Related parties" for purposes of interpretation hereunder, shall include the following:

(i) A person or entity shall be deemed a related party to his spouse, ancestors, descendants, brothers and sisters, or the spouses of any of the above, and also to any corporation, partnership, estate, trust, or other entity in which he or a related party has a substantial interest or in which there is common ownership.

(ii) A substantial interest shall be deemed an interest directly or indirectly, in excess of five percent (5%) of the control, voting power, equity, or other beneficial interest of the entity concerned.

(iii) Interests owned by a corporation, partnership, estate, trust, or other entity shall be deemed as owned by the stockholders, partners, or beneficiaries.

(iv) Control exists when a person or entity has the power, directly or indirectly, whether legally enforceable or not, to significantly influence or direct the actions or policies of another person or entity, whether or not such power is exercised.

(v) Common ownership exists when a person has substantial interests in two or more providers or entities serving providers.

(sp) "Fiscal year" and "fiscal reporting period" both mean the provider's internal revenue tax year.

(sg) "Department audit staff" and "audit staff" mean personnel directly employed by the department or any of the department's contracted audit personnel or organizations.

(tr) "Estimated economic life" means the estimated remaining period during which the property is expected to be economically usable by one or more users, with normal repairs and maintenance, for the purpose for which it was intended when built.

(us) "Rate year" means a 12-month period beginning July 1.

(t) "Nonemergency routine transportation" means routine transportation for routine activities such as facility scheduled outings, nonemergency visits to physicians, dentists, optometrists, etc. Such transportation will be considered routine when provided within the community served by the facility or within 20 miles of the facility, whichever is greater.

(vu) The laws and regulations and federal policies cited in this sub-chapter shall mean those laws and regulations which are in effect as of March 31, 1982.

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-141 MCA

46.12.1203 PARTICIPATION REQUIREMENTS The providers participating in the Montana medicaid program shall meet the following basic requirements to receive payments for services:

(1) maintain a current license under the rules of the department of health and environmental sciences for the category of care being provided;

(2) maintain a current certification for Montana medicaid under the rules of the department for the category of care being provided;

(3) maintain a current agreement with the department to provide the care for which payment is being made;

(4) have a licensed nursing home administrator or other qualified supervisor for the facility as statutes or regulations may require; and

(5) accept, as payment in full for all operating and property costs, the amounts calculated and paid in accordance with the reimbursement method set forth in these rules; and

(6) for a providers maintaining patient trust accounts, must insure that any funds maintained in those accounts are used only for those purposes for which the patient, legal guardian, or personal representative of the patient has given written delegation. A provider may not borrow funds from these accounts for any purpose; and

(7) be currently participating in the medicare program.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-141 MCA

46.12.1204 PAYMENT RATE (1) ~~Except as provided under ARM-46.12.1204(4) a~~ provider's payment rate is the sum of an operating rate and a property rate, ~~adjusted by the phase-in procedure provided in ARM 46.12.1201(43).~~

(2) The operating rate A, in dollars per patient-day, is given by:

A=A(1), if T_1 is equal to or greater than A(1), or
A=A(2), if T_1 is equal to or less than A(2), or
A= T_1 , if T_1 is less than A(1) and greater than A(2), or
A=A(3) if the facility was constructed after 6/30/82
where:

A(1) = B times ((C times ((~~\$30.17~~ 28.80 + (\$54,627 divided by D)) divided by .9)) + E), effective July 1, 1985 and B times ((C times ((28.12 + (\$54,627 divided by D)) divided by .9)) + E), effective July 1, 1986

A(2) = B times ((C times ((~~\$24.69~~ 26.06 + (\$54,627 divided by D)) divided by .9)) + E), effective July 1, 1985 and B times ((C times ((26.74 + (\$54,627 divided by D)) divided by .9)) + E), effective July 1, 1986

A3 = B times ((C times ((27.43 + (\$54,627 divided by D)) divided by .9)) + E),

B is the area wage adjustment for a provider,

~~E is 1.0 effective July 1, 1982, 1.06 effective July 1, 1983, and 1.1995 effective July 1, 1984. (The inflation target rate for FY 1985. The July 1, 1984 inflation will be discussed by the department and representatives of the nursing home industry prior to April 1, 1984).~~

C is the inflation factor used to compute the per diem rates.

D is the number of licensed beds for a provider or 25, whichever is greater, times 366 days,

E is the patient care adjustment for a provider,

T_1 is C times the interim operating rate in effect on June 30, 1982, indexed to December 31, 1982.

(a) The area wage adjustment for a provider is the result of computing the following formula:

B=1 + (((F-G) divided by G) times .71) if F is equal to or greater than one standard deviation from the average wage, or

B=1.0 if F is less than one standard deviation from the average wage,

where:

F is the average wage for a provider's wage area,

G is the average wage for all wage areas plus one standard deviation, if F is more than one standard deviation above the average wage, or

G is the average wage for all wage areas minus one standard deviation, if F is more than one standard

deviation below the average wage.

(b) The patient care adjustment for a provider is the result of computing the following formula:

$E = L \text{ times } (J - K)$

where:

E is the patient care adjustment for a provider.

J is the provider's average nursing care time,

K is the average nursing care time for all providers.

L is the average nursing care hourly wage including benefits.

(3) The property rate is the result of computing the formula:

(a) $M = \frac{N - ((N \text{ divided by } Z) \text{ times } \$6.09) \text{ times } (Q - 1) \text{ times } Q}{9}$ $M = N \times Z$

where:

M is the property rate per day of service,
N is 25 years minus the adjusted age of the facility as of 1982 (or as of licensure, for entire facilities built after July 1, 1982), if the facility is of wood-frame construction, or 30 years minus the adjusted age of the facility as of 1982 (or as of licensure, for entire facilities built after July 1, 1982), if the facility is of non-wood-frame construction. the facility's property rate as of 6/30/85. For entire facilities built after 6/30/85

0 is 1.0 effective July 1, 1982, 1.06 effective July 1, 1983 and 1.1236 effective July 1, 1984.

P is .0400 if N is \$7.60 for a facility is of non-wood-frame construction, and or .0333 if \$7.60 for a facility is of non-wood-frame construction,

Q is the number of years the building has changed in adjusted age since 1983.

For facilities new to the program constructed prior to 6/30/82 a 6/30/85 rate will be computed according to property rules effective 6/30/85. That rate will be carried forward using $M = N \times Z$

Z is 25 years if the facility is of wood frame construction, or 30 years if the facility is of non-wood-frame construction. 1.025 effective July 1, 1985 and 1.0506 effective July 1, 1986

(b) The addition prorated age of a facility is to be limited to no more than 20 years, for facilities of wood-frame construction, or to no more than 22 years, for facilities of non-wood-frame construction.

(c) For facilities extensively remodeled after July 1, 1982, a remodeling adjustment to the possibly limited (as described in ARB 46-12-1204-(3)(b)) age of the facility will be allowed, beginning with a given rate year, provided that the remodeling, or the claimed portion thereof, ended during the immediate prior June 1 to May 31 period. The remodeling adjustment consists of reducing the adjusted age of the

~~facility by the lesser of ten years and the integer nearest the quotient formed by dividing the cost of remodeling by the product of \$1,200 and the number of facility beds at completion of the remodeling.~~

(4) The payment rate to providers of intermediate care facility services for the mentally retarded is the actual includable cost incurred by the provider as determined in ARM 46.12.1207 divided by the total patient days of service during the provider's fiscal year, except that the payment rate will not exceed the final rate in effect on June 30, 1982, as indexed to the mid-point of the rate year by 9% per 12-month year.

(a) ~~One month prior to the beginning of the provider's fiscal year, an interim payment rate which is the department's estimate of actual includable cost divided by estimated patient days will be determined.~~ Prior to the billing of July services each year the department will compute an interim payment rate which is the department's estimate of actual includable cost divided by estimated patient days.

(b) The difference between actual includable cost prorated for services to medicaid patients as limited in ARM 46.12.1204(4) and the amount paid through the interim payment rate will be settled through the overpayment and underpayment procedures set forth in ARM 46.12.1209.

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

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-141 MCA

46.12.1205 PAYMENT PROCEDURES (1) The department pays providers amounts determined under these rules on a monthly basis upon receipt of an appropriate billing which represents the number of patient days of long-term care facility services provided to medicaid recipients times the payment rate minus the amount each medicaid recipient participates in the cost of care.

(2) The payments made according to ARM 46.12.1205(1) represent full payment for the patient days of long-term care facility services represented on a billing. A provider shall not bill or collect any additional amount from medicaid recipients or the department for these services, except that the department may be billed additionally as allowed below:

(a) A provider may bill additionally at direct cost, with no indirect charges added, on a per-patient basis, for the following items, if such items are medically necessary, in accordance with ARM 46.12.306 which are prescribed by a

physician: oxygen, including those disposable items associated with the administration of oxygen such as cannulas, tubing and masks; (however, the administration of oxygen is a routine service which is included in the payment rate for long-term care facility services and may not be billed additionally); catheters, disposable colostomy and ileostomy appliances, and bedside drainage bags; and routine nursing supplies used in extraordinary amounts and prescribed by a physician on an individualized basis for specialized care related to a specific diagnosis and prior authorized by the department or its designee.

(i) catheter insertion tray;
(ii) colostomy/ileostomy/urostomy accessories necessary to apply/maintain the appliance;
(iii) colostomy/ileostomy/urostomy appliance;
(iv) enteral feeding bags/bottles and associated filters and tubing;
(v) enteral tubes and catheters;
(vi) intravenous catheters;
(vii) intravenous fluids;
(viii) irrigation tray;
(ix) oxygen and oxygen equipment;
(x) oxygen related disposable items, including cannulas, tubing, and masks;
(xi) suction catheters;
(xii) tracheostomy tubes and related trach care kits;
(xiii) urinary catheters;
(xiv) urinary drainage systems;
(xv) routine nursing supplies used in extraordinary amounts and prior approved by the department.

