MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 7

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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

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STATE OF MONTANA
DEPARTMENT OF COMMERCE
COMMISSIONER OF FINANCIAL INSTITUTIONS

In the matter of a new rule concerning examination fees for consumer loan licensees	)))	NOTICE OF PROPOSED ADOPTION OF RULE SETTING EXAMINATION FEES FOR CONSUMER LOAN LICENSEES

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On May 10, 1986, the Department of Commerce proposes to adopt a new rule setting examination fees for consumer loan licensees.

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

"RULE I EXAMINATION FEES For the purpose of any regular or special examinations provided in Section 32-5-403, MCA, licensees shall be charged at the rate of $200.00 per person per day. Payment shall be made in the manner provided in Section 32-5-403, MCA."

Auth: Sec. 32-5-401, MCA; AUTH Extension, Sec. 9, Ch. 600, L. 1985 Imp: Sec. 32-5-403, MCA

3. The rule is proposed for the following reasons: Chapter 600, Laws 1985 amended Section 32-5-403, MCA to provide for setting examination fees by rule. This rule establishes the same fee schedule by rule as existed in Section 32-5-403, MCA prior to amendment.

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, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than May 8, 1986.

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, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than May 8, 1986.

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. Ten percent of those persons directly affected has been determined to be 3 based on the 30 licensees in Montana.

DEPARTMENT OF COMMERCE

BY: _____
ROBERT J. WOOD, GENERAL COUNSEL
DEPARTMENT OF COMMERCE

Certified to the Secretary of State March 31, 1986

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF MILK CONTROL

IN THE MATTER OF THE PROPOSED AMENDMENT OF RULE 8.86.301(6) (g) AS IT RELATES TO THE CLASS I PRICE FORMULA TO ESTABLISH A SPECIAL WHOLESALE PRICE FOR RETAIL GROCERY STORES	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULE 8.86.301 (6)(g) PRICING RULES DOCKET #74-86

TO: ALL LICENSEES UNDER THE MONTANA MILK CONTROL ACT (SECTION 81-23-101, MCA, AND FOLLOWING) AND TO ALL INTERESTED PERSONS:

1. On Friday, May 9, 1986 at 9:30 a.m. MST, or as soon thereafter as interested persons can be heard, a public hearing will be held in the SRS Auditorium, 111 Sanders, Helena, Montana 59620.

The hearing will continue at said place from day to day thereafter, until all interested persons have had a fair opportunity to be heard and to submit data, views or arguments.

2. The hearing will be held at the request of Edward McHugh, Clover Leaf Dairy, Helena, Montana to amend Rule 8.86.301 (6)(g) to establish a special wholesale price for retail grocery stores as shown below. (Full text of the rule is located at pages 8-2539 through 8-2549, Administrative Rules of Montana) (new matter underlined, deleted matter interlined).

"8.86.301 PRICING RULES

(1) . . .

(6) . . .

(g) . . .

(i) A special wholesale price for retail grocery stores will be calculated by multiplying regular retail prices by a factor of eighty nine percent (89%) for full service delivery by a distributor.

(h) . . . "

3. The petition was submitted pursuant to sections 81-23-302 and 2-4-315, MCA. The proceedings are contemplated in subsection 81-23-302, MCA.

4. The petitioner requests this amendment be adopted and made effective immediately after hearing and further requests the emergency wholesale price allowances be simultaneously dissolved.

5. The rationale for the proposed action is to help curtail serious, threatening and disruptive competitive pressures which have been created because of an alleged imbalance in retail price margins. Establishing a lower wholesale price for retail grocery stores will help distributors and jobbers more adequately meet competitive pressures.

6. Specific factors which the Board will take into consideration in these proceedings will include, but may not be limited to the following:

a. the cost of supplying and stocking grocery shelves.

b. supplies of surplus milk available in adjacent and surrounding areas and its possible impact on licensed Montana distributors and jobbers.

c. the cost factors in jobbing milk, which shall include among other things, equipment of all types required to market milk, and prevailing wage rates in the state.

7. In its consideration of the merits of the petition, the Board takes official notice as facts within its own knowledge of the following:

Supplies of milk which are available in surrounding areas for December 1985:

TABLE I

	CLASS I UTILIZATION	CLASS II UTILIZATION	CLASS III UTILIZATION
Oregon-Washington	71,046,906	17,846,756	82,730,724
Puget Sound - Inland	78,667,874	18,498,252	140,327,744
SW Idaho - E. Oregon	10,505,366	3,562,320	45,270,577
Western Colorado	6,595,000	448,000	1,556,000
Great Basin	46,932,000	8,291,000	36,769,000
Eastern Colorado	54,605,000	13,609,000	20,743,000
Lake Mead	11,669,000	*	6,951,000
Western North Dakota	8,259,756	368,117	3,145,553

* indicates Class II and III are combined

The Board takes notice that more than 80% of the milk sold in Montana is sold through retail grocery stores.

8. Interested persons may participate and present data, views or arguments pursuant to section 2-4-302, MCA, either orally or in writing at the hearing or by mailing the same to the Milk Control Bureau, 1520 East Sixth Avenue, Helena, Montana no later than May 8, 1986.

9. Robert J. Wood, Esq., 1424 Ninth Avenue, Helena, Montana has been appointed as presiding officer and hearing examiner to preside over and conduct this hearing. However, the Montana Board of Milk Control will sit in convened session at the hearing.

10. The authority for the Board to take the actions and adopt rules as proposed is in section 81-23-302, MCA. Such rules if adopted in the form as proposed or in a modified form, will implement section 81-23-302, MCA.

Curtis C. Cook, Chairman
Montana Board of Milk Control

BY: William E. Ross
William E. Ross, Chief
Milk Control Bureau

Certified to the Secretary of State March 31, 1986.

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

In the matter of a new rule relating to fish plants by the department or commercial hatcheries.	))))	NOTICE OF A CHANGE IN THE PUBLIC HEARING DATE ON THE PROPOSED ADOPTION OF A NEW RULE RELATING TO FISH PLANTS

To: All interested persons:

1. On May 15, 1986, a public hearing will be held before the Montana Fish and Game Commission at 1:30 p.m. in the Commission Room, Department of Fish, Wildlife and Parks Headquarters, 1420 East Sixth Avenue, Helena, Montana 59620, to consider the adoption of a new rule authorizing fish plants by the Montana Department of Fish, Wildlife and Parks and by commercial hatcheries in accordance with the requirements of Title 87, Chapter 5, part 7, MCA.

2. This notice changes the public hearing date from that originally noticed at page 429 of the 1986 Administrative Register, issue number 6, which was published March 27, 1986. The public hearing, which was initially scheduled for May 1, 1986, is now scheduled for May 15, 1986, because of a change in the date for the Montana Fish and Game Commission meeting.

3. The notice of the proposed adoption of a new rule relating to fish plants published on March 27, 1986, at page 429 of the 1986 Administrative Register, issue number 6, is hereby incorporated by reference and made a part of this notice.

4. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to George Holton, Department of Fish, Wildlife and Parks, 1420 East Sixth Avenue, Helena, Montana 59620, no later than May 16, 1986. The date for submitting comments has been extended from May 2, 1986, to May 16, 1986, for the convenience of the public and to conform with the change in the public hearing date.

Richard Johnson
Deputy Director
Department of Fish,
Wildlife and Parks

Certified to Secretary of State March 31, 1986.

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

In the matter of the adoption of a rule and the amendment of ARM 16.18.201(1), requiring water & wastewater treatment operators to earn continuing education credits	NOTICE OF PUBLIC HEARING FOR PROPOSED ADOPTION OF A RULE AND AMENDMENT OF A RULE (Water and Wastewater Treatment Operators)

To: All Interested Persons

1. On May 7, 1986 at 10:00 a.m. a public hearing will be held in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the adoption and amendment of the above-captioned rules.

2. The adoption of a rule would specify the number of continuing education credits which must be earned by all fully certified operators of class I, II, III, and IV water supply systems and wastewater treatment plants to be fully certified every two-year period commencing on July 1, 1986 and July 1 of every even-numbered year thereafter. The amendment of ARM 16.18.201(1) would require a "fully certified operator" as defined in the rule to earn continuing education credits as required by ARM 16.18.208, and would perform a housekeeping correction by changing a reference to ARM 16.18.230(8), and correcting it to read "ARM 16.18.203(8)".

3. The proposed rule does not replace or modify any section currently found in the Administrative Rules of Montana, and the proposed amendment would replace ARM 16.18.201(1) found at page 16-872 of the Administrative Rules of Montana.

4. The proposed rule provides as follows:

RULE I CONTINUING EDUCATION REQUIREMENTS (1) A continuing education credit or portion thereof must be earned by all class I, II, III, and IV fully certified operators during a two-year period commencing on July 1, 1986, and July 1 of even-numbered years thereafter. One continuing education credit per certificate (namely, ten contact hours or ten classroom hours or their equivalent) must be earned by a class I certified operator during each two-year period. Class II, III, and IV certified operators must earn one-half (1/2) credit per certificate (namely, five contact hours or five classroom hours or their equivalent) during each two-year period. On and after July 1, 1992, the credit requirements shall double for each classification.

(2) Newly certified operators (previously uncertified) who become certified after October 1 of each even-numbered year will not be required to earn the credit applicable to each classification until the next two-year period. If an

operator upgrades a certificate after October 1 of each even-numbered year and that upgrade increases the credit requirement, the operator will be required during that same two-year period to earn the lower credit requirement but will not be required to meet the higher credit requirement until the next two-year period commences.

(3) Beginning July 1, 1988, and succeeding even-numbered years, only those operators fulfilling the credit requirements before the end of each two-year period will be allowed to renew their certificate(s). The certificate(s) of operators not fulfilling the credit requirements shall expire on June 30 of the applicable biennium and may only be reissued on passage of the appropriate examination(s).

(4) All subject matter for which credit will be granted must be relevant to the operation and maintenance of water treatment plants, water distribution systems, wastewater treatment plants, or industrial wastewater treatment plants as classified in ARM 16.18.202. It may include but not necessarily be confined to subjects regarding plant, systems, or facility mechanics for operation and maintenance of plant and machinery, electrical systems, hydraulics, chemical treatment, biological testing, disinfection of water, or use of mathematics and chemistry where applicable. All activities for which credit will be granted must be first approved by the department and must be related to the subject matter of the particular certificate to which the credit is being applied.

(5) The department may, in individual cases involving hardship or extenuating circumstances, grant an extension of time of up to one year within which to fulfill the minimum credit requirements. Hardship or extenuating circumstances include documented health-related confinement or other circumstances beyond the control of the certified operator which prevent attendance at the required activities. All requests for extensions must be made prior to March 31 of the even-numbered year in which the credit is required to be submitted for registration.

(6) It is the certified operator's responsibility to notify the department of the credit earned during the period. The credit earned during the period shall be shown on the application for renewal.

(7) A certified operator shall be deemed to have complied with the continuing education credit requirements of this rule during periods that the operator serves honorably on active duty in the military services, or for periods that the operator is a resident of another state or district having a continuing education credit requirement for operators and meets all the requirements of that state or district for practice there, or for periods that the person is a government employee working as an operator and assigned to duty outside

of the United States, or for other periods of active practice and absence from the state approved by the department.
AUTHORITY: 37-42-202, MCA
IMPLEMENTING: 37-42-202, MCA

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

16.18.201 DEFINITIONS In addition to the terms defined in section 37-42-102, MCA:

(1) "Fully certified operator" means an operator who either has passed the certification examination and satisfies the experience requirements set forth in ARM 16.18.205; is an operator certified pursuant to ARM 16.18.203(1) who is still employed at the facility where he was employed July 1, 1967; was certified pursuant to section 37-42-305, MCA, before March 1, 1982; or is certified pursuant to ARM ~~16.18.230(8)~~ 16.18.203(8); and earns continuing education credits as required by ARM 16.18.208.

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

AUTHORITY: 37-42-202, MCA
IMPLEMENTING: 37-42-202, MCA

6. The department is proposing this new rule pursuant to Section 37-42-202(3), and is proposing to amend ARM 16.18.201(1) to include within the definition of "fully certified operator" the requirement that such an operator must earn continuing education credits pursuant to Section 37-42-202, MCA.

7. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Robert L. Solomon, Cogswell Building, Capitol Complex, Helena, MT, no later than May 12, 1986.

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

JOHN F. McGREGOR, M.D., Chairman

By John J. Drynan by
JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State March 31, 1986.

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

In the matter of the amendment of food service establishment rules 16.10.207, 16.10.213, 16.10.219, 16.10.220, 16.10.221, 16.10.229, 16.10.231, 16.10.233, and 16.10.234	)	NOTICE OF PROPOSED AMENDMENT OF RULES (Food Service Establishments)

NO PUBLIC HEARING CONTEMPLATED

To: All Interested Persons

1. On May 16, 1986, the department proposes to amend rules 16.10.207, 16.10.213, 16.10.219, 16.10.220, 16.10.221, 16.10.229, 16.10.231, 16.10.233, and 16.10.234 regarding the regulation of food service establishments.

2. The rules as proposed to be amended provide as follows (matter to be omitted interlined, new matter underlined):

16.10.207 FOOD PREPARATION (1) Food shall be prepared with the least possible manual contact, with suitable utensils, and on surfaces that prior to use have been cleaned, rinsed and sanitized to prevent cross-contamination. Sinks used for the preparation of foods shall be cleaned and sanitized as required by ARM 16.10.215(13)(f) immediately before beginning the preparation of the food.

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

AUTHORITY: 50-50-103, MCA
IMPLEMENTING: 50-50-103, MCA

16.10.213 EQUIPMENT AND UTENSIL DESIGN AND FABRICATION (1) - (14) Same as existing rule.

~~(15) Hood systems shall be designed, constructed, and installed in accordance with ARM 8.70.105.~~

~~(16)~~ (15) Equipment that was installed in a food service establishment prior to the effective date of this rule, and that does not fully meet all of the design and fabrication requirements of this rule, shall be deemed acceptable in that establishment if it is in good repair, capable of being maintained in a sanitary condition, and the food-contact surfaces are non-toxic. Replacement equipment and new equipment acquired after the effective date of this rule shall meet the requirements of this subchapter.

~~(17) The department hereby adopts and incorporates by reference ARM 8.70.105 to the extent that such rule applies to hood systems. ARM 8.70.105 is a Department of Commerce rule setting forth the uniform mechanical code, 1982 edition, including requirements for the design and construction of hood systems. A copy of ARM 8.70.105 may be obtained from the Building Codes Bureau, Department of Commerce, Capitol~~

~~Station, Helena, Montana, 59620.~~
AUTHORITY: 50-50-103, MCA
IMPLEMENTING: 50-50-103, MCA

16.10.219 PLUMBING (1) Plumbing shall be ~~designed, constructed,~~ installed, and maintained ~~according to ARM 8.70.302. There shall be no~~ in a manner which prevents cross-connections between the potable water supply and any non-potable or questionable water supply nor any source of pollution through which the potable water supply might become contaminated.

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

(5) If used, garbage grinders shall be installed ~~and maintained according to ARM 8.70.302,~~ to preclude potential cross-connections between sewer and potable water systems. Garbage grinders shall be maintained in a clean and sanitary manner at all times.

(6) Except for properly trapped open sinks, there ~~shall~~ may be no direct connection between the sewerage system and any drains originating from equipment in which food, portable equipment, or utensils are placed.

~~(7) The department hereby adopts and incorporates by reference ARM 8.70.302, which is a department of commerce rule setting forth the Uniform Plumbing Code (UPC), 1982 edition, which is a nationally recognized set of minimum specifications for plumbing equipment and installation for new buildings. A copy of ARM 8.70.302 may be obtained from the Building Codes Bureau, Department of Commerce, Capitol Station, Helena, Montana, 59620.~~

AUTHORITY: 50-50-103, MCA
IMPLEMENTING: 50-50-103, MCA

16.10.220 TOILET FACILITIES (1) Toilet facilities shall be ~~designed, constructed, installed, and maintained according to the minimum required plumbing fixture schedule, as delineated in ARM 8.70.303, shall be conveniently located, and shall be accessible to employees and customers, unless provided for in subsection (2) of this rule, during all times the establishment is in operation.~~ provided for employees. These toilet facilities shall be conveniently located and readily accessible to employees during all times the establishment is in operation.

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

~~(2) Establishments with no space on the premises for consumption of food by consumers must provide toilet facilities for employees.~~

~~(3)~~ (2) Employees and customers may use the same toilet facilities provided that patrons may use them without entering the food storage, food preparation, or food service areas or the dishwashing or utensil storage areas of the establishment.

~~(4) In a multiple activity area with available public toilets, such as sports centers, etc., these toilets may suffice for the use of food service patrons and employees, provided they shall be of adequate number and conveniently located to the food service establishment and shall be available at all times the food service establishment is in operation.~~

(3) When customer facilities are provided, they shall be maintained in good repair and be kept clean at all times.

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

~~(6)~~ (4) Food service ~~operations~~ establishments which must use privy-type toilets shall be evaluated on an installation-by-installation basis.

~~(7)~~ (5) ~~Toilet fixtures shall be of elongated bowl design and kept clean. Toilet seats shall be of open front construction.~~ Toilets and urinals shall be designed to be easily cleanable.

(6) Toilet fixtures shall be kept clean and in good repair.

~~(8)~~ (7) Toilet rooms shall be completely enclosed, and shall have tight-fitting, self-closing doors. Such doors shall not be left open except during cleaning or maintenance. If vestibules are provided, they shall be kept in a clean condition and good repair.

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

~~(9)~~ (8) A supply of toilet tissue in a wall-hung or protected container shall be provided at each toilet at all times. Easily cleanable receptacles shall be provided for waste materials, ~~and such receptacles in toilet rooms for women shall be covered~~. Such receptacles shall be emptied at least once a day, and more frequently when necessary to prevent excessive accumulation of waste material.

