

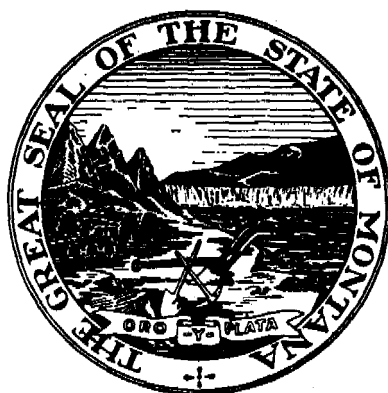
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# RESERVE

## MONTANA ADMINISTRATIVE REGISTER

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MAY 27 1982  
OF MONTANA

1982 ISSUE NO. 10  
MAY 27, 1982  
PAGES 1065-1134



# MONTANA ADMINISTRATIVE REGISTER

## ISSUE NO. 10

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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. Notices and tables are inserted at the back of each register.

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STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE BOARD OF MEDICAL EXAMINERS

IN THE MATTER of the proposed ) NOTICE OF PROPOSED AMENDMENTS  
amendments of ARM 8.28.418 con-) OF ARM 8.28.418 ANNUAL REGIS-  
cerning annual registration and) TRATION AND FEES; 8.28.504  
fees for physicians; 8.28.504 ) FEES; and PROPOSED ADOPTION  
concerning fees for acupuncture) OF 8.28.420 FEE SCHEDULE  
and proposed adoption of a new )  
rule 8.28.420 concerning a fee ) NO PUBLIC HEARING CONTEMPLATED  
schedule for physicians. )

TO: All Interested Persons:

1. On June 26, 1982, the Board of Medical Examiners proposes to amend rules ARM 8.28.418 concerning annual registration and fees for physicians and 8.28.504 concerning fees for acupuncture; and proposes to adopt a new rule, 8.28.420 concerning a fee schedule for physicians.

2. The proposed amendment of 8.28.418 will read as follows: (new matter underlined, deleted matter interlined)

"8.28.418 ANNUAL REGISTRATION AND FEES (1) Annual registration notices are to be sent by the department on or before February 1 of each year and a second notice on or before March 1 of each year.

(2) The annual license fee for a physician actively engaged in the practice of medicine on a permanent certificate shall be \$50 35.

(3) The annual license fee for a physician not actively engaged in the practice of medicine shall be \$50 35."

3. The board is proposing the amendment to lower the renewal fees as the earmarked revenue account was increasing more rapidly than the board expenses. The authority of the board to make the proposed amendment is based on section 37-3-203, MCA and implements section 37-3-313, MCA.

4. The proposed amendment of ARM 8.28.504 adds a new subsection (5) to the current rule and will read as follows: (new matter underlined, deleted matter interlined)

"8.28.504 FEES (1) ...

(5) The annual renewal fee to practice acupuncture will be \$20. An additional \$5 will be charged for late renewal."

5. The board is proposing the amendment to set fees for renewal commensurate with costs. The authority of the board to make the proposed change is based on section 37-13-201, MCA and implements section 37-13-306, MCA.

6. The proposed adoption of 8.28.420 will set a fee schedule for physicians and will read as follows:

"8.28.420 FEE SCHEDULE (1) The following fees will be charged:

- |                               |          |
|-------------------------------|----------|
| (a) Application fee           | \$100.00 |
| (b) Temporary certificate fee | 25.00    |
| (c) Temporary locum tenens    | 40.00    |

(d) Examination fee \$100.00"

7. The board is proposing the new rule to set fees commensurate with board program costs. The authority of the board to make the proposed adoption is based on section 37-3-203, MCA and implements sections 37-1-134, 37-3-304, 308, and 309, MCA.

8. Interested persons may submit their data, views or arguments concerning the proposed amendments and adoption in writing to the Board of Medical Examiners, 1424 9th Avenue, Helena, Montana 59620-0407 no later than June 24, 1982.

9. If a person who is directly affected by the proposed amendments and adoption wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Board of Medical Examiners, 1424 9th Avenue, Helena, Montana 59620-0407 no later than June 24, 1982.

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

11. The authority and implementing sections are listed after each proposed change.

BOARD OF MEDICAL EXAMINERS  
JOHN A. LAYNE, M.D., PRESIDENT

BY: 

GARY BUCHANAN, DIRECTOR  
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, May 17, 1982.

STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE BOARD OF MEDICAL EXAMINERS

IN THE MATTER of the proposed ) NOTICE OF PROPOSED REPEAL,  
repeal, transfer and adoption of) TRANSFER, AND ADOPTION OF  
rules pertaining to osteopathic ) RULES PERTAINING TO OSTEOPATHIC  
physicians. ) PHYSICIANS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On June 26, 1982, the Board of Medical Examiners proposes to repeal rules 8.38.101 board organization; 8.38.201 procedural rules; 8.38.202 citizen participation rules; 8.38.401 organization; 8.38.402 quorum; 8.38.403 meetings; and proposes to transfer rules 8.38.404 through 8.38.407 to a new sub-chapter 16 under the Board of Medical Examiners rules, new numbers to be 8.28.1601 through 8.28.1604; and proposes to adopt a new rule 8.28.1605 setting out a fee schedule. All rules relate to licensing of osteopathic physicians, located at pages 8-1105 through 8-1110, Administrative Rules of Montana.

2. The repeal of the above stated rules is being proposed as the board of osteopathic physicians was sunsetted and its functions transferred to the board of medical examiners under Chapter 87, 1981 session laws. The rules to be repealed contain functions which are covered by current medical board rules.

3. The proposed transfer of rules 8.38.404 through 8.38.407 places current osteopathic physician rules under a new sub-chapter of the medical board rules.

4. The proposed new rule adds a fee schedule for osteopathic physicians and will read as follows:

"8.28.1605 FEES (1) The following fees will be charged:

- |                                |         |
|--------------------------------|---------|
| (a) Active renewal             | \$15.00 |
| (b) Inactive renewal           | 7.50    |
| (c) Examination or reciprocity | 20.00"  |

5. The proposed repeal and transfer places the rules in their proper place as required by Chapter 87, 1981 Session Laws. The proposed fee schedule is to set fees commensurate with board program costs. The authority of the board for the repeal and transfer is based on Chapter 87, 1981 Session Laws and implements the same. The authority of the board to propose the fee schedule is based on sections 37-5-302, and 307, and implements sections 37-5-302, 303, 307, MCA.

6. Interested persons may submit their data, views or arguments concerning the proposed repeal, transfer and adoption in writing to the Board of Medical Examiners, 1424 9th Avenue, Helena, Montana 59620-0407 no later than June 24, 1982.

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

24, 1982.

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

9. The authority and implementing sections are noted in paragraph 5.

BOARD OF MEDICAL EXAMINERS  
JOHN A. LAYNE, M.D., PRESIDENT

BY:   
GARY BUCHANAN, DIRECTOR  
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, May 17, 1982.



STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE BOARD OF MEDICAL EXAMINERS

IN THE MATTER of the Proposed ) NOTICE OF PROPOSED REPEAL  
repeal of rules 8.46.101 board ) OF ARM 8.46.101 BOARD ORGANIZA-  
organization; 8.46.201 proce- ) TION; 8.46.201 PROCEDURAL  
dural rules and transfer and ) RULES; and TRANSFER AND AMEND-  
amendment of 8.46.401 annual ) MENT OF 8.46.401 ANNUAL RENEWAL  
renewal fees for podiatrists ) FEE

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On June 26, 1982, the Board of Medical Examiners proposes to repeal rules 8.46.101 board organization; 8.46.201 procedural rules and transfer and amend rule 8.46.401 annual renewal fees to sub-chapter 17 under the board of medical examiners rules.

2. The repeal of the above stated rules is being proposed as the board of podiatry examiners was sunset and its functions transferred to the board of medical examiners under Chapter 470, 1981 Session Laws. The rules to be repealed contain functions which are covered under the current medical board rules. The rules are currently located at pages 8-1261 through 8-1265, Administrative Rules of Montana.

3. The proposed transfer and amendment of rule 8.46.401 places the rule under sub-chapter 17 of the board of medical examiners rules as well as amending the rule as follows: (new matter underlined, deleted matter interlined)

"8.46-401 28.1701 -ANNUAL-RENEWAL-FEES (1) The annual renewal fee for a podiatrist whether actively engaged or not, in the practice of podiatry in the state of Montana shall be \$25.00.

(2) The following fees will be charged:

<u>(a) Reciprocity</u>	<u>\$50.00</u>
<u>(b) Examination</u>	<u>35.00</u>
<u>(c) Original Application</u>	<u>35.00"</u>

4. The board is proposing the amendment to set fees commensurate with board program costs. The authority of the board to make the transfer is based on Chapter 470, 1981 Session Laws and the amendment implements sections 37-6-302 and 303, MCA.

5. Interested persons may submit their data, views or arguments concerning the proposed repeal, transfer and amendment in writing to the Board of Medical Examiners, 1424 9th Avenue, Helena, Montana 59620-0407 no later than June 24, 1982.

6. If a person who is directly affected by the proposed repeal, transfer and amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Board of Medical Examiners, 1424 9th Avenue, Helena, Montana 59620-0407 no later than June 24, 1982.

7. If the board receives requests for a public hearing

on the proposed repeal, transfer and adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed repeal, transfer, and adoption; from the Administrative Code Committee of the legislature; from a governmental agency or subdivision; or from an association having not less than 25 members who are directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

8. The authority of the board to make the proposed changes is based on Chapter 470, 1981 Session Laws and implements sections 37-1-134, 37-6-302 and 303, MCA.

BOARD OF MEDICAL EXAMINERS  
JOHN A. LAYNE, M.D., PRESIDENT

BY: 

GARY BUCHANAN, DIRECTOR  
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, May 17, 1982.

-1071-  
STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE BOARD OF OPTOMETRISTS

IN THE MATTER of the proposed	)	NOTICE OF PROPOSED AMENDMENT
amendments of rules ARM 8.36.	)	OF ARM 8.36.405 RECIPROCITY;
405 concerning reciprocity, 8.	)	8.36.406 GENERAL PRACTICE
36.406 concerning general	)	REQUIREMENTS; 8.36.601 REQUIRE-
practice requirements, 8.36.601	)	MENTS; and PROPOSED ADOPTION
concerning requirements for	)	OF A NEW RULE 8.36.409 FEE
continuing education; and pro-	)	SCHEDULE
posed adoption of a new rule	)	
8.36.409 concerning a fee	)	NO PUBLIC HEARING CONTEMPLATED
schedule.	)	

TO: All Interested Persons:

1. On June 26, 1982, the Board of Optometrists proposes to amend ARM 8.36.405 concerning reciprocity, 8.36.406 concerning general practice requirements, 8.36.601 concerning requirements for continuing education; and proposes to adopt a new rule 8.36.409 concerning a fee schedule.

2. The proposed amendment of 8.36.405 deletes subsection (3) of the rule and will read as follows: (new matter underlined, deleted matter interlined)

"8.36.405 RECIPROCITY (1) Applications for reciprocity shall be made on uniform application blanks requiring optometric education; subjects examined in, percentage attained in each subject and general average, certificate of personal character, professional and ethical practice, as well as the recommendations of the state board of that state through which reciprocity is sought.

(2) Applicants must have been in active ethical practice for at least 5 years prior to the date of application.

~~(3) --The application fee for reciprocity shall be \$25.00.~~

(4) (3) Applicants meeting reciprocity requirements must appear before the board at its annual or special meeting."

3. The amendment is proposed as the board is placing the application fee for reciprocity in the new rule entitled "Fee Schedule". The authority of the board to make the proposed change is based on section 37-10-202, MCA and implements section 37-10-303, MCA.

4. The proposed amendment of rule 8.36.409 deletes subsection (1)(e) and will read as follows: (new matter underlined, deleted matter interlined)

"8.36.406 GENERAL PRACTICE REQUIREMENTS (1) Optometrists may conduct a practice in or at any desired location, under the following conditions:

(a) ...

~~(e) there must be no use of the words, "Optical Department", "Vision Center", or words of similar import on signs, in advertising, in windows, on bulletin boards, or in any other place. Telephone operators must not use~~

~~words-"Optical-Department"-or-similar-words--Use-must  
be-made-of-the-name-of-the-optometrist-who-conducts-the-  
practice-~~

~~(\*) (e) ... "~~

5. The board is proposing the amendment as this section of the rule is obsolete. The authority of the board to make the proposed change is based on section 37-10-202, MCA and implements section 37-10-311, MCA.

6. The proposed amendment of 8.36.601 adds a new subsection (3) to the rule and will read as follows:

"8.36.601 REQUIREMENTS (1) ...

(3) Only six hours of credit for approved continuing education correspondence courses will be allowed annually."

7. The amendment is proposed because of the increasing number of correspondence courses available for continuing education, the board has determined that only six hours should be allowed to apply towards the 12 hour requirement. This will encourage the licensee to participate in group programs. The authority of the board to make the proposed amendment is based on section 37-10-202, MCA and implements section 37-10-308, MCA.

8. The proposed new rule sets a fee schedule and will read as follows:

"8.36.409 FEE SCHEDULE

- |  |         |
|--|---------|
| (1) Original certificate of registration | \$50.00 |
| (2) Annual renewal                       | 55.00   |
| (3) Penalty for late renewal             | 45.00   |
| (4) Application for examination          | 75.00   |
| (5) Reciprocity application              | 160.00  |
| (6) Copies of documents, includes lists  | 7.50"   |

9. The board is proposing the new rule to set fees commensurate with costs of operating the board programs. The authority of the board to make the proposed change is based on section 37-10-202, MCA and implements sections 37-1-134, 37-10-302, 303 and 307, MCA.

10. Interested persons may submit their data, views or arguments concerning the proposed amendments and adoption in writing to the Board of Optometrists, 1424 9th Avenue, Helena, Montana 59620-0407 no later than June 24, 1982.

11. If a person who is directly affected by the proposed amendments and adoption wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Optometrists, 1424 9th Avenue, Helena, Montana 59620-0407 no later than June 24, 1982.

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

or subdivision; 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.

13. The authority and implementing sections are listed after each proposed change.

BOARD OF OPTOMETRISTS  
J. R. CRABTREE, O.D., PRESIDENT

BY: 

GARY BUCHANAN, DIRECTOR  
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, May 17, 1982.

BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the amendment )	NOTICE OF PUBLIC HEARING
of Rule 10.58.303 Professional )	ON PROPOSED AMENDMENT OF
Education )	RULE 10.58.303 PROFESSIONAL
	EDUCATION

TO: All Interested Persons

1. On June 17, 1982 at 11:00 a.m. to 12:00 p.m. a public hearing will be held in the Board of Regents Conference Room, 33 South Last Chance Gulch, Helena, Montana, to consider the amendment of rule 10.58.303 Professional Education.

2. The proposed amendment replaces present rule 10.58.303 found in the Administrative Rules of Montana. The proposed amendment would provide minimum exposure to the field of computer technology to all teachers.

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

10.58.303 PROFESSIONAL EDUCATION (1) Professional education refers to those studies which include foundations of education, and methods and materials of teaching, with supervised laboratory experiences designed to provide competencies required in the education professions.

(a) Each institution shall have a clearly stated set of objectives for the professional education component of its teacher education program.

(b) The component of professional education shall encourage individualization of the student's program while providing for a range of studies and experiences which will help the student develop:

(i) knowledge of the process of human growth, development, and learning, and the ability to apply this knowledge to the teaching of all students, including atypical children;

(ii) knowledge of current research, methods, materials, standardized tests, curriculum development, procedures, and media and technology appropriate to teaching. Emphasis shall be in the student's field(s) of specialization;

(iii) awareness of the impact of computers on society and ability to incorporate the use of computers into the instructional process in the student's field(s) of specialization;

(iv) ability to teach effectively and to work ethically and constructively with pupils, teachers, administrators, parents, and other concerned persons and organizations;

(v) understanding of the foundations underlying the development and organization of education in the United States;

(vi) understanding of the purposes, administrative organizations, finance aspects, board functions, and operations of the total education programs of the school;

(vii) ability and willingness to analyze teaching as a

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means of continually improving teaching skills;

(viii) ability to teach reading and writing skills appropriate to the level of the student and to the content of the subject;

(ix) knowledge of the legal aspects of teaching in the Montana schools, professional ethics, conduct, rights and responsibilities and the structure and financial basis of the Montana school system.

The rest of the rule remains the same.

4. The board of public education is proposing this amendment to its rule because new technology is growing at such a rate that all teachers need to be assured at least minimum exposure to this field. The rule will affect every teacher in a state-approved teacher education program.

5. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Allen D. Gunderson, Chairman, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana, 59601, no later than June 25, 1982.

6. Harriett Meloy, Member of the Board of Public Education, and Hidde Van Duym, Assistant to the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana have been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed amendment is based on section 20-2-121, MCA, and the rule implements section 20-2-121, MCA.

*Allen D Gunderson*

ALLEN D. GUNDERSON, CHAIRMAN  
BOARD OF PUBLIC EDUCATION

by

*Hidde Van Duym*

Assistant to the Board

Certified to the Secretary of State May 12, 1982.

BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the amendment	)	NOTICE OF PROPOSED
of Rule 10.55.403 Basic	)	AMENDMENT OF RULE 10.55
Instructional Program: Elementary	)	403 BASIC INSTRUCTIONAL
		PROGRAM: ELEMENTARY
		NO PUBLIC HEARING
		CONTEMPLATED

TO: All Interested Persons

1. On June 26, 1982, the Board of Public Education proposes to amend rule 10.55.403 which specifies the maximum educational program for an elementary school.

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

10.55.403 BASIC INSTRUCTIONAL PROGRAM: ELEMENTARY (1)

An elementary school shall have a minimum educational program that includes the subject areas listed below:

(a) Language arts including reading, literature, writing, speaking, listening, spelling, penmanship and English.

(b) Arithmetic, written computation and problem solving.

(c) Science, ecology and conservation.

(d) Social sciences, including geography, history of the United States, history of Montana, agriculture and economics. Contemporary and historical traditions and values of American Indian culture may also be included.

(e) Fine arts, including music and art.

(f) Physical education.

(g) Safety, including fire prevention as outlined in state statutes.

(h) Health education.

(i) Weekly time allotments for each subject area are flexible; however, in grades 1, 2, and 3, the standard school day must consist of at least four hours. In grades 4, 5, 6, 7 and 8, the standard school day must consist of at least six hours. Daily time allotments do not include time allotted for the lunch period, and the time allotments should be scheduled to give balance to the educational program. ~~One recess period per day may be counted toward the standard school day if a planned activity is provided during the recess.~~ Two recesses per day may be counted toward the standard school day. One recess per day may be counted as physical education if a planned activity supervised by a certified teacher is provided. Passage time between classes may be counted toward the standard school day.

(2) Basic instructional course material or textbooks in the fundamental skill areas of language arts, mathematics, science and social studies must be reviewed by school district personnel at intervals not exceeding five years. All instructional materials must be sequential and, in addition, must be compatible with previous and future offerings. (History: Sec. 20-7-101 MCA; IMP, Sec. 20-7-111 MCA)

10-5/27/82

MAR Notice No. 10-3-55



3. The board of public education is proposing this amendment because the wording was changed inadvertently in the printing of the fourth edition of the Standards of Accreditation and the wording is being changed back to the original intent of the board of public education.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to Allen D. Gunderson, Chairman, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana, 59620 no later than June 25, 1982.

5. 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 Allen D. Gunderson, Chairman, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620 no later than June 25, 1982.

6. 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 100 persons based on 1,000 administrators in the state of Montana.

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

*Allen D. Gunderson*

ALLEN D. GUNDERSON, CHAIRMAN  
BOARD OF PUBLIC EDUCATION

by

*Walter L. D. Jr.*

Assistant to the Board

Certified to the Secretary of State May 12, 1982.

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

In the matter of the amendment ) NOTICE OF PUBLIC HEARING  
of rules 16.8.1423 and 16.8.1424 ) ON PROPOSED AMENDMENT OF  
concerning new source performance) ARM 16.8.1423 and 16.8.1424  
standards and emission standards )  
for hazardous air pollutants ) (Air Quality)

TO: All Interested Persons

1. On July 21, 1982, at 9:00 a.m., or as soon thereafter as the matter may be heard, a public hearing will be held in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of rules 16.8.1423 and 16.8.1424.

2. The proposed amendments replace present rules 16.8.1423 and 16.8.1424 found in the Administrative Rules of Montana. The proposed amendments would update the incorporations by reference contained in the rules.

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

16.8.1423 STANDARD OF PERFORMANCE FOR NEW STATIONARY SOURCES (1) This rule shall apply to the following new stationary sources: fossil fuel-fired steam generators, incinerators, portland cement plants, nitric acid plants, sulfuric acid plants, asphalt concrete plants, petroleum refineries, storage vessels for petroleum liquids, secondary lead smelters, secondary brass and bronze ingot production plants, iron and steel plants, sewage treatment plants, primary copper smelters, primary lead smelters, primary zinc smelters, primary aluminum reduction plants, wet process phosphoric acid plants, superphosphoric acid plants, diammonium phosphate plants, triple superphosphate plants, granular triple superphosphate storage facilities, coal preparation plants, ferro-alloy production facilities, steel plant electric arc furnaces, kraft pulp mills, and lime manufacturing plants as defined in subsection (2) of this rule. This rule applies to the owner or operator of any new stationary source for which a standard of performance is prescribed by subsection (2) of this rule.

(2) All new stationary sources shall comply with the provisions of Title 40, Part 60, Code of Federal Regulations, (CFR) July 1, 1977, 1981, as amended at 42 FR 37000, July 19, 1977, 42 FR 37936-37938, July 25, 1977, 42 FR 38178, July 27, 1977, 42 FR 39389, August 4, 1977, 42 FR 41122, August 15, 1977, 42 FR 41424, August 17, 1977, 42 FR 41754-41789, August 18, 1977, 42 FR 44012, September 7, 1977, 42 FR 55796-55797, October 18, 1977, 42 FR 57125-57126, November 17,

1977, 42 FR 58520-58521, November 10, 1977, 42 FR 61537, December 5, 1977, 43 FR 1494-1498, January 10, 1978, 43 FR 7560-7596, February 23, 1978, 43 FR 8799-8800, March 3, 1978, 43 FR 9276-9278 and 9452-9454, March 7, 1978, 43 FR 10866-10873, March 15, 1978, 43 FR 11984-11986, March 23, 1978, and 43 FR 15600-15602, April 13, 1978, with the following exceptions: 40 CFR 60.10 and 40 CFR 60.20-60.29 are deleted.

(3) For the purpose of this rule, the board hereby adopts and incorporates by reference Title 40, Part 60, (CFR) which sets forth standards of performance for new stationary sources. Copies of the federal regulations are available at A copy of Title 40, Part 60, CFR, may be obtained from the air quality bureau of the department, Cogswell Building, Helena, Montana. Phone: 449-3454. AUTH: 75-2-111 and 75-2-203, MCA IMP: 75-2-203, MCA

16.8.1424 EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

(1) This rule shall apply applies to the owner or operator of any stationary source for which an emission standard for hazardous air pollutants is prescribed by subsection (2) of this rule.

(2) The owner or operator of any stationary source shall comply with the provisions of Title 40, Part 61, Code of Federal Regulations (CFR), July 1, 1977, 1981, as amended at 42 FR 41424, August 17, 1977, 42 FR 51574, September 29, 1977, 43 FR 8800, March 3, 1978, and 43 FR 26373-26374, June 19, 1978, with the following exception: 40 CFR 61.16 is deleted.

(3) For the purpose of this rule, the board hereby adopts and incorporates by reference Title 40, Part 61, CFR, which sets forth emission standards for hazardous air pollutants. A listing of affected stationary sources as defined in 40 CFR 61 shall be maintained by and available from the air quality bureau of the department. Copies of the federal regulations are also available A copy of Title 40, Part 61, CFR, may be obtained from the air quality bureau of the department, Cogswell Building, Helena, Montana. Phone: 449-3454. AUTH: 75-2-111 and 75-2-203 IMP: 75-2-203, MCA

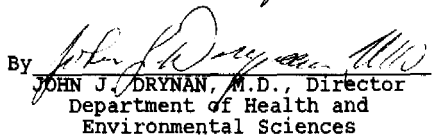
4. The proposed amendments are required for the continued delegation of the new source performance standards (NSPS) and emission standards for hazardous air pollutants (NESHAPS) programs by the air quality bureau of the department.

5. Interested persons may present their data, views or arguments, either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Sandra R. Muckelston, Cogswell Building, Capitol Station, Helena, MT, 59620, no later than July 30, 1982.

6. Sandra R. Muckelston, Helena, MT, has been designated to preside over and conduct the hearing.

7. The authority of the Board to make the proposed amendments is based on sections 75-2-111 and 75-2-203, MCA, and the rules implement section 75-2-203, MCA.

  
JOHN F. MCGREGOR, M.D., Chairman

By   
JOHN J. DRYNAN, M.D., Director  
Department of Health and  
Environmental Sciences

Certified to the Secretary of State May 17, 1982

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY  
OF THE STATE OF MONTANA

IN THE MATTER of the adoption of	)	NOTICE OF PROPOSED ADOPTION
new rules concerning suitable work,	)	OF NEW RULES relating to
disqualification, and eligibility	)	extended benefits, pension
for extended benefits; pension	)	deductions, and Amending ARM
deductions from a claimants weekly	)	24.11.411 relating to school
unemployment benefit amount; and	)	as a reason for voluntary quit.
amending ARM 24.11.411 concerning	)	
school as a reason for voluntary	)	(Unemployment Insurance)
quit.	)	NO PUBLIC HEARING CONTEMPLATED

T0: All Interested Persons:

1. On June 29, 1982, the department proposes to adopt New Rules I, II, III, IV, and amend ARM 24.11.411 which enact federal requirements concerning extended benefits.

2. The proposed rules provide as follows:

RULE I DEFINITION OF SUITABLE WORK FOR EXTENDED BENEFITS PURPOSES

(1) An individual who fails to apply for available suitable work or fails to accept available suitable work or, when so directed by the department, to return to his customary occupation, if any, shall be denied benefits for the week in which the failure occurred. The individual shall also be denied extended benefits beginning with the first day of the week following the week in which the failure occurred until services in other than self-employment are performed and the individual has earnings equal to or greater than the extended weekly benefit amount, as defined in 39-51-2501, MCA in any four weeks within the period of eligibility for extended benefits following the disqualification. These four weeks need not be continuous. The individual's extended benefit duration shall be reduced by four weeks.

(2) For extended benefits purposes the term 'suitable work' means any work which is within the individual's capabilities. No work shall be determined suitable for an extended benefits claimant unless all of the following criteria are met.

(a) The gross average weekly remuneration payable for the work must exceed the individual's extended weekly benefit amount plus the amount, if any, of supplemental unemployment benefits (as defined in 26 USCA 501(c) (17)(D) of the Internal Revenue Code of 1954 as amended) payable for such week.

(b) The wages payable are higher than the minimum wage provided by 29 USCA 206(a)(1), of the Fair Labor Standards Act of 1938 as amended, or any state or local minimum wage. These wages will be the criterion even if the occupation is not subject to the minimum wage requirements.

(c) The position was offered to the individual in writing or was listed with the Montana State Job Service or with Job Service of the state in which the claimant is filing in the case of an interstate claim.

(d) When determining if a denial of benefits is to be assessed the definition of suitable work in Section 39-51-2304(2)(3)(a)(b)(c), MCA will be applied. The failure to apply for or to accept suitable work could not result in a denial of benefits under the definition of suitable work for regular benefit claimants in Section 39-51-2304(2) to the extent that the criteria of suitability in that section are not inconsistent

with the provisions in this rule.

(e) Regardless of the provisions of this rule, no work shall be determined suitable if it does not meet the labor standards provisions required by Section 202(a)(3), of the Federal State Extended UC Act and contained in Section 39-51-2304(3), MCA.

(3) If the individual furnishes satisfactory evidence that his or her prospects are good for obtaining work in his or her customary occupation within four weeks of the date of eligibility for extended benefits, the determination of whether any work is suitable for that individual shall be made in accordance with the definition of suitable work for regular benefit claimants. A final determination that the work is not suitable under the regular benefit criteria shall dispose of that issue and it shall not again be determined under the provisions of this rule.

