

**RESERVE**

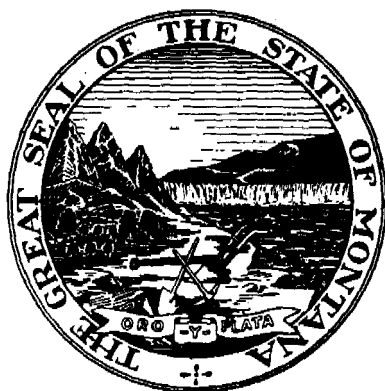
**MONTANA  
ADMINISTRATIVE  
REGISTER**

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**APR 13 1982**

**OF MONTANA**

**1982 ISSUE NO. 6  
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APR 13 1982

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 6

OF MONTANA

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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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BEFORE THE DEPARTMENT OF AGRICULTURE  
OF THE STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PROPOSED REPEAL of  
repeal of ARM 4.10.301 through) ARM 4.10.301 through ARM  
4.10.310 regarding aquatic ) 4.10.310 regarding aquatic  
herbicide rules ) herbicide rules  
 ) No Hearing contemplated

TO: All Interested Persons

1. On April 24, 1982 the Department of Agriculture proposes to repeal ARM 4.10.301 through ARM 4.10.310 relating to the sale and use of aquatic herbicides.

2. The rules proposed to be repealed are on pages 4-227 through 4-230, Vol. 2, Part 1, Title 4, Administrative Rules of Montana.

3. The rules are proposed for repeal as they have been replaced in their entirety by a new set of rules on the same subject matter and filed for adoption of March 15th, 1982. Such new rules were adopted by the Department after public hearing through the MAPA rule adoption process.

4. Interested parties may submit their data, views, or arguments concerning the proposed repeal in writing to W. Gordon McOmber, Agriculture/Livestock Building, 6th and Roberts, Capitol Station, Helena, Montana 59620, no later than April 24, 1982

5. If a person who is directly affected by the proposed repeal wishes to express data, views and arguments orally or in writing at a public hearing, he or she must make written request for a hearing and submit the requests along with any written comments to W. Gordon McOmber, Agriculture/Livestock Building, 6th and Roberts, Capitol Station, Helena, Montana 59620, no later than April 24, 1982.

6. If the agency receives requests for a public hearing on the proposed repeal from 25 or more persons directly affected by the proposed repeal; 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.

7. The authority of the Department to make the proposed repeal is based on Sec. 80-8-105 MCA and the repeal implements Sec. 80-8-105 MCA.

  
W. Gordon McOmber, Director  
Department of Agriculture

Certified to the Secretary of State March 15, 1982.

BEFORE THE DEPARTMENT OF AGRICULTURE  
OF THE STATE OF MONTANA

In the matter of the adoption	)	NOTICE OF PUBLIC HEARING FOR
of new rules I through XII,	)	ADOPTION OF NEW RULES I
inclusive, establishing oper-	)	THROUGH XII, INCLUSIVE, ES-
ating procedures for the	)	TABLISHING OPERATING PROCEDURES
alfalfa seed committee to	)	FOR THE ALFALFA SEED COMMITTEE.
promote research and ad-	)	
vertisement of the alfalfa	)	
seed industry.	)	

TO: All Interested Persons:

1. On April 16, 1982, at 8:30 a.m., a public hearing will be held in Room 225 of the Agriculture/Livestock Building, 6th and Roberts Streets, Helena, Montana to consider the adoption of new rules relating to operational procedures for the Alfalfa Seed Committee.

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

3. The purpose of the rules is to implement House Bill No. 467 enacted by the 1981 Montana Legislature (80-11-301 MCA, et. seq.)

4. The proposed rules provide as follows:

RULE I PROCEDURAL RULES (1) The committee hereby adopts and incorporates by reference ARM 1.3.101 through 1.3.233 which sets forth the attorney general's model procedural rules. A copy of the model rules may be obtained from the Alfalfa Seed Committee, Agriculture/Livestock Building, Capitol Station, Helena, Montana 59620. AUTH: Sec. 80-11-304 MCA; IMP Sec. 2-4-201 MCA.

RULE II POLICIES AND OBJECTIVES (1) Public participation is to be allowed to the fullest extent practicable and consistent with the other requirements of state law and the rights and requirements of personal privacy. This will aid in greater responsiveness of committee actions to all concerns and priorities as well as helping to better the understanding of programs and committee actions. AUTH: Sec. 80-11-303 MCA; IMP Sec. 2-4-103 MCA.

RULE III PUBLIC PARTICIPATION (1) The committee hereby adopts and incorporates by this reference the public participation, awarding contracts and liaison rules of the Department of Agriculture, which set forth applicable procedures relating to these functions. Such department rules may be found in ARM 4.2.202, 203 and 204, and a copy thereof obtained from the Alfalfa Seed Committee, Agriculture/Livestock Building, Capitol Station, Helena, Montana, 59620. AUTH: Sec. 80-11-303 MCA; IMP Sec. 2-4-103 MCA.

RULE IV APPLICATION FOR GRANTS (1) Grant applications for project funding shall be filed with the committee on or before January 1. Filing requirements will be satisfied by

receipt of the original and nine (9) copies of each application at the office of the committee. The first regular meeting of the committee will be held during the month of February of each year. AUTH: Sec. 80-11-304 MCA; IMP Sec. 80-11-304 MCA.

RULE V REVIEW AND EVALUATION (1) All applications shall be reviewed and evaluated for project type, funding requested, market need for the project, and whether the project is new or on-going. AUTH: Sec. 80-11-304 MCA; IMP Sec. 80-11-304 MCA.

RULE VI COMMITTEE DETERMINATION (1) At the first meeting of the committee held annually the projects to be funded for the following fiscal period are selected and the amount of grant funding will be determined. Decisions will be based on project priorities set by the committee for the fiscal period after review and evaluation. Grants will be determined by amount of funds, type of grant last awarded, and need. AUTH: Sec. 80-11-304 MCA; IMP 80-11-304 MCA.

RULE VII NOTIFICATION OF AWARDS (1) Grant applicants shall be notified within thirty (30) days after the committee's February meeting whether or not their application(s) have been granted. Applicants shall also be notified of the amount to be funded for each approved project. AUTH: Sec. 80-11-304 MCA; IMP Sec. 80-11-304 MCA.

RULE VIII PERFORMANCE EVALUATION (1) The committee shall periodically evaluate all outstanding grant agreements for adequate and satisfactory financial control, accounting, and performance by grantee. AUTH: Sec. 80-11-304 MCA; IMP Sec. 80-11-304 MCA.

RULE IX MODIFICATION OR TERMINATION OF GRANTS (1) The committee may modify or terminate the funding of any grant if a determination is made that the grantee has not complied or cannot comply with a provision of the grant agreement. The committee shall notify the grantee in writing within thirty (30) days of such determination, of the reasons for the determination, and the effective date of the modification or termination. AUTH: Sec. 80-11-304 MCA; IMP Sec. 80-11-304 MCA.

RULE X ALFALFA SEED ASSESSMENT AND REFUNDS (1) Application for assessment refund shall be in writing on forms provided by the committee.

(a) Forms will be furnished upon application to the Alfalfa Seed Committee, Agriculture/Livestock Building, Capitol Station, Helena, Montana 59620.

(b) Written application for refund of alfalfa seed assessments must be submitted by the person who paid the assessment, or by his power of attorney.

(c) Refund application forms shall be submitted no sooner than 30 days from date of first sale but said forms must be filed prior to August 1 of each calendar year for the preceding crop year. AUTH: Sec. 80-11-309 MCA; IMP 80-11-309 MCA.



RULE XI REQUIREMENTS FOR REPORTS (1) All report forms shall be sent out from the department of agriculture with an enclosed envelope addressed to the department, and these reports shall be completed and returned to the department after being properly signed. These reports shall be filed with the department within twenty (20) days after the close of the business for the month in which the report is being filed. Each report shall show a date of assessment, invoice draft number, pounds of seed (in dirt/or conditioned), total settlement and total assessment. Additional sections of this form may be used to comply with Section 80-11-310 MCA.

(2) Requests for past due reports shall be handled in the following manner:

(a) First notice shall be a form letter from the alfalfa seed committee requesting submission of past due reports within ten (10) days of the date of the letter.

(b) Second notice shall be a telephone call from the alfalfa seed committee giving five (5) additional days to submit the past due reports.

(c) Third and final notice shall be a visit from a department of agriculture inspector to collect the past due reports.

(d) Any person failing to produce the past due reports shall be guilty of a misdemeanor and shall be subject to a fine of not less than \$25 or more than \$500 upon conviction. AUTH: Sec. 80-11-308 MCA; IMP Sec. 80-11-308 MCA.

RULE XII CORRECTION OF ERRORS ON REPORTS (1) Checking of all reports for errors in the pounds of alfalfa seed, amount of assessment paid, failure to make payment of assessment on all first purchases of alfalfa seed, lack of signature, will be handled in the following manner:

(a) A telephone call shall be made to the purchaser to try to correct the error.

(b) A corrected report shall be requested if the error cannot be corrected over the telephone.

(c) A visit by the department of agriculture inspector shall be made if the error cannot be corrected over the telephone and if a corrected report cannot be obtained.

(d) Any person failing to comply with the request for the corrections will be guilty of a misdemeanor and shall be subject to a fine of not less than \$25 or more than \$500 upon conviction. AUTH: Sec. 80-11-308 MCA; IMP Sec. 80-11-308 MCA.

4. The department is proposing to adopt the foregoing rules to implement the new 1981 Legislative enactments.

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 Oran Roy Bjornson, at room 110, Agriculture/Livestock Building, 6th and Roberts Streets, Helena, Montana, no later than April 22, 1982.

6. Tim Meloy, Agriculture/Livestock Building, 6th and Roberts Streets, Helena, Montana has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed adoptions is based on sections 2-3-103, 80-11-303, 80-11-304, 80-11-308 and 80-11-309 MCA, and the rules implement sections 2-4-103, 2-4-201, 80-11-304, 80-11-308 and 80-11-309 MCA.

BY:



W. Gordon McOmber, Director  
Montana Department of Agriculture

Certified to the Secretary of State 3-15, 1982.

BEFORE THE DEPARTMENT OF AGRICULTURE  
OF THE STATE OF MONTANA

In the matter of the adoption ) NOTICE OF PUBLIC HEARING FOR  
of new rules I through XIII, ) ADOPTION OF NEW RULES I THROUGH  
for virus indexing of nursery ) XIII, FOR VIRUS INDEXING OF  
stock. ) NURSERY STOCK

TO: All Interested Persons:

1. On April 16, 1982, at 1:30 p.m., a public hearing will be held in Room 225 of the Agriculture/Livestock Building, 6th and Roberts Streets, Helena, Montana to consider the adoption of new rules relating to virus indexing of nursery stock.

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

3. The proposed rules provide as follows:

RULE I GENERAL (1) Trees may be registered as rootstock and top-stock sources for the propagation of certified nursery stock when inspected, tested and found to be true-to-name and discernibly free from harmful virus and virus-like diseases by procedures outlined in this program.

(2) Certification verifies that proper field sampling procedures were followed and that the indexing results indicated are those determined by an approved governmental agency designated to test for virus diseases in nursery stock.

(3) Participation in this program shall be voluntary.

AUTH: Sec. 80-7-112 MCA; IMP Sec. 80-7-112 MCA.

RULE II DEFINITIONS (1) "Virus infected (affected)" means the presence of a harmful virus(es) in a plant or plant part.

(2) "Virus-like" means a disorder of genetic or non-transmissible origin and also includes mycoplasma-like organisms and rickettsia-like organisms.

(3) "Off-type" means not true-to-name.

(4) "Indicator plant" means any herbaceous or woody plant used to index or determine virus infection.

(5) "Index" means to determine virus infection by means of inoculation from the plant to be tested to an indicator plant or by any other method.

(6) "Registered tree" means that a registration number has been assigned by the department to a tree or clonal planting that has been inspected and tested in accordance with the provisions of this program.

(7) "Scion-block" means a planting of registered trees which serves as a source of scionwood for the propagation of "Montana certified fruit tree nursery stock".

(8) "Seed-block" means a planting of registered trees which serves as a source of seed for producing rootstock used in the propagation of "Montana certified fruit tree nursery stock".

(9) "Stool-bed" means a clonal planting of self-rooted registered trees for the specific purpose of producing

vegetatively propagated rootstock used in the propagation of "Montana certified fruit tree nursery stock".

(10) "Montana certified fruit tree nursery stock" means nursery grown seedlings, clonal rootstocks originating from registered trees and nursery grown trees propagated by using top-stock from registered trees and rootstock originating from registered trees except as herein provided for certain rootstocks.

(11) "Montana certified fruit tree seed" means seed produced on registered seed trees or commercial seed having been tested and found to have a transmissible virus content that does not exceed five percent. AUTH: Sec. 80-7-112 MCA; IMP Sec. 80-7-112 MCA.

RULE III REQUIREMENTS (1) The applicant nurseryman shall be responsible, subject to the approval of the department, for the selection of the location and the proper maintenance of registered plantings being grown under the provisions of this program. The applicant nurseryman shall be responsible for maintaining the identity of all nursery stock entered in this program in a manner approved by the department. Any planting entered in this program shall be kept in a thrifty growing condition and free of plant pests.

(2) There shall be no budding, grafting, or top-working of registered trees in any scion-block, seed-block or stool-bed.

(3) Any plant found to be affected by a virus or virus-like disease or if off-type shall be removed and destroyed immediately from any planting following notification by the department. AUTH: Sec. 80-7-112 MCA; IMP Sec. 80-7-112 MCA.

RULE IV SCION-BLOCKS (1) Location. A scion-block shall be located not less than 100 feet from any nonregistered cultivated plant of the Rosaceae family. The ground in a scion-block and for a distance of 20 feet surrounding it shall be kept either clean cultivated or in an approved, properly controlled, ground cover. Registered scion-block trees shall be planted and maintained in a manner and at sufficient distance that branches of different varieties do not overlap. Care shall be taken in the use of pollinizing insects and pollen application to prevent the transmission and spread of virus diseases through the use of infected pollen and/or its application. Registered scion-block trees shall not be used for propagation purposes until trueness-to-name has been established. Each tree shall bear a permanent registration number.