~~(10)~~ (9) ~~In all new or remodeled toilet rooms, mechanical ventilation shall be provided as required by ARM 8.70.101 and 8.70.105.~~ All toilet rooms shall be vented to the outside. In addition, mechanical ventilation shall be provided in new or newly remodeled toilet rooms.

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

~~(12) The department hereby adopts and incorporates by reference ARM 8.70.303, to the extent that such rule applies to toilet facilities, and ARM 8.70.101 and 8.70.105, to the extent that they apply to ventilation of toilet facilities. ARM 8.70.303 sets minimum required plumbing fixture requirements for new buildings and ARM 8.70.101 and 8.70.105 set forth, respectively, the Uniform Building Code, 1982 edition, and the Uniform Mechanical Code, 1982 edition. Copies of ARM 8.70.303, 8.70.101, and 8.70.105 may be obtained from the Building Codes Bureau, Department of Commerce, Capitol Station, Helena, Montana, 59620.~~

AUTHORITY: 50-50-103, MCA
IMPLEMENTING: 50-50-103, MCA

16.10.221 LAVATORY FACILITIES (1) Lavatories shall be ~~designed,~~ constructed, installed, and maintained ~~according~~ to ~~the standards for lavatories in ARM 8.70.302 and 8.70.303.~~ facilitate cleaning.

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

(6) ~~Sinks used for food preparation or for equipment or utensil washing shall not be used for hand washing.~~ When utility sinks are used as a lavatory, such sinks shall be located to prevent potential contamination of food or food contact surfaces of equipment and utensils by splash from handwashing procedures and the operation and maintenance of cleaning equipment.

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

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

~~(11)~~ (10) Lavatories, soap dispensers, hand drying devices and all related fixtures shall be kept clean and in good repair.

~~(12) The department hereby adopts and incorporates by reference, to the extent that they apply to lavatories, ARM 8.70.302 and 8.70.303, which are department of commerce rules setting forth, respectively, the Uniform Plumbing Code and minimum required plumbing fixture requirements for new buildings. Copies of ARM 8.70.302 or 8.70.303 may be obtained from the Building Codes Bureau, Department of Commerce, Capitol Station, Helena, Montana, 59620.~~

AUTHORITY: 50-50-103, MCA
IMPLEMENTING: 50-50-103, MCA

16.10.229 VENTILATION (1) All rooms shall have sufficient ventilation to keep them free of excessive heat, steam, condensation, vapors, obnoxious odors, smoke and fumes. ~~Ventilation systems shall be designed, constructed, installed and operated according to the standards pertaining to ventilation systems in ARM 8.70.101 and 8.70.105, and,~~ when When vented to

the outside, the system ~~shall~~ may not create an unsightly, harmful or unlawful discharge.

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

~~(4) The department hereby adopts and incorporates by reference ARM 8.70.101 and 8.70.105, which contain, respectively, the Uniform Building Code, 1982 edition, and the Uniform Mechanical Code, 1982 edition. Copies of ARM 8.70.101 or 8.70.105 may be obtained from the Building Codes Bureau, Department of Commerce, Capitol Station, Helena, Montana, 59620.~~

AUTHORITY: 50-50-103, MCA
IMPLEMENTING: 50-50-103, MCA

16.10.231 TOXIC MATERIALS (1) - (2) Same as existing rule.

(3) Poisonous or toxic materials consist of the following categories:

(a) insecticides and rodenticides;

(b) detergents, sanitizers, ~~and~~ related cleaning or drying agents, caustics, acids, polishes, and other chemicals.

~~(c) caustics, acids, polishes, and other chemicals.~~

(4) Each of the ~~three~~ two categories set forth in subsection (3) shall be stored and physically located separate from each other. All poisonous or toxic materials shall be stored in cabinets or in a similar physically separate place used for no other purpose. To preclude contamination, poisonous or toxic materials shall not be stored above food, food equipment, utensils or single-service articles, except that this requirement does not prohibit the convenient availability of detergents or sanitizers at utensil or dishwashing stations.

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

AUTHORITY: 50-50-103, MCA
IMPLEMENTING: 50-50-103, MCA

16.10.233 MOBILE FOOD SERVICE (1) Mobile food units or pushcarts shall comply with the requirements of this subchapter, except as otherwise provided in this subsection and in ARM ~~16.10.235(4) and (5)~~ subsection (2) of this rule. The regulatory authority may impose additional requirements to protect against health hazards related to the conduct of the food service establishment as a mobile operation, may prohibit the sale of some or all potentially hazardous food, and when no health hazard will result, may waive or modify requirements of this subchapter relating to physical facilities, except those requirements of subsections (4) and (5) of this rule, ARM 16.10.234, and ARM 16.10.235.

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

AUTHORITY: 50-50-103, MCA
IMPLEMENTING: 50-50-103, MCA

16.10.234 MOBILE FOOD SERVICE COMMISSARY (1) Same as existing rule.

(2) The commissary or other fixed food service establishment used as a base of operation for mobile food units or pushcarts shall be constructed and operated in compliance with the requirements of this ~~rule~~ subchapter.

AUTHORITY: 50-50-103, MCA
IMPLEMENTING: 50-50-103, MCA

3. The department is proposing these amendments to eliminate the adoption of referenced sections from the Uniform Mechanical Code and the Uniform Plumbing Code to relieve health authorities of the responsibility of enforcing rules for which they are not properly trained or qualified, and to make minor housekeeping changes to eliminate errors and clarify rule intent.

4. Interested persons may submit their data views, or arguments concerning the proposed admendments in writing to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than May 15, 1986.

5. If persons directly affected by the proposed action wish to express their data, views, and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than May 9, 1986.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action, from the Administrative Code Committee of the legislature, from a governmental subdivision or agency, or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 379, based on the total number of persons holding food service licenses.

JOHN J. DRYNAN, M.D., Director

By WILLIAM J. OPITZ, Deputy Director

Certified to the Secretary of State March 31, 1986.

BEFORE THE BOARD OF CRIME CONTROL
OF THE STATE OF MONTANA

In the matter of proposed amendment of rule 23.14.407 and proposed repeal of rule 23.14.416, rule 23.14.417 and rule 23.14.418	) NOTICE OF PROPOSED AMENDMENT) OF RULE 23.14.407 REQUIRE-) MENTS FOR THE ADVANCE) CERTIFICATE, AND PROPOSED) REPEAL OF RULES 23.14.416) THE BASIC COURSE, 23.14.417) THE INTERMEDIATE COURSE,) 23.14.418 THE ADVANCE) COURSE.) NO PUBLIC HEARING CONTEM-) PLATED

TO: All Interested Persons:

1. On May 16, 1986, the Board of Crime Control proposes to amend and repeal the above stated rules.

2. The proposed amendment of 23.14.407 will read as follows:

23.14.407 REQUIREMENTS FOR THE ADVANCED COURSE In addition to ARM 23.14.403 and 23.14.404 above, the following are required for the award of the Advance Certificate:

Subsection (1) shall remain the same.

(2) Shall have completed the advanced course or the equivalency as defined by the POST advisory council or complete alternative courses as provided in subsection (3).

(a) if the council determines the training to be equivalent to the advance course, the officer must successfully complete an equivalency test, approved by the council and administered by MLEA, by achieving a cumulative score of 75% or more. The council will require those who fail the equivalency test to successfully complete the advance course at MLEA before awarding the advance certificate.

(b) if the council determines the training is not equivalent, the officer must successfully complete the advance course.

(3) Shall have completed a professional development course, such as the FBI national academy course, northwestern university traffic institute management courses, the southern police institute management courses, and others that are recognized by the POST advisory council; or, with the approval of the agency administrator:

(a) complete one 40-hour special course and the legal training school conducted by MLEA; or

(b) complete two 40-hour special courses within a 24 month cycle; and

(c) any applicant for the advanced certificate who has completed the requirements of either subsection (3)(a) or (3)(b) after October 26, 1984, has met the advanced course requirements.

~~(3)~~(4) remains the same but is renumbered.
~~(4)~~(5) remains the same but is renumbered.
Auth: 44-4-301, MCA Imp: 2-4-201 MCA

3. The board is proposing the amendment to the rule at the request of the Montana Sheriffs and Peace Officers Association and the Montana Chief of Police Association. The results of a survey conducted by the board of all peace officers in the state supports this amendment. This will allow more flexibility in the requirements and in certain circumstances permits specialization in the career development of a peace officer.

4. The board is proposing the repeal of rules 23.14.416, 23.14.417 and 23.14.418. The full text of the rules are located at pages 23-426 and 23-427, Administrative Rules of Montana. These rules specify the course curriculum for the Basic, Intermediate and Advanced Courses. The board is proposing the repeal because these courses are continually being upgraded and changed to meet the changing training needs of law enforcement. To amend the rules to conform with each change is too costly and is unnecessary.

5. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Mr. Clayton Bain, Executive Director, P.O.S.T. Advisory Council, 303 North Roberts, Helena, Montana 59620 no later than May 15, 1986.

6. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Mr. Bain no later than May 15, 1986.

7. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code committee of the legislature; from a governmental sub-division or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 145 persons based on the number of peace officers registered with the P.O.S.T. Advisory Council.

Mike Lavin
(Administrator)

Certified to the Secretary of State on March 27, 1986

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of New Rules I through III relating to adjusting a jointly filed tax return.	NOTICE OF PUBLIC HEARING on the PROPOSED ADOPTION of New Rules I through III relating to adjusting a jointly filed tax return.

TO: All Interested Persons:

1. On April 30, 1986, at 1:00 p.m., a public hearing will be held in Room 365 of the Mitchell Building, Fifth & Roberts Streets, Helena, Montana, to consider the adoption of new rules I through III, relating to adjusting a jointly filed tax return in the circumstance where a refund is being offset for a child support debt.

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

RULE I DEFINITIONS RELATING TO ADJUSTMENT OF JOINT RETURN The following definitions apply:

(1) "Obligated spouse" means a taxpayer who is liable for a past due child support obligation.

(2) "Injured spouse" means a taxpayer who does not owe a child support obligation, but who has reported income on a joint return with a taxpayer who does owe a past due child support obligation.

AUTH: 17-4-110 MCA and § 2, Ch. 679, L. 1985; IMP: 17-4-105(4) MCA.

RULE II REQUEST FOR ADJUSTMENT OF JOINT RETURN (1) A taxpayer may request the department to adjust a joint tax return that was filed in the circumstance where the refund is being offset by the bad debts/collection bureau for a child support arrearage. The adjustment will reflect the dollar amount of the refund that is attributable to the "obligated spouse", and the part of the refund that is attributable to the "injured spouse". The amount attributable to the injured spouse will be deemed exempt from offset. This request must be made in writing, and must be made within 30 days after the notice of offset and opportunity for hearing is mailed to the taxpayer.

AUTH: 17-4-110 MCA and § 2, Ch. 679, L. 1985; IMP: 17-4-105(4) MCA.

RULE III STATEMENT REQUIRED FOR ADJUSTMENT OF JOINT RETURN (1) The written request for an adjustment of the joint tax return shall include a statement entitled "injured spouse statement". This statement must contain the identical social security numbers of both spouses in the same order as they appear on the original joint tax return; it should clearly indicate how any income, itemized deductions, exemptions, credits, and tax payments (as originally claimed) should be divided between the spouses; the "injured spouse" (both spouses if possible) must

sign the statement; and the statement must be mailed to the Department of Revenue, Income Tax Division, Office Audit Bureau, Mitchell Building, Helena, Montana 59620, before any adjustment can be made. This statement to the department does not relieve the obligated taxpayer of the responsibility for requesting a hearing, in writing, if the taxpayer wishes to contest the child support debt. This request must be made within 30 days after the notice of offset and opportunity for hearing is mailed to the taxpayer.

(2) The office audit bureau will review the statement and the tax return, make the adjustment of the tax liability and refund, and will subsequently notify the taxpayer in writing. If the taxpayer disagrees with the adjustment made by the office audit bureau, the taxpayer may request a reconsideration of the adjustment pursuant to the procedure set out in ARM 42.16.111. AUTH: 17-4-110 MCA, and § 2, Ch. 679, L. 1985; IMP: 17-4-105(4) MCA.

3. The Legislature gave the Department of Revenue the authority to establish by rule a procedure to adjust a jointly filed tax return in cases where there is a past due child support obligation (17-4-105(4), MCA). These rules are intended to set forth the procedure to be used by the Department to adjust a jointly filed tax return when offsetting a state tax refund for a child support debt which is assigned to the State pursuant to 53-2-613, MCA, or when the Department is attempting to collect a child support arrearage on behalf of an applicant who has applied for service under 40-5-203, MCA.

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:

Dawn Sliva
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620

no later than May 8, 1986.

5. Scott Currey, Agency Legal Services, Department of Justice, has been designated to preside over and conduct the hearing.

6. The authority for the Department to make the proposed adoptions is found in § 17-4-110, MCA, and § 2, Ch. 679, L.1985. The proposed rules implement § 17-4-105(4), MCA.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 03/31/86

MAR Notice No. 42-2-317 7-4/10/86

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

In the matter of the repeal of Rule 46.5.621; the amendment of Rules 46.5.601 through 46.5.607, 46.5.609 through 46.5.612, 46.5.614, 46.5.615, 46.5.616, 46.5.620, 46.5.622, 46.5.630, 46.5.632, 46.5.635, 46.5.636, 46.5.657 and 46.5.669; and the adoption of rules pertaining to child and youth care facilities	)	NOTICE OF PUBLIC HEARING ON THE PROPOSED REPEAL OF RULE 46.5.621; THE AMENDMENT OF RULES 46.5.601 THROUGH 46.5.607, 46.5.609 THROUGH 46.5.612, 46.5.614, 46.5.615, 46.5.616, 46.5.620, 46.5.622, 46.5.630, 46.5.632, 46.5.635, 46.5.636, 46.5.657 AND 46.5.669; AND THE ADOPTION OF RULES PERTAINING TO CHILD AND YOUTH CARE FACILITIES

TO: All Interested Persons

1. On April 30, 1986, at 1:00 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed repeal of Rule 46.5.621; the amendment of Rules 46.5.601 through 46.5.607, 46.5.609 through 46.5.612, 46.5.614, 46.5.615, 46.5.616, 46.5.620, 46.5.622, 46.5.630, 46.5.632, 46.5.635, 46.5.636, 46.5.657 and 46.5.669; and the adoption of rules pertaining to child and youth care facilities.

2. The Department proposes to repeal Rule 46.5.621 pertaining to child care agency, seclusion. The rule as proposed to be repealed may be found on pages 46-253 and 46-254 of the Administrative Rules of Montana.

AUTH: Sec. 41-3-1103, 41-3-1142 and 53-4-111 MCA
IMP: Sec. 41-3-1103, 41-3-1142, 53-2-201 and 53-4-113 MCA

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

46.5.601 YOUTH CARE FACILITY, DEFINITIONS (1) The following definitions apply to all youth care facility licensing ~~and standards~~ rules:

Subsections (1) through (3) remain the same but will be recategorized as (a) through (c).

~~(4)~~ (d) "Youth foster home" or "foster care home" or "boarding home" means a YCF in which substitute care is provided to one (1) to six (6) children or youth to whom the foster parents are not related by blood, marriage, adoption or wardship.

Subsections (5) through (13) remain the same but will be recategorized as (e) through (m).

(n) "Time-out" means the placement of a child for a period of less than 30 minutes in an unlocked room.

(o) "Restraint" means the extraordinary restriction of a child's freedom or freedom of movement.

(p) "Passive physical restraint" means the least amount of direct physical contact required by a staff member using approved methods of making such physical contact to restrain a child from harming himself/herself or others.

(q) "Child/staff ratio" means number of children in care per each on-duty child care staff member.

(2) The following definitions apply only to child care agencies which operate an approved residential treatment center:

(a) "Residential treatment center" means a unit or facility of a child care agency that treats children who are seriously disturbed either mentally, emotionally or behaviorally. In addition to the child care agency rules, such unit or facility must meet the licensing requirements contained in Rules IV, V, VI, VII, VIII, IX and X.

(b) "Seclusion" means isolation of a child in a locked room when that child is out of control and is in danger of harming himself/herself or others. Seclusion may be used to protect the child, other children, and staff and to give the child the opportunity to regain control of his or her behavior and emotions by providing definite external boundaries and decreased stimulation.

(c) "Psychotropic medication" means a drug or substance which acts upon the brain and includes all central nervous system agents identified in american hospital formulary service section 28:08 through 28:28. (The list of psychotropic medications is available from the American Society of Hospital Pharmacists, 4630 Montgomery Avenue, Bethesda, Maryland.)

(d) "Chemical restraint" means the use of psychotropic medication to subdue, inhibit, confine or control a child's behavior.

(e) "Mechanical restraint" means the restriction by mechanical means of a child's mobility and/or ability to use his/her hands, arms or legs.

AUTH: Sec. 41-3-1103, 41-3-1142 and 53-4-111 MCA; AUTH Extension, Sec. 2, Ch. 177, Laws of 1985; Sec. 7, Ch. 531, Laws of 1985

IMP: Sec. 41-3-1102, 53-2-201 and 53-4-113 MCA

46.5.602 YOUTH CARE FACILITY, PURPOSE (1) These rules establish licensing procedures and ~~minimum standards~~ requirements for youth care facilities.

AUTH: Sec. 41-3-1103, 41-3-1142 and 53-4-111 MCA; AUTH Extension, Sec. 2, Ch. 177, Laws of 1985; Sec. 7, Ch. 531, Laws of 1985
IMP: Sec. 41-3-1102, 41-3-1142, 53-2-201 and 53-4-113 MCA

46.5.603 YOUTH CARE FACILITY, LICENSE REQUIRED

Subsections (1) and (2) remain the same.