(b) For purposes of combined facilities providing these items through the hospital direct cost will mean invoice price to the hospital with no indirect cost added.

(bc) Physical, occupational, and speech therapies may be billed additionally by the licensed therapist providing the service. If the therapist is employed by the provider, the provider shall bill under a separate therapy provider number. Department rules related to physical therapy (ARM 46.12.527), occupational therapy (ARM 46.12.547), and speech pathology (ARM 46.12.532) shall apply.

(ed) Medically necessary motorized or customized wheelchairs with special design for a unique condition; helmets; shoulder braces, sacroiliac, lumbo sacral, and dorso-lumbral supports; hinged joint steel knee cap; wrist supports; orthopedic braces; elastic stockings; other anatomical supports; and oxygen may be billed additionally by the provider of medical supplies or equipment in accordance with APM 46.12.801 - 802 and ARM 46.12.805 - 806.

(de) All prescribed medication may be billed additionally by the pharmacy providing the medication including flu shots and tine tests in accordance with ARM 46.12.702.

(ef) Nonemergency (exclusive of those outlined in ARM 46.12.1202(2)(v)) transportation may not be billed additionally. Emergency transportation may be billed additionally by an ambulance service in accordance with ARM 46.12.1021-1022 and ARM 46.12.1025.

(fg) Providers may contract with any qualified person or agency, including home health agencies, to provide required long-term care facility services. However, except as allowed in this subsection, none of the contracted services may be billed additionally.

(3) If a provider has any deficiency as determined in ARM 4246.12.1206(9), the department will conduct an audit of the provider's costs for the fiscal year in which the deficiency occurred and may collect any difference between the amount the department paid during the fiscal year and actual includable cost prorated for services to medicaid recipients as determined in ARM 46.12.1207. Recovery will be in accordance with ARM 46.12.1209. If there are no deficiencies as defined in ARM 46.12.1206(9), the provider retains the full amount the department pays during the fiscal year.

(4) Any medical services and supplies for medicaid recipients in long-term care facilities not included under long-term care facility services may be billed by the provider of those services according to applicable department rules.

(5) No payment or subsidy will be made to a provider for holding a bed while the recipient is receiving medical services elsewhere, such as in a hospital, except in a situation where a provider is full and has a waiting list of potential residents. A provider will be considered full if all beds are occupied or being held for a patient temporarily in a hospital. In this exceptional instance, a payment may will be made for holding a bed while the resident is temporarily receiving care in a hospital, is expected to return to the provider, and the cost of holding the bed will evidently be less costly than the possible cost of extending the hospital stay until an appropriate bed would otherwise become available. Furthermore, payment in this exceptional instance may will be made only upon approval from the director of the department or his designee. A request for payment in this instance must be submitted to the department on the appropriate forms provided by the department within 90 days of the requested absence. In situations where conditions of billing for holding a bed are met, providers are required to hold the bed and may not fill the bed until these conditions are no longer met. The bed may not be filled unless prior approval is obtained from the department.

(6) Reimbursement will be made to a provider for reserving a bed while the recipient is temporarily absent if the recipient's plan of care provides for therapeutic home visits. Therapeutic home visits may be allowed for trial placement in the home and community based services program. A total of 24

days ~~annually~~ in each rate year will be allowed for therapeutic home visits. The provider is responsible for notifying the department on a form provided by the department ~~when~~ within 90 days of when a resident leaves the facility for a therapeutic home visit. Reimbursement for therapeutic home visits will not be allowed unless the form is filed with the department. Absences are restricted to no more than 72 consecutive hours per absence. Longer hours per absence may be allowed if determined medically appropriate and prior authorized by the director of the department or his designee.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-141 MCA

46.12.1206 PATIENT ASSESSMENTS, STAFFING REPORTS AND DEFICIENCIES (1) Each provider will report to the department each month the care requirements for each medicaid patient in the facility on forms ~~specified and provided by the department~~ and according to instructions supplied by the department.

(2) Each provider will report to the department each month the staffing provided at the facility on forms ~~specified and provided by the department~~ and according to instructions supplied by the department.

Subsection (3) remains the same.

(4) At least twice annually, ~~patient assessment and staffing review teams will validate~~ the monthly patient assessment and staffing reports will be validated for accuracy and consistency with medical ~~and financial~~ records maintained at the facility. If the department's review team indicates that facility patient assessment abstracts submitted are significantly different from the abstract average determined by the review team, the provider's average nursing care time will be computed from the abstracts submitted by the review team.

(a) "Significantly different" shall mean a ten percent or greater variance.

Subsections (5) and (6) remain the same.

(7) Review teams designated by the department will submit written reports to the medicaid financing bureau relative to findings and recommendations based upon the evaluations conducted in accordance with ARM 46.12.1206(4), (5) and (6). The medicaid financing bureau will respond to these reports by:

~~(a) Informing the provider that the three areas of review have been taking no action if the review is successfully completed with no significant deficiencies; or~~

~~(b) informing the provider that corrective action is necessary, and~~ The department may require that a corrective action plan approved by the department or jointly by the department and the state department of health and environ-

mental sciences must be implemented within a period of time specified by the department; or

(c) informing the provider that deficiencies are major and constitute a danger to the patients' well-being and necessitate the filing of a formal complaint with the state department of health and environmental sciences.

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

(9) Deficiencies referred to in ARM 46.12.1206(8) shall be deemed to have occurred if:

(a) There are any findings initiated by the department review teams resulting in necessary corrective action in accordance with ARM 46.12.1206(7)(b); or

(b) there are any findings initiated by the department review teams which result in confirmation by the state department of health and environmental sciences that a condition existed in the facility which constituted a danger to the patients' well-being, in accordance with ARM 46.12.1206(7)(c); or

(c) there is a loss of certification for participation in the medicaid program in accordance with rules established by the department of health and environmental sciences; or

(d) there is a determination by the medicaid financing bureau that a facility's average patient assessment care requirement was 25% ten percent or more in excess of actual facility nursing care staffing for two or more consecutive months.

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-141 MCA

46.12.1207 INCLUDABLE COSTS (1) For purposes of reporting includable costs, the department hereby adopts and incorporates herein by reference the health insurance manual HIM-15, which is a manual published by the United States department of health and human services, social security administration, which provides guidelines and policies to implement medicare regulations which set forth principles for determining the reasonable cost of provider services furnished under the Health Insurance for Aged Act of 1965, as amended. A copy of the HIM-15 may be obtained through the Department of Social and Rehabilitation Services, P.O. Box 4210, 111 Sanders, Helena, Montana 59604. For the purpose of reporting costs as required in ARM 46.12.1208(4), includable costs for cost reports with ending dates subsequent to July 1, 1982, will be determined in accordance with HIM 15 subject to the exceptions and clarifications herein provided, including the following:

(a) Return on net invested equity will be an includable cost only for providers of intermediate care facility services to the mentally retarded if they provide those services with the intention of earning a profit.

(b) Cost incurred in the provision of long-term care facility services to the extent such costs are reasonable and necessary are includable.

(c) Includable property costs shall be limited in the following manner:

(i) ~~The capitalized cost of a facility including the building, leasehold improvements, and all equipment shall not exceed property costs determined under ARM 46.12.1204(3). Movable equipment shall not exceed the fair market value of the asset at the time of acquisition.~~

(ii) ~~Lease costs shall not exceed the property costs determined under ARM 46.12.1204(3).~~ Property related interest, whether actual interest or imputed interest for capitalized leases, shall not exceed the interest rates available to commercial borrowers from established lending institutions at the date of asset acquisition or at the inception of a lease.

(iii) Leases shall be capitalized according to generally accepted accounting principles.

(iv) Depreciation of real property and movable equipment must be in accordance with American hospital association guidelines. Accelerated cost recovery guidelines will not be accepted.

(v) Includable property costs shall not be increased on the basis of a change in ownership which takes place on or after July 18, 1984, in accordance with Sections 1861(v)(1)(O) and 1902(a)(13) of the Social Security Act, which is a federal act establishing the Medicare and Medicaid programs. Sections 1861(v)(1)(O) and Section 1902(a)(13) are hereby adopted and incorporated herein by reference. Copies of these sections may be obtained through the Medicaid Financing Bureau, Department of Social and Rehabilitation Services, P.O. Box 4210, 111 Sanders, Helena, Montana 59604.

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

(k) Travel costs related to patient care are includable to the extent that such costs are allowable under Sections 162 and 274 of the internal revenue codes and section 1.162-2 of the income tax regulations, which are federal statutes and regulations dealing with allowable travel expenses and transportation costs. The above-cited sections of the internal revenue code and income tax regulations are hereby adopted and incorporated herein by reference. A copy of the statutes and regulations may be obtained from the Department of Social and Rehabilitation Services, P.O. Box 4210, 111 Sanders, Helena, Montana 59604. Vehicle operating costs will be prorated between business and personal use based on mileage logs or a prior approved percentage derived from a sample mileage log or other approved method acceptable to the department. Mileage logs shall include odometer readings. For vehicles used primarily by the administrator any portion of vehicle costs disallowed on pro-ration shall be included as compensation

subject to the limits specified in ARM 46.12.1207. Depreciation shall be included on a straight-line basis (subject to salvage value) with a minimum of 3 years. Depreciation and interest, or comparable lease costs may not exceed \$3200 per year. Other reasonable vehicle operating expenses may be included. Public transportation costs will be allowable at tourist or other available commercial rate (not first class).

Subsection (1)(1) remains the same.

(m) Costs, including attorney's fees, in connection with court or administrative proceedings shall be includable only to the extent that the provider prevails in the proceeding. Where such proceedings are tied to specific reimbursement amounts, the proportion of costs which are includable shall equal the same percentage as is derived by dividing the total reimbursement at issue by the total reimbursement in which the provider prevailed.

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

IMP: Sec. 53-2-201, 53-6-111 and 53-6-141 MCA

46.12.1208 COST REPORTING The procedures and forms for maintaining cost information and reporting are as follows:

Subsections (1) through (5)(d) remain the same.