(2) Acceptability. The rootstock and top-stock sources of the scion-block trees shall have originated from foundation trees established under this program or from virus-tested trees originating through the Inter-regional Project No. 2 (IR-2). If the tree is scion-rooted, its source shall have met the above requirements. Only registered trees shall be permitted in the scion-block. AUTH: Sec. 80-7-112 MCA; IMP Sec. 80-7-112 MCA.

RULE V SEED-BLOCKS (1) Location. A Prunus seed-block shall be located not less than 300 feet from any nonregistered flowering plant of the Prunus species. The ground in a seed-block

and for a distance of 20 feet surrounding the seed-block shall be kept clean cultivated or in an approved, controlled ground cover. Care shall be taken in the use of pollinizing insects and pollen application to prevent the transmission and spread of virus diseases through the use of infected pollen and/or its application. Each tree shall bear a permanent registration number.

(2) Acceptability. The rootstock and top-stock sources of the seed-tree shall have originated from foundation trees established under this program or from virus-tested trees originating through the Inter-regional Project No. 2 (IR-2). If the tree is scion-rooted, its source shall have met the above requirements. Only registered trees shall be permitted in the seed-block. AUTH: Sec. 80-7-112 MCA; IMP Sec. 80-7-112 MCA.

RULE VI STOOL-BEDS (1) Location. A stool-bed shall be located not less than 50 feet from any nonregistered cultivated plant of the Rosaceae family. The following exception will apply. Nonregistered stool-beds may be located no less than 10 feet from registered stool-bed plantings. The ground in a stool-bed and for a distance of 10 feet surrounding it shall be kept clean cultivated.

(2) Acceptability. Existing stool-beds that index clean on the commonly used virus indicators will qualify as Registered Stool-beds. New stool-beds (those planted after effective date of these rules) shall have originated from foundation stock established under this program, or from virus-tested plants originating through the Inter-regional Project No. 2 (IR-2). If the tree is scion-rooted, its source shall have met the above requirements. Only registered trees shall be permitted in the stool-bed. AUTH: Sec. 80-7-112 MCA; IMP Sec. 80-7-112 MCA.

RULE VII NURSERY STOCK (1) Rootstocks. All stone and pome fruit nursery stock being grown for Blue Tag Certification shall be on rootstocks from registered trees except for stone fruit trees grown on peach seedlings and pome fruit trees grown on apple and pear seedlings. These seedling rootstocks, when grown from commercial seed, will be acceptable if seed transmissible virus content does not exceed five percent. Clonal rootstocks used in the production of Montana Certified Blue Tag Nursery Stock must originate from Registered Stool-beds.

(2) Location. Nursery stock being grown for certification shall be planted sufficiently apart to maintain its identity and shall be kept clean cultivated. It shall be designated as to rootstock, top-stock, and interstock sources. There shall be no rebudding or regrafting of nursery row stock unless such stock is reworked with scions from the original registered scion-tree.

(3) Seed. Certified seed shall have been produced on Registered Seed Trees or commercial seed having been tested and found to have a transmissible virus content that does not exceed five percent.

(4) Tagging. A Blue Tag shall designate trees produced from Registered Scion-source trees and which have been propagated on rootstocks produced from Registered Seed-source or Stool-bed trees; or which are self-rooted.

All nursery stock meeting the requirements of this program when sold shall have the variety, interstock and rootstock designated where applicable as follows: Variety/interstock/rootstock. AUTH: Sec. 80-7-112 MCA; IMP Sec. 80-7-112 MCA.

RULE VIII INSPECTION PROCEDURE (1) Inspections will be made only by the Montana Department of Agriculture and at times when specific diseases are most likely to be expressed.

(2) Inspection of Nursery Stock for Certification. At least one visual inspection shall be made of nursery rootstock in a planting for certification during the first growing season. At the request of the department any undesirable rootstock shall be rogued before propagation. At least two visual inspections shall be made of nursery stock during the growing season following bud or graft placement.

The department shall refuse certification in part or all of a planting if plants have been propagated from registered trees determined to be affected by a virus or virus-like disease or if other requirements of this program have not been met.

AUTH: Sec. 80-7-112 MCA; IMP Sec. 80-7-119 MCA.

RULE IX TESTING PROCEDURES Testing procedures prescribed in this program shall conform to IR-2 standards or to any other acceptable and approved procedures developed and used for determining the presence of virus diseases in nursery stock.

AUTH: Sec. 80-7-112 MCA; IMP Sec. 80-7-132 MCA.

RULE X FUMIGATION OF GROWING SITES (1) Application.

(a) Application forms will be provided by the Montana Department of Agriculture. The applicant nurseryman shall furnish to the department all information pertinent to the operation of this program and shall give his consent to the department to take propagating wood from any tree for testing purposes.

(b) Application for inspection and testing of registered scion, seed, and stool-bed trees and for inspection of nursery stock for certification shall be filed by June 1 of each year with the Montana Department of Agriculture.

(2) Fees. (a) The application fee shall be \$100.

(b) Laboratory fee. Laboratory fees will be charged according to the actual costs incurred on a per sample basis.

AUTH: Sec. 80-7-112 MCA; IMP Sec. 80-7-111 MCA.

RULE XII TAGGING AND IDENTITY (1) Tagging. The department will authorize the use of official certification tags for the identification of nursery stock or seed that meet the requirements of this program. These tags will be supplied by the Montana Department of Agriculture to all members participating in this program. Participating members will reimburse the Department of Agriculture for all certification tags supplied. This reimbursement will be based on the actual cost incurred by the Montana Department of Agriculture.

(2) Identity. Any person selling Montana certified fruit tree nursery stock is responsible for the identity of the stock bearing each tag and for such nursery stock meeting the requirements of this program. Persons issued tags authorized by the program shall account for stock produced and sold and keep such records as may be necessary. AUTH: Sec. 80-7-112 MCA; IMP Sec. 80-7-119 MCA.

RULE XIII MONTANA CERTIFIED FRUIT TREE NURSERY STOCK AND SEED All certified fruit tree nursery stock offered for sale is to be bundled in accordance with commercial practice and shall be identified by one or more legible printed labels.


AUTH: Sec. 80-7-112 MCA; IMP Sec. 80-7-119 MCA.

4. Interested persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Oran Roy Bjornson, at room 110, Agriculture/Livestock Building, 6th and Roberts Streets, Helena, Montana, no later than April 22, 1982.

5. Tim Meloy, Agriculture/Livestock Building, 6th and Roberts Streets, Helena, Montana has been designated to preside over and conduct the hearing.

6. The authority of the agency to make the proposed adoptions is based on section 80-7-112 MCA, and the rules implement sections 80-7-111, 80-7-112, 80-7-119 and 80-7-132 MCA.

BY:

  
W. Gordon McOmber, Director  
Montana Department of Agriculture

Certified to the Secretary of State, 3-15, 1982.

STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE BOARD OF VETERINARIANS

IN THE MATTER of the Proposed )	NOTICE OF PROPOSED AMENDMENT
Amendment of ARM 8.64.402 fee )	OF ARM 8.64.402 FEE SCHEDULE,
schedule and 8.64.501 concern-)	ARM 8.64.501 APPLICATION RE-
ing application requirements; )	QUIREMENTS; PROPOSED REPEAL
proposed repeal of ARM 8.64. )	OF ARM 8.64.404 DISCIPLINARY
404 concerning )	ACTION AND PROPOSED ADOPTION
disciplinary action and pro-)	OF A NEW RULE, IMMORAL, UNPROFES-
posed adoption of a new rule )	SIONAL, OR DISHONORABLE CONDUCT
concerning immoral, unprofes-)	
sional or dishonorable conduct)	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On April 24, 1982, the Board of Veterinarians proposes to amend rules ARM 8.64.402 concerning fee schedules and 8.64.501 concerning application requirements; proposes to repeal ARM 8.64.404 concerning disciplinary action; and proposes to adopt a new rule concerning immoral, unprofessional or dishonorable conduct.

2. The proposed amendment of 8.64.402 will read as follows: (New matter underlined, deleted matter interlined)

"8.64.402 FEE SCHEDULE

- |   |                   |
|---|-------------------|
| (1) Veterinarians                                 |                   |
| (a) Annual renewal of certificate of registration | \$25.00           |
| (b) Restoration                                   | 25.00             |
| (c) Application for examination                   | 75.00             |
| <del>(2) --Veterinary Technicians</del>           |                   |
| <del>-(a) --Annual registration</del>             | <del>10.00</del>  |
| <del>-(b) --Application for examination-</del>    | <del>25.00"</del> |

3. The board is proposing the amendment as the licensing of veterinary technicians was repealed by the 1981 Legislature and signed into law by the Governor as Chapter 96, 1981 Session Laws. The authority of the board to make the proposed amendment is based on section 37-18-202, MCA and implements sections 37-18-302, 303, and 307, MCA.

4. The proposed amendment of ARM 8.64.501 will read as follows: (New matter underlined, deleted matter interlined)

"8.64.501 APPLICATION REQUIREMENTS (1) The examination application form may be used for application for licensure by reciprocity.

(2) Applicants for licensure by examination shall submit a completed application with the proper fee and supporting documents to the board office no later than 30 days prior to the examination date as set by the board. Supporting documents shall include:

(a) copy of diploma from a school of veterinary medicine accredited or approved by the American Veterinary Medical Association Council on Education showing evidence of graduation in and receiving a degree;



(i) senior veterinary students who have not yet received a diploma when submitting the application, shall submit a letter stating that he/she is a senior student and the expected date to receive the degree of Doctor of Veterinary Medicine or its equivalent. No license shall be issued, however, until such time as the board office receives a photostatic copy of the diploma.

(b) photograph approximately 2" x 2" taken within 2 years of the date of application;

(3) All applicants must have taken the National Board examination prior to the examination date as set by the board and have their scores reported to the board office through the Interstate Reporting Service or its equivalent.

(a) Applicants must have taken the National Board examination within 5 years prior to the date of the next scheduled examination.

(b) It is the responsibility of each applicant to take the National Board wherever and whenever possible. Montana will not administer the National Board examination unless deemed necessary by the board.

(4) Foreign veterinary school graduates must have completed the requirements of the American Veterinary Medical Association's Education Commission for Foreign Veterinary Graduates (E.C.F.V.G.) before an application will be accepted. The four basic steps for meeting the E.C.F.V.G.'s requirements are as follows:

(a) graduation from a veterinary college listed by the World Health Organization or from a college recognized by the Ministry of Education of that particular country;

(b) proof of fluency in English;

(i) graduates of U.S. or Canadian English language high schools must furnish proof of high school graduation, or

(ii) satisfactory completion of the Test of English as a Foreign Language (TOEFL) and the Test of Spoken English (TSE), both administered by the Educational Testing Service of Princeton, New Jersey, must be shown. In the interest of fairness and uniformity, graduates of colleges in all foreign countries, including English speaking countries, are required to take this examination. However, persons who are natives of English speaking countries may petition E.C.F.V.G. for waiver of the TOEFL and TSE requirement. Petitions are considered individually and granted or refused on a case by case basis;

(c) successful completion of either the E.C.F.V.G. examination or the National Board examination. The E.C.F.V.G. is actually a form of the previously given National Board examination and is printed, distributed, and scored by the Professional Examination Service (PES); and

(d) completion of a year of evaluated clinical experience

at either a college of veterinary medicine in the U.S. or Canada or in a private practice approved by E.C.F.V.G. Approximately six months of the experience received must be with small animals and six months with large animals. Either large or small animal experience or both may be obtained in a mixed practice.

(i) A foreign veterinary medical school graduate may serve the required, but not more than, one year internship (12 months) in this state providing, however, that proof can be shown that the private practice is currently approved by E.C.F.V.G., and written approval has been obtained from the board of veterinarians. This internship allows candidates to participate in all phases of the practice of veterinary medicine under direct supervision to the extent permitted by section 37-18-101, MCA et seq.

(e) For specific information on the requirements of the E.C.F.V.G., contact the American Veterinary Medical Association, E.C.F.V.G., 930 North Meacham Road, Schaumburg, IL 60192."

5. The board is proposing the amendment to clarify that schools or colleges of veterinary medicine must be accredited or approved by the AVMA Council on Education before graduates will be accepted for application for examination. The Council on Education evaluates each college/school of veterinary medicine in the United States and Canada in terms of the degree to which it meets its own stated objectives and the established criteria for accreditation. The amendment of subsection (4)

is so that the basic requirements of the E.C.F.V.G. are known and to allow the foreign graduates to obtain their one year internship in Montana. The authority of the board to make the proposed amendment is based on section 37-18-202, MCA and implements the same.

6. The board is proposing to repeal ARM 8.64.404 Disciplinary action in its entirety. The complete text of the rule is located at page 8-1784, Administrative Rules of Montana.

7. The board is proposing the repeal as the licensing of veterinary technicians was repealed by the 1981 Legislature and signed into law by the Governor as Chapter No. 96, 1981 Session Laws. The authority of the board to make the proposed repeal is based on section 37-18-202, MCA and formerly implemented section 37-18-311, MCA.

8. The board is proposing adoption of a new rule concerning immoral, unprofessional, or dishonorable conduct which will read as follows:

I. "IMMORAL, UNPROFESSIONAL, OR DISHONORABLE CONDUCT

(1) It shall be the duty of the board to judge, in individual cases, whether a licensed veterinarian is guilty of immoral, unprofessional, or dishonorable conduct as those terms are used in section 37-18-311 (1)(e), MCA.

(2) The board shall consider the following ethical guidelines in making such judgements:

(a) The principal objectives of a licensed veterinarian shall be to render service to society, to conserve our livestock resources, and to relieve the suffering of animals. A licensed veterinarian shall conduct himself in relation to the public, his colleagues, and his patients so as to merit their full confidence and respect;

(b) A veterinarian may choose whom he will serve. Once he has undertaken care of a patient, he shall not neglect him, and in an emergency he shall render service, to that patient, to the best of his ability. He shall not solicit clients, nor announce fees and services in such a manner as to be misleading, fraudulent, or deceptive;

(c) A licensed veterinarian shall not employ his professional knowledge and attainments nor dispose of his services under terms and conditions which tend to interfere with the free exercise of his judgement and skill or tend to cause a deterioration of the quality of veterinary service;

(d) A licensed veterinarian shall seek, through consultation, assistance of others when it appears that the quality of veterinary service may be enhanced thereby;

(e) A licensed veterinarian shall observe all laws, uphold the honor and dignity of the profession, and accept its self-imposed discipline; and

(f) The responsibilities of the licensed veterinarian shall extend not only to patient and client but also to society. The health of the community as well as the patient shall be the objective of the licensed veterinarian."