(4) The Job Service shall refer any claimant entitled to extended benefits to any suitable work which meets the criteria prescribed in this rule.

(AUTH. and IMP. Section 39-51-302 MCA)

RULE II DISQUALIFICATION OF EXTENDED BENEFITS CLAIMANTS FOR FAILURE TO ACTIVELY SEEK WORK (1) An extended benefits claimant shall be treated as actively engaged in seeking work during any week if the individual

(a) has engaged in a systematic and sustained effort to obtain work during such week and

(b) furnishes tangible evidence that he has engaged in such effort during such week.

(2) An extended benefits claimant who has failed to actively engage in seeking work shall be denied benefits for the week in which the failure occurred. Such claimant shall also be denied benefits beginning with the first day of the week following the week in which the failure occurred until services in other than self-employment are performed and the claimant has earnings equal to or greater than the extended weekly benefit amount in each of four weeks. The individual's extended benefit duration shall also be reduced by four weeks.

(AUTH. and IMP. Section 39-51-302 MCA)

RULE III ELIGIBILITY FOR EXTENDED BENEFITS IN CASES OF GROSS MISCONDUCT (1) A regular benefit claimant who is disqualified for gross misconduct under Section 39-51-2302(2) shall not be paid extended benefits, unless he has earned at least eight times the weekly benefit amount after the date of such disqualification.

(AUTH. and IMP. Section 39-51-302 MCA)

RULE IV PENSION DEDUCTION (1) A claimant's weekly benefit amount shall be reduced by the amount the individual is receiving from a governmental or other pension, retirement pay, or other similar periodic payment which is based on the previous work of that individual and which is maintained by or contributed to in whole or in part by a base period employer.

(2) In the case of payments other than those received under the Social Security Act or the Railroad Retirement Act, the payments shall be

deductible only if the service (or the remuneration for the service) for the employer in the base period effected the individual's eligibility for the payment or increased the amount of the payment. If service for the employer in the base period (or remuneration for such service) did not either effect eligibility for or increase the amount of the payment, the payment shall not be deductible.

(3) Payment under the Social Security Act and the Railroad Retirement Act shall be deductible regardless of whether service (or remuneration) for the base period employer effected eligibility for or increased the amount of the payment.

(4) The amount by which weekly benefit amount is to be reduced shall be determined by the ratio of the employer's contribution to the fund from which the payment is made so that the claimant will receive credit only for the proportion of his contributions to that fund.

(AUTH. and IMP. Section 39-51-302 MCA)

24.11.411 SCHOOL AS A REASON FOR VOLUNTARY QUIT (1) A regular benefit claimant who voluntarily leaves work to attend school shall be disqualified until he earns at least six times the weekly benefit amount for services other than self-employment. ~~to requalify for benefits under Section 39-51-2302(3); MCA; the student must establish:~~

(2) Pursuant to Section 39-51-2302(3), MCA, such an individual can requalify for regular benefits without earning the required six times weekly benefit amount if it is established:

(a) that the student voluntarily quit work to attend school, and  
(b) the school schedule would have interfered with the previous employment and

(c) the school must be an accredited educational institution by the State of Montana, at which the student has had regular attendance for at least three (3) consecutive months from the date of enrollment.

(3) An individual who requalifies for regular benefits without six times his weekly benefit amount must earn that amount as a condition for the receipt of extended benefits.

(AUTH. and IMP. Section 39-51-302 MCA)

3. These rules are proposed to meet the federal requirements of the Omnibus Reconciliation Act of 1980, P.L. 96-499; and 26 USCA 3304(9)(4) of the Federal-State Extended Unemployment Compensation Act.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to Harold V. Kansier, Employment Security Building, Capitol Station, Helena, Montana 59624, no later than June 29, 1982.

5. If a person who is directly affected by the proposed action wishes to express his or her data, views and arguments orally or in writing at a public hearing, he or she must make a written request for a hearing and submit this request along with any written comments to Harold V. Kansier, Employment Security Building, Capitol Station, Helena, Montana 59624, no later than June 29, 1982.

6. If the department receives requests for a public hearing on the proposed rule from either 10 percent or 25, whichever is less, of the

persons who are directly affected by the proposed rule; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than 25 persons.

  
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DAVID L. HUNTER, Commissioner

Certified to the Secretary of State May 17, 1982



BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY  
DIVISION OF WORKERS' COMPENSATION  
OF THE STATE OF MONTANA

In the matter of the proposed )	NOTICE OF PROPOSED ADOPTION
adoption of new rules concerning)	OF RULES CONCERNING COVERAGE
workers' compensation coverage )	UNDER THE STATE COMPENSATION
under the State Compensation )	INSURANCE FUND (PLAN 3)
Insurance Fund (Plan 3) )	
)	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On July 1, 1982, the Division of Workers' Compensation proposes to adopt rules concerning obtaining, maintaining, and terminating coverage under the State Compensation Insurance Fund (Plan 3).

2. The proposed rules provide as follows:

"RULE I. ELECTING COVERAGE UNDER PLAN THREE (1) An employer may request coverage with the State Compensation Insurance Fund either by mail, phone, or in person. Coverage will not be extended to any employer having a delinquent account. In all cases, coverage is subject to the approval of the State Fund. Coverage obtained pursuant to this rule will extend only to those employments not listed in Section 39-71-401, MCA, unless the procedures in Rule II are followed.

(2) By phone. An employer who requests coverage by telephoning Policy Services (Underwriting), State Fund, at headquarters in Helena, Montana, may have coverage effective at 12:01 a.m. on the day following the telephone request, provided the following requirements are met:

(a) A completed State Fund application, form 210, is received by the State Fund within 15 days after the telephoned request, or, if the employer requests the State Fund to supply application forms, within 15 days after the date the State Fund mails application forms to the employer.

(b) Payment in full of the initial deposit is received within 15 days after the billing date shown on the statement for initial deposit, form 403.

(3) By mail. An employer who mails a completed application, form 210, to the State Fund, may have coverage effective as of the date the application form is received at the office of the State Fund in Helena, Montana, provided the State Fund receives payment, in full, of the initial deposit within 15 days after the billing date shown on the statement for initial deposit, form 403.

(4) In person. An employer who delivers a completed application, form 210, to the State Fund in person may have coverage effective at 12:01 a.m. the day following delivery, provided the State Fund receives payment, in full, of the initial deposit within 15 days after the billing date

shown on the statement for initial deposit, form 403."

AUTH: Sec. 39-71-2303

IMP: Sec. 39-71-2303

"RULE II. ELECTION OF OPTIONAL COVERAGES (1) Coverage for exempt employments listed in Section 39-71-401, MCA, may be obtained at the time the employer elects coverage under Plan 3 or any time thereafter. However, in no case, including payment of premium for exempt employments, shall coverage be effective unless the procedures enumerated in Sections (2) or (3) have been followed.

(2) In order for coverage for the exempt employments to be effective on the effective date of Plan 3 coverage, completed endorsement forms must be received and approved by the State Fund prior to or at the time of receipt of the initial deposit.

(3) If coverage for exempt employments is not obtained pursuant to section (2), coverage will become effective upon receipt and approval of the endorsement forms by the State Fund.

(4) Endorsement forms for exempt employments are available upon request from Policy Services (Underwriting) of the State Fund."

AUTH: Sec. 39-71-2303

IMP: Sec. 39-71-2303

"RULE III. ELECTION OF CORPORATE OFFICERS NOT TO BE BOUND

(1) The election by a corporate officer not to be bound under 24.29.3201, ARM, may become effective on the effective date of Plan 3 coverage, provided endorsement form 215 is received and approved by the State Fund prior to or at the time of receipt of the initial deposit. Thereafter, an election is not valid until endorsement form 215 is received and approved by the State Fund."

AUTH: Sec. 39-71-2303

IMP: Sec. 39-71-2303

"RULE IV. POLICY AND DECLARATIONS (1) When coverage becomes effective for an employer, a policy of insurance, form 300, and declarations, form 301, will be issued to the employer. Coverage for that employer is subject to the terms and conditions contained in the policy.

(2) The declarations, form 301, shall contain a description of the entity and types of employment, operations and locations covered. 'Entity' may be an individual, partnership, joint venture, corporation, association or a fiduciary such as a trustee, receiver or executor. Any change in entity, types of employment, operations or locations must be reported promptly to the State Fund."

AUTH: Sec. 39-71-2303

IMP: Sec. 39-71-2303

10-5/27/82

MAR Notice No. 24-29-1

"RULE V. TERMINATION OF COVERAGE (1) Once coverage is effective, it remains effective continuously unless cancelled by the State Fund or insured as set forth in section (2).

(2) Cancellation may be accomplished:

(a) By the insured. If the insured transfers coverage or withdraws from business, the Fund must be notified in writing, showing the last date upon which the employees worked, or the date on which coverage transferred or the business ceased. Cancellation shall become effective upon the date this information and documents are received by the State Fund, or the date on which coverage becomes effective with another carrier, whichever occurs first.

(b) By the State Fund. The Fund may cancel coverage by mailing notice to the insured at least thirty (30) days prior to the effective date of such cancellation for:

(i) failure of the insured to submit payroll reports, or

(ii) failure of the insured to pay premium, or

(iii) failure of the insured to pay increased deposit when required, or

(iv) other good cause.

(3) An insured may not assign his interest under any State Fund policy unless consent is indicated in writing by a duly authorized representative of the State Fund.

(4) In the event of the death of the insured, the insured's coverage with the State Fund shall extend to the insured's legal representative, provided written notice is given the State Fund within thirty (30) days after the date of such death.

(5) Upon cancellation, the State Fund shall apply the insured's initial deposit to any unpaid premiums. The balance, if any, shall be refunded to the insurer, provided at least \$25 in premium has been paid by the insured during the policy coverage period."

AUTH: Sec. 39-71-2303

IMP: Sec. 39-71-2303

3. The proposed rules describe the manner in which employers may obtain and maintain workers' compensation coverage under the State Compensation Insurance Fund (Plan 3). They also describe termination procedures to be utilized by employers and the State Fund.

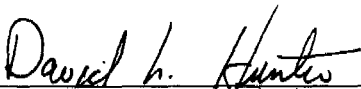
4. Interested parties may submit their data, views or arguments concerning the proposed rules in writing to the Division of Workers' Compensation, 815 Front Street, Helena, Montana 59604, no later than June 28, 1982.

5. If a person who is directly affected by the proposed rules wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request, along with any written comments he has, to the Division of Workers' Compensation, 815 Front Street, Helena, Montana 59604, no later than June 28, 1982.

MAR Notice No. 24-29-1

10-5/27/82

6. If the Division receives requests for a public hearing on the proposed adoption of these rules from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed rules adoption; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.



DAVID L. HUNTER, Commissioner  
Department of Labor and Industry

Certified to the Secretary of State May 17, 1982

BEFORE THE DEPARTMENT  
OF PUBLIC SERVICE REGULATION  
OF THE STATE OF MONTANA

IN THE MATTER of Proposed Adop-	)	NOTICE OF PUBLIC HEARING ON
tion of Interpretive Rules	)	PROPOSED ADOPTION OF INTER-
Relative to the Nonregulated	)	PRETIVE RULES RELATIVE TO
Status of "Car Pools."	)	THE NONREGULATED STATUS OF
	)	"CAR POOLS"

TO: All Interested Persons

1. Pursuant to MAR Notice No. 38-2-60, MAR Issue No. 9 page 893, the Montana Public Service Commission has scheduled a public hearing for June 24, 1982, in the large courtroom in the Federal Building at 316 North 26th Street, Billings, Montana at 7:30 p.m. to consider the proposed adoption of interpretive rules specifying the position of the Commission concerning treatment of movements of passengers including "car pools" relative to the requirements of Title 69, Chapter 12, MCA, that operations "for hire on a commercial basis" are to be regulated by the Commission. Following issuance of the initial notice of hearing the level of public interest has indicated that an additional hearing at another location would be appropriate. Therefore, the Commission hereby gives notice that an additional hearing on the matter will be held June 22, 1982, in the Conference Room in the offices of the Montana Public Service Commission at 1227 11th Avenue, Helena, Montana at 10:00 a.m.

2. The text of the proposed rules can be located at MAR Notice No. 38-2-60, MAR Issue No. 9 pages 893-895.

AUTH: 69-12-301(3), MCA; IMP. 69-12-101(6), 69-12-311, 69-12-312 and 69-12-313, MCA.

3. Rationale for the proposed rules can also be located at MAR Notice No. 38-2-60, MAR Issue No. 9 pages 893-895.

4. Interested parties may submit their data, views or arguments concerning the proposed rules at the hearing, or in writing to Calvin Simshaw, Montana Public Service Commission, 1227 11th Avenue, Helena, Montana 59620, no later than June 24, 1982.

5. The Montana Consumer Counsel, 34 West 6th Avenue, Helena, Montana 59620 (Telephone 449-2771), is available and may be contacted to represent consumer interests in this matter.



GORDON E. BOLLINGER, Chairman

CERTIFIED TO THE SECRETARY OF STATE MAY 17, 1982.

BEFORE THE SECRETARY OF STATE  
OF THE STATE OF MONTANA

In the matter of the amend- )	NOTICE OF PROPOSED AMENDMENT
ment of rule pertaining to )	OF RULE - 1.2.423 AGENCY
agency filing fees. )	FILING FEES

No Public Hearing Contemplated

TO: All Interested Persons:

1. On June 26, 1982, the Office of the Secretary of State proposes to amend rule 1.2.423 which pertains to agency filing fees.

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

1.2.423 AGENCY FILING FEES (1) Beginning January 1, 1982, all agencies will be required to pay a ~~\$20.00~~ 13.50 per page filing fee for all pages submitted which are applicable to the notice and rule section of the Montana Administrative Register. The Secretary of State will bill annually monthly for all fees incurred by the agency ~~for the calendar year~~.

AUTH: 2-4-313, MCA IMP: 2-4-313, MCA

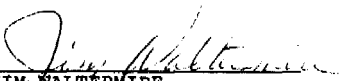
3. The rule is proposed to be amended to establish agency filing fees, to correspond with legislative intent expressed by the Administrative Code Committee in accordance with Section 2-4-313 (6), MCA. Legislative appropriation for the 83 biennium required that this program be funded out of the revolving fund rather than the general fund. A copy of the Committee's formal action and the supporting documentation regarding the fees to be charged are available on request in the Secretary of State's office.