(6) Audits. Department audit staff ~~will~~ may perform a desk review of cost statements and may conduct on-site audits of provider records. Such audits shall be conducted in accordance with audit procedures developed by the department.

(a) Desk review of cost reports will determine the adjustments to be applied to reported costs. Incomplete reports, or inconsistency in reported costs will cause the return of the cost report to the facility for correction and may result in withholding payment as set forth in APM 46.12.1208(4)(b). Department audit staff ~~will~~ may conduct a desk review of each cost report ~~within nine months of its receipt~~ to verify, to the extent possible, that the provider has provided a complete and accurate report.

(b) On-site audits of provider detailed records shall be made to assure validity of reports, costs and statistical information. Audits will meet generally accepted auditing standards. ~~Audits of providers' cost reports, financial records and other pertinent data will be adequate to verify that the provider has included only those expense items that are specified as includable costs under ARM 46.12.1207 in compiling the costs of services, and that the provider's includable costs are reasonable.~~

(c) On conclusion of a review of a cost report ~~and not later than nine months after its receipt~~, the department shall send the provider the results of the review.

(d) Upon conclusion of each on-site audit the department audit staff will submit an audit report to the medicaid financing bureau. The report will meet generally accepted

auditing standards and will state the auditor's opinion as to whether, in all material respects, the cost report submitted by the provider has included only those expense items that are specified as includable costs under ARM 46.12.1207 in compiling the costs of services, and that the provider's includable costs are reasonable. The department will keep audit reports on file for at least 3 years after receipt.

(7) A provider may object to audit findings through the administrative review process according to ARM 46.12.1210.

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

IMP: Sec. 53-2-201, 53-6-111 and 53-6-141 MCA

46.12.1209 OVERPAYMENT AND UNDERPAYMENT Subsections (1) through (3) remain the same.

~~(4) -- Errors in cost report data identified by the provider may be corrected if submitted within 30 days after receipt of the department's audit or desk review report.~~

(54) In the event an underpayment has occurred, the department will reimburse the provider promptly following the department's determination of error.

(65) Court or administrative proceedings for collection of overpayment or underpayment shall be commenced within five years following the due date of the original cost report or the date of receipt of a complete cost report, whichever is later. In the case of a reimbursement or payment based on fraudulent information, recovery of overpayment may be undertaken at any time. ~~Court costs, including attorneys' fees, in connection with court or administrative proceedings shall be deemed includable only when approved by the court or hearings officer.~~

(76) The amount of any overpayment constitutes a debt due the department as of the date of initial request for payment and may be recovered from any person, party, transferee, or fiduciary who has benefited from either the payment or from a transfer of assets.

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

IMP: Sec. 53-2-201, 53-6-111 and 53-6-141 MCA

3. These rules were originally implemented on July 1, 1983. Since that time experience has revealed clarifications that need to be made in such matters as sales of facilities and patient assessment. It should be noted that these clarifications do not change existing departmental policy or action. In addition, prior rules were implemented as a phase-in to the current reimbursement system. These changes continue with the progression of that phase-in. A court ordered settlement was also made during October of 1984; these changes serve to implement that settlement.

The estimated budgetary impact of these rules will be increased expenditures of \$2,765,362 in FY 1986 and \$1,443,585 in FY 1987. This increase is due to the changes for inflation required by the 10/84 court ordered settlement. Some cost savings is predicted by the requirement of Medicare certification.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than June 13, 1985.

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



Director, Social and Rehabilitation
Services

Certified to the Secretary of State May 6, 1985.

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

In the matter of the Repeal	)	NOTICE OF PUBLIC HEARING ON
of Rules 46.25.302,	)	THE PROPOSED REPEAL OF
46.25.310, 46.25.320,	)	RULES 46.25.302, 46.25.310,
46.25.340, 46.25.701,	)	46.25.320, 46.25.340,
46.25.702, 46.25.704,	)	46.25.701, 46.25.702,
46.25.709, 46.25.710,	)	46.25.704, 46.25.709,
46.25.712, 46.25.713,	)	46.25.710, 46.25.712,
46.25.723, 46.25.739,	)	46.25.713, 46.25.723,
46.25.745 and 46.25.750; the	)	46.25.739, 46.25.745 AND
amendment of Rules	)	46.25.750; THE AMENDMENT OF
46.25.101, 46.25.705,	)	RULES 46.25.101, 46.25.705,
46.25.707, 46.25.720,	)	46.25.707, 46.25.720,
46.25.721, 46.25.726,	)	46.25.721, 46.25.726,
46.25.732, 46.25.738 and	)	46.25.732, 46.25.738 AND
46.25.755; and the adoption	)	46.25.755; AND THE ADOPTION
of rules pertaining to the	)	OF RULES PERTAINING TO THE
general relief and medical	)	GENERAL RELIEF AND MEDICAL
assistance program	)	ASSISTANCE PROGRAM

TO: All Interested Persons

1. On June 7, 1985, at 9:30 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the proposed repeal of Rules 46.25.302, 46.25.310, 46.25.320, 46.25.340, 46.25.701, 46.25.702, 46.25.704, 46.25.709, 46.25.710, 46.25.712, 46.25.713, 46.25.723, 46.25.739, 46.25.745 and 46.25.750; the amendment of Rules 46.25.101, 46.25.705, 46.25.707, 46.25.720, 46.25.721, 46.25.726, 46.25.732, 46.25.738 and 46.25.755; and the adoption of rules pertaining to the general relief and medical assistance program.

2. The Department proposes to repeal 46.25.302, 46.25.310, 46.25.320, 46.25.340, 46.25.701, 46.25.702, 46.25.704, 46.25.709, 46.25.710, 46.25.712, 46.25.713, 46.25.723, 46.25.739, 46.25.745 and 46.25.750 relating to the general relief program. The rules as proposed to be repealed may be found on pages 46-7845, 46-7851, 46-7855, 46-7901, 46-7905, 46-7911, 46-7912, 46-7913, 46-7914, 46-7917, 46-7923, 46-7930, 46-7935 and 46-7941 of the Administrative Rules of Montana.

AUTH: Ch. 670, L. 1985 (HB 843)

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

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

MAR Notice No. 46-2-436

9-5/16/85

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

(1) ~~"County office" means the local county office of human services.~~ "Able-bodied" means the condition of a person who is not infirm.

(2) "Basic necessities" means food, shelter, utilities, and personal needs.

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

(24) "Department" means the ~~Montana state~~ department of social and rehabilitation services.

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

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

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

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

(9) "Household":

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

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

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

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

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

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

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

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

years unless that person has dependent minor children living in the household.

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

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

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

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

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

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

(22) "Substantial gainful work" means:

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

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

AUTH: Sec. 53-2-201, 53-2-904 MCA and Sec. 19, Ch. 670, L. 1985 (HB 843)

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

46.25.705 FAIR HEARINGS (1) Any person who is dissatisfied with action taken on an application, ~~grant-status-form~~ an eligibility determination or the amount or condition of payment, may request a fair hearing as provided in chapter 2, subchapter 2 of Title 46 of the Administrative Rules of Montana.

~~(2) -- It is the responsibility of the county office to inform every applicant or recipient in writing at the time of application or redetermination or at the time any action~~

~~affects his eligibility of the right to request a fair hearing.~~

~~(3)--A fair hearing must be requested within 90 calendar days from the date of notice of adverse action on an eligibility determination or redetermination. Adequate notice shall be considered given when the applicant is mailed a notice of adverse action.~~

AUTH: Sec. 53-2-201, 53-2-804 MCA and Sec. 19, Ch. 670, L. 1985 (HB 843)

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

46.25.707 FRAUD AND RECOVERY (1) ~~if a person appears~~

~~to have received assistance fraudulently, the county office must report all facts of the matter to the department's program integrity bureau, who will in turn refer the matter to the department of revenue or the county attorney of the county where the recipient resides. If it is found that assistance was improperly granted because of fraud:~~

~~(a) No further payment shall be authorized for the number of months or any portion thereof, equivalent to the amount of benefits fraudulently received divided by the monthly income standard.~~

~~(b) Repayment of assistance improperly granted because of fraud shall be made through grant reduction in each succeeding month of eligibility until the amount overpaid has been recovered, if not repaid by other means.~~

~~(2) Any or all of the assistance or benefits may be discontinued after: If it is found that assistance was improperly granted because of administrative or recipient error, repayment shall be made through grant reduction as described in (1)(b).~~

~~(a)--an investigation has been made to determine whether assistance was improperly granted;~~

~~(b)--the recipient has been notified that benefits will be discontinued; and given the opportunity to request a fair hearing; and~~

~~(c)--if a hearing is held and it is found that assistance was improperly granted, then no further payments shall be authorized for the length of time equal to the time period benefits were received fraudulently.~~

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

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

46.25.720 APPLICATION FOR GENERAL RELIEF (1) ~~An individual person must apply for general relief at the county office in the county of residence, or, in the case of intrastate or interstate transients and migrants, in the~~

county where present.

(2) Applications made out of the county of residence will be forwarded to the resident's county.

(23) Application for general relief assistance must be on the form prescribed by the department, complete and signed by the applicant or a knowledgeable third party when a physical or mental condition precludes signature by the applicant.

(3) ~~The "date of application" is established either by the date the application is received in the county office or the postmark on the envelope if an application is mailed.~~

(4) ~~The applicant shall make himself available for an interview and cooperate with the county office in its investigation.~~ Application for general relief medical must be made within 90 days of the date of medical service.

(5) ~~When an applicant or recipient of general relief has made application for supplemental security income (SSI) under Title XVI of the Social Security Act, the applicant or recipient shall sign an interim assistance agreement wherein general relief will be paid subject to recoupment when a supplemental security income retroactive eligibility determination is made.~~

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

IMP: Sec. 9, Ch. 670 , L. 1985 (HE 843)

46.25.721 PROCEDURES FOLLOWED IN PROCESSING APPLICATIONS
PROCESSING (1) ~~The following procedures apply to all~~

~~applicants for general relief:~~

(a) ~~Verified by the applicant and documented in all cases will be:~~

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

(ii) ~~property transfers;~~

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

(iv) ~~need; and~~

(v) ~~income and resources.~~

(21) Eligibility determination will be made within 30 days of the application date and the applicant promptly notified, in writing, of approval or disapproval and the basis for the determination.