9. The board is proposing the adoption of the new rule to define immoral, unprofessional, or dishonorable conduct as these terms are used in section 37-18-311 (1)(e), MCA so that registrants are aware of what the term includes and involves. The authority of the board to make the proposing adoption is based on section 37-18-202, MCA and implements section 37-18-311 (1)(e), MCA.

10. Interested persons may submit their data, views or arguments concerning the proposed amendments, repeal, and adoption in writing to the Board of Veterinarians, 1424 9th Avenue, Helena, Montana 59620-0407, no later than April 22, 1982.

11. If a person who is directly affected by the proposed amendments, repeal, 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 Veterinarians, 1424 9th Avenue, Helena, Montana 59620-0407, no later than April 22, 1982.

12. If the board receives requests for a public hearing on the proposed amendments, repeal and adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendments, repeal 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 VETERINARIANS  
WILLIAM A. ROGERS, D.V.M.,  
PRESIDENT

BY: 

GARY BUCHANAN, DIRECTOR  
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, March 15, 1982.

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

In the Matter of the Amendment ) NOTICE OF PROPOSED AMEND-  
of Rule 8.79.301 Regarding ) MENT OF RULE 8.79.301  
Licensee Assessments )  
 ) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On April 30, 1982, the Department of Commerce proposed to amend Rule 8.79.301 relating to an assessment to be levied upon licensees subject to the Milk Control Act. The proposed amendment will become effective July 1, 1982.

2. The purpose of the amendment is to change the effective date of the rule as it applies to the assessments. There is no change in the amount of the assessments. The rule as proposed to be amended would read as follows:

"8.79.301 LICENSEE ASSESSMENTS -

(1) Pursuant to Section 81-23-202, MCA, as amended, the following assessments for the purpose of deriving funds to administer and enforce the Milk Control Act during the fiscal year beginning July 1, ~~1981~~, 1982, and ending June 30, ~~1982~~, 1983, are hereby levied upon the Milk Control Act licensees of this Department.

(a) A fee of eight cents (\$0.08) per hundredweight on the total volume of all milk subject to the Milk Control Act produced and sold by a producer distributor.

(b) A fee of eight cents (\$0.08) per hundredweight on the total volume of all milk subject to the Milk Control Act sold in this state by a distributor home based in another state. Said fee is to be paid either by the foreign distributor or his jobber who imports such milk for sale within this state.

(c) A fee of four cents (\$0.04) per hundredweight on the total volume of all milk subject to the Milk Control Act sold by a producer.

(d) A fee of four cents (\$0.04) per hundredweight on the total volume of milk subject to the Milk Control Act sold by a distributor, excepting that which is sold to another distributor."

3. Interested persons are asked to note that there is no change in the amount of assessment proposed for fiscal year 1983. The purpose of the amendment is merely to change the effective dates from July 1, 1981 through June 30, 1982 to July 1, 1982 through June 30, 1983.

4. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Department of Commerce, 1424 Ninth Avenue, Helena, Montana 59620, no later than April 30, 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 along with any written comments he has to above address, no later than April 30, 1982.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10 percent 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 33 persons based on an estimate of 330 resident and nonresident producers, producer-distributors, and jobbers subject to this assessment.

7. The authority of the agency to make the proposed amendment is based on Section 81-23-202, MCA, and implements Section 31-23-202, MCA.

GARY BUCHANAN, DIRECTOR  
DEPARTMENT OF COMMERCE

By: William E. Ross  
WILLIAM E. ROSS, CHIEF  
MILK CONTROL BUREAU

Certified to the Secretary of State March 15, 1982.

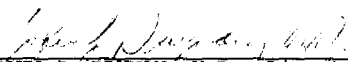
BEFORE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES  
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF VACATION
amendment of rules 16.10.601,	)	OF MAR NOTICE
16.10.602, 16.10.603,	)	NO. 16-2-202
16.10.604, 16.10.605,	)	
16.10.607, 16.10.608,	)	
16.10.609, 16.10.611,	)	
16.10.612, 16.10.615,	)	
16.10.616, 16.10.617,	)	
16.10.620, and 16.10.625,	)	
pertaining to policy,	)	
definitions, preconstruction	)	
review, license application,	)	
guest registration, structural	)	
and operational requirements,	)	
doors and windows, lighting	)	
and wiring, toilet facilities,	)	
water supply, beds and bed	)	
linens, cleaning of premises,	)	
employee requirements, and	)	
refuse-storage and disposal	)	

TO: All Interested Persons

1. On November 12, 1981, the Department of Health and Environmental Sciences published notice of amendment of rules 16.10.601, 16.10.602, 16.10.603, 16.10.604, 16.10.605, 16.10.607, 16.10.608, 16.10.609, 16.10.611, 16.10.612, 16.10.615, 16.10.616, 16.10.617, 16.10.620, and 16.10.625 regarding hotels, motels, tourist homes and roominghouses at pages 1353-1366 of the 1981 Montana Administrative Register, issue no. 21.

2. The above-referenced notice is hereby vacated and replaced with MAR Notice Nos. 16-2-220 and 16-2-221 which are published in this issue of the Montana Administrative Register. MAR Notice No. 16-2-220 proposes to repeal existing rules and MAR Notice No. 16-2-221 proposes to adopt new rules regulating hotels, motels, tourist homes and roominghouses.

  
JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State March 15, 1982

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

In the matter of the repeal )	NOTICE OF PUBLIC HEARING
of rules 16.10.601, 16.10.602, )	ON REPEAL OF RULES
16.10.603, 16.10.604, )	
16.10.605, 16.10.607, )	regulating hotels,
16.10.608, 16.10.609, )	motel,
16.10.611, 16.10.612, )	tourist homes
16.10.614, 16.10.615, )	and
16.10.616, 16.10.617, )	roominghouses
16.10.618, 16.10.620, )	
16.10.622, 16.10.623, )	
16.10.624 and 16.10.625 )	

TO: All Interested Persons

1. On April 26, 1982, at 10:00 a.m., a public hearing will be held in Room C209 of the Cogswell Building, Helena, Montana, to consider the repeal of rules 16.10.601, 16.10.602, 16.10.603, 16.10.604, 16.10.605, 16.10.607, 16.10.608, 16.10.609, 16.10.611, 16.10.612, 16.10.614, 16.10.615, 16.10.616, 16.10.617, 16.10.618, 16.10.620, 16.10.622, 16.10.623, 16.10.624 and 16.10.625.

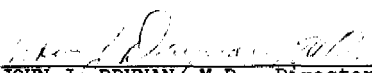
2. The rules proposed to be repealed can be found on pages 16-409 to 16-424 of the Administrative Rules of Montana.

3. The rules are proposed to be repealed because they have been revised and are being proposed as new rules in MAR Notice No. 16-2-221.

4. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Robert L. Solomon, Cogswell Building, Capitol Complex, Helena, Montana, no later than April 23, 1982.

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

6. The authority of the department to repeal the rules is based on section 50-51-103, MCA.

  
JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State      March 15, 1982



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

In the matter of the adoption	)	NOTICE OF PUBLIC HEARING
of Rules I through XII	)	FOR ADOPTION OF RULES
establishing requirements for	)	(Hotels, Motels,
hotels, motels, tourist homes,	)	Tourist Homes,
roominghouses and retirement	)	Roominghouses and
homes	)	Retirement Homes)

To: All Interested Persons

1. On April 26, 1982, at 10:00 a.m., a public hearing will be held in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the adoption of rules which establish requirements for the construction and operation of hotels, motels, tourist homes, roominghouses and retirement homes.

2. The proposed rules will replace rules 16.10.601, 16.10.602, 16.10.603, 16.10.604, 16.10.605, 16.10.607, 16.10.608, 16.10.609, 16.10.611, 16.10.612, 16.10.614, 16.10.615, 16.10.616, 16.10.617, 16.10.618, 16.10.620, 16.10.622, 16.10.623, 16.10.624 and 16.10.625 found at pages 16-409 to 16-424 of the Administrative Rules of Montana.

3. The proposed rules provide as follows:

RULE I. DEFINITIONS In addition to those definitions contained in section 50-51-102, MCA, the following definitions apply to this sub-chapter:

(1) "Bedding" means mattresses, box springs, mattress covers, mattress pads, sheets, pillow slips, pillows, pillow covers, blankets, comforters, quilts and bedspreads.

(2) "Building authority" means the Building Codes Division, Montana Department of Administration, or a local government building inspector enforcing a local building code enforcement program certified by the Department of Administration.

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

(4) "Establishment" means a hotel, motel, tourist home, roominghouse or retirement home.

(5) "Fire authority" means the state fire marshal or his authorized agent.

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

(7) "Floors" means sub-flooring and floor coverings of all rooms including stairways, hallways, and lobbies.

(8) "Furnishings" means cups, glasses, pitchers, utensils, draperies, curtains, blinds, light fixtures, lamps and lamp shades, chairs, tables, desks, shelves, books, magazines, bookcases, dressers, bedsteads, mattress springs other than box springs, towels, wash cloths, soap, toilet tissue, radios,

television sets, coffee makers, water heaters, pictures, mirrors, cabinets, closets and refrigerators.

(9) "Guest" means each occupant of any unit of an establishment.

(10) "License" means a written instrument issued by the department authorizing the operation of an establishment.

(11) "Local health authority" means a local health officer, local sanitarian, or any other person authorized by the department.

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

(13) "Sleeping accommodation" means the provision of sleeping quarters and linen service or housekeeping service where the linen service and housekeeping service are provided by management or by the residents under the direct supervision of management.

AUTHORITY: Sec. 50-51-103, MCA

IMPLEMENTING: Sec. 50-51-103, MCA

#### RULE II PRECONSTRUCTION REVIEW

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

(a) location and detail of storage rooms used for extra bedding and furnishings;

(b) location and detail of janitorial facilities;

(c) specifications for the water supply to serve the establishment unless the water supply has been previously approved by the department;

(d) specifications for the sewage treatment and disposal system to serve the establishment unless the sewage treatment and disposal system has been previously approved by the department;

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

(f) specifications for a swimming or spa facility to serve the establishment unless the swimming or spa facility has been previously approved by the department;

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

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

(i) evidence of approval by the building authority;

(j) evidence of approval by the fire authority; and

(k) any other information requested by the department.

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

(3) Approval will be granted for a period not to exceed 2 years, after which, if construction has not commenced, plans must again be submitted to the department or local health authority for re-evaluation.

AUTHORITY: Sec. 50-51-103, MCA

IMPLEMENTING: Sec. 50-51-103, MCA

RULE III EXISTING BUILDING -- CHANGE OF USE (1) An existing building may not be used as an establishment and the use of one type of establishment may not change to another type of establishment without the prior approval of the department or local health authority.

(a) When a proposal to use an existing building as an establishment or to change the use from one type of establishment to another involves structural modification, plans meeting the requirements of subsection (1) of [Rule II] must be submitted to the department or local health authority for review and approval. If no structural modification is involved, the department or local health authority may waive the requirement for submission of plans if:

(i) an inspection by the department or local health authority indicates that the proposed establishment meets the requirements of this sub-chapter, and

(ii) the building and fire authorities approve the building.

AUTHORITY: Sec. 50-51-103, MCA

IMPLEMENTING: Sec. 50-51-103, MCA

RULE IV LICENSURE, RENEWAL, AND INSPECTION (1) Upon notification that an application and fee has been received by the department for a previously unlicensed establishment, the local health authority shall make a prelicensing inspection to determine compliance with the requirements of this sub-chapter.

(2) A local health authority shall inspect a licensed establishment to determine compliance with this sub-chapter at least once in every 12 months unless the department or local health authority determines more frequent inspection is necessary.

(3) If the establishment is in compliance with this sub-chapter and the department does not receive notification of non-compliance from the building authority or fire authority, a license will be issued or renewed.

AUTHORITY: Sec. 50-51-103, MCA

IMPLEMENTING: Sec. 50-51-103, MCA

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

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

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

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

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

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

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

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

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

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

AUTHORITY: Sec. 50-51-103, MCA

IMPLEMENTING: Sec. 50-51-103, MCA

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

(a) Circular #11, "Springs";

(b) Circular #12, "Sanitary Features of Water Wells";

(c) Circular #17, "Cisterns for Water Supplies".

Copies of ARM 16.20.207 and Circulars #11, #12, and #17 may be obtained from the Water Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana, 59620.

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

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

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

one of the following circulars published by the department:

- (i) Circular #11 for springs
- (ii) Circular #12 for water wells
- (iii) Circular #17 for cisterns.

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

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

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

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

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

(5) Ice must be made from an approved water supply and must be manufactured, stored, handled, transported and served in a manner approved by the department or local health authority.

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

AUTHORITY: Sec. 50-51-103, MCA

IMPLEMENTING: Sec. 50-51-103, MCA

RULE VII SEWAGE SYSTEM (1) The department hereby adopts and incorporates by reference Bulletin 332, "Septic Tanks", published by the Montana State University Cooperative Extension Service, which contains standards for construction and operation of adequate individual sewage systems. A copy of Bulletin 332 may be obtained from the Water Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana, 59620.

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

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

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

with the proviso that the necessary size of the system be determined utilizing the following:

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

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

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

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

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

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

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

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

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

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

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

AUTHORITY: Sec. 50-51-103, MCA

IMPLEMENTING: Sec. 50-51-103, MCA

RULE VIII LAUNDRY FACILITIES (1) Laundries operated in conjunction with an establishment must be provided with:

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

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

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

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

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

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

AUTHORITY: Sec. 50-51-103, MCA

IMPLEMENTING: Sec. 50-51-103, MCA

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

AUTHORITY: Sec. 50-51-103, MCA

IMPLEMENTING: Sec. 50-51-103, MCA

RULE X SWIMMING AND BATHING AREAS (1) The department hereby adopts and incorporates by reference ARM Title 16, Chapter 10, sub-chapters 12 and 13, stating construction and operating requirements for swimming pools and swimming areas. A copy of ARM Title 16, Chapter 10, sub-chapters 12 and 13 may be obtained from the Food and Consumer Safety Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana, 59620.