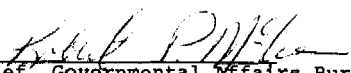
4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Robert P. McCue, Room 202, Capitol Building, Helena, Montana, 59620, no later than June 24, 1982.

5. 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 Robert P. McCue, Room 202, Capitol, Helena, Montana, 59620, no later than June 24, 1982.

6. 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 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 3 based the 23 titles published in the MAR.

-1089B-

  
JIM WALTERMIRE  
Secretary of State

By:   
Chief, Governmental Affairs Bureau

10-5/27/82

MAR Notice No. 44-2-26

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the repeal of)	NOTICE OF THE REPEAL OF
rule 2.11.103 providing for )	RULE 2.11.103
tour guide service for the )	
capitol building )	

TO: All Interested Persons.

1. On April 15, 1982, the Department of Administration published notice of a proposed repeal of rule 2.11.103 concerning capitol building tour guide service at page 623 of the 1982 Montana Administrative Register, issue number 7.

2. The agency has repealed the rule as proposed.

3. No comments or testimony were received.

4. The authority for the rule is 2-17-111, MCA, and the rule implements 2-17-111, MCA.

MORRIS L. BRUSETT, DIRECTOR  
DEPARTMENT OF ADMINISTRATION

By: *Morris Brusett*

Certified to the Secretary of State May 14, 1982.



BEFORE THE DEPARTMENT OF AGRICULTURE  
OF THE STATE OF MONTANA

IN THE MATTER of the adoption )	NOTICE OF ADOPTION OF
of emergency rules on the )	EMERGENCY RULES ALLOWING
sale and use of permethrin )	CERTAIN USES OF THE
(Ambush 2E, Pounce 3.2 E.C.) )	PESTICIDES AMBUSH 2E AND
)	POUNCE 3.2 E.C.

TO ALL INTERESTED PARTIES:

(1) Statement of reasons for emergency:

a. The department has determined the necessity of providing effective alternatives to endrin for use in controlling army and pale western cutworm infestations in small grain crops in Montana during the upcoming season. The immediate availability of such alternatives is imperative to provide current alternatives to FENDRIN, and a replacement thereof should it become necessary to cancel endrin on an emergency basis.

In implementing that determination, the department applied for and received an emergency exemption from the Environmental Protection Agency for use of permethrin (Ambush 2E, Pounce 3.2 E.C.). Such exemption was granted because of Montana's immediate need for the compounds, which occurs prior to their final registration by EPA.

Since, from the time of the application for exemption the department has been uncertain as to whether it would be granted, and if granted, what conditions would be imposed, it has been impossible to adopt or even process for adoption any rules permitting and regulating the use of the compounds.

Because of the immediate need for permitting the use of Ambush 2E and Pounce 3.2 E.C., the department finds need for the adoption of rules on an emergency basis. To proceed through the regular rule adoption process would present an imminent peril to the public health, welfare and safety during this year's cutworm season.

(2) The rules read as follows:

RULE 1 PROVIDING FOR EMERGENCY SALE AND USE OF AMBUSH 2E AND POUNCE 3.2 E.C.

(1) The department is hereby adopting emergency rules allowing the emergency sale and use of Ambush 2E and Pounce 3.2 E.C. for the control of army and pale western cutworms on wheat, barley and oats. The total usage shall not exceed 5,000 gallons or 100,000 acres. These emergency rules shall pertain only to the 5,000 gallons of Ambush 2E and Pounce 3.2 E.C. labeled specifically for army or pale western cutworm control on wheat, barley and oats.

RULE II DEALER INFORMATION TO BE PROVIDED

(1) Ambush 2E and Pounce 3.2 E.C. are classified as restricted for use on small grains to control cutworms. With respect to dealer records and submission of records to the department, all provisions of A.R.M. 4.10.504 and A.R.M. 4.10.505 shall pertain to Ambush 2E and Pounce 3.2 E.C.. Dealer records on the sales of Ambush 2E and Pounce 3.2 E.C. shall be submitted to the department in the dealer's monthly report of restricted pesticide sales as required by A.R.M. 4.10.504. Dealer records on the sales of Ambush 2E and Pounce 3.2 E.C. shall be provided to the department or its authorized representative upon inspection or at the written request of the department head. Each pesticide dealer or distributor shall maintain a list of sales of Ambush 2E and Pounce 3.2 E.C. to other dealers or distributors by name and volume sold. These records shall be subject to review by the department.

(2) In addition to information required for restricted use pesticides by A.R.M. 4.10.504, dealers shall require each purchaser to provide the following information for each purchase of Ambush 2E or Pounce 3.2 E.C.:

- a. Purchaser's name and address;
- b. Purchaser's applicator certification number and expiration date;
- c. Specific area and number of acres to be treated;
- d. Anticipated date of application;
- e. Crop to be treated;
- f. Pest to be controlled;
- g. Amount of Ambush 2E or Pounce 3.2 E.C. purchased.

This information shall be recorded on cards available at the distributor or dealer outlets. Cards shall be completed at that time of sale by the dealer and mailed to the department within 24 hours of the sale.

RULE III DIRECTIONS FOR APPLICATION

(1) All pesticide applicators shall use and apply Ambush 2E or Pounce 3.2 E.C. in accordance with all federal label directions, precautions, restrictions and the following use directions and precautions:

- a. An infestation of army cutworms or pale western cutworms must be confirmed by a certified applicator prior to application of Ambush 2E or Pounce 3.2 E.C..
- b. The rate of application shall be:  
For army cutworms and pale western cutworms  
- .1 lbs. A.I. per acre.
- c. Aerial application will require a minimum of 2 gallons of water per acre as diluent.
- d. Ground application will require a minimum of 10 gallons of water per acre as diluent.
- e. A maximum of one application of permethrin to any one acre, per year can be made. Such

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application shall not be made if treatment for cutworms in 1982 has previously been made to that acreage.

- f. Do not apply within 30 days of harvest.
- g. Cutting for feed or grazing of treated forages before harvest is prohibited.
- h. A 60 day crop rotational restriction is imposed.
- i. Permethrin is extremely toxic to fish and aquatic invertebrates. Do not apply directly to any body of water and observe drift reduction precautions. Do not apply where excessive runoff is likely to occur. Do not contaminate water by cleaning of equipment or disposal of wastes or excess pesticide.
- j. Permethrin is highly toxic to bees. Do not apply or allow drift to weeds or crops in bloom if bees are actively foraging.
- k. It is recommended that permethrin not be applied any closer to fresh water fish-bearing waters than indicated below:


Application Method	Aerial	Ground
Application Height	8 feet	2 feet
Application Rate	0.1 lb. A.I.	0.1 lb. A.I.
Distance From Water	200 feet	50 feet

Make applications when wind speeds are between 2 and 5 mph. Do not apply when wind speed exceeds 10 mph.

1. All applications are limited to certified applicators.
- m. Applicators must notify the Montana Department of Agriculture immediately of any misuse, environmental problems, or other adverse effects resulting from the use of Ambush 2E and Pounce 3.2 E.C.

(3) This emergency authorization, for the sale and use of Ambush 2E and Pounce 3.2 E.C. on wheat, barley and oats, is effective on May 4, 1982 and expires on June 30, 1982.

(4) The authority of the department to adopt the rule is based on Section 80-8-105 (2), (3) and (4) NCA and implements the same.

  
W. Gordon McOmber, Director  
MONTANA DEPARTMENT OF AGRICULTURE

Certified to the Secretary of State May 4, 1982.

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BEFORE THE DEPARTMENT OF AGRICULTURE  
OF THE STATE OF MONTANA

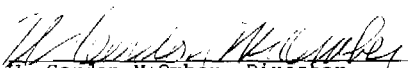
In the matter of the adoption of )	NOTICE OF ADOPTION OF NEW
new rules 4.8.101(I) through )	RULES 4.8.101(I) through
4.8.402(XII), establishing )	4.8.103; 4.8.201(IV) through
operating procedures for the )	4.8.206(IX); 4.8.301(X);
alfalfa seed committee. )	4.8.401(XI) and 4.8.402

TO: All Interested Persons:

1. On March 25, 1982, the Montana Department of Agriculture published notice of proposed adoption of new rules 4.8.101 through 4.8.402 establishing operating procedures for the Alfalfa Seed Committee at pages 516-519 of the 1982 Montana Administrative Register, issue number 6.

2. The committee has adopted the rules as proposed, with the exception of ARM 4.8.401 2(d) wherein the minimum penalty of \$25.00 has been deleted to conform with the statutory penalty which does not establish a minimum. This matter was pointed out to the department by the Montana Administrative Code Committee.

3. No comments or testimony were received, and with the exception stated in No. 2 above, the rules have been adopted as proposed.

  
W. Gordon McOmber, Director  
Montana Department of Agriculture

Certified to the Secretary of State May 17, 1982

BEFORE THE DEPARTMENT OF AGRICULTURE  
OF THE STATE OF MONTANA

In the matter of the adoption of ) NOTICE OF ADOPTION OF NEW  
new rules 4.12.1410 (I) through ) RULES 4.12.1410 (I) through  
4.12.1421 (XIII), for virus ) 4.12.1421 (XIII), for virus  
indexing of nursery stock. ) indexing of nursery stock.

TO: All Interested Persons:

1. On March 25, 1982, the Montana Department of Agriculture published notice of proposed adoption of new rules 4.12.1410 through 4.12.1421 for virus indexing of nursery stock, at pages 520-524 of the 1982 Montana Administrative Register, issue number 6.

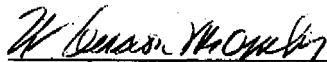
2. The reason for the adoption is that nurserymen in Montana under these rules will now be able to enter the market for export of nursery stock to Canada.

Canadian authorities prohibit the importation into Canada any nursery stock which has not been "virally indexed" which means not certified by a state agency to be free of significant viral infection.

The Department of Agriculture intends to enter into agreements with agencies of other states or the federal government to provide the laboratory expertise to analyze and determine the percentage of infection by virus diseases.

The Department of Agriculture, in applying the virus indexing rules will provide or meet all Canadian certification import requirements thus allowing Montana nurserymen the right to enter the market for export of nursery stock.

3. No comments or testimony were received, and the rules were adopted as proposed.



W. Gordon McOmber, Director  
Montana Department of Agriculture

Certified to the Secretary of State May 17, 1982

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

In the matter of the Amendment)	
of Rule 8.86.301(6)(g) as it )	NOTICE OF THE AMENDMENT
relates to the calculation of )	OF RULE 8.86.301(6)(g)
the minimum retail price of )	PRICING RULES
milk )	

TO: All Interested Persons:

1. On March 25, 1982, the Montana Board of Milk Control published notice of a proposed amendment of Rule 8.86.301(6)(g) relating to calculation of the minimum retail price of milk at page 328 of the 1982 Montana Administrative Register, issue number 4.

2. The Board of Milk Control has amended the rule with the following change:

"8.86.301 PRICING RULES (1)...

(6) ...

(g) The wholesale price of a half ( $\frac{1}{2}$ ) gallon of whole milk will be marked up ~~eleven-cents~~ ~~(\$0.11)~~ ten percent (10%) to arrive at the retail prices and all other products priced accordingly.

(h)..."

3. Several comments were received by proponents, opponents and other witnesses present and wishing to be heard.

At the public hearing, two representatives of the Montana Food Distributors Association and a processor appeared to testify in favor of amending Rule 8.86.301(6)(g) as originally petitioned for. The Board rejected their arguments to amend Rule 8.86.301(6)(g) for the following reasons:

(a) The Board believed the current retail margin was still adequate and that retailers can on their own initiative raise prices above the minimum if a greater margin is needed, since the price set by the Board is only a minimum.

(b) The effect on retailers as a result of any Board action would be minimal in terms of total milk sales.

(c) An adverse effect to consumers would result if the Board adopted the proponents requested rule amendment.

Several individuals representing themselves appeared to protest any increase in the price of milk due to its impact on low-income people, due to the fact that margins are presently adequate and retailers can already charge more if they wish.

The Board rejected their argument urging the Board not to amend Rule 8.86.301(6)(g) for the following reasons:

(a) The Board believed marking up the wholesale price by a percentage figure to set retail prices is a sound policy decision.

(b) The evidence presented demonstrates that the public interest would be served by taking the action ordered herein.

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, May 17, 1982.

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

In the matter of the amendment	)	NOTICE OF THE AMENDMENT
of rules 16.10.701, 16.10.702,	)	OF RULES
16.10.703, 16.10.704, 16.10.706,	)	16.10.701, 16.10.702,
16.10.707, 16.10.710, 16.10.711,	)	16.10.703, 16.10.704,
16.10.712, 16.10.713, 16.10.714,	)	16.10.706, 16.10.707,
16.10.715, 16.10.716, pertaining	)	16.10.710, 16.10.711,
to trailer courts; definitions,	)	16.10.712, 16.10.713,
layout plan reviews, licensure,	)	16.10.714, 16.10.715,
inspections, water supply,	)	and 16.10.716.
sewage systems, refuse, vermin	)	
control, fuel supply and	)	
storage, fire safety, operator	)	(Tourist Campgrounds
requirements, guest registra-	)	and Trailer Courts)
tion, and animals.	)	

TO: All Interested Persons

1. On December 17, 1981, the department published notice of proposed amendment of rule 16.10.701, 16.10.702, 16.10.703, 16.10.704, 16.10.706, 16.10.707, 16.10.710, 16.10.711, 16.10.712, 16.10.713, 16.10.714, 16.10.715, and 16.10.716, regulating tourist campgrounds and trailer courts; and respectively concerning definitions, layout plan review requirements, licensure procedure and restrictions, inspections and consequent corrections in operation, water supply and sewer system specifications, solid waste storage and disposal, noxious plant and animal control, handling and storage of fuel supplies, fire safety, operator requirements, guest registration, and animal control, at page 1647 of the 1981 Montana Administrative Register, issue number 23. .

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

16.10.701 DEFINITIONS (1) Terms defined in 50-52-101, MCA, supplement those defined herein. The following definitions apply when used in the act or this sub-chapter unless the context clearly indicates otherwise:

(1) (a) "Act" means the tourist campgrounds and trailer courts act, found in Title 50, Chapter 52, Montana Code Annotated.