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

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

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

IMP: Sec. 9, Ch. 670 , L. 1985 (HE 843)

46.25.726 DETERMINATION---OF RESOURCES ~~{1}---For---the purpose of this subchapter "resources" means all real and personal property which any member of the assistance unit has a legal right to sell or liquidate in order to meet needs.~~

(21) The equity value of all available property resources will be considered as available to meet the needs of the assistance---unit household unless specifically excluded elsewhere in this rule.

(32) All assets resources not specifically excluded will be deducted from the general assistance grant award; each eligibility period.

(3) Resources transferred without adequate consideration within two years prior to application will be treated as described in ARM 46.12.3207.

(4) Exclusions: The following items will be excluded when determining resource eligibility:

(a) home of residence including appurtenant land necessary for support of the house not exceeding 10 acres;

(b) a vehicle, not to exceed \$1500 equity value;

(c) personal items, clothing, household furniture, appliances and other essential household items; necessary for the operation of the home; and

(d) non-liquid assets, not to exceed \$1000; tools of a trade essential to the current or future employment of a household member for twelve months from the date of last gainful employment in that trade or until the temporary handicap allows the person to return to the trade for which the tools are used.

~~{5}---Conditional assistance may be granted for up to 60 days pending disposal or liquidation of non-liquid assets. After 60 days, equity value of the asset will be deducted from the grant award.~~

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

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

46.25.732 WORK PROGRAM (1) All recipients of general relief, unless excluded elsewhere in this rule, are required to participate in a work program to be reimbursed at the prevailing rate of pay for similar work in the county.

(2) The following persons may be exempt from the work requirement:

(a) caretaker relatives of children under 6 years old;

(b) children under age 16;

(c) persons over 16 who are full time high school students actively pursuing a degree; or diploma;

(d) incapacitated or disabled; infirm as provided in Rule III;

(e) persons geographically isolated; and

(f) persons sixty-five years of age or older.

(3) Work program participants are required to register for employment with the local job service and explore job possibilities at least weekly with the local job service.

~~(4) -- Work program participants may also be required to participate in general relief job search.~~

~~(a) -- While a recipient is participating in general relief job search, they may be required to submit up to two applications for employment per day, excluding weekends. Verification of job applications must be submitted weekly, bi-weekly or monthly as determined by the department.~~

(54) Any recipient who refuses to participate in the work program ~~or general relief job search~~ will have their monthly general relief benefit amount decreased by one-fourth for each refusal.

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

IMP: Sec. 53-2-822 and 53-3-304 MCA

46.25.738 STATE MEDICAL ASSISTANCE GENERAL RELIEF

MEDICAL APPLICATION (1) Medical aid and hospitalization

~~shall be provided to individuals with inadequate income and resources to provide necessary services for themselves in accordance with this subchapter. Requirements for application for general relief medical are the same as those for general relief assistance as described in Rule II.~~

~~(2) Application for state medical assistance is as described in ARM 46.25.720 and 46.25.721 for general relief unless specifically noted in other parts of this rule. All rules regarding application for general relief medical apply to a real party in interest including but not limited to:~~

~~(a) making application within prescribed timeframes; and~~
~~(b) establishing eligibility.~~

~~(3) -- Eligibility is determined based upon income and resources actually or potentially available on the date of application. -- Payment will not be made for claims accrued more than 90 days prior to application for assistance.~~

~~(4) -- Providers of state medical assistance may be sanctioned pursuant to the rules set forth in ARM 46.12.401 through ARM 46.12.408.~~

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

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

46.25.755 EMERGENCY ASSISTANCE (1) Emergency general assistance may be used to meet an individual's emergent needs in special situations. -- Services covered will include but are not limited to special clothing, transportation, shelter and

~~other personal needs which are a result of an occurrence beyond the control of the household.~~ will be provided to the extent that appropriations are available. When the appropriated funds are expended, emergency assistance will no longer be provided.

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

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

(a) Transportation by the least expensive means available to assist the person to return to the county of residence or state of origin.

(b) Shelter and food for up to three days in any twelve-month period to be provided by the least expensive means available.

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

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

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

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

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

(2) General relief assistance will be provided for three months in any twelve-month period to able-bodied persons between 35 and 49 years of age.

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

(a) able-bodied under 35 years of age without dependent minor children;

- (b) institutionalized; or
- (c) incarcerated.

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

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

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

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

RULE II PROVISION AND VERIFICATION OF ELIGIBILITY
INFORMATION

(1) A person applying for general relief assistance must make himself available for an interview.

(2) A person applying for general relief medical must make himself available for an interview unless medical circumstances prevent it.

(3) An applicant must provide household and financial information and verification necessary for eligibility determination. This information includes, but is not limited to the following:

- (a) residency;
- (b) property transfers;
- (c) employment or work registration;
- (d) income and resources;
- (e) third party liability for medical expenses;
- (f) household composition; and
- (g) social security number.

(4) This information will be provided on the form and in the manner prescribed by the department.

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

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

RULE III DETERMINATION OF INFIRMITY (1) In order to be determined an infirm person for the purpose of eligibility for general relief assistance, the following nonfinancial criteria must exist:

(a) a diagnosed disability established through a physical or mental examination provided by a licensed medical practitioner;

(b) an impairment that substantially limits one or more of the person's life functions described as cognitive and psychological dysfunction, seeing, hearing, speaking and mobility; and

(c) which produces a handicap that prevents the person from engaging in substantial gainful work.

(2) The diagnosis of infirmity is subject to professional medical review.

(3) A finding of infirmity is subject to redetermination:

(a) after a break in eligibility because of financial reasons; or

(b) upon receipt of new information indicating a change in the person's condition; or

(c) periodically as determined by the department.

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

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

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

(2) Lump sum income:

(a) Received by the household during any eligibility period renders the household ineligible for general relief assistance for the number of months determined by dividing the lump sum plus other available income by the maximum monthly income standard for the same household size. Any remainder is considered income in the first month following the ineligibility period.

(b) The ineligibility period shall be recalculated if the household size changes during said period or if a portion of the lump sum was used to pay medical bills for a serious medical condition.

(c) The period of ineligibility does not preclude eligibility for general relief medical.

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

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

RULE V MONTHLY INCOME AND RESOURCE STANDARD FOR GENERAL RELIEF ASSISTANCE (1) The monthly income standards are:

Monthly Income Standard

Number of Persons in Household	Monthly Income Standard	
	Fiscal 1986	Fiscal 1987
1	\$212	\$219
2	284	296
3	358	372
4	432	449
5	506	526
6	580	603
7	652	679
8	727	756
9	800	832
10 or more	874	909

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

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

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

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

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

(2) Grant amount computation:

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

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

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

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

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

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

IMP: Sec. 5, 10 and 15, Ch. 670 , L. 1985 (HB 843)

RULE VII INTERIM ASSISTANCE AND APPLICATION FOR OTHER BENEFITS

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

(2) Upon receipt of other assistance the applicant must repay an amount equal to the interim assistance granted.

(a) Before receiving interim assistance the applicant must sign an interim assistance repayment agreement.

(3) Eligibility for a grant from aid to families with dependent children renders the person ineligible for general relief assistance.

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

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

RULE VIII PERIODS OF ELIGIBILITY (1) Eligibility for general relief assistance will be provided for a one (1) month period.

(2) Continued eligibility may be established prior to the end of the current eligibility period.

(3) Eligibility for able-bodied persons age 35 through 49 with no minor dependent children in the household shall be for three months in any twelve-month period. Provision of general relief assistance will begin 60 days after application. The applicant must remain continuously eligible for the 60-day waiting period. This continuous eligibility must be verified monthly on the form prescribed by the department.

(a) Any time continuous eligibility is less than 3 months the applicant must reapply and remain continuously eligible for an additional 60-day period before general relief assistance will be granted.

(4) Eligibility for general relief assistance terminates at any time the department determines that the household:

(a) no longer meets eligibility criteria; or

(b) received general relief assistance by means of fraud or mistake.

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

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

RULE IX NOTIFICATION (1) Notification of eligibility for general relief medical will be the same as for general relief assistance.

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

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

RULE X APPLICATION FOR OTHER BENEFITS (1) Payment for services under this rule will be provided only after all other available resources have been identified and used. Such resources include, but are not limited to health and accident insurance; veteran's administration and hospital; industrial accident benefits; Montana medicaid program; and other liable third parties.

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

IMP: Sec. 8 and 12, Ch. 670, L. 1985 (HB 843)

RULE XI PERIODS OF ELIGIBILITY FOR GENERAL RELIEF

MEDICAL (1) Eligibility for general relief medical begins the date the service is provided and terminates when the serious medical condition has been treated. Conclusion of treatment may be determined based upon a professional medical review.

(2) Eligibility for general relief medical also terminates when the household:

- (a) no longer meets eligibility criteria; or
- (b) received assistance by means of fraud or mistake.

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

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

RULE XII RESOURCES FOR GENERAL RELIEF MEDICAL (1) All nonexcluded resources of the household must be used to offset medical expenses. Excluded resources are found at ARM 46.25.726.

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

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

RULE XIII INCOME FOR GENERAL RELIEF MEDICAL (1) Covered medical services will be provided to an eligible person if their average monthly income is below the monthly income standard for a household of the same size found at Rule V.

(a) Average monthly income is that income reasonably certain to be received by the household in a twelve (12) month period, divided by 12.

(b) The twelve (12) month period begins with the month medical service is provided.