(2) The construction and operation of any swimming pool, hot bath, mineral bath, or public swimming place which serves an establishment shall be in accordance with Title 50, Chapter 53, MCA, and ARM Title 16, Chapter 10, Sub-Chapters 12 and 13.

AUTHORITY: Sec. 50-51-103 MCA

IMPELEMENTING: Sec. 50-51-103 MCA

RULE XI SOLID WASTE In order to ensure that solid waste is safely stored and disposed of an establishment must:

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

(2) clean all solid waste containers frequently;

(3) utilize exterior collection stands for the containers referred to in subsection (1) of this rule which prevent the containers from being tipped, protect them from



deterioration, and allow easy cleaning below and around them; and

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

AUTHORITY: Sec. 50-51-103, MCA

IMPLEMENTING: Sec. 50-51-103, MCA

RULE XII GUEST REGISTRATION (1) In each establishment, a register of all guests, including name and home address of guest and unit to which the guest was assigned, must be maintained.

AUTHORITY: Sec. 50-51-103, MCA

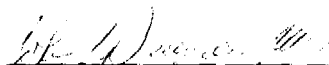
IMPLEMENTING: Sec. 50-51-103, MCA

4. The Department is proposing these rules as a revision of the current rules regulating hotels, motels and tourist homes (ARM 16.10.601 to 16.10.625) in order to establish requirements for construction and operation of roominghouses and retirement homes and to eliminate from the current rules those standards administered by the building codes division of the Department of Administration and the fire marshal bureau of the Department of Justice.

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Robert L. Solomon, Cogswell Building, Capitol Complex, Helena, MT, 59620, no later than April 23, 1982.

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

7. The authority of the Department to make the proposed rules is based on section 50-51-103, MCA, and the rules implementation section 50-51-103, MCA.

  
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JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State March 15, 1982

BEFORE THE COMMISSIONER  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the application	)	NOTICE OF
of Section 18-2-422, MCA, of the	)	PETITION FOR
Montana Prevailing Wage Act,	)	DECLARATORY
Section 18-2-401, et. seq., MCA,	)	RULING AND
to nonconstruction contracts let	)	PUBLIC HEARING
by public contracting agencies.	)	

TO: All Interested Persons

On April 27, 1982 at 9:00 a.m. a public hearing will be held in the conference room, Labor Standards Division, Department of Labor and Industry at 35 South Last Chance Gulch, Helena, Montana on a Petition for Declaratory Ruling which is pending before the Commissioner, Department of Labor and Industry. The body of that petition is:

1. Petitioner's name and address is Morris L. Brusett, Director, Department of Administration, Sam W. Mitchell Building, Room 155, Helena, Montana 59620.

2. Petitioner is the Director for the Department of Administration, State of Montana. Among his duties are recommending and drafting contracts for the Board of Examiners and administering those contracts, and purchasing materials and services for the State of Montana.

3. The statutes as to which petitioner requests a declaratory ruling are Sections 18-4-403 and 422 of the Montana Prevailing Wage Act, Section 18-4-401, et. seq., MCA.

Section 18-4-422, MCA provides:

"All bid specifications and contracts for public works projects must contain a provision stating for each job classification the prevailing wage rate, including fringe benefits, that contractors and sub-contractors must pay during construction of the project."

Section 18-2-403, MCA provides:

"(1) In any contract let for state, county, municipal, school, or heavy construction, services, repair, or maintenance work under any law of this state, there shall be inserted in the bid specification and the contract a provision requiring the contractor to give preference to the employment of bona fide Montana residents in the performance of the work and to pay the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions and travel allowance provisions, in effect and applicable to the county or locality in which the work is being performed. . . .

(3) Failure to include the provisions required by

18-2-422 in a public works contract relieves the contractor from his obligation to pay the standard prevailing wage rate and places such obligation on the public contracting agency."

4. The questions presented for declaratory ruling by the Department of Labor and Industry are: (1) whether the above statutes require that contracts which are not for construction or construction-related activity; e.g., repair or remodeling, must "contain a provision stating for each job classification the prevailing wage rate, including fringe benefits, that the contractors and subcontractors must pay during construction of the project"; and (2) if the specific wage rates do not have to be contained in nonconstruction or nonconstruction-related projects, what is an appropriate "provision requiring the contractor to give preference to the employment of bona fide Montana residents in the performance of work and to pay the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions and travel allowance provisions, in effect and applicable to the county or locality which the work is being performed," which should be inserted into the contract.

5. Petitioner contends that "a provision stating for each job classification the prevailing wage rate, including fringe benefits, that the contractors and subcontractors must pay during construction of the project" is only required in contracts for construction or construction-like projects.

6. The Petitioner requests a declaratory ruling that public contracts for nonconstruction or nonconstruction-related projects do not require a provision stating the prevailing wage rate that the contractors and subcontractors must pay.

7. The Petitioner knows of the following parties who are similarly affected:

- (1) all contracting agencies of the State of Montana;
  - (2) all counties in the State of Montana;
  - (3) all municipalities in the State of Montana;
  - (4) all school boards in the State of Montana;
- and
- (5) all units or subdivisions of the entities listed above.

Dated this 8th day of March, 1982.

/s/ MORRIS L. BRUSETT, DIRECTOR

Interested persons may present their data, views or arguments either orally or in writing at the hearing.


Written data, views, or arguments also may be submitted to the Labor Standards Division, Department of Labor and Industry, 35 South Last Chance Gulch, Capitol Station, Helena, Montana 59620, no later than April 27, 1982.

The Labor Standards Division, Department of Labor and Industry, has been designated to preside over and conduct the hearing.

6-3/25/82

MAR Notice No. 24-2-18-1

Authority of the agency to hear the Petition is found in Section 2-4-501, et. seq., MCA and Section 2-18-401, et. seq., MCA.

  
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DAVID L. HUNTER  
Commissioner, Department of  
Labor and Industry, State of  
Montana

Certified to the Secretary of State this 10th day of  
March, 1982.

BEFORE THE BOARD OF OIL  
AND GAS CONSERVATION

In the matter of the amendment )	NOTICE OF PROPOSED AMENDMENT
of Rules 36.22.1001 and )	OF RULE 36.22.1001. ROTARY
36.22.1002 to require that )	DRILLING PROCEDURE AND
only freshwater based drilling )	RULE 36.22.1002, CABLE
fluid be used when drilling )	DRILLING PROCEDURE
through freshwater aquifers. )	

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On May 13, 1982, the Board of Oil and Gas Conservation (Board) proposes to amend 36.22.1001 and 36.22.1002 which sets forth procedures to be used in drilling oil and gas wells.

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

"36.22.1001 ROTARY DRILLING PROCEDURE Unless altered, modified, or changed for particular common sources of supply upon notice and hearing before the Board, the following rules on "drilling procedure" shall apply to wells drilled with rotary tools:

(1) Suitable and safe surface casing shall be used in all wells. In all wells drilled in areas where pressure and formations are unknown, sufficient surface casing shall be run to reach a depth below all potable fresh water located at levels reasonably accessible for agricultural and domestic use. Surface casing shall be set in or through an impervious formation and shall be cemented by the pump and plug or displacement method with sufficient cement to circulate to the top of the well. If and when it becomes necessary to run a production string, such string shall be cemented by the pump and plug method or any other recognized method and shall be properly tested by the pressure method before cement plugs are drilled.

(2) All cemented casing strings shall stand under pressure until the cement has reached a compressive strength of 300 pounds per square inch; provided however, that no tests shall be commenced until the cement has been in place for at least 8 hours. The term "under pressure" as used herein will be complied with if one float valve is used or if pressure is otherwise held.

(3) In all proven areas, the use of blow-out prevention equipment shall be in accordance with established practice in the area.

(4) In unproven areas, all drilling wells shall be equipped with a mastergate or its equivalent and an adequate blowout preventer, together with choke and kill line or lines of the proper size and working pressures. The entire control equipment shall be in good working condition at all times.

(5) Only freshwater based drilling fluid may be used when drilling through freshwater aquifers anywhere within the state of Montana.

36.22.1002 CABLE DRILLING PROCEDURE (1) Before commencing to drill a well, proper and adequate slush pits shall be constructed for the reception of mud of sufficient quality and quantity so that such mud may be available if and when the hole is plugged.

(2) Where cable tools are used, sufficient casing shall be set to protect all potable fresh water located at levels reasonably accessible for agricultural and domestic use, and such casing shall be tested by bailing to insure a shutoff before drilling below the casing point proceeds.

(3) Natural gas which may be encountered in a substantial quantity in any section of a cable tool drilled hole above the ultimate objective shall be shutoff with reasonable diligence either by mudding or by casing or other approved method and confined to its original source. Any gas escaping from the well during drilling operations shall be conducted to a safe distance from the well site. This shall not prohibit the use of natural gas produced from the bradenhead for lease operations.

(4) A casing program adopted for cable tool drilled wells must be so planned as to protect any potential oil or gas bearing horizons penetrated during drilling from infiltration of injurious waters from other horizons and to prevent the migration of oil or gas from one horizon to another.

(5) Only freshwater based drilling fluid may be used when drilling through freshwater aquifers anywhere within the State of Montana."

3. The Board proposes to amend the rules to require that only freshwater based fluid be used when drilling through freshwater aquifers anywhere within the State of Montana. The Board of Oil and Gas is initiating these rule making proceedings to strengthen protection of freshwater aquifers within the State of Montana.

4. Interested parties may submit their data, views, or arguments concerning the proposed amendment to Dee Rickman, P.O. Box 217, 25 South Ewing, Helena, Montana 59624, no later than April 23, 1982.

5. If a person who is directly affected by the proposed amendment wishes to enter his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit that request along with any written comments he has to Dee Rickman, P.O. Box 217, 25 South Ewing, Helena, Montana 59624, no later than April 23, 1982.

6. If the Board receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons 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 at least greater than 25 persons based on the Board's determination that there are more than 250 persons who may drill an oil or gas well through freshwater aquifers, or who may own surface acreage affected by said drilling.

7. The authority of the Board to make the proposed amendment is based on Section 82-11-111, MCA, and the rule implements Section 82-11-123 and 82-11-124, MCA.

Richard A. Campbell  
Richard A. Campbell, Chairman  
Board of Oil and Gas Conservation

BY: Dee Rickman  
Dee Rickman  
Assistant Administrator  
Oil and Gas Conservation District

Certified to the Secretary of State March 15, 1982.

BEFORE THE SECRETARY OF STATE  
OF THE STATE OF MONTANA

In the matter of the amendment )	NOTICE OF PROPOSED AMENDMENT
of rule 1.2.210 pertaining to )	OF RULE 1.2.210 ADOPTION OF
form format, placement of form, )	AN AGENCY RULE BY INCORPORATION
removal of requirement for cover )	BY REFERENCE
letter on adoption by reference )	
material. )	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On April 26, 1982, the office of the Secretary of State proposes to amend rule 1.2.210, pertaining to an adoption of an agency rule by incorporation by reference. Notice number 44-2-27, published in the 1981 MAR Issue 23, pertaining to the above rule, is hereby vacated. The notice is vacated because the attorney general has set down a sample form for the adoption of a later amendment to a federal agency rule and because new amendments to the rule are proposed in this notice.

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

1.2.210 ADOPTION OF AN AGENCY RULE BY INCORPORATION BY REFERENCE (1) All agencies adopting by reference any of those documents or types of rules specified in 2-4-307, MCA, shall utilize the following form in the Administrative Rules of Montana or the Montana Administrative Register when adopting by reference.

(2) (a) The (department) hereby adopts and incorporates by reference (citation to incorporated material) which sets forth (substance of rule). A copy of the (citation to federal agency rule, model code, rule of any agency of this state or other similar publication) may be obtained from (department or agency name and address).

(3) ~~(2) The above form will be placed in the first subsection of each rule that adopts by reference. If there is more than one citation in the same rule to the same adoption by reference citation, then a reference back to the paragraph which includes this form will be necessary for each citation.~~ The above form is placed in each rule that adopts by reference. The form is placed where it logically falls in the language of the rule.

(4) ~~(3) Only a notice of incorporation by reference of later amendments of a federal regulation, as specified in 2-4-307, MCA, is published in the Montana Administrative Register. The attorney general's model rule for substantive rules with no public hearing contemplated is used for the notice format. The format for the incorporation by reference is as shown in paragraph (2)(a) above. The format for the notice is set down in the attorney general's sample forms. The notice shall state an effective date of such incorporation.~~

(4) No further notice of adoption or replacement page is required. However, to help the user determine the date of the latest incorporation by reference, it is suggested that the agency furnish a replacement page to the Administrative Rules of Montana.



An amendment notation in the history of a rule will lead the user back to the page where the notice is published in the Montana Administrative Register.

(5) ~~The director or head of the department must submit a cover letter, addressed to the secretary of state, indicating their intention to adopt an agency rule by incorporation by reference.~~

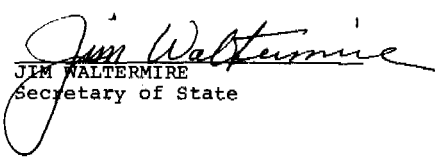
(6) (5) Upon request of the secretary of state, a copy of the omitted material must be filed with the secretary of state.

3. The rule is proposed to be amended at the request of several rulemaking agencies. The purpose of the amendment is to set down format and procedures for an adoption of an agency rule by incorporation by reference.

4. Interested parties may submit their data, views or arguments concerning the proposed rule in writing to Julie Glosser, Office of the Secretary of State, Montana State Capitol, Helena, Montana 59620, no later than April 22, 1982.

5. The authority to make the proposed amendment is based on Section 2-4-306, MCA, and the rule implements Section 2-4-307, MCA.

Dated this 15th day of March 1982.