(2) (b) "Applicant" means the person whose signature appears on the license application or plan submittal.

(3) (c) "Approved" means authorized in writing by the department.

(4) (d) "Building authority" means the building codes division, department of administration, or its local authorized agent.

(5) (e) "Camping trailer" means a canvas or folding structure mounted on wheels and designed for travel, recreation and vacation.



(6) (f) "Campsite" is that part of a tourist campground designated for the placement of a single tent and the exclusive use of its occupants.

(g) "Contamination" means impairment or other alteration of the physical, chemical, or biological properties of water, including causing violation of the surface water quality standards contained in ARM Title 16, Chapter 20, Sub-chapter 6 or the maximum contaminant levels for public water supplies contained in ARM Title 16, Chapter 20, Sub-chapter 2, or otherwise creating a hazard to human health.

(7) (h) "Dependent trailer" means a trailer which ~~has no~~ lacks one or more of the following: toilet, lavatory, or bathing facilities.

(8) (i) "Health authority" means the local health officer, local sanitarian, or other authorized representative.

(9) (j) "Independent trailer" means a trailer which has a toilet, lavatory, and bathing facilities. Omission of one or more of these facilities will classify the trailer as a dependent trailer.

(10) (k) "Lateral" means that portion of the water system or sewerage system which extends horizontally from the water or sewer main to the water or sewer riser pipe.

(11) (l) "License" means a written permit issued by the department authorizing a person to operate a tourist campground or trailer court under the provisions of this sub-chapter.

(12) (m) "Mobile home" means a trailer which is a factory assembled structure or structures equipped with the necessary service connections and made so as to be readily movable as a unit on its own running gear and designed to be used as a dwelling unit.

(13) (n) "Motor home" means a trailer which is a portable, temporary dwelling to be used for travel, recreation and vacation, constructed as an integral part of a self-propelled vehicle.

(14) (o) "Parcel of land" means a place or area capable of legal description and including one or more contiguous lots owned or leased by the same person or family.

(15) (p) "Pickup camper" means a trailer designed to be mounted on a truck chassis for use as a temporary dwelling for travel, recreation and vacation.

(16) (q) "Plan submittal" means the information and fees required under rule 16.10.702.

(17) (r) "Potable water" means safe for human consumption in terms of bacteriological and chemical quality.

(18) (s) "Public" means individuals in general without restriction or selection.

(19) (t) "Public sewage treatment and disposal system" means a sewage treatment and disposal system that serves 10 or more families or 25 or more persons at least 60 days out of the calendar year.

(20) (u) "Public water supply system" means any installation or structure that provides water for human consumption and serves 10 or more families or 25 or more persons at least 60 days out of the calendar year.

(21) (v) "Sanitary station" means a facility used for removing and disposing of wastes from trailer holding tanks.

(22) (w) "Self-contained trailer" means a trailer which can operate independently of connections to sewer, water and electric systems. It contains a water-flushed toilet and lavatory, shower and kitchen sink, either or all of which are connected to water storage and sewage holding tanks located within the trailer.

(23) (x) "Service building" means a structure housing shower or bath, toilet, lavatory, and such other facilities as may be required by this sub-chapter.

(24) (y) "Sewer connection" means the connections consisting of all pipes, fittings, and appurtenances from the drain outlet of the trailer to the inlet of the corresponding sewer riser pipe of the sewage system serving the tourist campground or trailer court.

(25) (z) "Sewer riser pipe" means that portion of the sewer lateral which extends vertically to the ground elevation and terminates at each trailer space.

(aa) "State waters" means any body of water, irrigation system, or drainage system, either surface or underground.

(26) (bb) "Stop-and-waste valve" means any unit that permits the outlet valve to be drained through a port or drain hole provided in the valve.

(27) (cc) "Tent" means a collapsible shelter of canvas or other fabric stretched and sustained by poles and used for camping outdoors.

(28) (dd) "Trailer" means a camping trailer, mobile home, motor home, pickup camper, or travel trailer.

(29) (ee) "Trailer space" means that part of a tourist campground or trailer court designated for the placement of a single trailer and the exclusive use of its occupants.

(30) (ff) "Travel trailer" means a vehicular, portable structure built on a chassis, designed to be used as a temporary dwelling for travel, recreational and vacation uses; and, when factory equipped for the road, it shall have a body width not exceeding 8 feet and a body length not exceeding 32 feet.

(31) (gg) "Water connection" means the connection consisting of all pipes, fittings, and appurtenances from the water riser pipe to the water inlet pipe of the distribution system within the trailer.

(32) (hh) "Water riser pipe" means that portion of the water lateral which extends vertically to the ground elevation and terminates at a designated point at each trailer space.

(33) (ii) "Water station" means a facility for supplying potable water to the water storage tanks of trailers and other potable water containers.

(2) The department hereby adopts and incorporates by reference the provisions of ARM Title 16, Chapter 20, Sub-chapters 2 and 6, containing, respectively, public water supply maximum contaminant levels and surface water quality standards; and ARM 16.10.702, setting requirements for layout plan review. Copies of ARM Title 16, Chapter 20, Sub-chapters 2 and 6, and ARM 16.10.702 may be obtained from the Food and Consumer Safety Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620. AUTHORITY: Sec. 50-52-102 MCA IMPLEMENTING: Sec. 50-52-102 MCA

16.10.702 LAYOUT PLAN REVIEW (1) Scaled layout plans and specifications of a proposed tourist campground or trailer court must be prepared and submitted to the department and the local health authority for approval prior to the construction of a tourist campground or trailer court or the altering or enlarging of an existing tourist campground or trailer court.

(a) Plans for the water supply and distribution system, sewage collection, treatment, and disposal system, solid waste disposal method and surface drainage control measures for a tourist campground or trailer court must be prepared and submitted to the department in accordance with the sanitation in subdivisions act and ARM Title 16, Chapter 16.

(b) Plans and specifications for any service building, cabin, cooking shelter, or other structure at a tourist campground or trailer court which is available to the public must be submitted to and approved by the building authority before the department may approve the construction or expansion of that tourist campground or trailer court.

(2) Detailed layout plans shall must be drawn to scale and shall show:

(a) Name and address of developer.

(b) Name and address of architect, engineer, or designer.

(c) Legal description of property.

(d) Number and size of all trailer spaces and campsites and detail of each typical trailer space or campsite.

(e) Water service lateral pipe size, material, and location on layout plan.

(f) Sewer service lateral pipe size, material, gradient, and location on layout plan.

(g) Detail of water and sewer line crossings.

(h) Cross section of water riser indicating pipe size and material.

(i) Cross section of stop-and-waste valve and drain system.

(j) Cross section of sewer riser indicating pipe size, material, and provisions for capping when not in use.

(k) Location of water and sewer riser on typical trailer space.

(l) Location and detail of watering station.  
(m) Location and detail of sanitary station.  
(n) Location and detail of each solid waste storage area.

(o) Location and detail of service building and any other building.

(p) Information relating to the water supply and distribution system; sewage collection, treatment, and disposal system; surface drainage; and solid waste disposal as required by ARM 16.16.104 and the appropriate review fee as required by ARM 16.16.803.

(q) Evidence that the required subdivision review fee has been paid.

(3) The use of existing utilities in a proposed tourist campground or trailer court may be approved only if it can be shown that the existing utilities meet or exceed current standards. Conversion of a tourist campground or trailer court from one type to another must be approved by the department and the health authority.

(4) Within 60 days after the receipt of an incomplete plan submittal the department will make any deficiencies known to the applicant.

(5) Within 60 days after the receipt of a complete plan submittal the department must take final action, unless an environmental impact statement is required, at which time this deadline may be increased to 120 days.

(6) When, after review of the plans and specifications for the proposed tourist campground or trailer court, the department and health authority are satisfied that the tourist campground or trailer court meets the requirements of this sub-chapter, the sanitation in subdivisions act and its rules, contained in ARM Title 16, Chapter 16; and the public water supply act and its rules, contained in ARM Title 16, Chapter 20, Sub-chapter 2; approval will be given authorizing construction of the tourist campground or trailer court.

(7) Approval to construct is for a period not to exceed 2 years, after which, if construction has not begun, plans and specifications must again be submitted for re-evaluation.

(8) No campsite or trailer space in a proposed tourist campground or trailer court or proposed addition to an existing tourist campground or trailer court may be occupied until all improvements have been made as submitted in the approved plans, an inspection has been made by the health authority or department to confirm that fact, and a license has been issued authorizing the use of such space.

(9) The department hereby adopts and incorporates by reference the provisions of ARM 16.16.104, setting out information to be included in an application for subdivision approval; ARM Title 16, Chapter 16, setting out standards subdivisions must meet and application and subdivision review procedure; ARM Title 16, Chapter 20, Sub-chapter 2, setting

out water standards required of public water supplies; and ARM Title 16, Chapter 10, Sub-chapter 7, setting requirements for approval and operation of tourist campgrounds and trailer courts. Copies of ARM 16.16.104; Title 16, Chapter 16; Title 16, Chapter 20, Sub-chapter 2; and Title 16, Chapter 10, Sub-chapter 7; may be obtained from the Food and Consumer Safety Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620. AUTHORITY: Sec. 50-52-102 MCA IMPLEMENTING: Sec. 50-52-102 MCA

16.10.703 LICENSURE (1) It is unlawful for any person to operate a tourist campground or trailer court unless he holds a current license issued by the department and validated by the local health officer in the name of such a person for the specific tourist campground or trailer ~~park~~ court.

(2) Licenses shall expire on December 31 of the year in which issued.

(3) A nonrefundable \$20 license application fee must be submitted by all applicants. An applicant wishing to license a new establishment shall submit his application and fee when the establishment is complete and ready for inspection.

(4) The department or the health authority shall make a pre-licensing inspection after a complete license application and fee have been received. If the tourist campground or trailer court is in compliance with this sub-chapter and the act, a license will be issued. If the establishment is not in compliance, the department shall commence proceedings to deny the license application pursuant to 50-52-207, MCA.

(5) A licensee shall give notice in writing to the department at least 30 days prior to selling, transferring, giving away, or otherwise disposing of interest in or control of any tourist campground or trailer court. Such notice shall include the name and address of the person succeeding to the ownership or control of the tourist campground or trailer court.

(6) Upon application in writing for issue or renewal of a license and deposit of a fee of \$20, the department shall issue or renew the license if the tourist campground or trailer court is in compliance with all applicable provisions of this sub-chapter.

(7) The department hereby adopts and incorporates by reference the provisions of ARM Title 16, Chapter 10, Sub-chapter 7, setting requirements for operation and approval of tourist campgrounds and trailer courts. Copies of ARM Title 16, Chapter 10, Sub-chapter 7 may be obtained from the Food and Consumer Safety Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.

AUTHORITY: Sec. 50-52-102 MCA

IMPLEMENTING: Sec. 50-52-102, 50-52-201 to 50-52-203 MCA

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16.10.704 INSPECTIONS (1) A licensee shall permit representatives of the department and the health authority to inspect the tourist campground or trailer court at reasonable hours for determining compliance with the requirements of the act and this sub-chapter.

(2) A licensee shall arrange for access to any part of the trailer space or campsite at reasonable times for the purpose of making such repairs or alterations as are necessary to effect compliance with this sub-chapter or with any lawful order pursuant to the provisions of this sub-chapter.

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

(a) If plans for correction are not required, the department or health authority shall determine an acceptable time schedule for correction.

(b) If plans for correction are required, at the request of the department or health authority the licensee shall submit such plans and a proposed time schedule for correction. Such time schedule and plans, if approved, shall become the basis for licensure.

(4) Modifications will not be required to be made in the water supply and distribution system or sewage collection, treatment, and disposal system serving a tourist campground or trailer court licensed as of the date of adoption of this rule or approved and constructed in accordance with a prior regulation, unless upgrading is necessary due to system failure as described in 16.10.706(6) and 16.10.707(9) (8).

(5) Violation of this sub-chapter or the act may be enjoined by the department pursuant to 50-1-103, MCA, or a criminal charge may be brought pursuant to 50-52-105, MCA.

(6) A local board of health may adopt regulations which are more stringent than this sub-chapter, pursuant to 50-2-116, MCA.

(7) The department hereby adopts and incorporates by reference the provisions of ARM 16.10.706(6), defining failure of a water supply system, and ARM 16.10.707(8), defining failure of a sewage treatment and disposal system. Copies of ARM 16.10.706(6) and 16.10.707(8) may be obtained from the Food and Consumer Safety Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, MT, 59620.

AUTHORITY: Sec. 50-52-102 MCA

IMPLEMENTING: Sec. 50-52-102, 50-52-103, 50-52-301 MCA

16.10.706 WATER SUPPLY (1) An adequate and potable supply of water must be provided in each tourist campground or trailer court. Where a ~~municipal~~ public water supply of satisfactory quantity and pressure is available, and the owner

agrees to provide service, connection must be made thereto and its supply used exclusively. When a satisfactory municipal existing public water supply is not available, a private or public water supply system may be developed and used as approved by the department and health authority.

(2) A common watering station is required in each tourist campground or trailer court, except those in which each trailer space or campsite is provided with an individual water service connection. A watering station shall consist of at least a water hydrant and the necessary appurtenances and must be protected against the hazards of backflow, back siphonage and hose contamination. Watering stations must be located so as to eliminate the possible use of the hose for sewage holding tank flushing.

(3) If facilities for individual water service connections are provided, the following requirements apply:

(a) Riser pipes provided for individual water service connections must be so located and constructed that they will not be damaged by the parking of trailers. Protection may consist of posts, fences, or other permanent barriers.

(b) Water riser pipes ~~shall~~ must extend at least 4 inches above ground elevation. The pipe size must be at least three-quarters of an inch.

(c) Adequate provisions must be made to prevent freezing of service lines, valves and riser pipes.

(d) Where water risers are provided for irrigation use, a "backflow preventer" must be installed in the water service line at or near the outlet.

(e) Stop-and-waste valves and cocks may be installed in an underground service line only under the following conditions:

(i) A stop-and-waste valve must be located a minimum of 2 feet above the level of the water table and in soil providing good drainage.

(ii) There must be at least 10 feet horizontal distance between a sewer line connection and a stop-and-waste valve.