(2) Covered medical services will be provided to the eligible person when the household average monthly income is above the monthly income standard found in Rule V but below the monthly income level found in this rule after the following computations are followed:

(a) Average monthly income is determined by computing income reasonably certain to be received in a twelve (12) month period; and

(b) The twelve (12) month period begins the month medical service is provided; and

(c) The household incurs covered medical expenses each month of eligibility equal to the difference between their average monthly income and the monthly income standard.

(3) A household is not eligible for medical services if that income described in (1)(a) and (b) exceeds the monthly income level for the household size.

(4) The monthly income levels are:

MONTHLY INCOME LEVELS

<u>Family Size</u>	<u>Monthly Income Level</u>
1	\$ 314
2	375
3	400
4	425
5	501
6	564
7	624
8	685
9	744
10	804
11	864
12	923
13	983
14	1,042
15	1,102
16	1,162

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

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

RULE XIV SELECTION OF MEDICAL PROVIDER (1) The department may designate a medical provider to provide diagnosis and treatment of the serious medical condition for eligible persons.

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

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

RULE XV SCOPE OF GENERAL RELIEF MEDICAL ASSISTANCE

(1) Services will be provided to alleviate the serious medical condition in the amount and scope not to exceed those provided under the medicare program described at Title 46, chapter 12 of the Administrative Rules of Montana with the following limitations:

- (a) No experimental services will be allowed;
- (b) Cosmetic services will be allowed;
- (i) when a medical review indicates the condition poses a serious medical risk; and

(ii) the department has granted prior authorization.

(c) the department will review the medical necessity of hospitalization for acute care.

(2) General relief medical is limited to those covered services not met by other available assistance or benefits which may include health and accident insurance, veteran's benefits, industrial accident benefits, medicare and medicaid benefits and any other liable third party.

(3) Prior authorization must be received prior to services rendered within the period of the treatment of the serious medical condition except for covered emergency services rendered within 90 days prior to application.

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

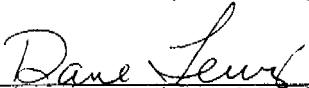
IMP: Sec. 14, Ch. 670, L. 1985 (HB 843)

5. The 49th Montana Legislature provided, with specificity, a complete revision of the general relief program in Montana. These proposed adoptions, amendments and repeals are intended to fully implement those areas of that program where either options or discretion have been given the Department by the Legislature.

The repeal of ARM 46.25.302 through ARM 46.25.340 pertain to county general relief. These sections are being repealed because HB 843 removes the authority of the department to approve county general relief plans. The remainder of the repealed, amended and proposed rules set forth in this notice affect only the general relief programs in counties which have requested state assumption of their welfare duties. The Act, HB 843 (1985), gives direction and areas of discretion to other counties to promulgate local rules for general relief.

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 June 14, 1984.

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 May 6, 1985.

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

In the matter of the adoption)	
of rules regarding lump sum	)	NOTICE OF ADOPTION
conversions of benefits under	)	OF EMERGENCY RULES
section 39-71-741, MCA)	

TO: All Interested Persons.

1. Statement of reasons for emergency: On April 15, 1985, the Governor signed SB-281, amending section 39-71-741, MCA, which became effective immediately. The statute, as amended regarding conversions of biweekly permanent disability workers' compensation benefits to lump sums, imposes substantially new criteria for such conversions and their approval or denial by the Division. The statute presumes that biweekly payments are in the best interests of the worker or his beneficiary and that a lump-sum conversion must be the exception rather than the rule. The Division can only approve lump sum conversions if the worker or his beneficiary demonstrates that his ability to sustain himself financially is more probable with a lump sum conversion than with the biweekly payments and his other resources. Rules concerning proper documentation and careful procedure to evaluate a worker's or beneficiary's demonstration of his ability to sustain himself financially are needed to protect the health and welfare of applicants for lump sum conversions. It will take three to four months to adopt regular rules. Therefore, the Division finds that the lack of rules in the interim period before rules can be adopted will present an imminent peril to the public health and welfare.

2. The text of the rules is as follows:

RULE I INTRODUCTION (1) The procedure for determining whether lump-sum conversion of permanent disability biweekly payments will be approved is generally defined in Section 39-71-741, MCA.

(2) The conversion can only be made upon written application of the injured worker or the worker's beneficiary with the concurrence of the insurer, subject to the discretionary approval of the Division as to the amount of the lump sum payment and the advisability of the conversion.

(3) It is presumed that biweekly payments are in the best interests of the worker or his beneficiary. The approval of an application for lump-sum conversion by the division must be the exception, not the rule, and may be

given only if the worker or his beneficiary demonstrates that his ability to sustain himself financially is more probable with a whole or partial lump-sum conversion than with the biweekly payments and his other resources.

(4) Permanent partial conversions must meet the requirements of section (3) above. Permanent total conversions must meet the test of section (3) above plus all other requirements provided herein.

(5) A controversy between a claimant and an insurer regarding a conversion to a lump sum or a denial of approval of a conversion to a lump sum by the division, are considered disputes for which the workers' compensation judge has jurisdiction to make a decision.

(6) Lump sum settlements reached prior to April 15, 1985 will be allowed and approved, or denied, under provisions of 39-71-741, MCA, in effect before enactment of senate bill 281. Section 39-71-741 as amended, will be applied to all lump sum settlements reached on or after April 15, 1985. An injured worker or his beneficiary submitting a lump sum settlement reached before April 15, 1985 must provide to the division a written statement that agreement was reached before April 15, 1985.

AUTH: 39-71-203, MCA; Chapter 471, Laws of 1985

IMP: 39-71-741, MCA.

RULE II DOCUMENTATION REQUIREMENTS (1) Requests for lump sum conversions of permanent partial and permanent total and death benefits must include a description of the lump sum proposal, including but not limited to analysis of current financial conditions as described in section (3), analysis of financial condition under the proposed lump sum conversion as described in section (4), and an affidavit signed by the worker or his beneficiary, attesting to the validity of information provided in the worker's or beneficiary's written documentation. All analyses must be supported by complete documentation.

(2) Requests for lump sum conversions of permanent total and death benefits must include, in addition to the requirements of section (1), calculations of the total amount of benefits to be converted and their reduction to present value at a 7% discount, compounded annually, and an analysis of financial condition that would be reasonably expected had the worker not been injured as described in section (7).

(3) "Analysis of current financial condition" for purposes of section (1) shall include a list of all the worker's or beneficiary's income, assets and liabilities, and other available resources, including but not limited to:

- (a) periodic income (specify periods reported):
 - (i) social security disability income

- (ii) social security retirement income
- (iii) retirement or pension income
- (iv) other disability insurance
- (v) health insurance benefits
- (vi) mortgage insurance benefits
- (vii) spousal or other family income
- (viii) life insurance proceeds
- (ix) credit disability benefits
- (x) interest or dividend income
- (xi) workers' compensation benefits
- (xii) third party recovery (actual or potential)
- (b) monetary assets:
 - (i) cash on hand
 - (ii) checking account
 - (iii) saving account
 - (iv) accounts and notes receivable
 - (v) savings bonds
 - (vi) stock and bonds
 - (vii) mutual funds
 - (viii) cash value of life insurance
 - (ix) cash value of annuities
 - (x) cash value of retirement fund
- (c) fixed assets:
 - (i) home and property
 - (ii) other real estate
 - (iii) retirement fund
 - (iv) motor vehicles
 - (v) personal property
- (d) liabilities:
 - (i) all monthly living expenses
 - (ii) existing delinquent or outstanding debts
 - (iii) periodic payments on debts
 - (iv) long term liabilities
 - (v) attorney fees and costs

(4) "Analysis of financial condition under the proposed lump-sum conversion" for the purposes of section (1) shall include a description of the use of the lump sum and how this use will contribute to financially sustaining the worker or beneficiary over the same period biweekly payments would have been paid; additional documentation is required if a proposal involves debts or business ventures as indicated in sections (5) and (6).

(5) If the proposal involves the partial or total elimination of existing delinquent or outstanding debts, a debt management plan must be described and include:

(a) plan of management, through applying the proposed lump-sum conversion, of all existing delinquent or outstanding debts, both short- and long-term; and

(b) description of how the worker or his beneficiary will be sustained financially through use of the lump-sum conversion and other available resources, including cash

available throughout the life of the debt management plan, to manage delinquent or outstanding debts.

(6) If the proposal involves a business venture, a business plan must be described and include:

(a) information indicating the worker's or beneficiary's capability to succeed in proposed business venture, including:

- (i) relevant educational and work history
- (ii) knowledge of the proposed business
- (iii) if managerial, managerial capability
- (iv) role to be assumed in the proposed business

(b) If the venture is a new business, information about the proposed business venture including, but not limited to:

- (i) description of the proposed business venture
- (ii) estimate of the purchase price of the

business

(iii) work sheets showing: total source of dollars, start-up costs, projected expenses and net income forecast

(iv) feasibility study of the market conditions in the intended market area, showing that the business is a feasible venture.

(c) if the venture is an existing business, information about the proposed business including, but not limited to:

(i) description of proposed business venture

(ii) legal agreement showing intent to sell the existing business, purchase price of the business, and any conditions placed upon such sale

(iii) income tax statements and balance sheets for the two consecutive years prior to the agreement to sell the business

(iv) work sheets showing total source of dollars, start-up costs, projected expenses and net income forecast

(v) market analysis showing market conditions in the intended market area

(d) a statement of cash that will be available to the worker or his beneficiary as income on a biweekly basis after start-up costs and other business expenses are considered throughout the life of the venture.

(7) "Analysis of financial condition that would be reasonably expected had the worker not been injured" for purposes of section (2) must include a description of the income the worker or beneficiary would have received and the basis upon which the estimate is derived. The analysis must include:

(a) evidence of education and work experience, including:

- (i) work history, dates and descriptions of

employment or unemployment, names and locations of employers;

(ii) highest level of formal education attained, degrees received, dates of attendance, names and locations of schools; and

(iii) special training, professional licenses, registrations, or certifications, certifications received; dates of attendance, names and locations of institutions providing training, licenses, registrations or certifications.