  
JIM WALTERMIRE  
Secretary of State

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES  
OF THE STATE OF MONTANA

IN THE MATTER of the adoption ) NOTICE OF PUBLIC HEARING  
of rules implementing Initia- ) FOR THE ADOPTION OF RULES  
tive 85, the Montana Lobbyist )  
Disclosure Act of 1980 )

TO: All Interested Persons

1. On April 15, 1982, at 9:00 o'clock a.m., a public hearing will be held in Room 104 of the State Capitol Building, Helena, Montana, to consider the adoption of rules implementing Initiative 85, now codified as §§ 5-7-101 et seq., MCA. A more detailed summary of the rules' provisions are given below.

2. Rules One through Nine and Fifteen were the subject of previous hearings on November 18 and February 23, 1982, and reflect changes made at the suggestions of various interested persons. Rules Twelve through Fifteen have not been previously noticed.

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

Authority for all rules is based on Section 5-7-111, MCA. The text of the proposed rules is as follows (all language is new):

RULE 1 LOBBYING--DEFINITION--EXEMPTIONS (1) As used in section 5-7-102(4), the phrase "practice of promoting or opposing" the introduction or enactment of legislation means attempting to influence the course of pending or proposed legislation by direct personal contact and persuasion, or direct communications from a person to a legislator.

(2) It is immaterial whether such contact or persuasion occurs during a legislative session or other official proceeding or not.

(3) Exemptions. (a) Appearances before the legislature or a committee thereof in response to a subpoena or written request to appear from the presiding official of the body shall not be considered "lobbying."

(b) Response to a public invitation for comment is not considered "lobbying."

(4) The definition embodied in this rule is primarily for determination of who is required to register as a lobbyist, and should not be construed to encompass all activities covered by the Act for purposes of reporting by principals.

**RATIONALE:** For registration purposes, it is necessary to have a precise definition of "lobbying." The rule contains several changes from previous versions which were suggested by various parties. The rule implements section 5-7-102(4). AUTH: 5-7-111, MCA.

RULE II NON-LEGISLATIVE LOBBYING--DEFINITION--REGISTRATION

(1) For purposes of section 5-7-102(4)(b), an individual is engaged in "lobbying" as defined when he is attempting to influence the decision or action of an official or governmental entity when it is engaged in a proceeding which is quasi-legislative in nature. Examples of such activities include but are not necessarily limited to the following:

(a) any hearing conducted by any executive branch agency of state government pursuant to the Montana Administrative Procedure Act, the purpose of which is to adopt, amend, or repeal administrative rules; and

(b) any proceeding of a state or local governmental agency, the purpose of which is to enact, amend, or repeal ordinances, adopt a land-use plan, or zoning regulation.

(2) The definition of "lobbying" is not confined to efforts conducted at a formal proceeding. An individual who expends \$1000 or more in a calendar year on such efforts, exclusive of personal travel and living expenses is required to register as a lobbyist.

RATIONALE: This version of the rule eliminates some confusing language and makes clearer that the subsection in question (§5-7-102(4)(b)) refers to the expenses of lobbyists and not principals. The earlier version was unclear on that point. The proposed rule implements §5-7-102(4)(b). AUTH: 5-7-111, MCA

RULE III LOBBYISTS--REPORTING OF INFORMATION TO PRINCIPAL

(1) It is the duty of each individual lobbyist whose activities are covered by this Act to maintain records relating to information required to be reported by the Act and to transmit such information to his principal in a fashion that will allow timely reporting by the principal.

RATIONALE: This rule is required since the Act requires reports of lobbying expenditures to be filed by principals, but certain required information will be in the possession of the lobbyist. The proposed rule implements §5-7-212, MCA. AUTH: 5-7-111, MCA

RULE IV STATE GOVERNMENT AGENCIES--LOBBYING--DEFINITIONS AND REPORTING

(1) For purposes of calculation of expenditures for lobbying efforts by state government agencies, salaries paid to employees engaged in the following types of activities need not be calculated or reported:

(a) recommendations or reports to the legislature or a committee thereof in response to a legislative request expressly requesting or directing a specific study, recommendation, or report by an agency on a particular subject;

(b) any appearance before the legislature or a committee thereof if the appearance is in response to a subpoena or a written request to appear from the presiding official of the body;

(c) any other duty which is mandated by law or rule, such as the governor's annual message to the legislature.

(2) With the above exceptions, any other activities of state government agencies which are direct attempts to influence the course of proposed or pending legislation are "lobbying" as defined, and the staff time and resources expended are lobbying payments. Each individual department of the executive branch is a "principal" as defined if lobbying payments reach the threshold \$1000 level. Each department shall file a single report on the statutory dates which covers lobbying activities of all employees of the department.

(3) For purposes of section 5-7-103, "public official" includes any individual who is elected to public office or appointed to public office by the Governor. No activity by any such public official is considered to be "lobbying" within the meaning of the Act or this rule.

**RATIONALE:** Since the Act defines "lobbying" as any direct attempt to influence the actions of the Legislature, making an exception only for actions of public officials, by necessary implication it covers activities of public employees. However, since many of their activities are mandated by law, it seems logical to make certain exceptions. The Act itself does this in section 5-7-211. The proposed rule implements sections 5-7-208 and 5-7-211. AUTH: 5-7-111, MCA

**RULE V STATE GOVERNMENT EMPLOYEES--WAIVER OF REGISTRATION FEE** (1) State government employees whose lobbying activities are covered by the Act and these rules are required to register as lobbyists in the usual manner. The \$10 fee mentioned in section 5-7-103 will be waived for such employees.

**RATIONALE:** There is no express provision in the Act authorizing such a waiver, but in this case it makes sense. The fee would only be charged to the State and repaid to the State, with the interposition of a considerable amount of paperwork which costs money. The rule implements section 5-7-103. AUTH: 5-7-111, MCA

**RULE VI REPORTING OF CONTRIBUTIONS AND MEMBERSHIP FEES** (1) As used in section 11(5)(c), a contribution or membership fee is considered to be paid for the purpose of lobbying and therefore reportable by a principal if it is:  
(a) solicited by the recipient to be used primarily for payment of lobbying expenses;  
(b) paid to a group formed or existing primarily for the purpose of lobbying;  
(c) earmarked or intended by the donor to be used for payment of lobbying expenses.

**RATIONALE:** A rule in this area is required to clarify what is meant by the phrase "paid for the purpose of lobbying" in section 5-7-208(5)(c). The rule implements that section. AUTH: 5-7-111 MCA

RULE VII PERSONAL FINANCIAL DISCLOSURE BY ELECTED OFFICIALS (1) For purposes of sections 5-7-102(12) and 5-7-213, the term "business interest" means any interest in any business, firm, corporation, partnership, or other business or professional entity or trust owned by an elected official, his spouse or minor children, the current fair market value of which is \$1000 or more. Ownership of any security, equity, or evidence of indebtedness in any business corporation or other entity is a "business interest."

(2) Not included within the meaning of "business interest" and therefore not reportable under section 5-7-213 are interests of the following nature:

(a) ownership of any personal property held in an individual's name and not held for use or sale in a trade or business or for investment purposes, such as personal automobiles or household furnishings;

(b) cash surrender value of any insurance policy or annuity;

(c) money held in any retirement fund, whether public or private;

(d) bank deposits, including checking or savings accounts or certificates of deposit, if they are not held for use in a trade or business;

(e) securities issued by any government or political subdivision.

(3) In section 5-7-102(12), "property held in anticipation of profit" includes an ownership interest in real property. An ownership interest includes a fee, life estate, joint or common tenancy, leasehold, beneficial interest (through a trust), option to purchase, or mineral or royalty interest, if the current fair market value of the interest is \$1000 or more.

(a) It is not necessary to disclose ownership of a personal residence, but each elected official is entitled to exclude only one residence.

(b) While valuation of the property is not required (it need only be disclosed if its current fair market value exceeds \$1000), a description of both the property and the nature of the interest must be included. This must be a legal or other description sufficient to identify the property without recourse to oral testimony. A street address is sufficient unless it is a rural route. The nature of the property must be described; for example, farm, ranch, vacation home, commercial or residential property, raw land held for investment, etc. Any real property held by or through a corporation or other business entity which was disclosed pursuant to paragraph (1) above need not be disclosed pursuant to this part.

**RATIONALE:** Under section 5-7-213, certain elected officials must file biennial reports of personal financial interests. This rule is needed to clarify what must be reported under the section. Real property is treated either as a

"business interest" or "property held in anticipation of profit." We see no need to treat a personal residence, however, as either. The proposed rule implements sections 5-7-102(12) and 5-7-213. AUTH: 5-7-111 MCA

RULE VIII COMPLAINTS--PROCEDURE--RIGHT TO HEARING (1) A person against whom a complaint is filed with the Commissioner by a third party may request an administrative hearing prior to a determination by the Commissioner that the complaint is or is not justified. In addition, such a hearing may be requested by the complaining party or by the Commissioner.

(2) Such hearings shall be conducted in accordance with the Montana Administrative Procedure Act and the Attorney General's model rules for contested-case or declaratory rulings.

(3) If a complaint is filed against a person, the Commissioner shall notify the person of that fact.

**RATIONALE:** This rule is proposed at the request of several persons who have suggested that an administrative determination would be useful prior to a decision by the Commissioner to either reject a complaint or pursue formal legal action. Adoption of the MAPA and model rules eliminates the need for further procedural rules adopted by the agency and establishes both procedures and procedural safeguards. The proposed rule implements section 5-7-305. AUTH: 5-7-111 MCA

RULE VIX AUDITS (1) From time to time the Commissioner may undertake audits of reports filed by principals and of the circumstances and documentation underlying them. Such audits may be conducted either pursuant to a complaint or on the agency's own initiative.

(2) Such audits shall be conducted during normal and reasonable business hours and under circumstances that will assure minimal disruption of business affairs.

(3) The information or materials involved in such audits shall not be made public by the Commissioner unless the audit results in formal administrative or legal action, and then only to the extent necessary to accomplish such action.

**RATIONALE:** Another rule proposed at the request of several parties subject to the act. Audits could no doubt be undertaken in the absence of a rule, but the rule attempts to guarantee that they will not be made in an unreasonable manner and that business affairs will not be unnecessarily made public. The rule implements section 5-7-305. AUTH: 5-7-111MCA

RULE X PRINCIPALS--REPORTING OF COMPENSATION PAID TO LOBBYISTS (1) Pursuant to section 5-7-208(5), MCA, reports filed by principals shall disclose fees, salaries, and other compensation paid to lobbyists in the following manner:

(a) If the compensation is on a fee basis and the primary purpose of the contract is for lobbying services, the entire amount of the fee;

(b) If the lobbyist is a full-time employee or officer of the principal, and his duties include lobbying, the salary may be allocated on a daily basis or fractionally in this manner: time spent on reportable activities which is less than four hours shall be counted as a half day. A day in which more than four hours is spent on reportable activities shall be counted as a full day.

(c) If the compensation is a fee for services which include lobbying but not as a primary purpose of the contract, either:

(i) The proportion of the total fee which equals the proportion of the total time spent on legislative activities on behalf of the principal, or

(ii) If the principal is being billed on an hourly basis, the compensation paid for the actual time spent by the lobbyists on legislative activities on behalf of the principal.

RATIONALE: Since there are different classes of relationships between lobbyists and principals, it is necessary to make some distinction in how compensation is to be reported. This rule is expressly authorized by section 5-7-111 and implements that section and 5-7-208(5), MCA. AUTH: 5-7-111 MCA

RULE XI . PRINCIPALS--REPORTING OF COMPENSATION PAID TO LOBBYISTS; REPORTABLE ACTIVITIES (1) If the entire value of the compensation paid to a lobbyist is not reported as specified in [Rule Ten part (1)(a)], a principal shall report the value of compensation paid during periods in which the lobbyist is engaged in:

(a) Direct lobbying as described in [Rule One];

(b) Preparing a lobbying presentation or argument;

(c) Conferring with his principal or with other lobbyists on the presentation of legislation, amendments, or arguments on behalf of the principal.

RATIONALE: The statute requires that principals report "salaries and fees, including allowances, rewards, and contingency fees" paid to lobbyists. But not everything a lobbyist does should be considered to be "promoting or opposing the introduction or enactment of legislation" as defined in section 5-7-102(4). The proposed rule gives some guidance on what sort of activity is reportable. It implements section 5-7-208(5)(a)(viii). AUTH 5-7-111 MCA

RULE XII : PRINCIPALS--REPORTING OF TRAVEL, LIVING AND OTHER EXPENSES OF LOBBYISTS (1) Expenses incurred by a lobbyist which are reimbursed by his principal, including those for travel, meals, lodging, and other expenses related to the lobbying effort which are not required to be itemized under section 5-7-208(5)(b), shall be reported by the principal as follows:

(a) If the lobbyist's services are contracted for on a fee basis and the primary purpose of the contract is for lobbying services, all reimbursed expenses;

(b) If the services are contracted for on a fee basis and lobbying services are a portion of but less than the primary purpose of the contract, only those expenses which are reasonable related or incurred in relation to legislative activities on behalf of the principal;

(c) If the expenses are incurred by a full-time employee or officer of the principal, part of whose duties include lobbying, those reimbursed expenses which were incurred during periods of time in which the employee was engaged in legislative activities on behalf of the principal shall be considered as a full day devoted to lobbying on behalf of the principal.

**RATIONALE:** The statute requires reporting of "travel and personal living expenses," section 5-7-208(5)(a)(vii). Once again, not every expense a lobbyist might incur can be said to be related to the lobbying effort. The proposed rule singles out only those reasonably related to lobbying activities. Implements section 5-7-208(5)(a)(vii). AUTH 5-7-111 MCA

**RULE XIII PRINCIPALS--REPORTING OF MISCELLANEOUS OFFICE EXPENSES** (1) As used in section 5-7-208(5), MCA, "other office expenses" means expenses related to or incurred in the support of a lobbying presentation or argument or the support of a lobbyist. Specifically included are costs of staff time. Regular and recurring expenses such as rent or utilities need not be reported unless lobbying is the primary purpose of the organization.

(2) For purposes of this rule, lobbying is considered to be an organization's primary purpose if over 50% of its budget is allocated to lobbying efforts during any time when the legislature is in session.