AUTH: Sec. 41-3-1142 and 53-4-111 MCA
IMP: Sec. 41-3-1103, 41-3-1141, 41-3-1143, 53-2-201 and 53-4-113 MCA

46.5.604 YOUTH CARE FACILITY, LICENSES Subsections (1) through (7) remain the same.

AUTH: Sec. 41-3-1142, 41-3-1103 and 53-4-111 MCA; AUTH Extension, Sec. 2, Ch. 177, Laws of 1985; Sec. 7, Ch. 531, Laws of 1985
IMP: Sec. 41-3-1103, 41-3-1142, 53-2-201 and 53-4-113 MCA

46.5.605 YOUTH CARE FACILITY, LICENSING PROCEDURES

Subsections (1) through (3) remain the same.

AUTH: Sec. 41-3-1103, 41-3-1142 and 53-4-111 MCA; AUTH Extension, Sec. 2, Ch. 177, Laws of 1985; Sec. 7, Ch. 531, Laws of 1985
IMP: Sec. 41-3-1103, 41-3-1142, 53-2-201 and 53-4-113 MCA

46.5.606 YOUTH CARE FACILITY, LICENSE REVOCATION AND DENIAL Subsections (1) through (2) remain the same.

AUTH: Sec. 41-3-1103, 41-3-1142 and 53-4-111 MCA; AUTH Extension, Sec. 2, Ch. 177, Laws of 1985; Sec. 7, Ch. 531, Laws of 1985
IMP: Sec. 41-3-1103, 41-3-1142, 53-2-201 and 53-4-113 MCA

46.5.607 YOUTH CARE FACILITY, HEARING (1) Any person dissatisfied because of either the department's refusal to grant a license or the department's revocation of a license may request a hearing as provided in ARM 46.2.202~~-within-90-days-of-the-notice-of-adverse-action~~.

AUTH: Sec. 41-3-1103, 41-3-1142 and 53-4-111 MCA; AUTH Extension, Sec. 2, Ch. 177, Laws of 1985; Sec. 7, Ch. 531, Laws of 1985
IMP: Sec. 41-3-1103, 41-3-1142, 53-2-201 and 53-4-113 MCA

46.5.609 YOUTH CARE FACILITY, CONFIDENTIALITY OF RECORDS AND INFORMATION Subsection (1) remains the same.

(2) All records pertaining to an individual child are available upon request to:

(a) the child's parent, guardian, legal custodian, or attorney absent specific and compelling reasons for refusing such records;

Subsections (2)(b) and (2)(c) remain the same.

(d) an adult who was formerly the child in care to whom the records pertain absent specific and compelling reasons for refusing such records.

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

AUTH: Sec. 41-3-1103, 41-3-1142 and 53-4-111 MCA; AUTH Extension, Sec. 2, Ch. 177, Laws of 1985; Sec. 7, Ch. 531, Laws of 1985
IMP: Sec. 41-3-1142, 53-2-105, 53-2-106, 53-2-201 and 53-4-113 MCA

46.5.610 YOUTH CARE FACILITY, REPORTS Subsections (1) and (2) remain the same.

(a) a change of administrator; ~~as--defined---in--ARM 46.5.614(6)(b);~~

Subsections (2)(b) through (3) remain the same.

(4) As required by section 41-3-201 MCA, the provider ~~and--each~~ or staff member shall report within 24 hours any incidents of known or suspected child abuse or neglect to the local county welfare office or the state child abuse hot line 1-800-332-6100.

(a) If no action is taken on the referral, or if the above resources are not available at the time, reports shall be made to the social and rehabilitation services district or state office. ~~The-provider-shall-inform-each-new employee,-within-the--first--24--hours--of--employment,-of-the child-abuse-and-neglect-reporting-statute-and-responsibilities of-staff-relative-to-this-law.~~

(b) Each child care agency shall require each staff member of the agency to read and sign a statement which clearly defines child abuse and neglect and outlines the staff member's responsibility to report all incidents of child abuse or neglect according to state law to the department or its local affiliate and to the chief administrator of the agency or a person designated by the administrator.

(c) Each child care agency shall report any suspected or alleged incident of child abuse or neglect to the department and cooperate fully in the investigation of any incident.

(d) Each child care agency shall have written procedures for handling any suspected incident of child abuse including:

(i) a procedure for ensuring that the staff member involved does not work directly with the child involved until the investigation is completed;

(ii) a procedure for conducting in-house investigation of the incident;

(iii) a procedure for disciplining any staff member involved in an incident of child abuse; and

(iv) a procedure for notification of the county welfare department.

(5) Any serious incident involving a child shall be reported within the next working day to the person or agency which placed the child and to the licensing worker.

(a) A "serious incident" means suicide attempts, excessive physical force by staff, sexual assault by residents or staff, injury to a child which requires hospitalization, or the death of a child.

(b) The YCF shall complete a written incident report concerning any serious incident involving a child. The report shall include the date and time of the incident, the child involved, the nature of the incident, description of the incident and the circumstances surrounding it. A copy of the report shall be filed at the YCF and a copy shall be sent to the licensing worker.

(6) Runaways shall be reported within the next working day to the agency or person who placed the child.

(7) Disasters or emergencies which require closure of a residence unit shall be reported to the licensing worker within the next working day.

(8) The current YCF license shall be publicly displayed at the YCF.

AUTH: Sec. 41-3-1142, 41-3-1103 and 53-4-111(1); AUTH Extension, Sec. 2, Ch. 177, Laws of 1985; Sec. 7, Ch. 531, Laws of 1985

IMP: Sec. 41-3-1142, 53-2-201 and 53-4-113 MCA

46.5.611 CHILD CARE AGENCY, CASE PLANS (1) Each child care agency, except receiving homes, must develop a case plan for each child in care. A case plan is a specific plan for providing care, treatment and services of any kind to a specific child. The child care agency must seek assistance in developing and reviewing the case plan from the referring party, the child, all significant child care staff, and the parents, guardian, or legal custodian of the child.

(2) The case plan must include the following:

(a) the child's specific needs and the manner in which these needs will be met;

(b) the service goals with corresponding time frames~~,~~ ~~and~~ placement goals, discharge plans and follow-up services.

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

AUTH: Sec. 41-3-1142 and 53-4-111 MCA
IMP: Sec. 41-3-1142, 53-2-201 and 53-4-113 MCA

46.5.612 CHILD CARE AGENCY, ADMISSIONS, AND DISCHARGES~~,~~ ~~AND FOLLOW-UP~~

(1) A child care agency shall admit only those children for whom it has an operational program and who meet its admissions policies.

(2) Admissions shall be limited to those children for whom the child care agency's services are appropriate, considering the child's psychological and emotional needs, social development and past medical and educational history.

(3) No child under the age of six (6) shall be admitted to a child care agency.

(~~1~~4) Each child care agency~~,~~ ~~excluding receiving homes,~~ must have a written ~~process of~~ admissions~~,~~ policies which includes the following minimum requirements.

(a) The ~~provider~~ child care agency shall ~~require the placing agency to submit~~ obtain or develop a social study~~,~~ ~~completed~~ on the child and his family ~~and updated to the date of referral, to the child care agency's admissions person or committee, in the case of nonagency referrals, the child care agency has the responsibility to compile all necessary social information,~~ before admission.

~~(b) In all referrals, the child care agency shall assist the referring agency or family to review all available alternatives in order to assure appropriate placements.~~

(~~e~~b) The admission person or committee shall review all information and resources and determine the appropriateness of placement, including age and developmental needs of children accepted into the program.

(~~d~~c) When any child is placed in ~~Montana~~ a child care agency from another state which is a member of the Interstate Compact on the Placement of Children, ~~such placement must go through an agency or court in the sending state which will request the state's compact administrator to notify the compact administrator in Montana. No child subject to the compact may be placed within Montana until all necessary procedures pursuant to the compact have been completed.~~ that agency must notify the Montana state compact administrator

(~~e~~d) The child care agency's policy shall provide for and encourage a pre-placement ~~visits by~~ process with the child and family and may allow exceptions for emergency placements and geographical distances. The referring parties should be encouraged to assist with these arrangements.

(~~f~~e) The provider may accept ~~emergency placements~~ in some circumstances where all of the required information for placement is not readily available. These placements shall not exceed 10 percent of the total number of residents. The provider shall obtain the required information within ~~60~~ 30 days of admission.

(~~g~~f) Referrals may only be accepted from ~~parties~~ parents or agencies authorized by law to place children. ~~and with the resources to pay for the placement.~~

(g) The admission policy shall specify the age, sex and type of children served. The child care agency shall specify in the policy whether it will accept children who may be a danger to themselves or others and shall specify what programs and procedures are available to assure the protection and safety of such children and the other residents.

Subsections (2) through (2)(c) remain the same but will be recategorized as (5) through (5)(c).

AUTH: Sec. 41-3-1142, 53-4-111, 53-4-113(4) and 41-3-1103 MCA; AUTH Extension, Sec. 2, Ch. 177, Laws of 1985; Sec. 7, Ch. 531, Laws of 1985

IMP: Sec. 41-3-1142, 53-2-201, 53-4-113 and 41-3-1103 MCA

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

Subsection (2) remains the same.

(3) General personnel qualifications.

(a) All ~~personnel~~ child care staff of a child care agency must meet the following general qualifications:

(i) be at least 18 years of age;

(ii) be of good character;

(iii) be ~~emotionally mature and stable;~~ physically, mentally and emotionally competent to care for children;

Subsections (3)(a)(iv) through (3)(a)(vi) remain the same.

(vii) meet any ~~minimum~~ additional qualifications for the position established by these rules.

~~(b) All child care staff must be trained to administer first aid.~~

Subsection (4) remains the same.

(5) In-Service training. Each child care staff member must complete 15 hours of in-service training each year, in an area directly related to the staff member's duties. This training must be documented in each staff member's personnel file. The training may include formal course work, workshop attendance, or the reading of appropriate literature.

(6) All child care staff must, within 90 days of beginning employment, be trained to administer first aid.

(7) The child care agency shall employ, train and supervise an adequate number of staff necessary to ensure proper care, treatment and safety of the residents.

(8) No staff member, aide, volunteer or other person having direct contact with the children in the facility shall conduct themselves in a manner which poses any potential threat to the health, safety and well-being of the children in care.

(9) The child care staff of a child care agency shall be physically, mentally and emotionally competent to care for children and free from communicable disease. No child care staff member shall:

(a) have been convicted of a crime involving harm to children or physical or sexual violence. Any provider, caregiver or other person charged with a crime involving children or physical or sexual violence and awaiting trial may not provide care or be present in the home pending the outcome of the trial;

(b) be currently diagnosed or receiving therapy or medication for a serious mental illness which might create a risk to children in care. Serious mental illness which might create a risk to children in care shall be determined by a licensed psychologist or psychiatrist. The department may request a provider, caregiver or other person to obtain a psychological or psychiatric evaluation at his or her own expense if there is reasonable cause to believe a serious mental illness exists;

(c) be chemically dependent upon drugs or alcohol. Chemical dependence on drugs or alcohol shall be determined by a licensed physician or certified chemical dependency counselor. The department may request the provider, caregiver or other person to obtain an evaluation at his or her own expense if there is reasonable cause to believe chemical dependence exists;

(d) have been named as a perpetrator in a substantiated report of child abuse or neglect.

(10) The qualifications of all staff shall be verified by the child care agency.

(11) Any staff member whose behavior or health status endangers the residents shall not be allowed at the child care agency.

(612) ~~Administrator.~~ Administration.

(a) A child care agency must designate an administrator to direct and manage the child care agency's work in all areas. The administrator's duties specifically include but are not limited to directing the care and services provided to children in care, personnel matters, and any other specific matters determined by the board of directors of the child care agency.

(b) An administrator must meet the following ~~minimum~~ qualifications in addition to the general qualifications for child care ~~agency-personnel~~ staff:

(i) have a bachelor's degree supplemented with experience in an area relating to professional child care for appropriate graduate education;

Subsections (612)(b)(ii) and (iii) remain the same.

(~~7~~13) Social ~~workers~~ services.

(a) Each child care agency ~~except-receiving-homes~~ must employ an adequate number of trained ~~social-workers~~ professionals to provide the following services for each child in care:

(i) to plan for a child's admission, coordinate the case plan and overall treatment plan, negotiate for the necessary resources for the child, and prepare the child for discharge and return to the family or other placement;

(ii) to ~~service~~ serve as advocate for the child and liaison with the family, the referring party, and the community;

(iii) to prepare and maintain all required records and reports regarding the child;

(iv) to provide post-placement plans and services and to make the necessary referrals;

(v) to assist the child and staff to adjust to the child's placement; and

(vi) to record the child's reactions to the child care agency, school, other children, staff, and family, and to participate in ~~all~~ staff discussion regarding progress and plans for the child.

(b) ~~A---social--worker~~ Those persons providing social services must meet the following ~~minimum~~ qualifications in addition to the general qualifications for child care ~~agency personnel~~ staff:

(i) have a bachelor's degree in a behavioral science and experience in areas related to child care or services; or

(ii) have a reasonable equivalent to the above.

~~(8)--Houseparents-and-group-care-staff.--Houseparents-and group--care-staff--must-meet-the--following-minimum-qualifications-in-addition-to-the-general-qualifications-for-child-care agency-personnel:~~

~~(a)--be-patient,-flexible,-able-to-set-limits-and-able-to function-in-emergencies;-and~~

~~(b)--be-capable--of-constructive-relationships-with-children-in-their-care.~~

~~(9)--Maintenance--personnel.--A-child--care-facility-must employ--adequate-maintenance-personnel-to-operate-the-physical plant--efficiently--without--reliance--upon--child--care-staff members-or--children-in-care.--Maintenance-personnel-must-meet the-general-qualifications-for-child-care-agency-personnel.~~

(~~10~~14) Education. If a child care agency conducts a formal education program for children in care, teachers must

have the same qualifications as comparable teachers in the public and private schools of Montana.

(~~11~~15) Health and nutrition.

(a) Every child care agency must employ or ~~have easy access to~~ have a written agreement with the following professionals:

(i) a licensed physician;

(ii) a licensed dentist;

(iii) a registered nurse; and

(iv) a ~~qualified nutritionist~~ registered dietician.

~~(b) Every child care agency except maternity homes must provide for regular periodic review of the health records of all children in care by a registered nurse or other appropriately qualified health professional, to assure the continued health care of the children.~~

(16) Maintenance personnel. A child care facility must employ adequate maintenance personnel to operate the physical plant efficiently without reliance upon child care staff members or children in care. Maintenance personnel must meet the general qualifications for child care agency personnel.

(~~12~~17) Work hours. A child care agency must maintain adequate child care staff to assure that no staff member, ~~particularly house parents~~, is burdened with excessive working hours or responsibilities.

AUTH: Sec. 41-3-1103, 41-3-1142, 53-4-111 and 53-4-113 MCA; AUTH Extension, Sec. 2, Ch. 177, Laws of 1985; Sec. 7, Ch. 531, Laws of 1985

IMP: Sec. 41-3-1103, 41-3-1142, 53-2-201 and 53-4-113 MCA

46.5.615 CHILD CARE AGENCY, CHILD/STAFF RATIO ~~AND EMERGENCY OVERFLOW~~ (1) ~~Ratios.~~ Each child care agency must maintain ~~at least~~ the minimum child/staff ratios set forth in this rule. ~~"Child/staff ratio" means number of children in care per each on duty care staff member and is determined by the following rules.~~

~~(a) To compute the ratio, children are grouped by age into two groups: "younger children" (under 6 years of age), and "older children" (children 6 years of age and older).~~

(ba) Children of child care staff members, including foster children, who ~~live on the child care agency premises~~, are present in the child care unit must be counted in computing child/staff ratios.

~~(c) The child/staff ratio may not be rounded to the nearest whole number. Example: If the required ration is 1 to 7, the child care agency has 8 children in care, 2 staff members must be on duty.~~

(db) Child care agencies ~~other than receiving homes~~ must use the actual number of children in care each day to compute the child/staff ratio. ~~Receiving homes must use the average~~

~~daily population of children served for the previous year in computation of the child/staff ratio.~~

~~(e) Child care agencies which care only for "younger children" or for both "younger children" and "older children" must maintain a minimum child/staff ratio of 1 to 7 at all times.~~

(~~f~~c) Child care agencies, other than maternity homes, ~~which care only for "older children"~~ must maintain the following minimum staff ratios:

(i) from 3:00 P.M. to 11:00 P.M., 1 to 8; and

(ii) from 11:00 P.M. to 3:00 P.M., 1 to 10.

(d) A child care agency's residential treatment center must meet the child/staff ratios set forth in rule IV.

(~~g~~e) Maternity homes must maintain the following minimum child/staff ratios:

(i) from 7:00 A.M. to 8:00 P.M., 1 to 15; and

(ii) from 8:00 P.M. to 7:00 A.M., 1 to 25. However, during this period, additional staff must be available for duty within 30 minutes.

~~(h) During regular vacation periods for children, a child care agency may request the department to lower temporarily its child/staff ratios by excluding from the daily count of the children in care any child who is absent for vacation for more than 7 consecutive days.~~

~~(2) Emergency overflow. "Emergency overflow" means a child care agency providing care for more children than it is licensed to care for. Emergency overflow is subject to the following rules:~~

~~(a) The department may approve emergency overflow on a case-by-case basis, upon request from a child care agency and a showing by the agency that an emergency requires additional placements. Emergency overflow may not exceed two placements in addition to the number permitted by the child care agency's license.~~

~~(b) A period of emergency overflow may not exceed 14 days of care for any one child.~~

~~(c) A child care agency may not use more than 60 days of emergency overflow per calendar year.~~

AUTH: Sec. 41-3-1142 and 53-4-111 MCA
IMP: Sec. 41-3-1142, 53-2-201 and 53-4-113 MCA

46.5.616 CHILD CARE AGENCY, FINANCES Subsections (1) through (3) remain the same.

(4) The child care agency must notify all appropriate referral sources and financially responsible parties of intended rate increases at least four months prior to the anticipated effective date.

Subsection (5) remains the same.

(6) The child care agency shall ~~be continuously assured of enough money, in addition to goods in kind (e.g., donations~~

~~of food or clothing)~~ obtain enough funding to provide for the proper care and reasonable development of the children ~~from whom it has assured responsibility or intends to assume responsibility~~ in care.