(f) Valves must be provided for the outlet of each water service connection. They ~~shall~~ must be turned off and the outlets capped or plugged when not in use.

(4) A water service lateral must be constructed as follows:

(a) Pipe used for a water service lateral must be copper, 160 psi-rated plastic approved for potable water supply use, or an equivalent.

(b) Inside pipe diameter must be a minimum of 3/4 inch.

(c) A water service lateral must be laid at least 10 feet horizontally from any existing or proposed sewer unless:

(i) it is laid in a separate trench or on an undisturbed earth shelf located on one side of the sewer, in either case at such an elevation that the bottom of the water service lateral is at least 12 inches above the top of the sewer.

(ii) the sewer is constructed of schedule 40 PVC, schedule 40 ABS, or standard weight cast iron pipe and tested for leakage in accordance with ~~rule~~ ARM 16.10.707(7)(a) (6)(a). In such a case, a lateral may be laid without regard to vertical separation from the sewer. In order to provide for maintenance of the sewer, the water service lateral must be kept to one side of the sewer, with crossings minimized.

(d) A water service lateral crossing a sewer line must be laid to provide a minimum vertical distance of 12 inches between the bottom of the water service lateral and the top of the sewer line unless a single length of schedule 40 PVC, schedule 40 ABS, or standard weight cast iron pipe tested for leakage in accordance with ~~rule~~ ARM 16.10.707(7)(a) (6)(a) is centered on the crossing, in which case the pipe may be laid without regard to vertical separation.

(5) An operator of a public water supply system serving a tourist campground or trailer court must be certified in compliance with Title 37, Chapter 42, MCA, and the ~~rules adopted pursuant thereto~~ ARM 16.18.201 through 16.18.206.

(6) A water supply system is determined to have failed and to require replacement or repair when the water supply becomes unsafe (exceeds the maximum contaminant levels as specified in the ~~rules of the Montana public water supply act~~ ARM 16.20.201 through 16.20.207) or inadequate (less than 20 psi measured at the extremity of the distribution line during peak usage).

(7) Extension, alteration, repair, or replacement of water distribution systems, or development of new water supply systems must be in accordance with ARM 16.20.401 through 16.20.405, ~~adopted pursuant to the sanitation in subdivisions act.~~

(8) The department hereby adopts and incorporates by reference the provisions of ARM 16.10.707(6)(a), which set forth a test for pipe leakage, ARM 16.20.201 through 16.20.207, stating maximum allowable contaminant levels for public water supplies; and ARM 16.20.401 through 16.20.405, stating requirements for public water and sewer plans, cross connections, and drilling of water wells. Copies of ARM 16.10.707(6)(a), ARM 16.20.201 through 16.20.207, and ARM 16.20.401 through 16.20.405 may be obtained from the Food and Consumer Safety Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.

AUTHORITY: Sec. 50-52-102 MCA

IMPLEMENTING: Sec. 50-52-102 MCA

16.10.707 SEWAGE SYSTEM (1) An adequate and safe sewage system must be provided in each tourist campground or trailer court for conveying, treating and disposing of all sewage. Where a ~~municipal~~ public sewage treatment and disposal system of adequate capacity is available, and the owner agrees to provide service, connection must be made thereto and its services used exclusively. When a ~~municipal~~



public sewage system is not available, a private or public system may be developed and used as approved by the department and health authority. Such system must be designed and constructed in accordance with the rules adopted pursuant to the sanitation in subdivisions act ARM 16.16.302, 16.16.304, or 16.16.305, whichever is appropriate. Where a local board of health has adopted a regulation governing individual sewage treatment and disposal systems, the more stringent requirement will apply.

(2) A sanitary station is required in each tourist campground which provides trailer space for self-contained trailers, except the following:

(a) Where each trailer space is provided with an individual sewer riser.

(b) Where a sanitary station is available for public use on a full-time basis within a reasonable distance from the tourist campground.

(c) Where installation of a sanitary station is not feasible due to lack of electricity, water under pressure, or other considerations; and where the campground is designed for use only by tent campers and use by travel trailers is not expected, the requirement for a sanitary station may be waived.

(3) A sanitary station must be provided in the ratio of one for every 100 trailer spaces lacking individual sewer risers or fraction thereof.

(4) A sanitary station shall consist of at least a 4-inch sewer riser pipe connected to the trailer court or tourist campground sewage system surrounded at the inlet end by a concrete apron at least 4 feet square sloped to the drain and provided with a suitable self-closing hinged cover and a water outlet with approved anti-back siphoning devices connected to the trailer court or tourist campground water supply system to permit periodic washdown of the immediate adjacent area. Signs must be placed at such locations stating the water is unsafe for drinking.

(5) If facilities for individual sewer connections are provided, the following requirement shall apply:

(a) The sewer riser pipe shall have a 4-inch diameter and shall be so located on the trailer space that a sewer connection to the trailer drain outlet will approximate a vertical position. It must be separated from the water riser by at least 6 feet at finished grade.

(b) Surface drainage must be diverted away from the riser.

(6) A sewer service lateral must be constructed as follows:

(a) A sewer service lateral must be water tight at all points, tested by filling with water or other equivalent test. A sewer service lateral required to be constructed of schedule 40 PVC, schedule 40 ABS, or standard weight cast iron pipe

must be tested under pressure of at least a 10-foot head of water for a minimum of 15 minutes, or other equivalent test.

(b) Pipe size must be a minimum of 4 inches in diameter.

(c) A sewer service lateral must be sloped to maintain a 2-foot/second flow velocity (1.2% slope for 4-inch line).

(7) An operator of a public sewage treatment and disposal system serving a tourist campground or trailer court must be certified in compliance with Title 37, Chapter 42, MCA.

(8) A sewage treatment and disposal system must be deemed to have failed and require replacement or repair if any of the following conditions occur:

(a) The system refuses to accept sewage effluent at the rate of application.

(b) Sewage effluent seeps from or ponds on or around the system.

(c) Effluent from the sewage treatment and disposal system contaminates a potable water supply or state waters.

(d) The sewage system is subjected to mechanical failure, including electrical outage, collapse or breakage of a septic tank, lead line, or drainfield line.

(9) Extension, alteration, or replacement of any sewage treatment and disposal system must be in accordance with the rules of the sanitation in subdivisions act ARM 16.20.401 and 16.20.402.

(10) The sewer connection shall have a nominal inside diameter of at least 3 inches and the slope of any portion thereof must be at least 1/4 inch per foot. The sewer connection shall consist of one pipe line only, without any branch fitting. Each joint must be watertight.

(11) All materials used for sewer connections must be corrosion resistant, non-absorbent and durable. The inner surface must be smooth.

(a) An exception to the requirement of the foregoing sentence is that "flex hose" may be used for making the sewer connection only in a tourist campground and only when the connection will be made for 14 days or less.

(12) Provisions must be made for plugging or capping the sewer riser pipe with a tamper resistant type cap when a trailer does not occupy the space. Such cap must provide an air tight seal.

(13) No liquid wastes from sinks, showers, or baths may be discharged onto or allowed to accumulate on the ground surface. Such waste must be discharged into the sewage treatment and disposal system serving the trailer court or tourist campground or into an alternate system approved by the department and health authority.

(14) The department hereby adopts and incorporates by reference the provisions of ARM 16.16.302, 16.16.304, and 16.16.305, setting standards for sewage treatment and disposal systems; and ARM 16.20.401 and 16.20.402, setting requirements

for public water and sewer plans and cross connections. Copies of ARM 16.16.302, 16.16.304, 16.16.305, 16.20.401 and 16.20.402 may be obtained from the Food and Consumer Safety Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.

AUTHORITY: Sec. 50-52-102 MCA

IMPLEMENTING: Sec. 50-52-102 MCA

16.10.710 SOLID WASTE--STORAGE AND DISPOSAL (1) The storage, collection and disposal of solid waste in the tourist campground or trailer court must be so conducted as to create no health hazards, rodent harborage, insect breeding areas, accident or fire hazards or air pollution.

(2) All solid waste must be stored in galvanized flytight, watertight, rodent-proof containers or in other suitable containers with secured lids which must be located not more than 150 feet from any trailer space or campsite. Containers must be provided in sufficient number and capacity to properly store all solid waste between collections.

(3) A solid waste collection stand must be provided for each solid waste container. A container stand must be designed so as to prevent tippage, to minimize spillage and container deterioration and facilitate cleaning.

(4) All solid waste containing garbage must be collected at least weekly. Where suitable collection service is not available from municipal or private agencies, the owner or operator of the tourist campground or trailer court shall provide this service. All solid waste must be collected and transported in a covered vehicle or covered containers in accordance with the solid waste management act to a solid waste disposal facility licensed by the department.

AUTHORITY: Sec. 50-52-102 MCA

IMPLEMENTING: Sec. 50-52-102 MCA

16.10.711 NOXIOUS PLANT AND ANIMAL CONTROL (1) The grounds, buildings and structures of a tourist campground or trailer court must be maintained free of harborage for insects, rodents, and other vermin. Extermination methods and other measures to control insects and rodents shall conform with the requirements of the health authority.

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

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

(4) Where the potential for insect and rodent infestation exists, any skirting of trailers must be of a type and construction which will not provide harborage. Where trailers are skirted, an access opening must be provided near service

connections. The growth of brush, weeds and grass shall be controlled to prevent harborage of noxious insects and other vermin. Tourist campgrounds and trailer courts must be so maintained as to prevent the growth of noxious weeds considered detrimental to health.

AUTHORITY: Sec. 50-52-102 MCA

IMPLEMENTING: Sec. 50-52-102 MCA

16.10.712 FUEL SUPPLY AND STORAGE (1) The department hereby adopts and incorporates by reference the provisions of ARM 23.7.111, Uniform Fire Code, which sets forth requirements for storage of liquefied petroleum gas. A copy of the rule is available from the Food and Consumer Safety Bureau of the Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620. A copy of the Uniform Fire Code and appendices which ARM 23.7.111 in turn adopts by reference may be obtained from either the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California, 90601, or the Fire Marshal Bureau, Department of Justice, 1409 Helena Avenue, Helena, MT, 59620.

(2) All fuel oil storage tanks and cylinders must be securely fastened in place and must not be located inside or beneath any trailer or less than 5 feet from any trailer exit. Storage tanks located in areas subject to vehicular traffic must be protected against physical damage.

(3) Liquefied petroleum gas must be stored in accordance with the provisions of ARM 23.7.111 of the Uniform Fire Code.

AUTHORITY: Sec. 50-52-102 MCA

IMPLEMENTING: Sec. 50-52-102 MCA

16.10.713 FIRE SAFETY (1) Tourist campgrounds and trailer courts must comply with the rules and regulations of the state fire prevention authority.

(a) (2) Tourist campgrounds and trailer courts must be kept free of litter, rubbish and other burnable material.

(2) A trailer space must be large enough so that, when occupied by the largest trailer and accessory structures to be allowed, clearance from the trailer to other structures is maintained as follows:

(a) A trailer must not be located closer than 10 feet from any other trailer or from any permanent building within or adjacent to the tourist campground or trailer court.

(i) Any attached, enclosed room addition or porch is to be considered part of the trailer.

(iii) Any attached, unenclosed accessory structure such as an awning, carport, etc., of noncombustible construction must not be located closer than 3 feet from a trailer or building on an adjacent lot. Unenclosed means that the side opposite the mobile home and at least one other side must be maintained at least 50 percent open at all times.

(iii) An unattached storage structure must not be located closer than 3 feet from a trailer or building.

(b) An unoccupied trailer must meet the following clearance standards in regard to other structures.

(i) The requirements of subsection (2)(a) above shall regulate the placement of an unoccupied trailer adjacent to an occupied trailer.

(ii) The requirements of subsection (2)(a) above do not apply to placement of an unoccupied trailer adjacent to another unoccupied trailer (i.e., common storage areas for travel trailers).

(3) A campsite must be clearly defined, have a minimum of 400 square feet exclusive of vehicle parking area, and be separated from any adjoining campsite by at least 10 feet.

AUTHORITY: Sec. 50-52-102 MCA

IMPLEMENTING: Sec. 50-52-102 MCA

16.10.714 OPERATOR REQUIREMENTS (1) The person to whom a license is issued at all times shall operate the tourist campground or trailer court in compliance with this sub-chapter and shall provide adequate supervision to maintain the tourist campground or trailer court, its facilities, and equipment in good repair and in a clean and sanitary condition.

(2) The licensee of a trailer court shall have a manager on duty on the premises to maintain the trailer court and its facilities in accordance with this rule at all times.

(3) The licensee of a tourist campground shall have a manager who, if not resident at the campground, shall visit the campground as often as necessary to maintain the campground in accordance with this sub-chapter at all times.

(4) Signs must be placed in conspicuous places indicating restrictions placed on the types of trailers permitted in a tourist campground, based on the type and amount of facilities provided.

(5) Each campsite and trailer space in a tourist campground must be clearly marked with an identification number or other symbol.

(6) Addresses must be clearly marked on each trailer in a trailer court.

(7) Every owner, operator, attendant or other person operating a tourist campground shall notify the department or health authority immediately of any suspected communicable or contagious disease within the tourist campground.

AUTHORITY: Sec. 50-52-102 MCA

IMPLEMENTING: Sec. 50-52-102 MCA

16.10.715 GUEST REGISTRATION (1) The licensee of a tourist campground shall maintain a register that must be preserved for at least 6 months, be made available to the department and health authority, and record:

(a) The name and permanent address of each trailer space and campsite occupant.

(b) The make, model and license number of each trailer and tow vehicle.

(c) The date of arrival and departure for each trailer and vehicle and its occupants.

AUTHORITY: Sec. 50-52-102 MCA

IMPLEMENTING: Sec. 50-52-102 MCA

16.10.716 ANIMALS RUNNING AT LARGE (1) The licensee of a tourist campground or trailer court shall not allow a person in charge of a dog, cat, or other pet animal to permit it to run at large or to commit any nuisance within the limits of any tourist campground or trailer court. Any pet animal must be limited to the area of the tenant's lot, unless the animal is leashed. The tourist campground or trailer court licensee or manager is responsible for the containment of any pet animal and any nuisance caused by a pet animal.