**RATIONALE:** The statute (section 5-7-208(5)(a)(xi) does not elaborate on just what "other office expenses" need to be reported. The proposed rule would require reporting only of those which are reasonably related to the lobbying effort. Implements section 5-7-208(5)(a)(xi). AUTH 5-7-111 MCA

**RULE XIV PRINCIPALS--REPORTING OF COSTS OF SOCIAL EVENTS RELATED TO LEGISLATIVE EFFORTS** (1) A principal shall report the cost of gatherings and events to which legislators are invited (if such expenses are not required to be itemized under section 5-7-208(5)(b) if the primary purpose of the event is related to the principal's legislative effort.

(2) For purposes of this rule, the primary purpose of an event is related to the principal's legislative effort if;

(a) The event occurs during a legislative session or within sixty days preceding a legislative session; or

(b) The event includes a program the subject of which is pending, proposed, or existing legislation.

**RATIONALE:** This rule would require lump-sum reporting of the costs of certain gatherings to which legislators are



invited. It attempts to distinguish between those affairs whose purpose is mostly social and those which could be described as "promoting or opposing the introduction or enactment of legislation." Many of such affairs would probably include entertainment which would be required to be itemized under section 5-7-208(5)(b), which makes no distinction between business and social purposes, but some would not. The proposed rule implements section 5-7-208(5)(a)(ix). AUTH: 5-7-111 MCA

RULE XV ALLOCATION OF TIME AND COSTS--ALTERNATIVE METHOD

(1) A person who is compensated by a principal and whose duties include lobbying is lobbying for hire, as defined in section 5-7-102(6). If substantially all of such an employee's time during a given period is devoted to lobbying or lobbying-related activities, the total sum of all compensation paid to him during the period may be reported as lobbying payments.

(2) If only a portion of such an individual's time is devoted to lobbying or other legislative activities, the costs of which is reportable under the Act, then the sum reportable may be computed as the proportion of the total compensation paid which equals the reasonable proportion of the total hours or days spent on reportable activities during the period. For example, if an employee or agent is paid \$500 per week and spends the reasonable equivalent of two days on lobbying or lobbying related activities, then \$200 may be reported by his principal as lobbying payments.

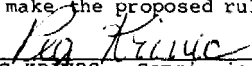
(3) In the same manner, office and other expenses may be reported as an estimated proportion of total expenses (including staff salaries) for the period. If it can be reasonably estimated that a given proportion of total expenses during a period were related to lobbying efforts, a principal may report the proportion of total expenses for the period which equals the estimated proportion of time and budget spent on the lobbying effort.

**RATIONALE:** A rule of this nature is specifically required by section 5-7-111. This would allow organizations which have activities other than lobbying to make a reasonable estimate of the time and budget devoted to lobbying purposes. The alternative is to keep detailed records of how time and budget is spent, which could be costly. Implements section 5-7-111. AUTH: 5-7-111, MCA.

4. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Peg Krivec, Commissioner of Political Practices, Capitol Station, Helena, Montana 59620, no later than May 15, 1982.

5. Jack Lowe, \* Commissioner of Political Practices, Capitol Station, Helena, Montana 59620, has been designated to preside over and conduct the hearing.

6. The authority of the agency to make the proposed rules is based on Section 5-7-111, MCA.

  
PEG KRIVEC, Commissioner  
of Political Practices

Certified to the Secretary of State March 15, 1982.

6-3/25/82

MAR Notice No. 44-3-10-17

BEFORE THE MERIT SYSTEM COUNCIL  
OF THE STATE OF MONTANA


In the matter of the repeal of	)	NOTICE OF THE REPEAL
rules 2.23.311, 2.23.1305 and	)	OF RULES A.R.M.
2.23.1503 and the amendment of	)	2.23.311, 2.23.1305
of rules 2.23.1015, 2.23.1026	)	AND 2.23.1503 AND
and 2.23.1027	)	THE AMENDMENT OF
	)	RULES 2.23.1015,
	)	2.23.1026 AND 2.23.1027

TO: All Interested Persons.

1. On January 28, 1982, the Montana Merit System Council published notice of proposed repeal of rules A.R.M. 2.23.311, 2.23.1305 and 2.23.1503 and amendment of rules 2.23.1015, 2.23.1026 and 2.23.1027 concerning the operation of the Montana Merit System Council at page 1 of the 1982 Montana Administrative Register, issue number 1.

2. The Council has repealed and amended the rules as proposed.

3. No comments or testimony were received.

  
Charles Seifert, Chairman  
Merit System Council

BEFORE THE DEPARTMENT OF AGRICULTURE  
OF THE STATE OF MONTANA

In the matter of amendment ) NOTICE OF AMENDMENT OF ARM  
of rule 4.10.207 RECORDS, ) 4.10.207, 4.10.508, 4.10.504  
rule 4.10.208 VIOLATIONS, ) and 4.10.505, AND ADOPTION OF  
rule 4.10.504 RECORDS, rule ) NEW RULES REGULATING ENDRIN,  
4.10.505 VIOLATIONS; and ) AQUATIC HERBICIDES AND  
adoption of new rules ) NOTIFICATION  
regulating the sale and use )  
of endrin, aquatic )  
herbicides and notification.)

TO: All Interested Persons:

1. On December 17, 1981, the Department of Agriculture published summary notice of proposed amendment of ARM 4.10.207 Records, 4.10.208 violations, 4.10.504 records, 4.10.505 violations and the adoption of new rules regulating the sale and use of endrin, strychnine, aquatic herbicides and notification at pages 1635-1637 of the 1981 Montana Administrative Register, issue number 23. A full text of the proposed rules was distributed to interested parties upon publication of the summary notice. Public hearings at which written and oral testimony was taken, were held January 12, 1982 at Miles City and in Helena January 14 and 15, 1982. Written testimony was accepted through January 19, 1982.

(2) (a) The department is not adopting, at this time, the proposed rule on strychnine. The proposed rule and testimony is being studied and remains under advisement.

(2) (b) The department has adopted the new rules on endrin with the following changes: (Matter stricken from proposed rule interlined, new matter added single underlined.)

~~Rule-I - CANCELLATION OF REGISTRATION - (1) - The Department of Agriculture hereby cancels the state registered uses of the insecticide endrin for the control of grasshoppers.~~

4.10.901 - SALE AND USE OF ENDRIN FOR PALE WESTERN AND ARMY CUTWORM CONTROL (1) The application of products containing the chemical endrin shall only be allowed for the control of army cutworm and pale western cutworm and only on small grain crops.

(2) Subsections (2), (3) and (4) of Rule II as originally proposed (re-printed below) are withheld from this adoption pending their further study through an

Environmental Impact Statement under Title 75, Chapter 1 MCA (Montana Environmental Policy Act.)

(2) The use of products containing the chemical endrin for the purpose of controlling army cutworm and pale western cutworm in small grains is prohibited in any county of the State of Montana until qualified state or university personnel approved by the department determine by field survey that an infestation of either pest exists within the county and there are no effective or available alternate control methods. The field survey personnel and the director will consider information such as: ambient temperature, soil temperature, soil type, soil moisture, crop height and density, and insect density in the decision making process. The director after reviewing the recommendation of these personnel will make the final use decision for each county. The department will, through mass media and appropriate government agencies, inform applications, dealers and agricultural producers of those counties in which endrin may be used, special application precautions, and information on determining economic thresholds and conducting field surveys.

(3) Products containing the chemical endrin for use on small grains shall be sold only to licensed, certified commercial or government applicators. Use of endrin is restricted to commercial and government applicators.

(4) Application of endrin is prohibited within (½) mile of any permanent, lake, pond, river, stream or irrigation system or semi permanent bodies of water, whether public or private.

(3) Farm applicators shall notify the department by telephone or correspondence within one (1) week of any application of endrin and provide the following information: their name, address, telephone number and the acreage sprayed.

4.10.902 - VIOLATION (1) It shall be a violation for any person to:

~~(a) Use endrin in any county not designated by the director;~~

~~(b) (a) Use endrin inconsistent with its label or labeling or the provisions of the rules in this sub chapter.~~

~~(c) Sell endrin to any person other than a licensed certified commercial or government applicator;~~

~~(d) (b) Fail to comply with any requirements or conditions of this sub chapter.~~

BASIC PURPOSE AND EXPLANATION OF THE PROPOSED RULES - ENDRIN. The primary purpose of rules I and II is to protect the environment especially wildlife from both the acute and chronic effects of endrin, and public health from the consumption of wildlife with endrin residues. The Montana Pesticides Act in section 80-8-103 "Purpose" sets forth that the department must consider agricultural, health and environmental needs and concerns in administering the Act. The department has determined that when endrin is used even under correct and proper conditions of use residues in wildlife and the environment will result. Rule I would cancel the use of endrin for grasshopper control. Today there are adequate alternatives available to control grasshoppers in various crops. Rule II would only allow the use of endrin for army or pale western cutworm control, if an effective and alternative pesticide is not available.

MODIFICATIONS AND EXPLANATIONS. Rule I which cancels the registration of endrin for grasshopper control has been deleted because subsection (1) of proposed rule II accomplishes the same function by restricting the use of endrin only for cutworm control in small grains.

The department, based on testimony received, and statutory and rule requirements, determined it necessary to examine proposed rule II as well as the others, for an in compliance with the Montana Environmental Policy Act (Title 75 Chapter 1 MCA).

Upon such examination, the department has determined that under Rule II, as proposed, subsection (1) may be adopted as is, but subsections (2), (3) and (4) must be withheld from any further permanent adoption consideration at least until an environmental impact statement is prepared to discuss the nature and significance of their environmental impact, as well as, other available and viable alternatives.

In regard to subsection (1) the department has determined through a preliminary environmental review (PER), on file with and available upon request to the department, that such provision does not significantly affect the quality of the human environment and therefore may be adopted without an Environmental Impact Statement (EIS).

In regard to subsections (2), (3) and (4), the department has determined that such provisions may significantly affect the quality of the human environment and that an EIS must be prepared thereon.

The department must emphasize that while subsections (2), (3) and (4) or modifications or replacements thereto are not going into effect with this adoption, neither are they being permanently deleted. They, or some form thereof may still be adopted as permanent rules within 6 months of their notice should they be found by an EIS to be compatible with the Environmental Policy Act, and remain necessary as a regulatory mechanism.

In taking this action, the department is acutely aware of the regulatory status of the use of endrin pending completion of the EIS and further action on subsections (2), (3) and (4). The department is therefore prepared to file said sections or variations thereof as rules in the event of an emergency infestation as determined by the director of the department, and under appropriate statutory provisions for emergency filings.

To facilitate making the foregoing determination of emergency, this adoption adds a section (3) regarding usage reports by farm applicators. While this provision was not specifically proposed in the original notice, its content is directly related to numerous issues raised by the original notice and discussed at hearings regarding usage by farm applicators, and therefore a proper and necessary subject for adoption at this time. The purpose of this provision is to insure that the department can monitor the the exact locations endrin is used and the amount used.

COMMENTS ON TESTIMONY - RULE I. Several commenters expressed their opposition to the cancellation of endrin for grasshopper control in small grains and requested that it be deleted. The department rejects this request. The reasons for this are (1) effective alternative insecticides are available for grasshopper control in small grains; and (2) application of endrin for grasshoppers in the summer, but more significantly in the fall, to small grains will (based upon the residue results of monitoring endrin used for cutworms in 1981) result in extremely high residues in wildlife and subsequent human consumption problems. Cancellation of endrin for this use is justified.

One commenter asked the question of who will monitor the use of pesticides and how will the requirements of the endrin rules be monitored or investigated. One commenter requested that specific monitoring requirements be set forth in these rules. The department's response to the last request is that the Montana Pesticides Act sets forth the enforcement requirements for the department and within legislative approved manpower and budgets conditions it will monitor and enforce the requirements of the Act and these rules. The primary monitoring and investigations will be accomplished by department enforcement and technical staff and secondly through cooperative efforts with other state agencies and the university. These activities are already established and do not need to be set forth in these rules.

BASIC PURPOSE AND EXPLANATION OF THE RULE - RULE 111 VIOLATION. This rule 111 (4.10.902) alerts users and sellers of endrin to what constitutes a violation. All parties involved must recognize that other violations are set forth in the Montana Pesticides Act and other pesticide rules. Users and sellers should be familiar with each of the violations.

RULE MODIFICATIONS AND EXPLANATIONS. The changes in this rule, deletion of (1)(a) and (1)(c), are not adopted as rule requirements at this time.

COMMENTS ON TESTIMONY. One commenter asked if the department will prosecute a person using endrin not in compliance with the endrin rules or if it is ultimately banned. The department will prosecute such cases of misuse or if the pesticide is banned. A number of individuals were prosecuted in 1981. Several commenters addressed the related problem of monitoring and enforcing pesticide rules and laws and because of the difficulties experienced in 1981, requested that endrin be banned. The department will, with existing personnel and operational budget limitations, perform the required monitoring and enforcement provisions of the Act and rules.

One commenter requested that tolerances for endrin be established for wildlife by the department. The department does not establish pesticide tolerances for crops, domestic animals or wildlife. The Environmental Protection Agency has the responsibility to establish tolerances for crops and domestic animals. The department, with the recommendations of the Pesticide Advisory Council, has made a request to the Environmental Protection Agency to study the need for establishing pesticide tolerances in wildlife. We have suggested that the Environmental Protection Agency evaluate the establishment of tolerances in wildlife species normally consumed by people and that tolerances could be established by wildlife groupings, i.e. big game, upland game birds, waterfowl, etc.

2. (c) The department has adopted the rules on aquatic herbicides with the following changes: (Matter stricken from proposed rule interlined, new matter added single underlined.)

4.10.311 - SALE OR USE OF AQUATIC HERBICIDES RESTRICTED - EXCEPTION The sale or use of all aquatic herbicides or chemicals intended for remission of aquatic vegetation, except copper sulfate and alkanolamine complex copper compounds and those products specifically labeled for swimming pool use, shall be restricted.

4.10.312 - SALE OF AQUATIC HERBICIDES Only pesticide dealers licensed under the Title 80 Chapter 8 MCA, may sell, exchange, or distribute a registered, restricted aquatic herbicide and only under the following conditions:

(1) Sale or distribution can only be made to a certified applicator who holds an aquatic pest control license or permit issued by the department. Sale of a pesticide labeled for both terrestrial and aquatic weed control and not restricted by the Environmental Protection Agency is exempt from the requirements of this rule.

(2) Each dealer must maintain a complete record of each aquatic herbicide sale. These records must be retained for a period of 2 years. The record shall include all requirements from rule 4.10.504.