AUTH: Sec. 41-3-1142 and 53-4-111 MCA
IMP: Sec. 41-3-1142, 53-2-201 and 53-4-113 MCA

46.5.620 CHILD CARE AGENCY, RECORDS Subsections (1) through (2)(f) remain the same.

(g) a case plan with written quarterly reviews of the plan.

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

(5) Every child care agency must provide for regular periodic review of the health records of all children in care by a registered nurse or other appropriately qualified health professional to assure the continued health care of the children.

AUTH: Sec. 41-3-1103, 41-2-1142 and 53-4-111 MCA; AUTH Extension, Sec. 2, Ch. 177, Laws of 1985; Sec. 7, Ch. 531, Laws of 1985
IMP: Sec. 41-3-1103, 41-3-1142, 53-2-201 and 53-4-113 MCA

46.5.622 CHILD CARE AGENCY, ADDITIONAL REQUIREMENTS (1) In addition to the ~~preceding standards~~ licensing requirements which apply specifically to child care agencies, a child care agency must also comply with the ~~standards~~ licensing requirements contained in ARM 46.5.651, ARM 46.5.652, ARM 46.5.653, ARM 46.5.654 (2)-(8), ARM 46.5.655, and ARM 46.5.656.

AUTH: Sec. 41-3-1103, 41-3-1142, 53-4-111 and 53-4-113(4) MCA; AUTH Extension, Sec. 2, Ch. 177, Laws of 1985; Sec. 7, Ch. 531, Laws of 1985
IMP: Sec. 41-3-1103, 41-3-1142, 53-2-201 and 53-4-113 MCA

46.5.630 CHILD CARE AGENCY, TREATMENT PROGRAM Subsections (1) through (1)(c) remain the same.

(d) description of staff training requiredments;

Subsections (1)(e) through (1)(g) remain the same.

(h) provisions for transfer to another treatment resource when goals for treatment of a particular child have not been met or further treatment is required~~;~~;

Subsections (1)(i) through (2)(a) remain the same.

(b) the least restrictive method to accomplish treatment goals;

~~(c) adequate provision for periodic and regular review of each child's treatment plan;~~

(cd) utilization of available community resources.

~~(3) No medication or drugs may be used as part of a treatment program unless authorized by a physician and clearly required to attain the treatment goals. In such cases, the child's case record shall include a notation describing medication authorized, name of authorizing physician, purpose of medication, dosage, and provision for review of appropriateness of continuing medication.~~

AUTH: Sec. 41-3-1103 and 53-4-113(4) MCA; AUTH Extension, Sec. 2, Ch. 177, Laws of 1985; Sec. 7, Ch. 531, Laws of 1985

IMP: Sec. 41-3-1103 MCA

46.5.632 CHILD CARE AGENCY, MANAGEMENT

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

AUTH: Sec. 41-3-1103 and 53-4-113(4) MCA; AUTH Extension, Sec. 2, Ch. 177, Laws of 1985; Sec. 7, Ch. 531, Laws of 1985

IMP: Sec. 41-3-1103 MCA

46.5.635 CHILD CARE AGENCY, EDUCATION

Subsection (1) remains the same.

AUTH: Sec. 41-3-1103 and 53-4-113(4) MCA; AUTH Extension, Sec. 2, Ch. 177, Laws of 1985; Sec. 7, Ch. 531, Laws of 1985

IMP: Sec. 41-3-1103 MCA

46.5.636 CHILD CARE AGENCY, RECREATION

Subsection (1) remains the same.

AUTH: Sec. 41-3-1103 and 53-4-113(4) MCA; AUTH Extension, Sec. 2, Ch. 177, Laws of 1985; Sec. 7, Ch. 531, Laws of 1985

IMP: Sec. 41-3-1103 MCA

46.5.657 YOUTH GROUP HOME, STAFF Subsections (1) through (3) remain the same.

(4) No staff member, aide, volunteer or other person having direct contact with the children in the youth group home shall conduct themselves in a manner which poses any potential threat to the health, safety and well-being of the children in care.

(5) The child care staff of the youth group home shall be physically, mentally and emotionally competent to care for

children and shall be free from communicable disease. No child care staff member shall:

(a) have been convicted of a crime involving harm to children or physical or sexual violence. Any provider, caregiver or other person charged with a crime involving children or physical or sexual violence and awaiting trial may not provide care or be present in the home pending the outcome of the trial;

(b) be currently diagnosed or receiving therapy or medication for a serious mental illness which might create a risk to children in care. Serious mental illness which might create a risk to children in care shall be determined by a licensed psychologist or psychiatrist. The department may request a provider, caregiver or other person to obtain a psychological or psychiatric evaluation at his or her own expense if there is reasonable cause to believe a serious mental illness exists;

(c) be chemically dependent upon drugs or alcohol. Chemical dependence on drugs or alcohol shall be determined by a licensed physician or certified chemical dependency counselor. The department may request the provider, caregiver or other person to obtain an evaluation at his or her own expense if there is reasonable cause to believe chemical dependence exists;

(d) have been named as a perpetrator in a substantiated report of child abuse or neglect.

Subsections (4) and (5) remain the same but will be renumbered (6) and (7).

AUTH: Sec. 41-3-1103, 41-3-1142 and 53-4-111 MCA; AUTH Extension, Sec. 2, Ch. 177, Laws of 1985; Sec. 7, Ch. 531, Laws of 1985

IMP: Sec. 41-3-1103, 41-3-1142 and 53-4-111 MCA

46.5.669 YOUTH FOSTER HOME, FOSTER PARENTS Subsections (1) through (1)(d) remain the same.

(2) No foster parent, family member or other person having direct contact with the children in the home shall conduct themselves in a manner which poses any potential threat to the health, safety and well-being of the children in care.

(3) The foster home parents and all other persons responsible for children in the youth foster home shall be physically, mentally and emotionally competent to care for children and free from communicable disease. No foster parents, family members or other caregivers in the foster home shall:

(a) have been convicted of a crime involving harm to children or physical or sexual violence. Any foster parent, family member or other caregiver charged with a crime involving children or physical or sexual violence and awaiting trial

may not provide care or be present in the home pending the outcome of the trial;

(b) be currently diagnosed or receiving therapy or medication for a serious mental illness which might create a risk to children in care. Serious mental illness which might create a risk to children in care shall be determined by a licensed psychologist or psychiatrist. The department may request that the person obtain a psychological or psychiatric evaluation at his or her own expense if there is reasonable cause to believe a serious mental illness exists;

(c) be chemically dependent upon drugs or alcohol. Chemical dependence on drugs or alcohol shall be determined by a licensed physician or certified chemical dependency counselor. The department may request that the person obtain an evaluation at his or her own expense if there is reasonable cause to believe chemical dependence exists;

(d) have been named as a perpetrator in a substantiated report of child abuse or neglect.

AUTH: Sec. 41-3-1103; AUTH Extension, Sec. 2, Ch. 177, Laws of 1985; Sec. 7, Ch. 531, Laws of 1985
IMP: Sec. 41-3-1103 and 41-3-1142 MCA

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

RULE I CHILD CARE AGENCY, ADMINISTRATION OF MEDICATION

(1) Each child care agency shall have written policies and procedures governing the use and administration of medication to children. These policies and procedures shall be disseminated to all persons responsible for prescribing or administering medication.

(a) These policies shall specify:

(i) the conditions under which medications can be prescribed and administered;

(ii) who can prescribe and who can administer medication;

(iii) procedures for documenting the administration of medication and medication errors and drug reactions; and

(iv) procedures for notification of the attending physician in cases of medication errors and/or drug reactions.

(2) The agency shall ensure that a child is personally examined by the prescribing physician prior to receiving any medication. In cases of medical emergency, telephone orders for the administration of medication may only be placed by a licensed physician.

(3) Each child care agency shall maintain a cumulative record of all medication dispensed to children including:

(a) the name of the resident;

(b) the type and usage of medication;

(c) the reason for prescribing the medication;
(d) the time and date the medication is dispensed;
(e) the name of the dispensing person; and
(f) the name of the prescribing physician.
(4) When a child first comes into care, the agency shall ascertain all medication the child is currently taking. At this time the facility shall carefully review all medication the child is using and make plans to either continue the medication or to reconsider the medication needs of the child considering the changed living circumstances.
(5) The child care agency shall have a written medication schedule for each child to whom medication is prescribed. A child's medication schedule shall contain the following information:
(a) name of child;
(b) name of prescribing physician;
(c) telephone number at which prescribing physician may be reached in case of medical emergency;
(d) date on which medication was prescribed;
(e) generic and commercial name of medication prescribed;
(f) dosage level;
(g) time(s) of day when medication is to be administered;
(h) possible adverse side effects of prescribed medication; and
(i) date on which prescription will be reviewed.
(6) The child care agency shall provide a copy of a child's medication schedule to all staff members responsible for administering the medication to the child. The schedule shall subsequently be placed in the child's case record.

AUTH: Sec. 41-3-1103, 41-3-1142 and 53-4-111 MCA; AUTH Extension, Sec. 2, Ch. 177, Laws of 1985; Sec. 7, Ch. 531, Laws of 1985
IMP: Sec. 41-3-1103, 53-4-111 and 53-4-113 MCA

RULE II CHILD CARE AGENCY, TIME-OUT (1) Any child care agency which uses time-out procedures shall have a written policy governing the use of time-out.
(2) This policy shall include procedures for recording each incident involving the use of time-out and shall outline other less restrictive responses to be used prior to use of time-out.
(3) Any use of time-out exceeding 30 minutes in duration must have been approved by a qualified treatment practitioner.

AUTH: Sec. 41-3-1103 and 53-4-111 MCA; AUTH Extension, Sec. 2, Ch. 177, Laws of 1985; Sec. 7, Ch. 531, Laws of 1985
IMP: Sec. 53-2-201, 53-4-111 and 53-4-113 MCA

RULE III CHILD CARE AGENCY, PASSIVE PHYSICAL RESTRAINT (1) The child care agency must provide training in passive physical restraint to all staff members who may be required to use passive physical restraint and shall provide yearly refresher courses.

(2) Passive physical restraint of a child may be used:

(a) to end a disturbance by the child that threatens physical injury to the child;

(b) to end a disturbance by the child that threatens physical injury to others;

(3) A child care agency shall not use any form of restraint other than passive physical restraint without the prior approval of the department. Approval may be granted for other types of restraint only if the child care agency meets the requirements for a residential treatment center.

AUTH: Sec. 41-3-1103, 41-3-1142 and 53-4-111 MCA; AUTH Extension, Sec. 2, Ch. 177, Laws of 1985; Sec. 7, Ch. 531, Laws of 1985

IMP: Sec. 41-3-1103, 53-2-201, 53-4-111 and 53-4-113 MCA

RULE IV CHILD CARE AGENCY, RESIDENTIAL TREATMENT CENTER, STAFFING (1) In addition to the child care agency staff referred to in 46.5.614 (7) through (15), a residential treatment center must have a licensed psychiatrist, an education program coordinator, teachers, a program administrator, licensed psychologist(s), a registered nurse, recreation staff and qualified treatment practitioners.

(2) Child care staff qualifications/ratio:

(a) Child care staff of a residential treatment center must have a bachelor's level degree or three years of experience in group child care.

(b) Child care staff are involved in the on-going daily care and custody of the residents.

(c) Child care staff/child ratio:

7 am to 11 pm	One (1) awake staff person per each six (6) children in the residence/unit with one (1) staff person on call.
11 pm to 7 am	One (1) awake staff person per each ten (10) children in the residence/unit with one (1) staff person on call.

(3) Psychiatrist qualifications:

(a) The psychiatrist must be licensed to practice in the state of Montana.

(b) The psychiatrist shall be available to the residents and the child care staff for consultation, training and therapy as needed.

(c) The psychiatrist shall also assist the administrative staff, treatment practitioners and education staff to understand the medical concepts in working with children and their families.

(4) Education program coordinator/teachers:

(a) The education program coordinator must have at least a bachelor's level degree in education and be certified by the state of Montana as a teacher.

(b) The education coordinator shall be on the staff of the agency and shall run the provider's education program.

(c) Teachers must be on staff or under contract with the agency and must meet the same qualifications as comparable teachers in the public school system in Montana and have training in special and/or remedial education.

(5) Administrator:

(a) The residential treatment center administrator must have a bachelor's degree and four years of experience in residential child care or a master's degree and two years of residential child care experience. Prior administrative and supervisory experience may be substituted for residential child care experience.

(b) The residential treatment center administrator has overall responsibility for management of the agency's treatment program, clinical services, physical environment and finances, including but not limited to:

(i) planning and implementation of programs and services within the framework of policies set by the board; and

(ii) the design and control of fiscal procedures needed to assure program stability and fiduciary responsibility; and

(iii) establishing good community relations and ways of integrating the children and staff into community activities and service networks.

(6) Psychologist(s):

(a) The psychologist(s) must be on staff or under contract and must be licensed to practice in the state of Montana by the state board of psychologist examiners.

(b) The services of a psychologist shall be used to provide a diagnosis and to contribute to treatment plans for each child.

(c) The psychologist(s) shall provide, consult or supervise:

(i) administering of psychometric tests on an individual basis and interpreting the findings;

(ii) direct treatment of selected children in individual and/or group sessions;

(iii) involvement by residents in psychotherapy, behavior management, counseling and other therapy;

(iv) participation in on-going and aftercare planning, as requested by the program administrator, and in periodically evaluating the progress of each child in treatment;

(v) consultation to individual staff members who are responsible for direct treatment of children in formulating and modifying treatment plans; and

(vi) in-service training for staff to help staff understand symptomatic behavior and to enable them to deal with it in the way that is best for the child.

(7) Registered nurse:

(a) The nurse must be registered by the state board of nursing.

(b) The registered nurse shall be under contract or on staff of the agency and may be involved in routine treatment of physical ailments, administering medication, staff and client physical examinations and medical consultation.

(8) Recreation staff:

(a) The person in charge of the recreation program must be on staff or under contract and have a bachelor's degree.

(b) Recreation aides shall receive eight (8) hours of training during the first 90 days of employment on the needs of emotionally disturbed children and the role of recreation in the child's treatment plan. Aides must be supervised by the bachelor level degree recreation staff person.

(9) Treatment practitioner:

(a) Treatment practitioner(s) must be on staff of the agency and have at least a master's degree in psychology, social work, or other counseling field or a bachelor's degree and two years of experience in family, individual and group work, and shall be supervised by a licensed psychologist or psychiatrist.

(b) The practitioner(s) may be involved chiefly in treatment planning; case consultation; family, individual and group therapy; and the development of individual treatment plans for children in the treatment program.

AUTH: Sec. 41-3-1103, 41-3-1142 and 53-4-111 MCA; AUTH Extension, Sec. 2, Ch. 177, Laws of 1985; Sec. 7, Ch. 521, Laws of 1985

IMP: Sec. 41-3-1103, 41-3-1142, 53-2-201 and 53-4-113 MCA

RULE V CHILD CARE AGENCY, RESIDENTIAL TREATMENT CENTER, EDUCATION The residential treatment center shall have on on-grounds school including special education services.

AUTH: Sec. 41-3-1142 and 53-4-111 MCA
IMP: Sec. 53-2-201 and 53-4-111 MCA

RULE VI CHILD CARE AGENCY, RESIDENTIAL TREATMENT CENTER, RECREATION The residential treatment center shall have an on-grounds recreation program for residents, including: team sports, individual sports, non-competitive games,

physical conditioning, arts, crafts, music, cultural and ethnic pursuits, records, books, and hobby equipment.

AUTH: Sec. 41-3-1142 and 53-4-111 MCA
IMP: Sec. 53-4-111 and 53-4-113 MCA

RULE VII CHILD CARE AGENCY, RESIDENTIAL TREATMENT CENTER, PSYCHOTROPIC MEDICATION (1) Only child care agencies which operate a licensed residential treatment center may use psychotropic medication as part of their treatment program.

(2) A residential treatment center which uses psychotropic medications shall have a written policy governing the use of psychotropic medication. This policy shall include the following:

(a) identification of doctors permitted to prescribe psychotropic medication and their qualifications;

(b) identification of persons permitted to administer psychotropic medication and their qualifications;

(c) criteria for the use of psychotropic medications;

(d) a description of the agency's medication counseling program;

(e) procedures for obtaining informed consent from the child and the parent(s) or guardian where consent is required;

(f) procedures for monitoring and reviewing use of psychotropic medication;

(g) procedures for staff training related to the monitoring of psychotropic medication;

(h) procedures for reporting the suspected presence of undesirable side effects; and

(i) recordkeeping procedures.

(j) The psychotropic medication policy shall be disseminated to all child care staff.

(3) A residential treatment center which uses psychotropic medications shall inform children to whom medications are being administered and their parent(s) or guardian of the projected benefits and potential side effects of such medications.

(4) The residential treatment center shall ensure that a child is examined by the physician prior to prescribing a psychotropic drug and shall monitor the administration of the medication during the course of treatment.

(a) The prescribing physician shall provide a written initial report detailing the reasons for prescribing the particular medication, expected results of the medication and alerting child care staff to potential side effects.

(b) The residential treatment center shall ensure that each child who receives psychotropic medication is the subject of a monitoring report completed by a staff member trained in the recognition of side effects of the medication prescribed.

This report shall be submitted to the prescribing physician at least every 30 days.

(c) The prescribing physician or registered nurse shall prepare a written medication review report at least every 30 days on each child receiving psychotropic medication. The report shall detail the reasons medication is being continued, discontinued, increased in dosage, decreased in dosage or changed based on actual observation of the child and review of the monitoring reports.

(5) The residential treatment center shall ensure that use of medication is in accordance with the goals and objectives of the child's treatment plan.

(a) Psychotropic medications shall not be administered as a means of punishing or disciplining a child.