AUTHORITY: Sec. 50-52-102 MCA

IMPLEMENTING: Sec. 50-52-102 MCA

3. Will Selser, on behalf of the Lewis and Clark City-County Health Department, made the following comments:

(a) The exclusion of the department (DHES) from the definition of "health authority" in 16.10.701(8) was not apparently beneficial nor appropriate.

RESPONSE: The amendment was retained because the rules, as amended, differentiate between department duties, local health department duties, and those performed by either, and their respective duties are more easily ascertained when the definitions of "department" and "health authority" are mutually exclusive.

(b) Whenever sewage disposal is referred to, the phrase should include "treatment", in keeping with actual practice.

RESPONSE: The suggestion was accepted.

(c) In rule 16.10.702, requiring local health departments, as well as DHES, to review layout plans is duplication of effort and probably outside of DHES' legal authority to require, given recent legislative action to remove the department's supervisory authority over local boards of health.

RESPONSE: DHES is not exercising invalid supervisory authority since sections 50-52-201(2) and 50-52-208, MCA, require local health authorities to validate (or not) any license issued by DHES and the rule recognizes that dual authority. As for duplication of effort, aside from the statutory duty of both DHES and local health authorities to review, local personnel are in a better position, being knowledgeable of local conditions, to determine if factual information upon which an application is based is accurate, and DHES review consists primarily of engineer review of water and sewer system engineering, which most local health authorities do not have the expertise to do. Therefore, no change was made in the rule.

(d) In rule 16.10.706, relating to water supplies, a definition of "municipal" is needed; it is unclear why the change was made from "public water supply" to "municipal water

supply"; and the legal authority for a local health authority to approve a public water supply is questionable.

RESPONSE: The department agreed that a definition of "municipal" would be needed if it were to be used. However, it decided to return to the use of the phrase "public water supply", which is already defined, deleting "municipal", and to add language to deal with situations where non-municipal public water supplies are involved and the owners refuse to allow a hook-up. The same change was made in rule 16.10.707, sewage systems, which also used the word "municipal". Finally, the department agreed that the proposed language did appear to give concurrent review authority to local health authorities, though that was not intended, so the reference to health authority approval was deleted.

(e) Setting standards for sewage systems (10.10.707) is a duplication of the efforts of local health boards, which have the authority by law to do so, and traditionally regulate subsurface sewage systems.

RESPONSE: Standards for subsurface sewage systems were retained. Although local health boards may indeed adopt rules relating to sewage disposal, there are significant differences between counties, and not all counties have adopted such standards. A statewide minimum standard is therefore needed and is established in 16.10.707, which also contains language recognizing that rules adopted by a local board which are more strict than the state minimum standard will apply.

(f) Rule 16.10.707(8) defines a sewage system as having failed if its effluent contaminates "state waters"; "state waters" should clearly include groundwater.

RESPONSE: In order to be absolutely clear, a definition of "state waters" was added to rule 16.10.701 which is the same as that in section 75-6-102(13), MCA, of the Public Water Supply Act, and which clearly includes groundwater.

(g) There is a need to clarify what constitutes "contamination" in 16.10.707(8)(c).

RESPONSE: The department agreed and added a definition.

(h) Rule 16.10.707(13), both original and proposed versions, prohibits discharge of liquid waste onto the ground surface. The phrase "discharged onto or" should be deleted from the first sentence of paragraph (13) to allow surface application on an experimental basis, under controlled conditions, since it is possible to do so and still protect public health.

RESPONSE: The department agreed and deleted the phrase.

(i) The department should ensure that the provisions in rule 16.10.713, fire safety, regarding accessory structures and trailer separations, are part of the Uniform Fire Code.

RESPONSE: In response to this comment, the department discussed the fire safety rules in detail with fire safety authorities and discovered at least one conflict, with more easily developing in the future since the fire safety code is

revised regularly and is due for a revision soon. To cure the problem of potential conflicts between the fire safety code and these rules, and because fire authorities already adequately supervise and have enforcement power over tourist campgrounds and trailer courts, the department decided to eliminate most of the specific fire safety provisions in 16.10.713, retaining only the general statement that campgrounds and trailer courts must comply with the rules of the fire safety authority and the operational requirement that sites be kept free of burnable material.

The department corrected a discrepancy between the definitions of "dependent trailer" and "independent trailer" in rule 16.10.701, and made editorial changes. The department also corrected the accidental omission, in rule 16.10.712, of the standard for storage of liquefied petroleum gas contained in the Uniform Fire Code; the provision was incorporated by reference in the proposed rule, but the standard itself was inadvertently omitted and is now added.

In the matter of the adoption	)	NOTICE OF ADOPTION
of a rule setting requirements	)	OF RULE 16.10.717
for service facilities at	)	
tourist campgrounds or trailer	)	(Service Buildings and
courts	)	Other Service Facilities)

To: All Interested Persons

1. On December 17, 1981, the department published notice of a proposed adoption of a rule now numbered 16.10.717, concerning tourist campground and trailer court service facility requirements, at page 1666 of the 1981 Montana Administrative Register, issue number 23.

2. The department has adopted the rule as proposed.

3. No comments or testimony were received. The rule is considered reasonably necessary to meet the statutory mandate to "ensure sanitation and protect public health", since it ensures careful sanitary practices and adequate sanitary facilities in campground and trailer court service facilities.

In the matter of the repeal	)	NOTICE OF REPEAL
of rules 16.10.705, environ-	)	OF RULES
mental requirements;	)	16.10.705, 16.10.708,
16.10.708, toilet and	)	and 16.10.709
laundry facilities; and	)	
16.10.709, outdoor burning	)	(Trailer Courts)



To: All Interested Persons

1. On December 17, 1981, the department published notice of a proposed repeal of rules 16.10.705, 16.10.708, and 16.10.709, concerning tourist campground and trailer court environmental requirements, toilet and laundry facility requirements, and outdoor burning restrictions, respectively, at page 1668 of the 1981 Montana Administrative Register, issue number 23.

2. The department has repealed rules 16.10.705, 16.10.708, and 16.10.709, found on pages 16-434, 16-441, and 16-442, respectively, of the Administrative Rules of Montana.

3. No comments or testimony were received.

  
JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State May 17, 1982

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

In the matter of the adoption ) NOTICE OF ADOPTION  
of rules setting health, ) OF RULES  
water, and sewer standards )  
for day care centers ) (Day Care Centers)

To: All Interested Persons

1. On December 31, 1981, the department published notice of a proposed adoption of rules concerning protection of the health of children in day care centers from the health hazards of inadequate food preparation, poor nutrition, and communicable disease at page 1845 of the 1981 Montana Administrative Register, issue number 24; on January 28, 1982, the department published an amended notice of the same rules altering Rule I concerning definitions at page 84 of the 1982 Montana Administrative Register, issue number 2; and on January 28, 1982, the department published notice of two additional rules protecting children in day care centers from communicable disease associated with inadequate water or sewer systems at page 81 of the 1982 Montana Administrative Register, issue number 2.

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

16.24.406 (RULE I) DEFINITIONS Same as proposed.

16.24.407 (RULE II) SOLID WASTE In order to ensure that solid waste is safely stored and disposed of, a day care center must:

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

(2) clean all solid waste containers frequently;

(3) utilize exterior collection stands for the ~~solid~~ containers referred to in (1) above which prevent the containers from being tipped, protect them from deterioration, and allow easy cleaning below and around them.

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

16.24.408 (RULE III) LAUNDRY Same as proposed.

16.24.409 (RULE IV) GENERAL HOUSEKEEPING As general housekeeping measures, a day care center must ensure that:

(1) its building and grounds are free, to the extent possible, of harborage for insects, rodents, and other vermin.

(2) its floors, walls, ceilings, ~~furnishing~~ furnishings, and other equipment are easily cleanable and are kept clean.

(3) soap and disposable towels or other hand-drying devices are always available at all handwashing sinks. Common-use cloth towels are prohibited.

(4) toilet tissue is provided next to all toilets.

(5) the temperature is maintained at a minimum of 65° F. in the areas used for day care.

16.24.410 (RULE V) SPECIAL REQUIREMENTS WHEN CARING FOR CHILD UNDER TWO If a day care center cares for children under two years of age, it must:

(1) ensure that cribs, playpens, and toys are made of washable, nontoxic materials and are kept clean.

(2) either provide separate cribs for each such child, or launder bedding in accordance with Rule III(4) above.

(3) handle diapers in the following manner:

(a) provide an adequate and cleanable area for diaper changing separate from food preparation and play areas.

(b) store soiled diapers in easily cleanable or lined receptacles with tight-fitting lids, and empty and clean them at least daily.

(c) ensure that staff wash their hands after every diapering and before feeding each child under 2 years of age.

(4) request parents to provide a supply of clean clothes adequate to allow at least one change per day and adequate diapers for a day's use.

(5) use only disposable diapers unless parents present medical documentation that non-disposable diapers should be used, in which case they must be subjected, after each use, to a germicidal process approved by the department or local health authority, or returned to the parent for laundering at the end of each day.

(6) have facilities to bathe such children when necessary.

16.24.411 (RULE VI) SWIMMING AREAS Same as proposed.

16.24.412 (RULE VII) FOOD PREPARATION AND HANDLING  
Same as proposed

16.24.413 (RULE VIII) IMMUNIZATION (1) No child may be enrolled or reside in a day care center unless one of the following has been satisfied:

(a) The child is completely immunized as required by subsection (2) below, or immunized appropriately for his age, if less than 15 months old, as required by subsection (3) below, and immunization is documented as required by subsection (4) below.

(b) The child has received at least one dose of vaccine for measles (with the exception noted in (2)(a) below), rubella (unless a girl 12 years of age or older), poliomyelitis, diphtheria, pertussis (unless 7 years of age or older), and

tetanus, or the appropriate doses for his age if less than 15 months old; and that level of immunization is documented as required by subsection (4) below; and the limits on conditional enrollment set out in subsection (5) below have not been violated.

(c) The parent or guardian provides the day care center with a signed statement claiming a religious exemption from the immunization requirements or a medical exemption signed by a licensed physician.

(2) through (7) Same as proposed.

16.24.414 (RULE IX) HEALTH SUPERVISION AND MAINTENANCE

(1) The department hereby adopts and incorporates by reference ARM 16.28.1005, which sets standards for tuberculin testing of those working in day care centers, and treatment and monitoring of positive cases among them. A copy of ARM 16.28.1005 may be obtained from the Preventive Health Services Bureau Health Services Division, Department of Health and Environmental Sciences, Cogswell Building, 1400 Broadway, Helena, Montana, 59620, ~~phone: 449-4740.~~

(2) A day care center must exclude from enrollment any child whose parent or guardian has not provided the center, within 30 days after admission and annually thereafter, with a health record form documenting the results of a current health assessment performed by a physician licensed to practice medicine in Montana.

(3) The director of the day care center must designate a staff member to check daily the health status of each child immediately upon that child's entry into the center, and to exclude any child showing symptoms of illness. A child need not be excluded for a discharge from the nose which is not accompanied by fever.

(4) If a child develops symptoms of illness while at the day care center and after the parent or guardian has left, the day care center must do the following:

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

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

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

(5) The day care center may readmit a child excluded for illness whenever, in its discretion, the child either shows no symptoms of illness, or the parent or guardian provides the center with a signed certification of health from a licensed physician, except that the following restrictions must be followed:

(a) If a child is excluded for shigellosis, he may not be readmitted until he has no diarrhea or fever, and his parent or guardian produces documentation that 2 stools, taken at least 24 hours apart, are negative for shigellosis, and the local health authority has given written approval to readmission.

(b) If a child is excluded for hepatitis, he may not be readmitted sooner than 3 days after the appearance of jaundice, nor until he has received written approval from the local health authority to be readmitted.

(c) If a child is excluded for salmonella, he may not be readmitted until he has no diarrhea or fever, and his parent or guardian produces documentation that 2 stools, taken at least 24 hours apart, are negative for salmonella, and the local health authority has given written approval to readmission.

(6) Good health habits, such as washing hands, must be taught during everyday activities.

(7) Each employee, volunteer, or resident at a day care center must:

(a) Have an examination for tuberculosis prior to or within 30 days after commencing work at the day care center, in conformity with ARM 16.28.1005.

(b) Be excluded from the day care center if he has a communicable disease, including a sore throat or cold.

(c) Wash his or her hands after every diapering and before feeding of any child.

(8) Smoking must be prohibited in areas used by children.

16.24.415 (RULE X) NUTRITION (1) The department hereby adopts and incorporates by reference 46 Federal Register 57980 (November 27, 1981), containing meal requirements for day care facilities participating in the child care food program of the U.S. Department of Agriculture, Food and Nutrition Service. A copy of 46 Federal Register 57980 (November 27, 1981) may be obtained from the Child Nutrition Program, Maternal and Child Health Services Bureau, Nutrition Coordinator, Health Services Division, Department of Health and Environmental Sciences, Cogswell Building, 1400 Broadway, Helena, MT, 59620--phone+449-4740.

(2) Each day care center must do the following, with the exception noted in subsection (4) below:

(a) Serve meals and snacks which meet the requirements for meals contained in 46 Federal Register 57980 (November 27, 1981) of the rules of the U.S. Department of Agriculture's Food and Nutrition Service.

(b) Serve meals and snacks on, at a minimum, the following schedule to children in attendance:

- (i) snacks at mid-morning and mid-afternoon;
- (ii) lunch;

(iii) breakfast or supper if a child is being cared for in the center at the normal time for those meals and has not otherwise received them.

(c) Ensure that each bottle-fed infant from newborn to 1 year of age is held during bottle feedings until he or she is able to hold the bottle, and that bottles are not propped.

(d) For each child with nutritional therapeutic needs, request and carefully follow special dietary instructions, in writing, from either the child's parent or guardian, or a physician or registered dietitian, if the parent/guardian fails to or cannot provide such instructions. Food brought from home for special dietary purposes must be carefully labelled with the child's name.

(e) Plan menus at least 2 weeks in advance, date and post the menus where parents/guardians can see them, and serve meals and snacks in accordance with the posted menus, with the exception that a menu change may be made so long as it is posted before parents arrive to check in children on the date of service.

(f) Provide supervision to children while they eat and assist the children to eat, if necessary.

(g) Offer drinking water at regular intervals to infants and toddlers and ensure that drinking water is freely available to all children.

(h) Keep on file at the day care center written menu records and special dietary instructions for infants and children for 1 year following the date of the meal service.