4.10.313 - USE OF AQUATIC HERBICIDES Only persons certified and holding an aquatic pest control license or permit issued by the department may purchase, use, and apply a restricted aquatic herbicide.

(1) To qualify a person must attend a department approved aquatic herbicide training course and pass an aquatic herbicide examination.

(2) To maintain qualification for certification, the applicator must attend at least one department approved aquatic training course in a four year period; starting January 1, 1983. The department may require additional training if significant changes occur in aquatic herbicide use patterns or aquatic vegetation control techniques.

4.10.314 - APPLICATION OF AQUATIC HERBICIDES Certified aquatic pest control applicators shall:

(1) Submit a pre-season aquatic vegetation management plan to the department by April 15th, or at least two weeks prior to the first aquatic herbicide application.

(a) This management plan must include:

(i) A map of the ditch: including all locations where irrigation waters cross or discharge into state waters.

(ii) Pesticide/Herbicide to be used.

(iii) Approximate amount of pesticides herbicide to be applied.

(iv) Approximate application dates.

(v) Rates to be used.

(vi) Weed(s) to be controlled.

(vii) Application techniques.

(viii) Points where the chemical will be applied.

(2) Maintain and update the plan as changes or modifications occur. This management plan will remain on file in the department.



(3) Allow an inspection of the water treatment area to be-treated prior to application by the department or its authorized agents. The department may inspect all water areas prior to the management plan approval.

(4) Consult the Montana Department of Fish, Wildlife and Parks before applying a restricted aquatic pesticide herbicide.

(5) Submit a postseason application report to the department by November 15 to include:

- (a) Name and license or permit number of the applicator.
- (b) Name of the ditch, canal, or area treated.
- (c) Miles of canal treated or volume of area treated.
- (d) ~~Pesticide(s)~~ Herbicide(s) used and amount.
- (e) Rate and date of application.
- (f) Weeds controlled.
- (g) Application technique.
- (h) Accidental spills and misapplication.

4.10.315 - APPLICATOR RECORDS Each applicator must maintain a record of each restricted aquatic herbicide application according to rule 4.10.207. The report required in Rule 4.10.314 (5) will satisfy the requirements of rule 4.10.207 (8) if use of general use aquatic herbicides is included in the report.

4.10.316 - APPLICATOR INCIDENT REPORT Any person who, through his own actions or omissions or the actions or omissions of persons under his direction or control, causes or allows any aquatic herbicide to escape into or be deposited into any public waters or private waters ~~not his own~~, or causes or allows any aquatic herbicide to escape onto or be deposited on any person, or lands or property, shall provide notice to the department, by the quickest means possible immediately following said pesticide herbicide misapplication or escape. The notice shall give the geographic location of the incident, the name of the pesticide involved, and the name(s) and address(es) of the person(s) whose waters, land, person or property, including the State of Montana's, was subjected to the pesticide herbicide application.

4.10.317 - PERSONAL LIABILITY FOR DAMAGES Nothing in these rules shall be construed to relieve any person, including landowner or applicator, from liability for damage to the person, lands, water, or other property of another,

including the State of Montana, caused by the use of aquatic pesticides herbicides even though such use conforms to the rules of the department.

4.10.318 - VIOLATION Any person adjudged-guilty-of violating any of the provisions of the rules of this subchapter, or other pesticide rules or the act shall be subject to the provisions of Sec 80-8-306 MCA and/or appropriate administrative actions established by statute or rule. Each chemical application in violation shall be deemed a separate violation.

BASIC PURPOSE AND EXPLANATION OF THE RULE - AQUATIC HERBICIDES. The primary purpose of the aquatic herbicides rule is to prevent environmental contamination and adverse effects through accidents or misapplications of these pesticides by restricting them and controlling their sale and use. Accidents or misapplication can result in significant adverse effects on aquatic organisms or contaminate water used by humans, livestock and wildlife. To prevent these problems mandatory training of the applicators is required and aquatic management plans must be submitted to the department for evaluation. Inspection of ditches is required. The reporting of pesticide misuse or accidents is also required by these rules.

RULE MODIFICATIONS AND EXPLANATIONS. The department exempted copper sulfate compounds in the proposed rule I and the final rule 4.10.311 also exempted pesticides labeled for swimming pool use. The primary reason for this particular exemption is that state and local health departments inspect swimming pools including the use of all chemicals to protect public health.

In rule II or 4.10.312 the department added a new statement in subsection (1) which will allow dealers to sell pesticides labeled for both terrestrial and aquatic weed control to individuals who do not possess an aquatic herbicide license, permit or certificate. If individuals use these dual labeled herbicides for aquatic weed control they are responsible for following all the other requirements of these rules.

The department in rule III or 4.10.313 subsection (2) added a new provision that if significant changes occur in aquatic herbicide use patterns or control techniques that additional training may be required of applicators. This will assist in ensuring that applicators are aware of new control techniques and use patterns.

Rule IV or 4.10.314 has been modified by requiring that the management plans be submitted to the department by April

15th or at least two weeks prior to the first aquatic herbicide application. This addition alerts the applicator to the minimum time requirements for submission of the plan and prevents the situation of plans being submitted one day and approval expected the next day.

Another change in this rule requires that the map submitted to the department illustrate all locations where irrigation waters cross and are discharged into state waters. The reason for this is to alert the applicator and department to those areas where accidents or leakage may occur. More importantly, the applicator is alerted that these critical areas must be monitored closely to prevent accidental release of a herbicide into state waters.

One major change in this rule (4.10.314) was made in subsection (3). The phrase "by the department or its authorized agents", was inserted in the provision allowing inspection of the treatment area prior to application. Additionally, a requirement that the department may inspect the area prior to management plan approval was added. The reason for these changes was to ensure that applicators recognize that the department or its authorized agents may inspect the area to be treated prior to approval of the plan or prior to each application.

COMMENTS ON TESTIMONY. One commenter stated that rule 4.10.311 would prohibit the use of aquatic herbicides other than copper sulfate or alkanolamine complex compounds for aquatic herbicide applicators. The commenter misread the aquatic rules in that all aquatic herbicide applicators must obtain a certificate or license or permit prior to using the other aquatic herbicides. Copper compounds may be used by farmers or ranchers without obtaining a permit. A commercial or government applicator must already be licensed to use copper compounds.

A commenter asked if the Department of Agriculture would compensate the Department of Fish, Wildlife and Parks (FWP) for inspection and consultation. This is not required because consultation with the Fish, Wildlife and Parks by applicators is a labeling requirement which is restated in these rules so applicators are cognizant of their responsibility. Inspection of any irrigation system by Fish, Wildlife and Parks personnel is accomplished because of their standing request for participation and assistance to the Department of Agriculture. This cooperation between the departments has been in effect for the last two years and has been extremely helpful. The Department of Agriculture has not or can not require Fish, Wildlife and Parks to conduct inspections.

Several commenters questioned the need for the management plan. The department has found that the management plan makes applicators review the use of aquatic herbicides to assess critical areas where water contamination could occur and/or aquatic organisms could be

adversely affected. The plan also makes the applicator assess how treated waters will be held or diverted according to label requirements. Prior to the enactment of the previous rules many applicators were not assessing these conditions to ensure compliance with labeling requirements protecting the environment.

One commenter argued that the rules should only regulate the use of aquatic herbicide in state waters and private waters should be excluded. He recommended that the rules state "The following rules apply to the public flowing waterways within the state". The department rejects this recommendation and argument. Federal and state pesticide laws regulating the labeling and use of pesticides are applicable to any site of use such as public and private waters. The rules on aquatic pesticides will assist in protecting state and private waters from improper use.

This same commenter argued that rule 4.10.316 is redundant and unnecessary. He implied that a given quantity of herbicide would have to be spilled or an effect be seen before reporting to the department would be necessary. The department rejects this argument. Aquatic pesticides vary in the types of risks to health and the environment and their accidental release or misapplication into waters may result in adverse effects under varying conditions and quantities. Labels are also very specific in that release into state waters and other environments is prohibited no matter what quantity is released. The concept that dead bodies of aquatic life must be seen prior to reporting to the department is not acceptable.

A commenter expressed concern that some aquatic herbicides have labeled terrestrial and aquatic uses on them and that this may cause purchasers and sellers problems in terms of record keeping, sales and usage. The department agrees and in rule 4.10.312 has addressed this problem. The department has exempted the sale of herbicides registered and labeled for control of both terrestrial and aquatic weeds from the sale restrictions imposed in rule 4.10.312. If the purchaser of this type of product uses it for aquatic weed control the restrictions in the other aquatic rules must be followed.

A commenter stated that the Department of Natural Resources and Conservation has existing reporting requirements on release or spill of hazardous wastes into waters and that the Department of Agriculture should utilize this reporting system. The department rejects this argument for several reasons: (1) personal communications with Department of Natural Resources and Conservation personnel and a review of their existing rules did not reveal a reporting requirement; (2) even if reporting was in effect in Department of Natural Resources and Conservation it would not cover all applications of aquatic herbicides and; (3) the Department of Agriculture is the lead agency for regulating all uses of aquatic herbicides.

A number of commenters expressed concern and recommended that consultation with the Department of Fish, Wildlife and Parks not be required. The department does not agree with this recommendation. Nearly all aquatic herbicides labels require consultation with wildlife agencies. The department has placed this requirement in the rules to alert users of these products that consultation is required and to ensure that aquatic organisms are protected from the effect of these products.

Several commenters recommended that Fish, Wildlife and Parks be given veto power over any aquatic herbicide application. The department can not consider this recommendation because the Pesticides Act does not allow for this procedure.

Commenters made a number of comments concerning inspection of irrigation systems or bodies of water prior to and after the application of an aquatic herbicide. These are: (1) the state should inspect every site prior to application of the herbicide; (2) state inspection should include a mechanism to determine need; (3) the state should ensure that the applicator inspects the system; (4) requiring reinspection of system every five years and; (5) requiring mandatory inspections by both Fish, Wildlife and Parks and Department of Agriculture. The department does not accept the idea that the state should inspect every system prior to application and the concept that the state should determine the need for application of an aquatic herbicide. The objective of the aquatic herbicide program is to educate and regulate applicators to perform these duties and responsibilities themselves. The department's objective is not to become the chief inspector and applicator; our objective is to assist and ensure that all applicators perform these functions safely and professionally. The department will inspect new and old systems periodically with its personnel or through authorized agents to ensure compliance with the aquatic rules and to assist applicators in improving their management plans.

A number of commenters make specific recommendations concerning elements within the management plan such as: (1) the map should show all locations where the herbicide could enter state waters; (2) the date of submission should be specified; (3) the word "herbicide" should be used instead of "pesticide". The department has included all these recommendations rule 4.10.314.

A few commenters recommended that a copy of the management plan be provided to Fish, Wildlife and Parks and that this concept be stated in the plan. The department does not believe this recommendation needs to be included in the rules. We do agree that a cooperative program is necessary between the two departments. The Department of Fish, Wildlife and Parks has recommended that their regional office receive the management plans as part of the inter-departmental cooperative program. We will be

discussing this request further with officials from the Fish, Wildlife and Parks Department.

A commenter requested that the Department of Health and Environmental Sciences (HES) be given the authority by the Department of Agriculture to approve any application of an aquatic herbicide prior to its use in order to protect public water supplies. The department rejects this request because under federal and state pesticide laws and state water quality laws the applicator must protect public water supplies. The Department of Health and Environmental Sciences also has existing authority to protect and regulate public water supplies.

Two commenters addressed the educational requirements of the rule. Another commentator asked if applicators are required to be examined and to maintain their qualification by education at least every four years. One commenter requested that training be mandated every two years for all applicators. The department believes that these rules establish the minimum qualification and educational requirements. We project that training courses worth 50 points will be held every two years so applicators may collect 100 qualification points to requalify every fourth year. A new provision has been added to the rule so that as new techniques of control are developed and used, the department could require special training on these new techniques.

Several commenters recommended that the department prepare an environmental impact statement on the aquatics rule and that economics be addressed. The department has prepared a PER addressing these issues and it is available for public review. The department has determined that an EIS is not required.

2. (d) The department has amended ARM 4.10.504 and 4.10.505 with the following change: (Amended rules, matter stricken in existing rules interlined and new matter added single underlined; new matter from proposed rules, double underlined and proposed matter deleted, slashed(/).)

4.10.504 RECORDS (1) All pesticide dealers, including pharmacists, veterinarians, and certified pharmacies shall be required to maintain shipping, purchase, or invoice records of all pesticide products received. These records must be retained for two (2) years.

(2) Each dealer, including pharmacists, veterinarians, and certified pharmacies shall maintain a complete and an accurate typed or printed record of all ~~restricted-use~~ restricted use pesticides purchased and sold. These records must be retained for two (2) years.

(2) (3) The sales record shall include for each individual sale of a restricted use pesticide, and other pesticides designated by the department

(i) the company or manufacturer's name on the label.

(ii) the complete trade name

(iii) the EPA registration number

(iv) the volume sold

(v) the license or permit number of the certified applicator or the dealer purchasing the restricted pesticide.

(vi) the signature of the certified applicator, or purchaser employee or family member purchasing the restricted pesticide.

(vii) the address and telephone number of the farm applicator purchasing restricted pesticides.

(viii) the county or counties in which the product will may be used.

(A) The sales record shall include for each individual sale of general use pesticides the

(A) product name, manufacturer, and EPA registration number

(B) volume sold

(3) (4) (a) Each dealer, including pharmacists, veterinarians, and certified pharmacies, selling restricted pesticides shall submit to the department, written reports/ records containing the information in rule 4.10.504. The report records shall be provided within 15 submitted within 14 calendar days after the end of the calendar month that the pesticides were sold. The report records shall be made on the standard forms/ provided by the department, or on forms approved by the department.

(b) If no restricted pesticides are sold during a given month, this should be so documented to the department.

(5) (a) Each dealer shall submit to the department an accurate typed or printed report of their calendar year sales of general use pesticides. This report shall include the total volume sold, the trade name and the company name of each individual product.

Example:

ABC company Weed Killer 4 200 gallons

MNO company Malathion 5 175 gallons

XYZ company Granular 8 500 lbs.