(6) The residential treatment center must maintain the following information in the case record of each child receiving psychotropic medication:

(a) medication history;

(b) description of any significant changes in the child's appearance or behavior that may be related to the use of medication;

(c) any medication errors;

(d) monitoring reports; and

(e) medication review reports.

AUTH: Sec. 41-3-1103, 41-3-1142 and 53-4-111 MCA; AUTH Extension, Sec. 2, Ch. 177, Laws of 1985; Sec. 7, Ch. 531, Laws of 1985

IMP: Sec. 41-3-1103, 53-4-111 and 53-4-113 MCA

RULE VIII CHILD CARE AGENCY, RESIDENTIAL TREATMENT CENTER, CHEMICAL RESTRAINT (1) A child care agency shall not use chemical restraint without first being licensed by the department to operate a residential treatment center.

(2) Chemical restraint of a child may be used only if the child is a danger to himself or others and cannot be controlled by any other type of restraint.

(3) A residential treatment center which uses chemical restraint shall ensure that such restraint is administered by intramuscular injection by a person qualified and trained in the administration of intramuscular injections.

(a) A child who is capable of accepting an oral administration of chemical restraint shall not be deemed to require chemical restraint.

(4) A residential treatment center which uses emergency chemical restraint shall ensure that each administration of chemical restraint is specifically ordered by a physician who has personally examined the child.

(a) There shall not be standing orders related to the use of chemical restraint.

(b) The child shall be monitored continuously by a person trained and qualified to observe potential adverse side effects. This person shall have no other immediate responsibilities.

(5) The chief administrator of the child care agency or a person designated by that administrator shall authorize each use of chemical restraint.

(6) When a child in care requires chemical restraint on more than three occasions during a 30-day period an emergency meeting shall be held to discuss the appropriateness of the child's continued placement at the agency. This meeting shall take place within 24 hours of the third incident requiring chemical restraint and shall include the chief administrator of the agency or his/her representative, a physician and all appropriate staff. A report of this meeting, signed by all persons attending, shall be filed in the child's case record and a copy sent to the placing agency.

(a) The agency shall make every effort to notify the placing agency and the child's parent(s) or guardian of this situation. If possible, a representative of the placing agency and the child's parent(s) or guardian shall attend the emergency meeting.

(b) Documentary evidence of the attempt to notify the placing agency and the child's parent(s) or guardian shall be placed in the child's case record.

AUTH: Sec. 41-3-1103, 41-3-1142 and 53-4-111 MCA; AUTH Extension, Sec. 2, Ch. 177, Laws of 1985; Sec. 7, Ch. 531, Laws of 1985

IMP: Sec. 41-3-1103, 41-3-1141, 41-3-1142, 53-4-111 and 53-4-113 MCA

RULE IX CHILD CARE AGENCY, RESIDENTIAL TREATMENT CENTER, MECHANICAL RESTRAINT (1) A child care agency shall not use mechanical restraint without first becoming licensed by the department to operate a residential treatment center.

(2) A residential treatment center which uses mechanical restraints shall use only those forms of mechanical restraint which are approved by the department.

(a) The agency shall not use or apply any form of mechanical restraint which inflictr physical pain or is likely to cause personal injury.

(3) A child care agency which uses mechanical restraint shall assign a staff member with no other immediate responsibilities to continuously monitor any child placed in restraint.

(a) The staff member shall ensure that the child's physical needs are promptly met.

(b) The staff member must remain in continuous auditory and visual contact with the child.

(4) The administrator of the child care agency which uses mechanical restraint or a person designated by that administrator must authorize each use of mechanical restraint. Each authorization shall be for one-half hour only. No child shall be kept in mechanical restraint for more than two hours in any twelve-hour period.

(a) Any child who needs to be mechanically restrained for more than two hours in any twelve-hour period shall be transferred to an acute care psychiatric facility.

AUTH: Sec. 41-3-1103, 41-3-1142 and 53-4-111 MCA; AUTH Extension, Sec. 2, Ch. 177, Laws of 1985; Sec. 7, Ch. 531, Laws of 1985

IMP: Sec. 41-3-1103, 41-3-1141, 41-3-1142, 53-4-111 and 53-4-113 MCA

RULE X CHILD CARE AGENCY, RESIDENTIAL TREATMENT CENTER SECLUSION (1) Only child care agencies which operate a licensed residential treatment center may use seclusion as a method of intervention.

(2) A seclusion room is a single room in a child care agency treatment center in which a child may be confined.

(a) Seclusion may be used as a means of intervention only when the child is in danger of harming himself, others, or property.

(b) Seclusion shall be used only for the time needed to change the behavior necessitating its use. Seclusion shall not be used as punishment.

(3) Each child care agency which utilizes seclusion shall have a written statement of its seclusion policies which describe, at a minimum:

(a) the philosophy for use of the room;

(b) the procedure for admittance;

(c) emergency procedures for special circumstances occurring while the child is in placement (i.e., fire, internal or external disaster, etc.);

(d) the method for children to express grievances regarding the use of seclusion.

(4) The child shall be informed of the reason for seclusion at the time of his/her placement in seclusion.

(5) Children shall not be placed in a seclusion room which has not been inspected and approved by the department.

(6) Records of the use of the seclusion room, policies for the operation and supervision of the room, the children's treatment records, staff records and the room itself shall be made available to the department for inspection.

(7) If the child care agency does not meet all requirements for the use of the seclusion room, the department shall give written notice of the specific deficiencies which shall be corrected. The child care agency shall cease secluding any

children in the room until corrections are made and authorization is given by the department.

(8) When a seclusion room is used, the following physical requirements shall apply:

(a) the room shall be a minimum of sixty-four (64) square feet to be occupied by one (1) child only;

(b) the room shall be maintained in a clean and sanitary condition;

(c) all utility or ventilation switches, including electrical outlets, shall be outside the room. Switches will be restricted to operation by staff only;

(d) windows shall be of shatter resistant material;

(e) the room shall contain an observation window constructed of shatter resistant material;

(f) there shall be no features by which a child may be injured within the room;

(g) there shall be no more than one locked door between the child and staff;

(h) if soundproof, the room shall have an intercom system which shall be activated when in use;

(i) there shall be an approved ventilation system.

(9) A child may not be placed in seclusion unless:

(a) lesser restrictive alternatives have been attempted by staff and have failed to control the child;

(b) the child is in danger of harming himself, others, or property;

(c) the placement in seclusion has been approved by a qualified treatment practitioner authorized by the provider to place children in seclusion.

(10) Placement in seclusion may not exceed one (1) hour unless specifically authorized by a psychiatrist. In no event may placement in seclusion exceed twenty-four (24) hours. A child who requires seclusion in excess of twenty-four (24) hours shall be transferred to an acute psychiatric care facility.

(11) A staff member with no other immediate duties shall continuously monitor the child placed in seclusion by visual or auditory means and shall remain within twenty (20) feet of the room. If continuous monitoring is by auditory means, the staff member shall visually check on the child at least every ten (10) minutes.

(12) Upon the placement of a child in seclusion, the following minimum items shall be recorded, updated and maintained, if applicable:

(a) a written report which states the child's name, date, time of placement, staff member initiating the placement, qualified treatment practitioner authorizing placement and narrative describing the following: the precipitating event, child's behavior before placement, and actions taken by staff of a less restrictive nature in an attempt to control, calm or contain the child;

(b) written notation of visual checks at least every ten (10) minutes and notation of behavior and time occurring;

(c) notation regarding opportunity to use toilet facilities once per hour;

(d) notations regarding when the child had opportunity to exercise;

(e) notation as to medications administered, time given and staff administering;

(f) notation of all staff contact including a description of the resolution of the placement incident which results in the termination of seclusion.

(13) Staff of the residential treatment center who monitor or initiate the use of the room shall be trained in the use of seclusion and be specifically authorized by the facility.

AUTH: Sec. 41-3-1103, 41-3-1142 and 53-4-111 MCA; AUTH Extension, Sec. 2, Ch. 177, Laws of 1985; Sec. 7, Ch. 531, Laws of 1985

IMP: Sec. 41-3-1103, 41-3-1142, 53-2-201, and 53-4-113 MCA

5. These rules as proposed will provide additional licensing requirements for those agencies that operate a "residential treatment center". The rules also clarify and expand some current child care agency licensing requirements; particularly those that involve staff qualifications, administration of medication, time-out and reports of child abuse or neglect.

The rules as proposed are necessary both to keep licensing requirements current with practice in the field and to provide clarification and specificity to some current licensing rules.

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 May 9, 1986.

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 March 31, 1986.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the adoption of emergency rules pertaining to permitting purple internal discoloration in Nooksack Seed Potatoes for blue or red tag grades	NOTICE OF THE ADOPTION OF EMERGENCY RULES PERMITTING PURPLE INTERNAL DISCOLORATION IN NOOKSACK SEED POTATOES FOR BLUE OR RED TAG GRADES

TO: All Interested Persons.

1. In 1985 a combination of drought and an early hard frost occurred in the state of Montana. This unique weather pattern, together with an unusual growth pattern of Nooksack tubers growing too close to the surface of the soil has created a purple internal discoloration. This discoloration is undetectable unless a tuber is dissected. Therefore the purple discoloration condition remained undetected until department potato grade inspectors began inspecting the seed potatoes two weeks ago. These purple internal discolorated potatoes fail to meet acceptable grade standards for either blue or red tags due to the discoloration.

2. However, according to Mike Sun, Plant Pathologist at Montana State University, "The purple discoloration of this kind should not affect the behavior and performance of the potatoes as seed." Therefore it should not be marked as a defect for grading purposes.

3. The department presently is scoring this purple discoloration as a defect and thereby the potatoes are not making certified seed as blue or red tag grade. This failure to make grade leaves the potato producers without market to sell their potatoes, because other states will not permit ungraded seed potatoes to be planted in their state. Unless the department amends its rules to permit this purple discoloration condition, an economic hardship may occur due to the failure to sell these potatoes.

4. The department responded to the seed potato industry request, and set a hearing in contemplation of rules to take comments on proposed emergency rules to adjust the grade standard to as to include purple discoloration Nooksack potatoes. The department notified interested persons of said hearing. The department held the hearing on March 20, 1986, at 1:30 p.m. in the Boothill Conference Room at the Outlaw Inn in Kalispell, Montana. Based upon the response and comments received, the department adopted the foregoing emergency rules. The department determined that an imminent peril to public health safety or welfare would occur because a delay of implementing these rules would cause financial losses to some seed potato farmers. Therefore the department promulgates these emergency rules to meet the immediate need to change the standards for grading to permit purple internal discoloration in Nooksack potatoes.

5. The text of the rules is as follow:

RULE I PURPLE - INTERNAL DISCOLORATION (1) It shall be permissible to use official tags on Nooksack seed potatoes affected by a purple internal discoloration caused by stress late in the potato growing season. It shall be the responsibility of the grower to obtain written evidence that the purchaser is willing to accept the purple condition as part of the grade before final certification may be made.

AUTH: 80-3-110, MCA IMP: 80-3-104, 80-3-105, MCA

4.12.3503 BLUE TAGS (1) (a) through (j) No changes.

(k) Purpling - internal discoloration, shall be permissible only for Nooksack seed potatoes affected by the stress condition that occurred in 1985 late in the potato growing season provided the grower provides written evidence of the acceptance of the conditions by the buyer.

AUTH: 80-3-110, MCA IMP: 80-3-104, 80-3-105, MCA

4.12.3504 RED TAGS (1) (a) through (d) No changes.

(e) The following blue tag exceptions shall also apply to red tags: air cracks, sunburn (greening), stem-end discoloration, immaturity, sprouts, oversize, undersize, hollow heart, and freezing injury, and purple - internal discoloration in Nooksack potatoes.

AUTH: 80-3-110, MCA IMP: 80-3-104, 80-3-105, MCA

6. The authority of the department to make the emergency rules is 80-3-110, MCA and the rules implement 80-3-104 and 80-3-105, MCA.

The emergency action is effective on March 21, 1986.

Keith Kelly
Director

Certified to the Secretary of State, March 21, 1986.

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

In the matter of the amendment of rule 6.6.2003 pertaining to unfair trade practices on mid-term cancellations of casualty or property insurance	)))))))	NOTICE OF ADOPTION OF AMENDMENT TO ARM 6.6.2003 PERTAINING TO UNFAIR TRADE PRACTICES ON MID-TERM CANCELLATIONS OF CASUALTY OR PROPERTY INSURANCE

1. On January 16, 1986, the State Auditor and Commissioner of Insurance published notice of public hearing on the proposed amendment of ARM 6.6.2003, pertaining to unfair trade practices on mid-term cancellations of casualty or property insurance at page 10 of the 1986 Montana Administrative Register, Issue Number 1.

2. The State Auditor and Commissioner of Insurance has adopted the proposed amendment to ARM 6.6.2003 without any changes.

3. The State Auditor and Commissioner of Insurance did not receive written comments or testimony regarding the proposed amendment.

4. The authority for the amendment to ARM 6.6.2003 is Section 33-1-313, MCA, and ARM 6.6.2003, as amended, implements Section 33-18-1003, MCA.

Andrea "Andy" Bennett
State Auditor and
Commissioner of Insurance

Certified to the Secretary of State March 31, 1986.

BEFORE THE BOARD OF MILK CONTROL
OF THE STATE OF MONTANA

IN THE MATTER OF THE PROMULGATION OF AN EMERGENCY RULE FOR A LIMITED SERVICE MINIMUM JOBBER PRICE) ORDER PROMULGATING AN EMERGENCY LIMITED SERVICE MINIMUM JOBBER PRICE

Petitioner, Jerry W. Schuster, having filed a petition for a Limited Service Minimum Jobber Price Order and the Board having heard evidence presented to the Board in convened session on March 22, 1986, the Board finds as follows:

1. Gallatin Dairies Inc. now known as Country Classic Dairies, Inc., herein Gallatin, a Montana corporation, for months has been and is selling fluid milk to Associated Grocers for consumption in Montana at less than the minimum wholesale price as reflected in the Milk Control Bureau's investigations and the court documents in the state and federal court proceedings between the Department of Commerce, Milk Control Bureau and Gallatin. Gallatin is engaging in a similar type of sale or transaction with Super Valu and individual I.G.A. stores. These actions by Gallatin have undermined the minimum wholesale price established by the Board and have placed all other licensed distributors and jobbers at a serious competitive disadvantage.

2. The actions of Gallatin described in paragraph 1 will continue to undermine and destroy the minimum wholesale price, will undermine or destroy the effectiveness of all other Board of Milk Control laws and regulations, will place all other licensed distributors and jobbers at a serious competitive disadvantage, will cause the destruction of the business of some licensed distributors and jobbers, will cause the destruction of the business of some licensed producers, and will seriously jeopardize or interfere with the Montana consumer's right to an adequate supply of wholesome Class I milk.

3. The same problem arises in relation to jobbers as it does for distributors. Since the Emergency Rule promulgated on February 8, 1986 did not provide for the necessary temporary adjustments to the minimum jobber prices to be paid for the five (5) items of fluid milk products to be purchased and sold under the categories of Limited Service and Drop Delivery, jobbers have been and will continue to receive less than the minimum jobber price/percentage established pursuant to Montana Board of Milk Control ARM Rule 8.86.301 (6)(h). Without adopting an amendatory emergency rule to correct the inequity created as a result of an oversight in the first emergency rule adopted on February 8, 1986, which was effective on February 10, 1986, jobbers have been forced and will continue to operate at a serious competitive disadvantage. Unless this amendatory emergency rule is adopted, the ommission will cause the destruction of the business of some jobbers, and will seriously impair and jeopardize certain Montana consumers' right to an adequate supply of wholesome Class I milk. This Order will correct that deficiency. This order amends the order promulgating

a limited service wholesale allowance which was published at page 251 of the Montana Administrative Register, Issue No. 4.

4. Section 2-4-303, MCA (1) provides if the agency finds that an imminent peril to the public health, safety or welfare requires adoption of a rule upon fewer than thirty (30) days notice and states in writing its reasons for that finding, it may proceed, without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency rule. The rule may be effective for a period not longer than 120 days, but the adoption of an identical rule under 2-4-302, MCA, is not precluded. (emphasis supplied)

This provision applies and requires emergency Board action in order to effectuate the policies of the Montana Milk Control laws including Sections 81-23-102 and 81-23-302, MCA.

5. The harm to jobbers identified in paragraphs 2 and 3, hereof mandates the Montana Board of Milk Control issue an emergency rule amending the emergency rule promulgated on February 8, 1986.

The amendatory emergency rule is to provide for a temporary adjustment to the minimum jobber prices on the five (5) items of fluid milk products to be purchased and sold under the wholesale categories of Limited Service and Drop Delivery on an emergency basis in accordance with section 2-4-303, MCA. This amendatory emergency rule is effective on March 25, 1986, and applies retroactively to the effective date of the Board's first emergency rule, which was effective on February 10, 1986.

6. Based upon the above findings, there is imminent peril to the public health, safety and welfare which requires the adoption of the amendatory emergency rule which is attached hereto:

(d) Notwithstanding the minimum jobber prices as calculated pursuant to Montana Board of Milk Control Rule 8.86.301 (6) (h) of the Administrative Rules of Montana, the minimum jobber prices with respect to only those items of fluid milk products purchased under subsections (a) and (b) above shall be as follows:

(1) LIMITED SERVICE MINIMUM JOBBER PRICES:

	Jobber Price	Jobber Price Stated As A Percentage Of Rule 1(a)
Gallon homo.	1.6415	78.55%
½ gallon homo.	.8213	78.22%
Gallon 2%	1.5377	78.46%
½ gallon 2%	.7675	78.32%
½ gallon skim	.70	77.78%

(2) DROP DELIVERY MINIMUM JOBBER PRICES

	Jobber Price	Jobber Price Stated As A Percentage Of Rule 1(b)
Gallon homo.	1.5631	78.55%
½ gallon homo.	.7822	78.22%
Gallon 2%	1.4593	78.46%
½ gallon 2%	.7362	78.32%
½ gallon skim	.6689	77.78%

7. It is noted that petitioner had been informed and advised by Montana distributors, who are the only parties adversely affected by the issuance of this Order, that they have no objection to this emergency action, but the Board finds they did object to it being retroactively implemented to February 10, 1986.