(3) If a day care center does not participate in the department's child care food program, that center must do the following in addition to meeting the requirements contained in subsection (2) above:

(i) Obtain guidance materials from the department about child care food program meal requirements and adhere to the recommendations therein; and

(ii) Within 1 year after it begins operation, or within 1 year after May 28, 1982, {the effective date of this rule}, whichever is later, and once annually thereafter, ensure that a registered dietitian evaluates the nutritional adequacy of its meals and their compliance with this rule, and that the dietitian makes a written report, to be retained on file at the day care center, containing the following information, with a copy to the department:

(AA) findings and recommendations pertaining to the nutritional adequacy of food served to the children;

(BB) an assessment of management of meals, and any infant or therapeutic diets.

(CC) date of the evaluation;

(DD) evaluator's signature and dietitian registration number.

(4) If a parent sends food with a child for consumption at the day care center, the center need not provide meals or

snacks for the child to the extent that food is provided by the parent for that meal or snack, but is required to do the following:

(a) Provide the child with a meal or snack meeting the requirements of subsection (2) above whenever the parent has not provided food for that meal or snack;

(b) Post a copy of the meal requirements referred to in subsection (2)(a) above in an area where it will be readily seen by parents;

(c) At least annually, provide each parent who has ever sent food to the center for consumption by a child a copy of the meal requirements referred to in subsection (2)(a) above.

16.24.416 (RULE I, January 28, 1982, notice) WATER SUPPLY SYSTEM Same as proposed.

16.24.417 (RULE II, January 28, 1982, notice) SEWAGE SYSTEM Same as proposed.

16.24.418 (RULE XI) TRAINING BY LOCAL HEALTH AUTHORITY  
Any training provided by a local health authority pursuant to section 53-4-506(2), Montana Code Annotated, must, at a minimum, include instruction concerning each provision of ~~Rules-II~~ ARM 16.24.406 through X 16.24.417 above.

3. Comments were received on the following proposed rules:

a. 16.24.407 (Rule II) The Food and Consumer Safety Bureau of the department suggested deleting the word "solid" before "container" in paragraphs (1) and (3) since it may be possible to have soft containers which are still fly and rodent-proof. The department made the change.

b. 16.24.410 (Rule V) The Cascade City-County Health Department recommended that staff wash hands after diapering or before feeding any child, not just those under two years of age. The department agreed, and so moved the requirements from 16.24.410 (Rule V), which is limited to children under two, to 16.24.414 (Rule IX), which sets general preventive health standards, so that they now apply to diapering and feeding any child.

Cascade also thought further guidance on washable toys and provisions for routine toy cleaning were needed. However, the department made no change since no reasonable routine could be envisioned, given the fact that toys need cleaning at times ranging from any moment to hardly ever, depending upon the type and degree of use they receive. The rule already requires toys to be washable, nontoxic, and "kept clean", which are considered sufficient, reasonable and probably the only enforceable requirements.

c. 16.24.413 (Rule VIII) The Cascade City-County Health Department found the immunization rule difficult for laymen to

understand, but made no suggestions for simplification, so the department left the language as it was, since it had already undergone considerable editing.

d. 16.24.414 (Rule IX) Comments objecting to a yearly physical for each child were received from Mr. and Mrs. Peter Day, St. Thomas Children's Home, Cascade City-County Health Department, and "A Great Place for Kids" (day care center), Great Falls, ranging from the lack of effectiveness of such physicals to control communicable disease to their cost, which would be a particular burden on low-income parents and perhaps force some to use unlicensed care or none at all.

Since most commenters saw value in a health assessment at the time of initial enrollment, but not in subsequent annual exams, and the department agreed the annual exam had little to add to health protection beyond that already provided by the daily health supervision also required, the necessity for annual exams after the initial assessment was eliminated.

The Cascade City-County Health Department also requested that local health departments control who is excluded or readmitted to a center because of communicable disease. The department felt requiring health department approval of admission after any communicable disease was not necessary to protect public health, especially in view of the fact that health authorities automatically would be notified of communicable diseases and can, if they so choose, control readmission in a given case. Health department approval was, however, added to the particular readmission requirements for cases of shigellosis, salmonella, and hepatitis.

e. 16.24.415 (Rule X) Julie Walker-Leonard at Clear Skies Child Care apparently had received erroneous information that none of the proposed rules covered nutrition, a lack to which she objected. Since a nutrition rule is in fact included, her comments in effect were regarded as support for it.

The Cascade City-County Health Department suggested the local health departments should not be involved in nutritional review, since guidance materials are available and an annual nutritional report goes to the department. However, since state law, rather than departmental rules, require local health department involvement, the issue is one for the legislature rather than the department (see Section 53-4-506, MCA).

Cascade also suggested a home economist or anyone from the local extension service office or with knowledge of the basic four food groups would suffice to evaluate menus, and that a registered dietitian was unnecessary and unduly expensive. "A Great Place for Kids", Great Falls, also felt that review by a registered dietitian was unnecessary and burdensome, and that workshops and other sorts of nutritional guidelines would be preferable.

Support for requiring periodic evaluation by a registered




dietitian was received from Pat Hennessey, M.S.R.D., citing American Academy of Pediatrics standards for day care centers recommending "regular planned, professional consultation" regarding feeding of children, professionals being registered dietitians. Ultimately, the department felt that, while provision of nutritional education to centers is certainly advisable and will be done to the extent possible, periodic nutritional evaluation of those centers not regularly supervised because of their involvement in the Child Care Food Program is needed as a means of double-checking the nutritional value of meals provided, and that it was sufficiently complicated to require a registered dietitian. Therefore, the provision was retained.

Bill DeCou of the Missoula City-County Health Department noted that the rule appeared to require meals to be served to children whose parents sent food with them, and suggested that parent-provided food be allowed, but also that the day care center be required to give such parents copies, quarterly, of the rule's meal nutritional requirements and to inform those parents if the annual nutritional review shows the diets of the home-fed children to be deficient. He also voiced support for the proposed annual nutritional review.

In response, the department added provisions holding centers to the meal requirements only for those meals or snacks which were not furnished by parents, and required centers to provide parents sending food with copies of the meal nutritional requirements annually, rather than quarterly, and to post them publicly in the center. The annual requirement was considered sufficient and less of a burden on centers, so long as it was coupled with the posting requirement, which would allow parents to see the nutritional standards daily. The department did not require parents to be notified if the annual nutritional review showed the home-supplied meals to be deficient since such review was impossible unless the center kept track of the contents of each sack lunch, a fairly onerous task with which the department declined to saddle the centers. The department does intend to advise reviewing dietitians, however, to spot check sack lunches on the days they visit centers and to comment on problems they see, though that will not be a rule requirement.

"A Great Place for Kids", Great Falls, also was concerned that the rule required centers to participate in a "sponsored program", such as the USDA's Child Care Food Program. Since that comment was based upon a misconception, and the rules does not require such participation, no change to the rule was contemplated.

  
JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State May 17, 1982

10-5/27/82

Montana Administrative Register

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE	)	NOTICE OF AMENDMENT OF RULE
Amendment of Rule 42.15.111.	)	42.15.111, relating to tax-
relating to taxation of	)	ation of military pay.
military pay.	)	

TO: All Interested Persons:

1. On April 15, 1982, the Department of Revenue published notice of the proposed amendment of rule 42.15.111, relating to the taxation of military pay, at pages 662-663 of the 1981 Montana Administrative Register, issue no. 7.
2. The Department has amended the rule as proposed.
3. No testimony or comments were received.



ELLEN FEAVER, Director  
Department of Revenue

Certified to Secretary of State 5/17/82

VOLUME NO. 39

OPINION NO. 59

APPROPRIATIONS - Application of budget amendment procedures to increase appropriation for office of Consumer Counsel;  
CONSUMER COUNSEL - Application of budget amendment procedures to increase appropriation for office of Consumer Counsel;  
MONTANA CODE ANNOTATED - Sections 69-1-223, 69-1-223(3), 69-1-224 and 69-1-224(4).

HELD: The office of Consumer Counsel may not expend an unappropriated balance in its earmarked revenue account through a budget amendment.

17 May 1982

Mr. James C. Paine  
Montana Consumer Counsel  
34 West Sixth Avenue  
Helena, Montana 59620

Dear Mr. Paine:

You have requested my opinion on the budget amendment procedure as it pertains to the office of Consumer Counsel. Section 69-1-223, MCA, creates an earmarked revenue account for the Consumer Counsel office funded by a fee, which is a percentage of gross receipts, assessed against the businesses and utilities regulated by the Public Service Commission. The statute provides that the Consumer Counsel office may be funded by a "base appropriation for regular operating expenses and a contingency appropriation for expenses due to an unanticipated caseload," both of which are to be paid from the earmarked revenue account funded by the fee. The amount of the fee assessed against regulated companies is determined by the Department of Revenue (hereinafter "the Department") under section 69-1-224, MCA. Regulated companies must report their gross receipts to the Department periodically. The Department then computes the percentage of these gross receipts necessary to fund the Legislature's appropriation to the Consumer Counsel office and sets the fee at a level estimated to be sufficient to raise the amount appropriated. If the revenue generated by

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the fee exceeds the amount expended from the fund in any year, section 69-1-224(4), MCA, requires the Department to apply the remaining balance in meeting the appropriation for the succeeding fiscal year, resulting in a correspondingly lower fee charged to the regulated companies.

For fiscal years 1982 and 1983, the Legislature enacted base appropriations for the office of the Consumer Counsel, but failed to provide a contingency appropriation for expenses related to unanticipated caseload. In setting the amount of the fee, however, the Department, for reasons which are not apparent, failed to apply the carry-over balance in the earmarked revenue account from fiscal year 1981 to reduce the amount of the fee collected in fiscal year 1982. As a result of the Department's action, a substantial unappropriated balance remains in the Consumer Counsel's earmarked revenue account. You inform me that several major cases within the Counsel's jurisdiction have recently been filed and that the Consumer Counsel will be unable to participate fully in these cases within the current base appropriation. You inquire whether the Consumer Counsel may seek a budget amendment to tap the unappropriated remaining balance in the earmarked revenue account to finance participation in these cases.

In my opinion, any unappropriated balance in the earmarked revenue account is not available to the office of the Consumer Counsel for expenditure under a budget amendment. Sections 69-1-223 and 69-1-224, MCA, compel this conclusion. Section 69-1-223(3), MCA, provides:

The amount of money which may be raised by the fee on the regulated companies during a fiscal year may not be increased from the amount appropriated, including both base and contingency appropriations, by the legislature for that fiscal year. Any additional money required for operation of the office of the consumer counsel must be obtained from other sources in a manner authorized by the legislature.

This section dovetails with section 69-1-224(4), MCA, which requires any money raised by the fee in excess of that expended in a fiscal year in effect to be rebated to the regulated companies in the form of a reduced fee for the succeeding fiscal year. Under these provisions, the amount of the earmarked revenue account which may be expended is limited to the amount appropriated and may not be increased by a budget amendment.

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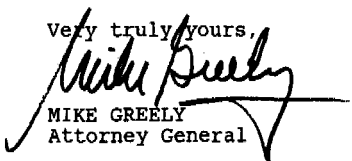
Your letter points to the provisions of HB 500, the legislative budget bill for fiscal years 1982 and 1983, which details the general budget amendment procedure for State agencies. You suggest that HB 50 establishes a budget amendment as an "other source" under section 69-1-223(3), MCA, from which the office of the Consumer Counsel can acquire spending authority. I disagree. HB 500, section 3(2), allows a budget amendment to tap an earmarked revenue account in emergency situations, but it makes no specific reference to the office of the Consumer Counsel. The question of whether the general language of HB 500 creates an implicit exception to the specific limitation on the office of the Consumer Counsel established in section 69-1-223(3), MCA, depends upon whether such an exception is consistent with the legislative intent, since in the absence of manifest intent to the contrary, the specific legislation controls the general. Dolan v. School District No. 10, 38 St. Rptr. 1903, 1907-08, 636 P.2d 825, 828 (1981).

The Legislature intended to limit regulated companies' tax liability under section 69-1-223, MCA, to the amount appropriated. It specifically provided in subsection (3) of that section that funds to be expended in excess of the amount appropriated must come from "other sources." If the fee raises more than the amount expended in any fiscal year, the unexpended balance does not revert to the general fund or remain in the earmarked fund, but rather inures to the benefit of the regulated companies under section 69-1-224(4), MCA, in the form of a corresponding lower fee for the succeeding year. Nothing in HB 500 suggests an intent to alter the balance of interests established in sections 69-1-223 and 69-1-224, MCA. I therefore conclude that it creates no implicit exception to the limitations on access to the earmarked revenue account.

THEREFORE, IT IS MY OPINION:

The office of Consumer Counsel may not expend an unappropriated balance in its earmarked revenue account through a budget amendment.

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 Joint Resolution directing an agency to adopt, amend or repeal a rule.

The Committee welcomes comments from the public and invites members of the public to appear before it or to send it written statements in order to bring to the Committee's attention any difficulties with existing or proposed rules. The address is Room 138, Montana State Capitol, Helena, Montana, 59620.

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

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

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

Use of the Administrative Rules of Montana (ARM):

- |                               |   |
|-------------------------------|---|
| Known Subject Matter          | 1. Consult General Index, Montana Code Annotated to determine department or board associated with subject matter or statute number.           |
| Department                    | 2. Refer to Chapter Table of Contents, Title 1 through 46, page i, Volume 1, ARM, to determine title number of department's or board's rules. |
|                               | 3. Locate volume and title.   |
| Subject Matter and Title      | 4. Refer to topical index, end of title, to locate rule number and catchphrase.   |
| Title Number and Department   | 5. Refer to table of contents, page 1 of title. Locate page number of chapter.  |
| Title Number and Chapter      | 6. Go to table of contents of Chapter, locate rule number by reading catchphrase (short phrase describing rule.)                              |
| Statute Number and Department | 7. Go to cross reference table at end of each title which lists each MCA section number and corresponding rules.                              |
| Rule in ARM                   | 8. Go to rule. Update by checking the accumulative table and the table of contents for the last register issued.                              |

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 1982. This table includes those rules adopted during the period April 1, 1982 through June 30, 1982, and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 1982, this table and the table of contents of this issue of the MAR.

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