(b) evidence of probable job promotions and pay increases, including:

(i) supportive documentation from employers, union contracts, or other reasonable substantiation of probable job promotions

(ii) wage history

(iii) statement from employer at the date of the accident of last wage rate paid; and

(iv) supportive documentation estimating wage rates from the date of the accident up to age 65.

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

RULE III. METHODS THE DIVISION WILL APPLY TO EVALUATE INFORMATION PROVIDED (1) In all lump-sum conversion requests, the worker or his beneficiary must demonstrate that he cannot sustain himself financially with biweekly payments and his other resources within 12 months following the application or the application for a lump-sum conversion will be denied.

(2) In permanent total lump-sum conversion requests, if the worker or his beneficiary demonstrates in addition that his ability to sustain himself financially is more probable with a whole or partial lump-sum conversion than with biweekly payments and his other resources, then:

(a) If the worker or his beneficiary demonstrates that his financial condition under the lump-sum proposal will not be greater than could have reasonably been expected had the worker not been injured, the lump sum will be approved only if it is limited to the unpaid biweekly benefits, assuming interest at 7% per year, compounded annually.

(b) If the worker or his beneficiary demonstrates that he will improve his financial condition with the lump sum over what could have been reasonably expected had the worker not been injured, the lump sum will be approved only if it is limited to the purchase price to the insurer of an annuity that would yield an amount equal to the biweekly benefits payable over the estimated duration of the compensation period.

(3) If the estimated duration of the compensation period is the remaining life expectancy of the worker or

his beneficiary, the remaining life expectancy will be determined by using the most recent Life Table: Expectation of Life at Single Years of Age, by Race and Sex: United States, all races, both sexes column, in Vital Statistics of the United States, Volume II-Mortality, Part A. U.S. Department of Health and Human Services, Public Health Service, National Center for Health Statistics.

(4) If the difference between the present discounted value of a permanent total lump sum and the future value of the biweekly payments is the only grounds for the lump sum, the lump sum conversion will be denied.

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

RULE IV FURTHER STUDIES MAY BE REQUIRED (1) If the Division finds that an application for lump-sum conversion does not adequately demonstrate the ability of the worker or his beneficiary to sustain himself financially, the Division may order, at the insurer's expense, financial, medical, vocational rehabilitation, educational or other evaluative studies to determine whether a lump-sum conversion is in the best interest of the worker or his beneficiary.

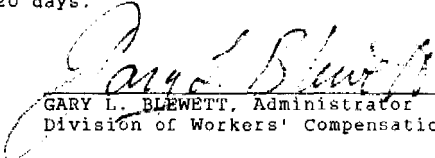
(2) The Division's order will specify the reasons why the application for lump sum conversion is inadequate and the type of evaluative studies required.

(3) The Division must be advised of the results of all evaluative studies and may determine after the studies have been completed whether to act on the pending application or to require a new application for lump-sum conversion.

(4) If, after receipt of the order, the worker or his beneficiary and the insurer cannot agree on a provider or providers to perform the evaluative studies, the Division shall make such designation.

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

3. These rules will become effective on the date certified to the Secretary of State as indicated below, and will remain effective until permanent rules are adopted but no longer than 120 days.



GARY L. BLEWETT, Administrator
Division of Workers' Compensation

Certified to the Secretary of State May 3, 1985.

9-5/16/85

Montana Administrative Register

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 46.10.318	)	RULE 46.10.318 PERTAINING
pertaining to emergency	)	TO EMERGENCY ASSISTANCE TO
assistance to needy families	)	NEEDY FAMILIES WITH DEPEND-
with dependent children;	)	ENT CHILDREN; AFDC PROGRAM
AFDC program)	

TO: All Interested Persons

1. On March 28, 1985, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rule 46.10.318 pertaining to emergency assistance to needy families with dependent children; AFDC program at page 266 of the 1985 Montana Administrative Register, issue number 6.

2. The Department has amended Rule 46.10.318 as proposed.

AUTH: Sec. 53-4-212 MCA
IMP: Sec. 53-4-211 MCA

3. No written comments or testimony were received.

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

In the matter of the amend-	)	NOTICE OF AMENDMENT OF
ment of Rules 46.10.303 and	)	RULES 46.10.303 AND
46.12.3401 and the adoption	)	46.12.3401 AND THE ADOPTION
of Rule 46.10.304A pertaining	)	OF RULE 46.10.304A PERTAIN-
to unemployed parent, AFDC	)	ING TO UNEMPLOYED PARENT,
program	)	AFDC PROGRAM

TO: All Interested Persons

1. On March 28, 1985, the Department of Social and Rehabilitation Services published notice of the proposed adoption of a rule and the amendment of Rules 46.10.303 and 46.12.3401 pertaining to unemployed parent, AFDC program at page 268 of the Montana Administrative Register, issue number 6.

2. The Department has amended Rules 46.10.303 and 46.12.3401 as proposed.

3. The Department has adopted the following rule as proposed with the following changes:

46.10.304A UNEMPLOYED PARENT Subsections (1) through (4) remain the same as proposed.

~~(5) -- A full-time student is not eligible for AFDC/UP assistance payments since he is not considered available to accept full-time employment.~~

(5)(6) In a two-parent household, only one parent must meet the criteria of this rule.

(6)(7) In conformity with Chapter No. 53 of the 1985 49th Legislature, this rule shall be effective March 11, 1985.

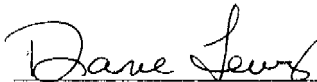
AUTH: Sec. 3, Ch. 53, L. 1985 (SB 122)

IMP: Sec. 53-4-201 MCA and Sec. 2 and 4, Ch. 53, L. 1985 (SB 122)

4. It is recommended that Rule 46.10.304A, Unemployed Parent, be revised by the deletion of subsection (5) in its entirety. This subsection states that a full-time student is not eligible for AFDC/UP assistance payments since he is not considered available to accept full-time employment.

Further research found that this subsection has no foundation in law nor Title 42 of the Code of Federal Regulations. Based on lack of authority, subsection (5) will be deleted.

5. No written comments or testimony were received.



Director, Social and Rehabilitation Services

Certified to the Secretary of State May 6, 1985

VOLUME NO. 41

OPINION NO. 9

CORPORATIONS - Authority of Department of Revenue to levy on wages of nonresidents employed by foreign corporation;

DEPARTMENT OF REVENUE - Authority of Department of Revenue to collect delinquent income taxes by levying on wages of nonresidents;

GARNISHMENT - Authority of Department of Revenue to use warrant for distraint to garnish wages of nonresidents;

JUDGMENTS - Collection of delinquent income taxes by warrant for distraint;

JURISDICTION - Authority of Department of Revenue to collect delinquent income taxes by levying on wages of nonresident employees of foreign corporation doing business in Montana;

TAXATION AND REVENUE - Collection of delinquent income taxes from nonresidents by warrant for distraint;

MONTANA CODE ANNOTATED - Title 15, chapter 1, part 7, Title 15, chapter 30, Title 35, chapter 1, part 10, Title 39; sections 15-1-201 to 15-1-202, 15-30-105, 15-30-311, 25-13-501 to 25-13-502, 25-13-614, 35-1-1005;

SESSION LAWS OF 1981 - Chapter 439;

UNITED STATES CODE - Sections 1671 to 1677.

HELD: The Department of Revenue has authority to collect delinquent income taxes by levying on wages of nonresidents employed by a foreign corporation doing business in Montana.

17 April 1985

John LaFaver, Director
Department of Revenue
Room 455
Sam W. Mitchell Building
Helena MT 59620

Dear Mr. LaFaver:

Your predecessor, Ellen Feaver, requested my opinion on a question which I have stated as follows:

Does the Department of Revenue have authority to collect delinquent income taxes by levying

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on wages of nonresidents employed by a foreign corporation doing business in Montana?

According to the inquiry, the Department has been collecting delinquent income taxes from nonresidents by serving a levy upon their employers, pursuant to the provisions of Title 15, chapter 1, part 7, MCA. If the employer is a foreign corporation doing business in Montana, the levy is served upon the corporation's registered agent, who forwards the levy to the corporate headquarters outside Montana. In the past, the levy has usually been honored by the foreign corporation; however, one employer has notified the Department that it will no longer honor levies for nonresident employees. The employer has both resident and nonresident employees working in Montana and has a long and substantial history of operations within the state. The employer operates in over half of the counties in Montana, with substantial real and personal property holdings located or based within the state.

I have concluded that the Department has authority to collect delinquent income taxes from nonresident employees of foreign corporations doing business in Montana by using the procedures set forth in Title 15, chapter 1, part 7, MCA.

Section 15-30-105, MCA, imposes an income tax on nonresidents with respect to net income derived from property owned and business or occupational activities carried on in Montana. The Department of Revenue is authorized and directed by statute to administer and enforce the state revenue laws, which include the income tax provisions of Title 15, chapter 30, MCA. §§ 15-1-201 to 202, MCA. With respect to the collection of delinquent individual income taxes, the Department is authorized to issue a warrant for distraint as provided in Title 15, chapter 1, part 7, MCA. § 15-30-311, MCA.

Part 7 of Title 15, chapter 1, MCA, sets forth the law and procedure regarding the collection of delinquent taxes by means of a warrant for distraint. Section 15-1-701, MCA, defines a warrant for distraint as an order, under the official seal of the Department, directing the sheriff or any agent authorized by law to collect a tax to levy upon and sell the real and personal property of the delinquent taxpayer. Section 15-1-702, MCA, provides that if a tax administered and

collected by the Department is not paid within 30 days of the due date, the Department may issue a notice to the taxpayer that unless payment is received within 30 days of the date of the notice a warrant for distraint may be issued. Either prior to or at the time of this notice, the Department must also notify the taxpayer of his right to request a hearing on the matter of tax liability; if the Department receives a written request for a hearing within 30 days of the date of this notice, section 15-1-705, MCA, forbids any execution upon the warrant until after the hearing.