8. The Board, however, in issuing this Order and retroactively implementing it to February 10, 1986, finds that these are minimum prices and that this Amendatory Emergency Rule in no way forces Montana distributors to correct the inequities which resulted from the oversight in the Order promulgating an emergency limited service wholesale allowance. It permits willing Montana distributors to make those adjustments retroactive on a voluntary basis. It will be in effect and enforceable on the date of publication of the Notice of Adoption hereof.

9. The Chief of the Milk Control Bureau will send a copy of this Order to all persons licensed by the Bureau, to the state wire service, and other news media.

10. The authority of the Board to make the emergency rule is 81-23-302, MCA, and implements section 81-23-302, MCA.

Dated March 25, 1986.

BOARD OF MILK CONTROL
CURTIS C. COOK, Chairman

BY William E. Ross
William E. Ross, Chief
Milk Control Bureau

Certified to the Secretary of State March 25, 1986.

STATE OF MONTANA
DEPARTMENT OF COMMERCE

In the matter of the amendment of 8.94.3701 concerning the administration of the Federal Community Development Block Grant Program	))))	NOTICE OF ADOPTION OF PROPOSED AMENDMENT OF 8.94.3701 INCORPORATION BY REFERENCE OF RULES FOR ADMINISTERING THE CDBG PROGRAM

TO: All Interested Persons.

1. On February 13, 1986, the Department of Commerce published a notice of public hearing to consider the amendment of the rules governing the administration of the federal Community Development Block Grant (CDBG) program which the department originally adopted by reference on June 13, 1985.

2. The hearing was held on March 5, 1986, at 1:30 p.m. in Room C209 of the Cogswell Building, Helena, Montana. Six persons appeared at the hearing to offer testimony and comments on the proposed rule. Five spoke in favor of the proposed amendment and one person spoke in opposition. In addition, 25 letters were received regarding the proposed amendment; 13 supported the amendment and 12 opposed it.

3. After thoroughly considering all the oral and written comments received, the department is adopting the amendment to the rule as proposed.

The principal reasons stated for its adoption were as follows:

The change would make CDBG assistance more accessible to Montana businesses. Communities need to be able to assist economic development projects when the opportunity arises.

Small communities should not be placed in the position of having to choose between addressing housing or public facilities needs or opportunities for job creation. The current requirement pits the prospective developer seeking CDBG assistance against the city council which is considering needed infrastructure repairs. Economic opportunity should be expanded, not restricted.

Whether a community is currently working on other housing or public facility problems with CDBG funds should not be a reason for eliminating the chance to bolster the local and state economy. The ultimate beneficiary of the change would be the state's economic well-being.

The current requirement means that a worthy project could be rejected at the local level when funds are available at the state level. Economic development projects should have the opportunity to compete at the state level for the available funds.

A more open competition for CDBG assistance should result in awarding funds to projects which are the strongest business

proposal and which provide the greatest benefits to low and moderate persons, on a statewide basis.

The change would increase the opportunity to assist and promote job creation, thereby providing greater benefit to low and moderate income.

The principal reasons stated against its adoption were as follows:

The competition for CDBG funds is already intense and the severe budget cuts will only increase the competition. We should fund as many communities as possible so the low and moderate income families in many jurisdictions across the state can receive needed benefits. With the reduced amount of dollars coming into Montana, it seems more advisable that more communities have their chance at obtaining a grant. It would be best to "Build Montana" by stimulating economies throughout all of the State rather than concentrating CDBG assistance in a few larger communities with greater capacity to compete for grants.

From its beginning, the State CDBG program was never intended to allow one local government to be awarded two grants. The logical result of the amendment is that other communities in the state will end up with less funds for their projects.

The amendment would decrease the opportunity that remote counties and small cities, without professional grant writing staffs, have for receiving grants. The declining source of grant monies would quickly be granted to areas which have professional capacity and expertise in grantsmanship.

Missoula County can apply for its economic development project under the 1986 program on August 1st, only six months from now.

Changing the requirement for the 1985 guidelines, at this late date, is unfair to other communities without prepared applications ready to submit for the March competition. If the guidelines are changed, it should be in 1986.

The department's reasons for overruling the considerations urged against its adoption are as follows:

Since the creation of the special setaside of funds for applications for CDBG economic development grants in 1984, the Application Guidelines for the Montana Community Development Block Grant Program have specifically noted a distinction between that category and the other application categories (housing and neighborhood revitalization, public facilities, and multipurpose). The guidelines stated that for public facilities and housing projects, basic needs are identified and can be planned for in advance. In contrast, economic development opportunities are not generally identifiable in

advance but require a timely response from the community. The guidelines have made clear that it was the intention of the economic development setaside to "allow the CDBG program to be more responsive to the unique constraints faced by local economic development projects".

The opponents have suggested that the department should fund as many communities as possible. However, from its beginning the Montana CDBG Program has focused on assisting those communities which have developed thorough, well-planned solutions for serious needs rather than an effort to distribute grants to communities on any geographic or numerical basis.

The opponents have also suggested that the amendment will result in a favored status for larger communities because of their perceived greater capacity to prepare CDBG applications. The department believes that the award of CDBG funds to communities has been and will continue to determine by considering the substance and severity of the needs described by each applicant rather than the degree to which an application has been polished by "grantsmanship". In the four years the State has administered the program, a higher proportion of the grants have been awarded to small municipalities and rural counties than was the case under federal administration of the "Small Cities" CDBG Program. The State's experience with the program suggests strongly that the capacity to compete successfully for grants is not a function of community size. The department does not believe that the change in the guidelines will reduce the opportunity that small communities will have to receive CDBG assistance. To the contrary, the proposed amendment may improve access for them by broadening the variety of projects they can consider for CDBG projects. To date, the majority of applications from small communities have focused on the backlog of infrastructure needs that most small minicipalities face. The amendment would allow them to take advantage of the CDBG program to encourage local economic development and business retention efforts, as well.

One opponent suggested that the community which had requested the amendment could apply for CDBG assistance at a later date. Another suggested that the department should wait until next year's guidelines are adopted to incorporate this amendment. However, the department considers the proponents' arguments for increasing the responsiveness of the CDBG program's economic development category to be compelling enough to justify implementation immediately through the Fiscal Year 1985 CDBG Program, rather than waiting until the Fiscal Year 1986 program guidelines are adopted.

In summary, the department believes that the proponents have offered persuasive arguments for adopting the amendment. It will made CDBG assistance more accessible to Montana businesses. It will allow communities, large and small, to be

responsive to the all too often limited opportunities to help create or retain employment while they are also addressing serious needs in housing and public facilities. The more open competition for CDBG economic development assistance allowed by the amendment will also help the department to achieve its objectives for the economic development setaside by allowing it to award its limited CDBG funds to those projects with the strongest prospects for success and which offer maximum benefit to low and moderate income persons.

DEPARTMENT OF COMMERCE

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

Certified to the Secretary of State, March 31, 1986

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

In the matter of the adoption of new RULES I through XVII, and the repeal of rules 16.10.1101 through 16.10.1109 relating to health and safety in schools	NOTICE OF THE ADOPTION AND REPEAL OF RULES (Schools)

To: All Interested Persons

1. On May 16, 1985, the department published notice of proposed adoption of Rules I thorugh XVII (to be codified 16.10.1110 through 16.10.1126), and the repeal of rules 16.10.1101 through 16.10.1109, concerning health and safety in schools, at page 443 of the 1985 Montana Administrative Register, issue number 9. On July 11, 1985, the department published a response to comments to date and extension of the comment period, at page 882 of the 1985 Montana Administrative Register, issue number 13. Because of a second request for extension of the comment period, on October 17, 1985, the department published notice of another extension of the comment period, at page 1479 of the Montana Administrative Register, issue number 19.

2. The department has repealed rules 16.10.1101 through 16.10.1109 and adopted the proposed rules with the following changes [matter stricken is interlined, and new matter is capitalized (or underlined if matter is punctuation or numbers); changes are to the rules as proposed in the July 11, 1985 notice]:

16.10.1110 DEFINITIONS (RULE I) Same as proposed.

16.10.1111 PRECONSTRUCTION REVIEW (RULE II) Same as proposed.

16.10.1112 EXISTING BUILDING - CHANGE OF USE (RULE III)
(1) Same as proposed.
(2) Whenever compliance with this subchapter requires capital expenditures for the modification of an existing building currently being used as a school on April 10, 1986, compliance with such requirements must be achieved no later than December 31, 1987.

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

16.10.1114 INSPECTION (RULE V) Same as proposed.

16.10.1115 PHYSICAL REQUIREMENTS (RULE VI) (1) A school must comply with the following physical requirements:
(a) Same as proposed.

(b) Floors, walls, and ceilings in toilet, locker and shower rooms, laundries, janitorial closets, and similar rooms subject to large amounts of moisture must be maintained in a smooth and non-absorbent condition. NON-ABSORBENT, NON-SKID FLOOR MATTING MAY BE USED WHERE APPROPRIATE TO PREVENT INJURY.

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

(2) Same as proposed.

16.10.1116 SAFETY REQUIREMENTS (RULE VII)

(1) - (4) Same as proposed.

(5) ~~Home economics, shops, offices~~ SHOPS and other rooms using electrically operated instruction equipment WHICH PRESENTS A SIGNIFICANT SAFETY HAZARD TO THE STUDENT UTILIZING SUCH EQUIPMENT must be supplied with a master electric switch readily accessible to the instructor or instructors in charge.

(6) Same as proposed.

(7) The topography of the site must permit good drainage of surface water TO ELIMINATE SIGNIFICANT AREAS OF STANDING WATER.

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

16.10.1117 HEALTH SUPERVISION AND MAINTENANCE (RULE VIII) (1) Same as proposed.

(2) ~~A sanitary~~ SANITARY napkin ~~dispenser and~~ disposal must be provided for girls of age 10 or older and in teachers' toilet rooms and nurses' toilet rooms; THE SCHOOL MUST PROVIDE EITHER SANITARY NAPKIN DISPENSERS IN THE GIRLS', NURSES', AND TEACHERS' TOILET ROOMS OR SOME OTHER READILY AVAILABLE ON-SITE ACCESS TO SANITARY NAPKINS.

(3) Same as proposed.

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

(a) obtaining emergency phone numbers for parents and guardians;

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

(c) emergency coverage, INCLUDING THE PRESENCE OF A PERSON WITH A CURRENTLY VALID AMERICAN RED CROSS STANDARD FIRST AID CARD, during school-sponsored activities, including field trips, athletics, 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 DURING SCHOOL HOURS in ~~areas~~, rooms AND ANY OTHER AREAS ~~and school vehicles~~ used by children, and no smoking signs must be posted in ~~such areas~~ EACH HALLWAY, ENTRYWAY, GYMNASIUM, LUNCHROOM, AND RESTROOM, THOUGH NOT IN EACH CLASSROOM; SMOKING MUST BE PROHIBITED IN SCHOOL VEHICLES WHILE USED BY CHILDREN FOR SCHOOL-RELATED FUNCTIONS.

(6) Same as proposed.

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

(a) assessment of student's health and developmental status;

(b) vision screening;

(c) hearing screening;

(d) scoliosis screening;

(e) chemical and alcohol abuse;

(f) nutritional screening; AND

(g) DENTAL SCREENING.

16.10.1118 LIGHTING (RULE IX) THE FOLLOWING STANDARDS ARE ADVISORY, RATHER THAN MANDATORY:

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

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

(a) - (c) Same as proposed.

(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~~ SHOULD be maintained on such machinery or equipment while in use.

16.10.1119 HEATING (RULE X) THE FOLLOWING STANDARDS ARE ADVISORY, RATHER THAN MANDATORY:

(1) Space heating systems ~~must~~ SHOULD be designed to be capable of providing the following minimum space ambient temperatures:

(a) - (c) Same as proposed.

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

16.10.1121 SEWAGE SYSTEM (RULE XII) Same as proposed.

16.10.1122 LAUNDRY FACILITIES (RULE XIII)

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

(a) Same as proposed.

(b) a hot water supply system capable of supplying water at a temperature of ~~130°~~ 120° F to the washer during all periods of use.

(c) ~~a separate~~ SUFFICIENT SEPARATION BETWEEN THE area USED for sorting and storing soiled laundry and THE AREA USED FOR folding and storing clean laundry TO PREVENT THE POSSIBILITY OF CROSS-CONTAMINATION.

(d) - (e) Same as proposed.

(2) Towels and other laundry items must be machine washed at a minimum temperature of ~~130°~~ 120° F for a minimum time of eight minutes and dried in a hot air tumble dryer.

16.10.1123 CLEANING AND MAINTENANCE (RULE XIV)

(1) A school must comply with the following cleaning and maintenance requirements:

(a) Daily cleaning and maintenance services must be provided WHENEVER THE SCHOOL IS IN USE.

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

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

(d) - (g) Same as proposed.

(h) Dry dust mops and dry dust cloths for cleaning purposes are prohibited, EXCEPT FOR USE ON GYMNASIUM FLOORS. 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, WITH THE EXCEPTION OF GYMNASIUM FLOORS.

(i) - (j) Same as proposed.

(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~~ AFTER PERIODS OF USE. INDIVIDUALS WITH OPEN SORES OR INFECTIONS ARE PROHIBITED FROM USING THERAPEUTIC WHIRLPOOLS.

16.10.1124 FOOD SERVICE REQUIREMENTS (RULE XV) Same as proposed.

16.10.1125 SOLID WASTE (RULE XVI) 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~~ AND ARE CONSTRUCTED TO MINIMIZE INSECT AND RODENT ATTRACTION AND HARBORAGE;

(2) clean all solid waste containers with sufficient frequency to maintain them in ~~sanitary~~ A condition WHICH MINIMIZES INSECT AND RODENT ATTRACTION;

(3) ~~utilize exterior collection stands~~ for ~~the~~ EXTERIOR containers ~~referred to in subsection (1) of this rule~~ OTHER THAN DUMPSTERS OR COMPACTORS, UTILIZE STANDS which prevent the containers from being tipped, protect them from deterioration, and allow easy cleaning below and around them; ~~and~~

(a) DUMPSTERS OR COMPACTORS MUST BE LOCATED ON OR ABOVE A SMOOTH SURFACE OF NON-ABSORBENT MATERIAL, SUCH AS CONCRETE OR ASPHALT, THAT IS MAINTAINED IN CLEAN AND GOOD CONDITION;

(4) Same as proposed.

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

3. The following comments were reviewed; responses are noted:

RULE I: Gary Griffith, Superintendent of Maintenance, Operation, and Support Services for the Bozeman Public Schools, was concerned that the statutory language referred to in the Rule I definition of "school" (excluding home schools as defined in Section 20-5-102(f), MCA) was confusing enough to allow the interpretation that non-public schools were also excluded from the definition.

No change was made in the rule's definition of "school" because Section 20-5-102(f), containing, as it does, separate definitions for "home school" and "non-public school", is clear enough to prevent the confusion Mr. Griffith was concerned about.

RULE II: (a) Gary Griffith, of the Bozeman schools, objected to having to include solid waste storage facility location and details in preconstruction review plans (Rule II(1)(h)) if such facilities are owned by a contractor separate from the school.

No change was made because it is important from a public health point of view to assure that the proposed facility is served by an adequate solid waste facility, whether or not it is under the school's control.

(b) Mr. Griffith also pointed out that Rule II(1)(i) would appear to preclude construction of a new school which did not have access to a DHES-approved landfill, even though

the school had been through a protracted design and planning process.

The department conceded that lack of an approved landfill could prevent the final approval of construction of a school, but did not make a change in the rule because access to a proper landfill is vital to protection of public health.

(c) Michael Radke, codes analyst for CTA Architects Engineers in Billings, felt that a 60-day plan review period was too long, and suggested 22 working days as more appropriate.

No change was made because, given current staffing levels, case load, and departmental experience with similar programs as well as this one, the department may be unable in many cases to conclude review within 22 working days, though it will endeavor to do so.

RULE III: (a) Mr. Griffith asked that the reference to "existing building" in Rule II(1) be modified to indicate that the phrase was not intended to cover buildings already and currently operated as schools.

The requested modifying clause was already added in the July 11, 1985, notice.

(b) The deadline date in Rule III(2) for compliance by an existing school with these modified rules was changed by the department from December 31, 1986, to December 31, 1987, because of the extended review period and delayed adoption of the rules.

RULE V: Mr. Gemmer, administrator of the Community Chapel and Bible Training Center, noted problems which could be caused if prior notice of inspections were not given, particularly to church-related schools.

The rule itself does not specify that the inspection be unannounced or announced, and the department felt it appropriate to leave the issue of whether to give prior notice to the local health officials who will be doing the inspections.

RULE VI: Craig Brewington and Dr. Dale Zorn, superintendents of, respectively, the Fort Benton and Shelby Public Schools, both requested that an exception to Rule VI(1)(b) be allowed for nonabsorbent, nonskid matting in slick areas, such as showers and locker rooms, and that Rule VI(1)(c) be deleted entirely on grounds that moving lockers, library shelves, etc. for cleaning was prohibitive.

The department agreed and acceded to both requests.

RULE VII: (a) Superintendents Brewington and Zorn, as well as Superintendent George Knierim of the Roy Public Schools, objected to Rule VII(3)'s requirement that the tem-

perature of water supplied to handsinks and showers not exceed 120°, while laundry facilities would have to be supplied with water no less than 130° in temperature (Rule XIII), requiring many schools to purchase auxiliary water heaters or temperature boosters.

On the basis of evidence at hand concerning, particularly, the dangers of scalding associated with higher hand washing and bathing water temperatures, the 120° standard was retained, but the minimum temperature for laundries was lowered to 120°.

(b) Sonny Hanson, President of Energy Conservation Consultants, Billings, submitted a letter in December criticizing adoption in the standards relating to hotels, motels, etc., of a minimum-maximum temperature for handsink and bathing water temperature of 100°-120°, on grounds that such low temperatures could foster development of the organism causing Legionnaire's disease; the information he submitted from a plumbing/supply manufacturer indicated that the Veteran's Administration recommended setting hot water storage tanks at 160°.

While Mr. Hanson's comment was not directed, strictly speaking, at these rules, it is relevant to them and was considered. A check of all available information concerning the relationship of water temperature to the spread of Legionnaire's disease was inclusive and insufficient to establish a probable link. In addition, a storage tank temperature of 160° would require installation of mixing valves at additional cost to schools. Therefore, the department did not adopt a high minimum and higher maximum temperature at this time, though it will continue to examine all available evidence to determine if the temperature should be changed in the future.

(c) Keith Rupert, Director of CTA Architects Engineers (Billings), suggested there was no need for master electric cutoff switches for any and all electrical instructional equipment (Rule VII(5)).

The department agreed and restricted the switch requirement to equipment representing a significant safety hazard, such as shop equipment.

(d) George Knierim of the Roy schools objected to Rule VII(6) on grounds it did not precisely state what site conditions would constitute "unreasonable or unnecessary dangers to health or safety".

The department made no change because it felt the standard would be consistently interpreted by most people and because site conditions and on-site "objects" were so variable that to define what was dangerous in each case was impractical and next to impossible.

(e) Superintendents Brewington and Zorn were concerned that Rule VII(7) would require costly resurfacing on the part of many schools, particularly those with paved or concrete playground areas.

In response, the department limited the provision's effect so that drainage need be sufficient only to eliminate the accumulation of large areas of standing water.

(f) Mr. Brewington and Dr. Zorn also objected to the Rule VII(8) requirement that all playground equipment be kept "clean", since they were uncertain how to keep ropes, tires, swings, etc., clean enough to satisfy the standard.

The department accepted the recommendation and deleted the requirement that such equipment be kept "clean".

RULE VIII: (a) Beverly Moog, R.N., school nurse in Havre, suggested that Rule VIII(2) be altered to allow sanitary napkins to be supplied to students by means other than mechanical dispensers, noting that in one school the napkins were supplied free by the school nurse.

The department agreed and added language allowing alternatives.

(b) Ms. Moog requested a minimum standard be set for the emergency coverage during school-sponsored activities required by Rule VIII(4)(c).

In response, the department added the requirement that a Red Cross-certified individual be present.

(c) In regard to Rule VIII(5), Ms. Moog wanted it clarified where no-smoking signs were to be located and whether smoking was banned even when children were not present. Mr. Brewington, Dr. Zorn, and George Knierim wanted the no-smoking provision to be deleted entirely and to rely instead on other existing law (presumable the Indoor Clean Air Act, Title 50, Chapter 40, MCA), apparently out of concern for its effect on the general public during ballgames, etc.

The department declined to eliminate the provision completely, since second-hand smoke is a major public health problem, children in particular are vulnerable to its effects, and the Indoor Clean Air Act is a fairly weak tool to use to control its effects. The requested clarifying language was added, however, and its application was limited to regular school hours and, in the case of school vehicles, to times when children use them for school-related purposes.

(d) Ms. Moog requested the addition of guidelines for the administration of medications in the school.

The department decided not to do so at this time because the issue is complex and controversial, a relevant policy is currently being worked out between DHES and the Office of Public Instruction, and guidelines for schools to use are available from the department.

(e) Mr. Griffith of the Bozeman schools objected to making school employees responsible for identifying illnesses in children (Rule VIII(3)) and notifying parents/guardians and the local health authority if symptoms occurred.

The provision requiring notification of the local health authority had already been deleted in the July notice. The remaining language requires only a common sense response to obvious illness; therefore, the department did not agree the responsibility placed on school officials was unreasonable and retained the language.

(f) The Montana Association of School Nurses requested that the health screening recommended by Rule VIII(7) be made mandatory (except for nutritional screening) and that dental screening be added to the list. George Knierim felt the screening was beyond the scope of school responsibility and expressed concern that the recommendations would gradually become regarded as mandatory. Mr. Brewington and Dr. Zorn wanted (7)(a) deleted because of ambiguity concerning who would be "appropriately qualified" to do the assessment and concerns about liability for any misdiagnosis.

The department added dental screening to the list of recommendations and more precisely defined those considered to be "appropriately qualified personnel", but did not make screening mandatory because it does not believe it has the statutory authority to do so. Since the screenings are not mandatory, the liability issue will have to be assessed by each school district deciding to implement such a program.

RULE IX: (a) Mr. Brewington and Dr. Zorn did not feel 100 footcandles were needed in all areas where students used equipment, such as typing rooms. Mr. Griffith objected to the reliance on footcandles and failure to consider factors such as color brightness and reflective values. Mr. Knierim was concerned that use of fluorescents to give 100 footcandles in shop areas could "strobe stop" some machines.

Because there is no general authoritative agreement about how best to handle lighting or what level is required to prevent eye strain, and because enforcement of standards similar to those proposed by Mr. Griffith (and contained in current ARM 16.10.1104) has proved beyond the expertise of most sanitarians, the rule is made advisory only, for the time being. Standards currently being developed nationally and in other states will continue to be examined and revised; mandatory lighting standards may be adopted in the future.

RULE X: Mr. Brewington and Dr. Zorn recommended locker rooms and showers be heated only to 70° F at four feet from the floor in order to save energy and because heat from showers would naturally increase the temperature to a comfortable level. Mr. Griffith also requested reinstatement of standards limiting heating system noise, drafts, and surface temperatures, currently contained in ARM 16.10.1105 but not in these proposed rules.

Because there remains a great deal of dispute among commentators and authorities about what heating standards are appropriate, and because the standards referred to by Mr. Griffith are considered more appropriately the responsibility of building code inspectors rather than the sanitarians who enforce these rules, this rule will be advisory only, for the time being. As with the lighting rule, other standards being developed throughout the U.S. will be monitored, and the department intends to adopt a mandatory standard in the future, after careful examination of the currently developing body of knowledge.

RULE XIII: (a) Mr. Brewington and Dr. Zorn interpreted Rule XIII(1)(c) to require separate rooms for handling clean and dirty laundry, and requested that it be deleted as unnecessary.

Since the provision was not intended to require separate rooms, it was amended to clarify the fact.

(b) Because of the comments made regarding water temperature, already referred to above (see comment (a) for Rule VII), the temperature for water supplied to washing machines was reduced to 120° F.

RULE XIV: (a) Gary Griffith requested clarification that Rule XIV(1)(a) requires daily cleaning only while the school is being used.

The suggestion was accepted and clarifying language added.

(b) George Knierim felt Rule XIV(1)(c) unnecessarily required the laundering of new, unused mop heads.

Since such was not the intent of the provision, it was clarified to prevent misinterpretation.

(c) Mr. Brewington and Dr. Zorn requested Rule XIV(1)(h) be altered to allow use of dry dust mops on gym floors to allow cleaning during games, etc., without rendering the floor dangerously slippery.

The department agreed and made the change.

(d) Mr. Brewington and Dr. Zorn also requested deletion of the subsection (1)(k) requirement that whirlpools be drained and disinfected between uses, because of the cost of hiring an attendant, and suggested substitution of a prohibition against whirlpool use by anyone with an infection or open sore.

The department agreed the change would sufficiently protect public health and made it.

RULE XVI: Mr. Brewington and Dr. Zorn objected to Rule XVI's requirements because of the great variety in containers, some of which are city containers and not amenable to being placed on stands.

The department made changes in the rule designed to deal with those problems, while protecting public health.

RULE XVII: (a) Mr. Knierim was concerned that the rule's requirement to control weeds might threaten children's health because of the hazardous nature of the chemicals likely to be used for the purpose.

The department made no changes because following label directions carefully should minimize any hazard, and alternative methods of control, such as cutting or digging, are available.

(b) Mr. Brewington and Dr. Zorn felt storage of lumber, etc., only one foot above ground would not prevent animals from accessing it, and suggested requiring only that it be stored "in a safe manner".

The language was not changed because it was felt adequate to prevent rodents from nesting under the stored materials.

(c) A representative of Glacier County requested addition of a standard requiring the local governing authority to keep school grounds free of roaming animals.

The department did not do so on grounds the only effective means of keeping animals away would be by fencing the school site, which the degree of the animal problem did not justify.

MISCELLANEOUS: (a) Mr. Griffith of the Bozeman schools objected to the deletion of standards for playgrounds -- e.g., cover material, minimum size, sidewalks for foot traffic, etc. -- on grounds that such standards could alleviate injuries and facilitate cleanliness in the playground and building areas.

While Mr. Griffith's reasoning is valid, his were the only comments of this nature received. The department proposes to take the comments under advisement and to consider future amendments to include such standards if additional research indicates it would appropriate to do so.

(b) Mr. Griffith also objected to deletion of ventilation standards, which are in current rules but not the proposed package.

Because ventilation standards are considered more appropriately the responsibility of those enforcing building codes, rather than sanitarians, and are addressed in the Montana Building Code, the department decided not to include them.

(c) Several persons commented that compliance with the rules will result in a severe financial burden on the schools. Those commenting did not specify which rules they felt would create such a burden.

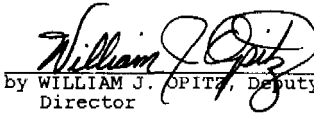
It is important to note that these proposed rules would replace rules which have been in existence for many years.

Under the proposed rules, many previous requirements are relaxed or eliminated entirely; others are modernized to reflect changes which have taken place over the years. The department does not feel that the few added standards place an undue financial burden on the schools.

(d) Several comments were received which protested the application of these rules to church-related schools (M. W. Gemmer, administrator, Community Chapel and Bible Training Center, Kalispell; Douglas Kelley, Esq.; Dr. Don Niemeir, pastor of the Florence Bible Church; and M. J. Bower of Full Gospel Church in Eureka). Mr. Kelley felt there had been no showing of need for "additional" rules, the cost of compliance was too high, and application of them to church schools was unconstitutional. However, none of the letters specified which particular rules were considered onerous or what provisions would "bankrupt" non-public schools.

As for being a burden on the churches, school rules have been in existence since 1972 and have been applied to both public and non-public schools. These revised rules, in fact, as noted above, in many respects relax the old standards and add new ones only in areas found by experience to be necessary, compliance with which would not appear to cost a great deal of money. As for the constitutional issue, neither the state nor federal constitutions leave churches free from any governmental regulation whatsoever. Mr. Kelley acknowledges that there is a compelling state interest in protecting the health and safety of all of our citizens; Montana has chosen to give special emphasis in that area to protection of school children. Given that point of agreement, the question remains whether the children at church schools may be protected in a less entangling manner than these rules prescribe, short of no regulation at all. It is not apparent where the rules may be so burdensome as to interfere with the free exercise of religion, and the department does not have the authority to refrain from applying the rules to non-public schools, since they are not excepted by the law authorizing the rules. Therefore, the rules as adopted will be considered applicable equally to public and non-public schools.

JOHN J. DRYNAN, M.D., Director



by WILLIAM J. OPITZ, Deputy Director

Certified to the Secretary of State March 31, 1986.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT) of Rule 42.20.113 relating to) the valuation of agricultural) and timberland.)	NOTICE OF THE AMENDMENT of Rule 42.20.113 relating to the valuation of agricultural and timberland.

TO: All Interested Persons:

1. On January 30, 1986, the Department of Revenue published notice of the proposed amendment of rule 42.20.113 relating to the valuation of agricultural and timberland at pages 92 and 93 of the 1986 Montana Administrative Register, issue no. 2.

2. The Department has amended rule 42.20.113 as proposed.

3. No comments or testimony were received.

4. The authority for the rule is 15-1-201, MCA, § 7, Ch. 681, L. 1985, § 2, Ch. 705, L. 1985, and § 4, Ch. 739, L. 1985, and the rule implements 15-6-133, 15-7-201, and 15-8-111, MCA.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 03/31/86

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

In the matter of the amendment of Rules 46.10.318 and 46.10.319 pertaining to AFDC emergency assistance	))))	NOTICE OF THE AMENDMENT OF RULES 46.10.318 AND 46.10.319 PERTAINING TO AFDC EMERGENCY ASSISTANCE

TO: All Interested Persons

1. On February 13, 1986, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.10.318 and 46.10.319 pertaining to AFDC emergency assistance at page 191 of the 1986 Montana Administrative Register, issue number 3.

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

46.10.318 EMERGENCY ASSISTANCE TO NEEDY FAMILIES WITH DEPENDENT CHILDREN Subsections (1) through (1)(b) remain as proposed.

(i) IN DETERMINING WHETHER GOOD CAUSE EXISTS FOR FAILURE TO ACCEPT EMPLOYMENT OR TRAINING FOR EMPLOYMENT, A CONSIDERATION OF ALL FACTS AND CIRCUMSTANCES WILL BE MADE INCLUDING THOSE SUBMITTED BY THE MONTANA EMPLOYMENT SECURITY DIVISION AT THE TIME OF THE ALLEGED FAILURE.

(A) "GOOD CAUSE" INCLUDES CIRCUMSTANCES BEYOND THE PERSON'S CONTROL, AND INCLUDE BUT ARE NOT LIMITED TO:

(I) ILLNESS OF THE PERSON;

(II) ILLNESS OF ANOTHER HOUSEHOLD MEMBER SUFFICIENTLY SERIOUS TO REQUIRE THE PRESENCE OF THE PERSON;

(III) UNAVAILABILITY OF TRANSPORTATION; OR

(IV) UNANTICIPATED EMERGENCY.

Subsection (1)(c) remains as proposed.

(d) where other resources, including public assistance benefits or services AND ALL LIQUID RESOURCES, have been exhausted.

Subsection (2) remains as proposed.

(3) Payment for shelter and utilities will be limited to the two (2) most recent months of ~~arrearages~~ RENT OR UTILITIES SERVICE DUE. An eviction notice or final utility cut-off notice will be required before emergency assistance will be granted.

Subsections (4) through (4)(f) remain as proposed.

AUTH: Sec. 53-4-212 MCA
IMP: Sec. 53-4-211 MCA

46.10.319 EMERGENCY ASSISTANCE TO NEEDY FAMILIES WITH DEPENDENT CHILDREN, PROCEDURES FOLLOWED IN DETERMINING ELIGIBILITY Subsections (1) through (7) remain as proposed.

(8) AN EXPEDITED ADMINISTRATIVE REVIEW OF A DENIAL OF AN APPLICATION FOR EMERGENCY ASSISTANCE WILL BE AVAILABLE TO APPLICANTS WHO REQUEST IN WRITING SUCH AN EXPEDITED REVIEW WITHIN FIVE (5) WORKING DAYS OF THE DATE OF THE DENIAL. SUCH A REVIEW WILL BE HELD WITHIN FIVE (5) WORKING DAYS OF THE DATE THE REQUEST IS RECEIVED BY THE COUNTY. REQUESTS NOT MADE IN ACCORDANCE WITH THESE PROVISIONS WILL BE PROCESSED ACCORDING TO THE DEPARTMENT'S STANDARD FAIR HEARING PROCEDURES.

AUTH: Sec. 53-4-212 MCA
IMP: Sec. 53-4-211 MCA

3. The Department has thoroughly considered all commentary received:

COMMENT: The Montana Low Income Coalition (Coalition) suggested additions to ARM 46.10.318 including, "deposits for shelter and utilities, transportation, personal needs, child care, repairs to autos, furnaces, appliances, and utilities, . . . homelessness, lack of utilities, loss of transportation, and breakdowns . . . ." These additions were suggested because although they are all essential living needs, it is not clear whether or not they are included in the SRS rule.

RESPONSE: This final notice does not incorporate the suggested additions. If these emergencies are a result of a situation indicated in 46.10.318(1)(a) through (d), the need will be covered. The need will be covered by vendor, in-kind or direct cash payment only as indicated in 46.10.318(2), (3) and (4)(a) through (f).

COMMENT: "Good cause" is defined in the AFDC Manual at 402-4 and this citation should be included in ARM 46.10.318 to clarify and conform the regulations.

RESPONSE: The Department will incorporate the following clarification of good cause into the rule as subsections (1)(b)(i) through (1)(b)(i)(A)(IV):

(i) In determining whether good cause exists for failure to accept employment or training for employment, a consideration of all facts and circumstances will be made including those submitted by the Montana employment security division at the time of the alleged failure.

(A) "Good cause" includes circumstances beyond the person's control, and include but are not limited to:

(I) illness of the person;

(II) illness of another household member sufficiently serious to require the presence of the person;

(III) unavailability of transportation; or

(IV) unanticipated emergency.

COMMENT: The "unforeseen" requirement in ARM 46.10.318 will be used to deny assistance in situations where past due bills were adding up and result in a utility cut-off or eviction notice. Every winter many people make every effort to pay their heating bills but still receive cut-off notices at the end of the winter moratorium. The situation is foreseeable but is not under the person's control and is unavoidable. This requirement is also unduly restrictive and not in compliance with federal regulation 45 CFR § 233.120.

RESPONSE: Emergency assistance was never contemplated to be available for the payment of routine household bills which, over a period of time, go unpaid. The proposed language is meant only to make clear that failure to pay routine and expected household bills, absent an emergency situation, will not qualify a household for this program. The specific language was adapted from the New York emergency assistance statute and has been upheld in court.

COMMENT: The requirement to exhaust "other resources" is unclear since "other resources" is undefined. Are any resources exempt? What resources are reasonably available? These questions can be answered by using the resource definitions under AFDC.

RESPONSE: All liquid resources must be exhausted before the need is covered by AFDC emergency assistance. Non-liquid resource requirements are the same as for regular AFDC assistance.