Section 15-1-704, MCA, allows the Department to file its warrant with the clerk of a district court. The warrant is filed in the judgment docket, with the taxpayer listed as judgment debtor, and creates a lien against all real and personal property of the taxpayer located in the county where the warrant is filed. Section 15-1-701(2), MCA, provides that the resulting lien is treated in the same manner as a properly docketed judgment lien and that the Department may collect the delinquent taxes and enforce the tax lien in the same manner as a judgment is enforced.

Pursuant to section 15-1-704, MCA, the Department may send a copy of the filed warrant to the sheriff or agent authorized to collect the tax. When the sheriff or agent receives the copy of the filed warrant and notice from the Department that the applicable hearing provisions have been complied with, he is authorized and directed by section 15-1-706, MCA, to execute upon the warrant in the same manner as prescribed for execution upon a judgment. Under subsection (2) of this statute, a notice of levy may also be made by means of a certified letter by an agent authorized to collect the tax.

Sections 15-1-703 and 15-1-707, MCA, provide for the issuance of an execution upon a warrant for distraint in certain emergency situations. Finally, section 15-1-709, MCA, states that the warrant for distraint is not an exclusive remedy for the collection of tax debts; the Department is authorized to use any other remedy provided by law.

These statutes provide the Department with authority to collect delinquent income taxes by means of summary administrative proceedings which are variously referred

to in the literature as distress or distraint. See 84 C.J.S. Taxation § 694. Collection of taxes by summary administrative proceedings has long been sanctioned and has always been held to constitute due process of law, subject only to the fundamental principle that the taxpayer must have notice and opportunity to be heard as to the amount of tax owing to the state. See 72 Am. Jur. 2d State and Local Taxation §§ 866, 868.

In 1981 the Montana Legislature revised, clarified, and unified the procedures for issuance of a warrant for distraint by the Department. 1981 Mont. Laws, ch. 439. This legislation collected the provisions for summary administrative proceedings which were contained in the various chapters of Title 15, MCA, set out a single procedure for the issuance of a warrant, and provided for notice and hearing on tax liability. The purpose of the revisions was to create "a remedy that is fair to the taxpayer and effective for the Department." Testimony of Larry Weinberg re: SB 272, Senate Judiciary Committee, February 13, 1981. The notice and hearing provisions bring this collection procedure within the due process requirements of such cases as Sniadach v. Family Finance Corp., 395 U.S. 337 (1969), and Mitchell v. W.T. Grant Co., 416 U.S. 600 (1974). See also Abrams v. Feaver, 41 St. Rptr. 1588, 1590, ___ P.2d ___ (1984).

Unlike many states, Montana has not adopted specific income-garnishment procedures. Instead, the judgment debtor's right to receive income is treated as a debt or credit and is thus subject to execution under the provisions of sections 25-13-501 to 502, MCA. The amount which may be garnished will depend upon the application of state and federal exemption statutes. See § 25-13-614, MCA; 15 U.S.C. §§ 1671-77; White v. White, 195 Mont. 470, 636 P.2d 844 (1981). However, there is no doubt that under Montana law the wages of a judgment debtor are liable to execution upon a judgment or, as in this case, upon a warrant for distraint which is the statutory equivalent of a judgment.

Given the Department's authority to issue a warrant and levy upon wages to collect delinquent income taxes, the next query is whether that authority extends to reach the wages of nonresidents employed by a foreign corporation doing business in Montana. It is assumed (although the assumption is not necessary for this

holding) that the foreign corporation has procured a certificate of authority to transact business in Montana, pursuant to Title 35, chapter 1, part 10, MCA, and has designated a registered agent and office in this state.

Generally, a state may enforce payment of a nonresident's income tax as far as it can by the exercise of a just control over persons and property within the state, as by garnishment of credits and requiring persons within the state paying money to nonresidents to withhold the amount of the tax. As applied to a foreign corporation employing nonresidents, such mode of enforcement is not an unreasonable regulation of the corporation's business within the state nor an impairment of the validity of contracts between employer and employee. See 85 C.J.S. Taxation § 1107; Travis v. Yale & Towne Manufacturing Co., 252 U.S. 60 (1920). In Travis, a Connecticut corporation doing business in New York and elsewhere challenged the jurisdiction of the state of New York to require it to withhold New York state income taxes from the salaries of employees who were not residents of New York but who were engaged in the corporation's business activities in New York. Citing Shaffer v. Carter, 252 U.S. 37 (1920), decided the same day, the Supreme Court held that the New York withholding provision was the practical equivalent of a garnishment of credit, which was a permissible exercise of control over property within the state to enforce payment of a nonresident's income tax imposed upon income arising from business or occupational activities carried on within the state. The court further observed:

The taxes required to be withheld are payable with respect to that portion only of the salaries of its employes which is earned within the state of New York. It might pay such salaries, or this portion of them, at its place of business in New York; and the fact that it may be more convenient to pay them in Connecticut is not sufficient to deprive the state of New York of the right to impose such a regulation.

252 U.S. at 77. The salaries or wages of nonresidents employed by a foreign corporation doing business in Montana may therefore be considered "property within the

state" which is subject to garnishment for delinquent income taxes, even if the compensation is paid through the corporate headquarters located outside Montana.

This conclusion is consistent with section 35-1-1005, MCA, which allows a foreign corporation authorized to transact business in Montana to enjoy "the same but no greater rights and privileges as a domestic corporation" and subjects the foreign corporation to "the same duties, restrictions, penalties, and liabilities" imposed on domestic corporations. In effect, a licensed foreign corporation is treated as a domestic corporation; since a domestic corporation, as garnishee of an employee's wages, has no right or privilege to refuse to honor a levy or a writ of execution or warrant for distraint, it follows that a foreign corporation licensed to do business in Montana has no greater right of refusal.

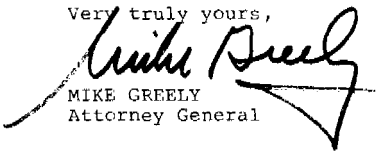
Requiring the foreign corporation to honor the levy does not offend the notions of "fair play and substantial justice" which govern assertions of both jurisdiction in personam and jurisdiction in rem. International Shoe Co. v. Washington, 326 U.S. 310 (1945); Shaffer v. Heitner, 433 U.S. 186 (1977). Both the foreign corporation and the nonresident employee who works for the corporation in Montana have sufficient "minimum contacts" with the state to permit it to assert jurisdiction to collect its taxes. By exercising the privilege of conducting activities within the state and enjoying the benefits and protections of the laws of the state, the foreign corporation has established a "presence" which requires it to respond to suits brought to enforce obligations arising out of or connected with its activities within the state. International Shoe. Furthermore, the employee's presence within the state while working for the foreign corporation, together with the presence of his wages (the state's claim to a portion of which is the source of the underlying controversy here), allows the state to exercise jurisdiction over the employee's interests in those wages. Shaffer. See also Rule 4B, Mont. R. Civ. P., which subjects any person (including nonresident individuals and corporations) to state court jurisdiction as to any claim arising from the transaction of business within the state or contracts for services to be rendered in the state.

Finally, it may be noted that under Title 39, MCA, Montana courts are available to the nonresident employee for the enforcement of wage and other employment-related claims against a foreign corporation arising from employment within the state. It follows, under the reasoning of such cases as Cole v. Randall Park Holding Co., 95 A.2d 273 (Md. 1953), that the foreign corporation may be made a garnishee by these same state courts; in essence, garnishment is viewed as an action by the judgment debtor against the garnishee for the benefit of the judgment creditor and is available in a forum which has jurisdiction over claims between the judgment debtor and the garnishee.

THEREFORE, IT IS MY OPINION:

The Department of Revenue has authority to collect delinquent income taxes by levying on wages of nonresidents employed by a foreign corporation doing business in Montana.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 41

OPINION NO. 10

CITIES AND TOWNS - Authority of city to regulate traffic at crosswalks on federal-aid or state highway;
HIGHWAYS - Authority of city to regulate traffic at crosswalks on federal-aid or state highway;
JURISDICTION - Jurisdiction of city over federal-aid or state highway within city limits;
MUNICIPAL GOVERNMENT - Authority of city to regulate traffic at crosswalks on federal-aid or state highway;
TRAFFIC - Authority of city to regulate traffic at crosswalks on federal-aid or state highway;
MONTANA CODE ANNOTATED - Title 61, chapter 8; sections 60-1-102, 60-1-201, 60-2-201, 60-2-203, 60-2-210, 61-1-201, 61-1-306, 61-1-403, 61-8-101 to 61-8-103, 61-8-203, 61-8-502, 61-12-101.

HELD: A city council may not enact an ordinance requiring a driver of a motor vehicle upon a federal-aid or state highway to stop for a pedestrian within a crosswalk when the pedestrian is not upon the half of the roadway upon which the vehicle is traveling and when the pedestrian is not close enough to be in danger.

22 April 1985

D. W. McKenna
Hamilton City Attorney
345 West Main Street
P.O. Box 389
Hamilton MT 59840

Dear Mr. McKenna:

You have asked my opinion on the following question:

May the City of Hamilton enact an ordinance requiring all traffic to stop for a pedestrian crossing U.S. Highway 93 whenever the pedestrian steps off the curb and into a crosswalk and to remain stopped for as long as

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the pedestrian is within any portion of the crosswalk?

U.S. Highway 93, a federal-aid highway maintained by the Montana Department of Highways, passes through the city limits of Hamilton. The segment of the highway within the city was recently widened to four lanes. The Montana Department of Highways has established several marked crosswalks for pedestrians to use in crossing the highway within the city. These crosswalks are not controlled by traffic signals. Your inquiry states that the Hamilton City Council may wish to consider and enact an ordinance which would require the driver of a vehicle on the highway to stop and remain stopped for a pedestrian at all times during which the pedestrian is within any portion of a crosswalk, rather than only when the pedestrian is upon or is about to enter upon the half of the roadway upon which the vehicle is traveling, as required in section 61-8-502, MCA.