COMMENT: The two month limitation in ARM 46.10.318 is not reasonable for utility cut-offs. A person will not get a termination notice until after the winter moratorium and that may easily include more than two months of arrearages. Also, utility arrearages are not computed on a monthly basis and LIEAP benefits are paid sporadically thereby making it impossible to compute the two most recent months of arrearages. The limitation is also unduly restrictive and not in compliance with federal regulation 45 CFR § 233.120.

RESPONSE: By payment of two months utilities' service, the Department means that it will pay no more than the total amount of the most recent two months' utilities bill, not including arrearages from former months. Any payment the household is able to make in the most recent month and any LIEAP payments may be applied to arrearages dating from before the two most recent months in order to maximize the emergency assistance payment. To be eligible for such a payment, the household must meet all of the other requirements for emergency assistance.

Payment of two months utility arrearages, particularly if those months are winter months, should alleviate any emergency requiring fuel assistance. Since the LIEAP program also provides necessary fuel assistance to basically the same constituency, the Department believes this limitation on emergency assistance to be appropriate.

COMMENT: The proposed change at ARM 46.10.319(3)(a) regarding a child's eligibility for emergency assistance complies with federal regulation 45 CFR § 233.120.

RESPONSE: No response is necessary.

COMMENT: Time requirements in ARM 46.10.319 are necessary to meet the emergency needs for which the regulation is being promulgated. This is especially true for evictions and cut-offs. If there is a 3-day notice for eviction, a person must pay before the three days are up to prevent the eviction. Cut-off warnings are often short and a person can be charged for having the utilities turned on again. A legal services attorney commented that even with an expedited hearing, he recently had a client who went over thirty days without a refrigerator before the Fair Hearing Decision awarded emergency assistance.

Additionally, it was suggested that the rules should provide that if a client requests a fair hearing, the administrative review will be scheduled to be held within 48 hours.

RESPONSE: The Department has a specific fair hearing process which will remain in effect. However, in consideration of the urgency of some emergency requests, the Department will provide an expedited administrative review for emergency assistance denials specifically requested in writing within five (5) working days of the date of the denial. Expedited administrative reviews will be held within five (5) working days of the date the request is received by the county. Those requests not properly submitted will be processed by standard procedures.

COMMENT: The Coalition proposes an addition to require notice be given by the county office to their clients of the availability of emergency assistance and those services listed in ARM 46.10.318(4)(e). Many people, including social workers, do not know about the availability of emergency assistance. The cost of such notice can be included under Federal Financial Participation for Information, 45 CFR § 233.120(b)(2).

RESPONSE: The Department will develop flyers to post notice of AFDC emergency assistance. Also, notice of the rule change and revised policy manual material will be distributed to social services staff.

COMMENT: Emergency assistance should pay utilities for those households who have paid at least 20% of their income toward monthly utility costs.

RESPONSE: The Department has considered this suggestion and has decided not to implement it for several reasons. First, the LIEAP program is specifically designed to provide emergency assistance to needy households, including AFDC families. Second, under the proposed rule, households eligible for emergency assistance are entitled to have up to two months of arrearages paid. This payment, if for winter months, could easily constitute over 20% of the household's yearly utility bill. Third, in order to implement the 20% suggestion, the Department would have to average costs and income over a fairly lengthy period of time, i.e., six months or a year. The documentation of income, fuel costs and household size from month to month would be time-consuming and inexact. The Department believes this suggestion to be administratively impractical for these reasons.

COMMENT: Emergency assistance should meet the emergency needs resulting from participation in a strike.

RESPONSE: Federal regulations at 45 CFR § 233.106 mandate that a state plan under Title IV-A of the Social Security Act must provide that participation in a strike shall not constitute good cause to leave, or to refuse to seek or accept employment. Since the state's emergency assistance program is part of the state's IV-A plan, participation in a strike is not an acceptable emergency under federal law.

COMMENT: The proposed rules should eliminate the language in rule 46.10.318(1)(a) "...which has caused or threatens to cause the destitution of the child and/or the household."

RESPONSE: This language is required by federal regulation (42 CFR 233.120(b)) for federal financial participation.

COMMENT: The rules should require that the county office approve or give reason for disapproval of an application submitted to the county office by day's end.

RESPONSE: This would be impractical to administer. In some instances, the county office might not be able to actually interview the applicant on the same day the application form is submitted. Also, even if the applicant is interviewed the same day the application form is submitted, the county office may need additional information or verification that the applicant might not be able to provide by day's end. Another possibility is that the county office may need more time to process the application and further research ways to best meet

the needs of the applicant. As required by the rule, priority will be given to these applications.

COMMENT: An attorney from legislative council questioned whether the proposed amendment at ARM 46.10.318(4)(f) should state "...cash payments shall not be paid directly to the recipients unless there is a protective payee."

RESPONSE: No. Cash payments in subsection (f) are specifically distinguished from shelter and utility payments which are made to vendors under subsection (c). Cash payments for AFDC emergency assistance shall be paid directly to the recipient unless there is a protective payee.

Dave Lewis
Director, Social and Rehabilitation Services

Certified to the Secretary of State March 31, 1986.

VOLUME NO. 41 OPINION NO. 54

HIGHWAYS - Accident reports;
JURISDICTION - Accident reports;
PEACE OFFICERS - Accident reports;
POLICE - Accident reports;
SHERIFFS - Accident reports;
TRAFFIC - Accident reports;
MONTANA CODE ANNOTATED - Title 61, chapter 7, part 1; sections 61-7-102, 61-8-101.

HELD: The provisions of the Uniform Accident Reporting Act, Tit. 61, ch. 7, pt. 1, MCA, apply upon highways and elsewhere throughout the state, and the application of the Act is unaffected by section 61-8-101, MCA.

18 March 1986

Robert M. McCarthy
Butte-Silver Bow County Attorney
Butte-Silver Bow County Courthouse
Butte MT 59701

Dear Mr. McCarthy:

I am writing in response to your request for an opinion regarding:

> Whether the provisions of the Uniform Accident Reporting Act, §§ 61-7-101 to 118, MCA, apply "upon highways and elsewhere throughout the state" as provided in section 61-7-102, MCA, or only upon "ways of this state open to the public" as provided in section 61-8-101, MCA.

The Uniform Accident Reporting Act, Tit. 61, ch. 7, pt. 1, MCA, requires the reporting of accidents, establishes a duty to give information and render aid, and provides a penalty for failure to do so. Section 61-7-102, MCA, states: "The provisions of this part [the Uniform Accident Reporting Act] shall apply upon highways and elsewhere throughout the state." (Emphasis added.)

Section 61-8-101, MCA, concerns the application of Title 61, chapter 8, the statutes on traffic regulation, and provides in part:

> (1) As used in this chapter, "ways of this state open to the public" means any highway, road, alley, lane, parking area, or other public or private place adapted and fitted for public travel that is in common use by the public. [Emphasis added.]

By its very definition, the use of the term "ways of this state open to the public" is limited to Title 61, chapter 8, MCA.

Where the language of a statute is plain, unambiguous, direct and certain, the statute speaks for itself and there is nothing left to construe. Dunphy v. Anaconda Co., 151 Mont. 76, 438 P.2d 660 (1968). Section 61-7-102, MCA, expressly applies to the Uniform Accident Reporting Act, Tit. 61, ch. 7, pt. 1, MCA. Section 61-8-101, MCA, expressly applies only to Title 61, chapter 8, MCA.

Thus, a driver who commits an offense set forth in the Uniform Accident Reporting Act, Tit. 61, ch. 7, pt. 1, MCA, may be cited for the offense as long as it occurs upon a highway or "elsewhere throughout the state," and the application of the Uniform Accident Reporting Act is unaffected by section 61-8-102, MCA.

THEREFORE, IT IS MY OPINION:

> The provisions of the Uniform Accident Reporting Act, Tit. 61, ch. 7, pt. 1, MCA, apply upon highways and elsewhere throughout the state, and the application of the Act is unaffected by section 61-8-101, MCA.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 41 OPINION NO. 55

ELECTIONS - Nonpartisan election ballot;
ELECTIONS - Qualifications for candidacy;
SECRETARY OF STATE - Certification of candidates on the ballot;
MONTANA CODE ANNOTATED - Sections 13-12-201;
MONTANA CONSTITUTION - Article VII, section 9(1).

HELD: The Secretary of State should not certify to election administrators for the primary election ballot the name of an individual who cannot possibly meet the eligibility requirements for the office of Supreme Court Justice.

21 March 1986

Mike McGrath
Lewis and Clark County Attorney
Lewis and Clark County Courthouse
Helena MT 59623

Dear Mr. McGrath:

You have asked my opinion on the following question:

> Is the clerk and recorder required to place on the ballot the name of a person obviously not legally qualified for the office of Supreme Court Justice?

The circumstances which give rise to your question are as follows: On February 20, 1986, an individual filed with the Secretary of State a declaration for nomination to the office of Supreme Court Justice; the declaration was a notarized statement that the declarant possessed the qualifications prescribed by the Montana Constitution and laws for the office of Supreme Court Justice; the declarant subsequently admitted in public, as described in various newspaper articles, that he, in fact, had no formal legal training and had not been admitted to the practice of law in Montana; on March 13, 1986, this individual was held in contempt of court in Kalispell for practicing law without a license. In

addition, the Clerk of the Montana Supreme Court has certified that the declarant is not listed in the roll of attorneys licensed to practice law in the State of Montana, nor has he been issued a certificate or license to practice law here.

In light of the above-mentioned circumstances, you ask whether the declarant's name should appear on the ballot for Supreme Court Justice. Under section 13-12-201, MCA, the Secretary of State may certify to election administrators the name of each candidate "entitled to appear on the ballot." Underlying your inquiry is the question of whether the Secretary of State should certify the declarant's name to the state's election administrators.

Article VII, section 9(1) of the Montana Constitution requires that a citizen be admitted to the practice of law in Montana for at least five years prior to the date of election in order to be eligible to the office of Supreme Court Justice. Under the situation described above, the declarant does not presently possess the qualifications necessary to hold the office of Supreme Court Justice nor can he possibly acquire them by the date on which the election is held, as is required by the Montana Constitution. Thus, regardless of the declarant's actions or the mere passage of time, he will be ineligible to hold the office of Supreme Court Justice for the term which begins in January 1987.

One who is ineligible to hold a public office has no right to be a candidate for election thereto, since his election would be a nullity. Jenness v. Clark, 129 N.W. 357, 358 (N.D. 1910). To permit the candidacy and perhaps the election of one who is not qualified to hold the office he seeks would frustrate the democratic process represented by the state's electoral system. It could result in the unwarranted expenditure of funds both on behalf of such a candidate's campaign and for the purpose of holding an election for such a candidate. State ex rel. Willis v. Larson, 539 P.2d 352, 355 (Wyo. 1975). Moreover, it could mislead electors to waste their votes on a candidate who could not hold office.

The courts of some jurisdictions have permitted election officials to refuse declarations for nomination only if the election official can determine, from the face of the declaration, whether a declarant is ineligible to

hold the office he seeks. See, for example, Fischnaller v. Thurston County, 584 P.2d 483 (Wash. 1978); County Election Board v. Robinson, 352 P.2d 920 (Okla. 1960). However, the form of declaration used for candidates for Montana Supreme Court Justice does not require that a declarant list the specific qualifications for that office. Rather, the form of the declaration for nomination contains a general statement that the declarant possesses "the qualifications prescribed by the Constitution and laws of the State of Montana for the office herein named." Thus, if a candidate has not been admitted to the practice of law for five years prior to the date of the election, his failure to meet this constitutional requirement to hold the office of Supreme Court Justice will not appear on the face of the declaration for nomination. Under the decision in Fischnaller, supra, the Secretary of State could not refuse the declarant's filing of his nomination form.

Fischnaller, however, does not address the situation where, as here, a candidate's ineligibility becomes clear subsequent to his filing for nomination. In addition, Montana case law does not interpret an election official's responsibilities as narrowly as did the Washington court in Fischnaller, supra. Mahoney v. Murray, 159 Mont. 176, 496 P.2d 1120 (1972), involved a delegate to the Constitutional Convention who attempted to file a declaration of nomination for the office of state treasurer. The Montana Constitution prohibited the state treasurer from holding any other public office. Because the position of delegate to the Constitutional Convention was considered to be a "public office," the Secretary of State refused to accept Mahoney's declaration of nomination. The Montana Supreme Court held that Mahoney's membership in the Constitutional Convention had not terminated and that because Mahoney was prohibited by the Constitution from holding both the office of state treasurer and that of constitutional convention delegate, the Secretary of State "was correct in refusing to file the declaration for nomination, and the petition for a writ of mandamus [was] denied." 496 P.2d at 1127.

In light of the holding in Mahoney, supra, and the general policy in favor of preventing candidacies of individuals who are ineligible to hold the office they seek, I conclude that the name of an individual who has admitted subsequent to his declaration of nomination

that he does not meet the legal requirements for holding the office he seeks should not be placed on the primary election ballot.

THEREFORE, IT IS MY OPINION:

> The Secretary of State should not certify to election administrators for the primary election ballot the name of an individual who cannot possibly meet the eligibility requirements for the office of Supreme Court Justice.

Very truly yours,

MIKE GREELY
Attorney General

cc: Secretary of State

VOLUME NO. 41 OPINION NO. 56

LOCAL GOVERNMENT - Recommendations of local government study commission;
LOCAL GOVERNMENT STUDY COMMISSIONS - Requirement that a recommendation be made in commission's final report;
MONTANA CODE ANNOTATED - Sections 7-3-103, 7-3-171 to 7-3-193;
MONTANA CONSTITUTION - Article XI, section 9(2).

HELD: A local government study commission may not have an alternative form of local government placed on the ballot unless the study commission recommends adoption of the alternative plan.

21 March 1986

Mike Salvagni
Gallatin County Attorney
Law and Justice Center
615 South 16th Street
Bozeman MT 59715

Dear Mr. Salvagni:

You have requested my opinion on the following question:

> May a local government study commission have an alternative form of government placed on the ballot if the study commission does not recommend the adoption of that alternative plan?

In 1979 the Legislature enacted procedures allowing voters to alter their form of local government. In 1983 the Legislature adopted sections 7-3-171 to 193, MCA, which provide the mechanism by which a local government study commission, hereinafter referred to as a study commission, can recommend a change in government and the electors can vote on the study commission's recommendations. A county study commission's recommendations may include any of the actions listed in section 7-3-185(1)(a), MCA, which provides the following:

Scope of study commission recommendations. (1)(a) A study commission examining the government of a county may:

(i) recommend amendments to the existing plan of government;

(ii) recommend any plan of government authorized by Title 7, chapter 3, parts 1 through 6;

(iii) draft a charter;

(iv) recommend municipal-county consolidation or amendments to an existing consolidation;

(v) in cooperation with a study commission in an adjoining county, recommend county merger; or

(vi) submit no recommendation.

Your question has arisen because the local government study commissioners for Gallatin County apparently are considering offering the voters an opportunity to adopt an alternative form of local government, pursuant to section 7-3-185(1)(a)(ii), MCA, without endorsing the alternative as a study commission recommendation. I conclude from an examination of the statutes on local government study commissions that such an action is not authorized by law.

Study commissions are established whenever the electorate votes to conduct local government review, and, in any case, every ten years as required by the Montana Constitution, article XI, section 9(2). § 7-3-173, MCA. Once the members of a study commission are elected they must meet and establish a timetable for their deliberations and actions. § 7-3-186, MCA. Terms of office of study commission members end either 90 days after a vote on the commission recommendations or, if no change is recommended, 30 days after submission of the commission's final report. § 7-3-178(1), MCA. Final reports must be adopted and special elections scheduled if the study commission recommends that changes to the existing form of government be made. § 7-3-186(2)(d), MCA. Supplementary reports may be prepared. § 7-3-190, MCA.

According to the language of section 7-3-187, MCA, which sets forth the requirements for the contents of a study commission's final report, a special election on an alternative form of government is scheduled only if the study commission recommends an alternative. Section 7-3-187, MCA, in pertinent part, states:

> Final report. (1) Every study commission shall adopt a final report. If the study commission recommends an alternative form of government, the final report shall contain the following materials and documents, each signed by a majority of the study commission members:
>
> (a) those materials and documents required of a petition proposing an alteration of an existing form of government in 7-3-142;
>
> (b) a certificate establishing the date of the special election, which may be held in conjunction with a regularly scheduled election, at which the alternative form of government shall be presented to the electors and a certificate establishing the form of the ballot question or questions; and
>
> (c) a certificate establishing the dates of the first primary and general elections for officers of a new government if the proposal is approved and establishing the effective date of the proposal if approved.
>
> (2) The final report shall contain any minority report signed by members of the commission who do not support the majority proposal.
>
> (3) If the study commission is not recommending any changes, its final report shall so indicate. [Emphasis added.]

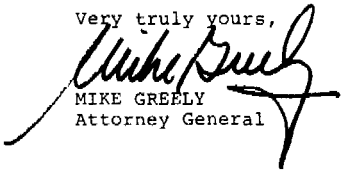
The language of the local government study commission statutes contemplates that a study commission may not wish to recommend any changes to the existing form of government. See, specifically, §§ 7-3-185(1)(a)(vi), 7-3-187(3), MCA. If changes are recommended, an election is to be scheduled pursuant to section 7-3-187(1), MCA. Should voters desire a change in their

form of government, despite the fact that their study commission is not so disposed, the voters may propose a change by petition as is permitted in section 7-3-103, MCA.

THEREFORE, IT IS MY OPINION:

A local government study commission may not have an alternative form of local government placed on the ballot unless the study commission recommends adoption of the alternative plan.

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 the existing or proposed rules. The address is Room 138, Montana State Capitol, Helena, Montana 59620.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions:

Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

Known Subject Matter

1. Consult ARM topical index, volume 16. Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued.

Statute Number and Department

2. Go to cross reference table at end of each title which list MCA section numbers and corresponding ARM rule numbers.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Procedure Act for inclusion in the ARM. The ARM is updated through December 31, 1985. This table includes those rules adopted during the period January 1, 1986 through March 31, 1986, 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 December 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 1986 Montana Administrative Register.

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