I have concluded that the City of Hamilton does not have authority to enact such an ordinance.

Section 61-8-502(1), MCA, provides:

When traffic-control signals are not in place or not in operation, the driver of a vehicle shall yield the right-of-way, slowing down or stopping if need be to so yield, to a pedestrian crossing the roadway within a crosswalk when the pedestrian is upon the half of the roadway upon which the vehicle is traveling or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger, but no pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield. This provision shall not apply under the conditions stated in 61-8-503(2).

Section 61-8-503(2), MCA, requires a pedestrian to yield the right-of-way when crossing at a point where a pedestrian tunnel or overhead crossing has been provided. This statute is not applicable here.

According to section 61-8-101(2), MCA, the provisions of Title 61, chapter 8, MCA (including section 61-8-502, MCA), refer exclusively to the operation of vehicles upon "highways," defined in section 61-1-201, MCA, to include any publicly maintained way open for public use for purposes of vehicular travel. U.S. Highway 93 comes within this definition of highway. Section 61-8-103, MCA, states:

The provisions of this chapter shall be applicable and uniform throughout this state and in all political subdivisions and municipalities therein and no local authority shall enact or enforce any ordinance, rule, or regulation in conflict with the provisions of this chapter unless expressly authorized herein. Local authorities may, however, adopt additional traffic regulations which are not in conflict with the provisions of this chapter.

Under section 61-1-306, MCA, the Hamilton City Council is a "local authority" and is therefore precluded from enacting any ordinance in conflict with section 61-8-502, MCA, without express authorization.

The proposed ordinance is in apparent conflict with section 61-8-502, MCA, which permits drivers to proceed through a crosswalk while a pedestrian within the crosswalk is upon the opposite half of the roadway so long as the pedestrian is not so close as to be in danger. Such an ordinance would not promote the state-wide uniformity intended by the Legislature. §§ 61-8-102 to 103, MCA.

Although local authorities may adopt nonconflicting traffic regulations under section 61-8-103, MCA, the proposed ordinance makes unlawful what would otherwise be lawful conduct by a driver on a highway and therefore must be considered to be "in conflict" with the provisions of section 61-8-502, MCA. The final question, then, is whether the statutes contain express authorization for a local authority to enact a conflicting ordinance regulating rights-of-way for crosswalks on a highway such as U.S. 93.

Section 61-12-101, MCA, states:

The provisions of chapter 8 and chapter 9 shall not be deemed to prevent local authorities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power from:

....

(2) regulating the traffic by means of ... traffic control devices;

....

(14) enacting as ordinances any and all provisions of chapter 8 or chapter 9 and any and all other laws regulating traffic, pedestrians, vehicles, and operators thereof, not in conflict with state law or federal regulations and to enforce the same within their jurisdiction. [Emphasis added.]

A marked crosswalk may be considered a "traffic-control device" under section 61-1-403, MCA, so that local authorities may regulate traffic "by means of" crosswalks; however, this statute does not provide express authority to change the respective rights-of-way of the driver and the pedestrian in crosswalk situations. In addition, the preliminary inquiry must be whether the highway is under the jurisdiction of the local authority. A review of the statutes leads to the conclusion that U.S. Highway 93 does not come under the jurisdiction of the city council as it enters the city limits of Hamilton. Section 60-1-201, MCA, classifies public highways and distinguishes between federal-aid or state highways and city streets, the latter being defined as those public highways under the jurisdiction of municipal officials. Section 60-1-102, MCA, indicates the legislative intent to make the department of highways the custodian of the federal-aid and state highways. Section 60-2-201(4), MCA, gives the department the authority to adopt necessary rules for the marking of state highways. Sections 60-2-203 and 60-2-210, MCA, require the department to maintain state highways within incorporated municipalities. On the other hand, local authorities are expressly precluded by section 61-8-203, MCA, from placing or maintaining a traffic control device upon a highway under the

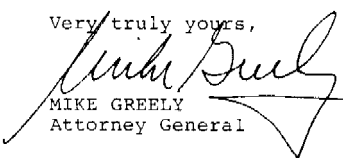
jurisdiction of the department. See also 39 Am. Jur. 2d Highways, Streets, and Bridges §§ 199, 200, 204; Annot., 144 A.L.R. 307; Bidlingmeyer v. City of Deer Lodge, 128 Mont. 292, 274 P.2d 821 (1954); Palffy v. Director of Finance of City of Bozeman, 168 Mont. 108, 540 P.2d 955 (1975).

The authority of the city council to regulate traffic is expressly subject to the provision that such regulation not conflict with state law. I could find no statutory authority which authorizes the enactment of this proposed ordinance.

THEREFORE, IT IS MY OPINION:

A city council may not enact an ordinance requiring a driver of a motor vehicle upon a federal-aid or state highway to stop for a pedestrian within a crosswalk when the pedestrian is not upon the half of the roadway upon which the vehicle is traveling and when the pedestrian is not close enough to be in danger.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 41

OPINION NO. 11

CLERKS - Information required to be in trust indenture as condition precedent to filing by clerk and recorder;
LIENS - Information required to be in trust indenture as condition precedent to filing by clerk and recorder;
MONTANA CODE ANNOTATED - Sections 7-4-2613, 7-4-2618, 7-4-2619(3) and (4), 70-21-101, 70-21-202, 70-21-203, 71-1-204, 71-1-303(4), 71-1-304(1), 71-1-305.

HELD: A county clerk and recorder may not refuse to accept for filing a trust indenture which does not include an amount secured and a maturity date.

26 April 1985

Harold F. Hanser
Yellowstone County Attorney
Yellowstone County Courthouse
Billings MT 59101

Dear Mr. Hanser:

You have requested my opinion on the following:

Must a county clerk and recorder accept for filing a trust indenture which does not include an amount secured and a maturity date?

I conclude that, because an amount secured and the maturity date are not among the types of information required to be indexed by the clerk and recorder or otherwise specifically required as a condition precedent to filing, the clerk and recorder must accept such trust indenture for recordation.

The term "trust indenture" is defined in section 71-1-303(4), MCA, as "an indenture ... conveying real property to a trustee in trust to secure the performance of an obligation of the grantor or other person named in the indenture to a beneficiary." Trust indentures may be used to convey real property interests in areas not exceeding 15 acres. § 71-1-304(1), MCA. A trust indenture is deemed to be a mortgage as to the affected property and is generally subject to all laws relating

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to mortgages. § 71-1-305, MCA.

Under sections 7-4-2613(1) and 70-21-202, MCA, clerk and recorders are required to accept mortgages for filing. The only stated conditions precedent to that obligation are payment of required fees (§ 7-4-2613, MCA), the mortgagee's address (§ 7-4-2618, MCA), and proper acknowledgment of the parties' execution (§ 70-21-203, MCA). The clerk and recorder, moreover, maintains two indices for recorded mortgages relevant to this matter. § 7-4-2619(3) and (4), MCA. These indices must reflect the names of the mortgagor and mortgagee, the date of the mortgage, the place of filing, the place of recording, the date of filing and, when applicable, the date of cancellation.

Section 70-21-101, MCA, although dealing specifically with abstracts of documents affecting interests in real property, further indicates that an amount secured and a maturity date are not filing prerequisites. That section permits filing of abstracts if they contain, among other information, acknowledgment of the parties' execution, their names and addresses and a description of the property; neither the amount secured nor the maturity date need be included in the abstract. Since an abstract may be filed in lieu of the underlying document, it would be anomalous to require, as a condition to filing the document itself, that it contain information not required in the abstract.

I conclude therefore that, in the absence of a specific statutory requirement that the amount secured and maturity date be set forth in a mortgage or trust instrument before the clerk and recorder may file it, such officer is obligated to perform the ministerial task of accepting the document for recordation without that information. See Huttinga v. Pringle, 40 St. Rptr. 1444, 1448, 668 P.2d 1068, 1072 (1983); Bionomic Church of Rhode Island v. Gerardi, 414 A.2d 474, 476 (R.I. 1980).

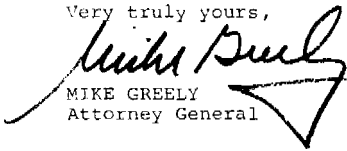
Finally, nothing in section 71-1-204, MCA, compels a different result. That section provides that a mortgage "may be made in substantially" the form set forth therein which includes reference both to the amount secured and the maturity date. First, use of the permissive "may" reflects that the form is merely suggestive and not mandatory. Second, the definition of

"trust indenture" in section 71-1-303(4), MCA, does not limit the obligation for which the property is secured to monetary amounts. Third, and most important, section 71-1-204, MCA, is both facially and in general purpose unrelated to the question of what information a mortgage or trust indenture must contain before the clerk and recorder is obligated to record it; had the Legislature intended inclusion of certain information, aside from that described above, to be a condition precedent to filing, it would have clearly so stated.

THEREFORE, IT IS MY OPINION:

A county clerk and recorder may not refuse to accept for filing a trust indenture which does not include an amount secured and a maturity date.

Very truly yours,


MIKE GREELY
Attorney General

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules or amendment or repeal of existing rules filed with the Secretary of State. Proposals of the Department of Revenue are reviewed only in regard to the procedural requirements of the Montana Administrative Procedure Act. The Committee has the authority to make recommendations to an agency regarding the adoption, amendment or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. In addition, the Committee may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt or amend a rule.

The Committee welcomes comments from the public and invites members of the public to appear before it or to send it written statements in order to bring to the Committee's attention any difficulties with existing or proposed rules. The address is Room 138, Montana State Capitol, Helena, Montana 59620.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE
MONTANA ADMINISTRATIVE REGISTER

Definitions: Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statute and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

Known Subject Matter 1. Consult ARM topical index, volume 16. Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued.

Statute Number and Department 2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 1985. This table includes those rules adopted during the period January 1, 1985 through June 30, 1985, and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 1985, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1984 and 1985 Montana Administrative Registers.

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