The report on the annual sale of general use pesticides shall be provided to the department within 14 calendar days after the end of each calendar year. The reports shall be made on the standard forms provided by the department, or on forms approved by the department.

(b) If no general use pesticides are sold during the calendar year, this should be so documented to the department.

(3) (6) Records required of dealers, pharmacists, veterinarians, and certified pharmacies shall be subject to

inspection by authorized employees of the department at all ~~normal~~ business hours/. ~~including those dealer outlets that~~  
~~open before 8:00 A.M. or close after 5:00 P.M. Dealers shall~~  
~~be required to submit the records or a true and accurate~~  
~~copy of the records to the department upon written request.~~  
~~Dealers shall be required to submit the records or a true~~  
~~and accurate copy of the records to the department upon~~  
~~written request. The records may be computerized or coded~~  
~~provided that the department is provided a key to the system~~  
~~for monitoring, tabulating, and enforcement purposes.~~

(7) Dealers and retailers, selling retail pesticides  
as designated in Rule 4.10.502, are exempt from the record  
keeping and reporting requirements of this rule. Records of  
retail pesticides shall be maintained as required in Rule  
4.10.502 (2) ARM.

4.10.505 VIOLATIONS (1) It shall be unlawful for a  
pesticide dealer, pharmacist, veterinarian, or certified  
pharmacy to:

(a) Sell, distribute, or offer for sale a restricted  
use pesticide to any person other than a certified  
applicator or person with proper department credentials.

(b) Recommend the use of a pesticide which is not  
inconsistent with the label directions, its labeling or the  
label or the department's restrictions on the use of that  
pesticide.

(c) Refuse an employee of the department the right to  
inspect the dealer's records, pesticide display, and storage  
areas.

(d) ~~Refuse or fail~~ Fail to submit written records or  
~~reports requested in writing~~ as required or requested by the  
department.

(e) Fail to maintain records or reports as required by  
rule 4.10.504.

(f) Fail to comply with any requirement or  
condition of this subchapter.

(2) Dealers, pharmacists, veterinarians, and certified  
pharmacies violating the Act and ~~regulations~~ rules adopted  
thereunder shall be subject to immediate revocation of the  
dealer license or shall be prevented from selling restricted  
use pesticides.

#### BASIC PURPOSE AND EXPLANATION OF THE RULE - DEALERS RECORDS.

The basic purpose of amended rule 4.10.504 records is  
to ensure that the state knows within a reasonable period of  
time who, where and why a restricted pesticide has been  
sold. The rule requirements relate to the department's  
enforcement responsibilities of ensuring that: (1)  
pesticides sold in Montana be registered with the



Environmental Protection Agency and the state; (2) sampling of these products can be accomplished properly to determine if the product ingredients meet the labeling requirements; and (3) records of sales of restricted use pesticides are maintained to determine that only certified applicators are purchasing them.

**RULE MODIFICATIONS AND EXPLANATIONS.** The final dealer record keeping rule was modified to account for some of the recommendations received from the public. The final rule requires dealers to record individual sales of a restricted pesticide and to submit these records to the department monthly. General use pesticides are exempted from this requirement. Dealers will have to submit to the department on an annual basis a summarized report on their sale of general use pesticides. This summarized report does not require that dealers submit to the department individual sales of pesticides but a summary of the total sales of each formulation of a pesticide.

The department has modified the dates that these monthly and annual reports must be received by the department. The proposed rule stated that these reports must be received 5 days after the end of each calendar month, while the final rule allows a 14 day period after the end of each month to submit the restricted pesticide monthly reports and 14 days after the end of each year for the general use pesticide annual reports.

The department added a new section to clarify for dealers that retail pesticides, as defined in the Montana Pesticides Act 80-8-212 and rule 4.10.502, are exempted from the reporting requirements of this rule 4.10.504.

**COMMENTS ON TESTIMONY.** The primary objection to the proposed rule on dealer record keeping 4.10.504 ARM expressed by numerous parties concerned the provision that all pesticide sales be recorded and the records be submitted to the department on a monthly basis. The department agrees with their objections in part, and has modified the rule to reflect these concerns. The final rule only requires dealers to record and report individual sales of restricted pesticides. The department believes submission of monthly sales records of restricted pesticides is essential to carry out its enforcement and monitoring responsibilities. The sale and reporting of general use pesticides has been modified. Dealers will only have to record and submit annual summarized reports on the sale of general use pesticides. Individual sales will not have to be recorded. Summarized annual reports for general use pesticide will now include the total volume sold, the trade name and company name.

A number of commenters requested that in subsection 2 of rule 4.10.504 that the words "restricted use" be reinserted into the rule. The department accepted this

modification because of the changes made in the final rule, deleting the requirement that dealers report the sales of general use pesticides monthly.

One commenter requested that the present requirement of dealers retaining their records for 2 years be changed to 5 years or that the department retain the records for 5 years. The department did not accept the proposal that dealers keep their records for 5 years. From an enforcement point of view this extension is not necessary. The department has, and will continue to, keep records of dealer sales of pesticides for more than two years.

Several commenters asked that dealers only be required to keep records on the sale of federally restricted use pesticides. The department did not accept this recommendation. The reasons for this rejection are: (1) normally, the only pesticides for which records of individual sales will be required is for federally restricted pesticides; and (2) the department by law has the right to restrict or prohibit the sale or use of any pesticide that is causing special agricultural, health or environmental problems within the state. Records are required to be kept on pesticides so restricted.

Some commenters recommended that subsection (3) of this rule be modified by striking the words "and other pesticides designated by the department". We have accepted this recommendation, because of the department's authorization to restrict pesticides upon appropriate justification and passage of a specific rule. The restriction of such pesticides will be done by rules which ensures public input. One commenter requested that specific criteria be established for designating a pesticides as restricted. The department has eliminated designation of pesticides in the final rule. Criteria for designation or restriction of a pesticide may be found in section 80-8-105 (3) (a) MCA, which allows the department by rule to restrict a pesticide and subsequently require records.

Numerous industry commenters requested that the present record keeping system be retained and no amendments be made to the present rules. The department rejected these requests because of the experience this year in obtaining dealer records on restricted use pesticides used to control cutworms. The records received, while meeting present requirements, were found to be inadequate to carry out proper enforcement and monitoring activities. The new recording criteria for restricted use pesticides and the monthly reports will eliminate these problems.

Several environmental organizations requested that dealer records be open to inspection by Fish, Wildlife and Parks personnel and that the Departments of Health and Environmental Sciences and Fish, Wildlife and Parks decide, with the Department of Agriculture, which pesticides should be reviewed and/or restricted in Montana. The department has considered these requests. With regard to the question

of access to records by other agencies, the department will resolve this issue when it finalizes its policy implementing the opinion of the Attorney General regarding access to records. The department can designate authorized agents (80-8-304 MCA) to assist it in performing its responsibilities and duties. This procedure has been utilized to handle the strychnine rabid skunk program with the Department of Livestock and the aquatic herbicide program with the Department of Fish, Wildlife and Parks. The Department of Agriculture has allowed government agencies access to enforcement case file records, and has established an inter-departmental group (Agriculture; Fish, Wildlife and Parks; Health and Environmental Sciences; and Livestock) to evaluate pesticides issues. The department believes this cooperative program will adequately serve the interest and concerns of these other agencies. The final statutory decision making authority rests with the department, however, the department will evaluate the ideas and concerns of these other agencies in administering and enforcing the Montana Pesticides Act.

Several commenters expressed their concerns about the provision requiring dealers to list the address and telephone number of farm applicators purchasing restricted pesticides and for having to designate the county in which the product will be used. The department did not modify the address and telephone provision because of the need to locate farm applicators rapidly when restricted use pesticide problems occur. The department recognizes the problem for dealers listing the county in which the restricted use pesticide will be used. This provision has been modified to include the county or counties in which a restricted use pesticide may be applied by a certified applicator. The purpose of this requirement is to provide a mechanism to generally determine where a restricted pesticide will be used. The rule does not require a dealer selling a pesticide to a dealer to indicate the county or counties because the sale to another dealer does not result in the use of the pesticide by that dealer.

Many commenters recommended that subsection (5) of rule 4.10.504 be either modified or deleted in its entirety. The objections included the concept of reporting the sales of all pesticides and the submission of the records 5 days after the end of the calendar month. The department has rejected the proposals to delete these requirements in their entirety. The department has made the following modifications: The provision that monthly reports be submitted to the department for all pesticides sold has been changed to include only restricted use pesticides. The 5 day reporting requirement has been modified to 14 days after the end of the calendar month. This provision in the final rule is designated as subsection (4) because of the other modifications made in this rule.

The department has also added a provision (4) (b) that would require dealers to document to the department if no sales of restricted use pesticides were made in a given month. This provision allows the department to know within a reasonable time if a dealer has or has not sold any restricted pesticides. Without this provision the department would have to contact every dealer not submitting a report to determine if the dealer failed to submit a report or if no restricted pesticides were sold.

Several commenters questioned if reporting of retail pesticides sold were included in rule 4.10.504. The terms "dealer" and "retailer" and the concept of "retailer pesticides" are defined in the Montana Pesticide Act. Reference to the following sections of the act is recommended for clarification, 80-8-102 (9) "Dealer", (35) "retailer" and 80-8-212 "retail noncommercial sale of pesticides". The quantity, size or volume and concentration of retail pesticides is further defined in an existing rule 4.10.502. By law a retail pesticide is defined as a pesticide that is labeled for home, yard, garden, home orchard, shade trees, ornamentals, trees, bushes and lawn, not exceeding certain volumes and classified as general use. All other pesticides are classified as dealer pesticides. Because of these definitions in the act and rules, dealers and retailers are exempt from reporting sales of retail pesticides. The one exemption is that retailers and dealers must maintain shipping and invoice records when they purchase retail pesticides. The department has included for clarification in rule 4.10.504 a new section (7) which exempts retail pesticides from the requirements of this rule. All agricultural and industrial pesticides are included in the record keeping and reporting requirements of rule 4.10.504.

A number of commenters addressed the issue of the confidentiality of dealer records. As ruled by opinion of the Montana Attorney General, (Vol, No. 38, Opinion No. 1), pesticide applicator and dealer records held by the Department of Agriculture are subject to public disclosure, unless the department finds that the applicators or dealers right to privacy clearly outweighs the public's right to know. Such determination will be considered under department policy on a case-by-case basis.

There will however be no department publication of any information of these records which may disclose operations of selling, production or use of pesticides by any person. Such prohibition has been declared under 80-8-107 MCA and confirmed under department interpretation of a letter of explanation to the above cited opinion from the Attorney General.

A few commenters requested that the Department's Pesticide Advisory Council review the proposed rules and testimony prior to finalization of this rule. The director has already received their input at council meetings and at

the rules hearings and now must by statute make the final decision.

Some commenters expressed concerns on the costs of administering this rule and the costs to the industry in complying with the rule. Presently, the department collects dealer records for one year every five years. The costs of administering the dealer applicator records and reports and to collect and evaluate dealer records once every five years is \$35,500. The estimated cost for administering the revised rules is \$3,720 annually or \$18,600 during a five year period, a savings of approximately \$16,900 over a five year period would be realized.

The cost to dealers will be the time needed to complete the individual sales of restricted pesticides (which is presently required), the time to complete the annual summary of general use pesticides, and the postage required to mail the monthly and yearly reports. The cost for all dealers on an annual basis could be \$2,400 plus the personnel time required to complete the summaries.

The department will pay for the record and reporting forms, unless dealers elect to use their own forms which must be approved by the department. This is to ensure standardization of data which will assist the department in compiling and evaluating the information.

**BASIC PURPOSE AND EXPLANATION OF THE RULE - 4.10.505 VIOLATIONS.** The purpose of this rule is to set forth the situations and conditions the act has established as violations of dealer requirements. These criteria allow the regulated dealers and public to know and understand what violations the department will prosecute.

**RULE MODIFICATIONS AND EXPLANATIONS.** No significant changes were made in this rule.

**COMMENTS ON TESTIMONY.** Several commenters requested that this rule not be modified in any fashion from the existing rule. The department rejected these requests. The modifications made addressed the revised specific provisions in rule 4.10.504 which have been discussed.

(2) (e) The department has amended ARM 4.10.207 and 4.10.208 and has adopted a new rule 4.10.209 on notification with the following changes: (Amended rules, matter stricken in existing rules interlined and new matter added single underlined; new matter from proposed rules, double underlined and proposed matter deleted, slashed (/).) (New rules, matter stricken from proposed rules interlined, new matter added single underlined.)

Rule 4.10.207 RECORDS (1) All licensed, certified-licensed commercial, public utility, and government applicators, and certified non-commercial applicators shall be required to keep and maintain operational records for two (2) years. For every application performed either by an applicator or operator, the application record shall include:

(a) The name of the applicator or ~~employee~~ operator applying the pesticide. Initials or an assigned number are acceptable if the full name of the applicator or operator is cross-referenced.

(b) The following items:

(i) date.

(ii) time. The time should be as specific as possible but it may be recorded generally as A.M. or P.M. for such things as rights-of-way application, fogging cities, and other similar applications.

(iii) location. The location should be recorded as specific as possible but may generally be expressed as the owner, lessee, or administrator's land area, farm or ranch building, premises, etc. Right-of-way, and similar applications may be expressed in general terms of identifiable landmarks. The location shall be specifically recorded. The location shall include the property owners or lessee's name and address, the county or counties in which the pesticide was applied, and the township, range and section number. The specific application site shall be expressed by township, range and section numbers or local identifiable landmarks. Right-of-way applications may be expressed in general terms of identifiable landmarks. Instead of township, range and section numbers. Non-agricultural applications may specify the site, building, facility, premise or other identifiable landmarks. Instead of township, range and section numbers.

(c) The type of equipment. If the same piece of equipment is used for all applications, then ~~reference to~~ this equipment may be listed only once. If more than one piece of ~~the same~~ equipment is utilized, ~~then~~ the applicator may assign a ~~separate~~ number to each piece of equipment and ~~may~~ list the equipment once by description and thereafter by number.

(d) The pesticide or pesticides used which shall include the company ~~of manufacture~~ name, trade name, and type of formulation.

(e) The rate of application. used by active ingredient and diluent. This includes the formulation rate and the diluent to be sprayed on a given unit area. Examples: 1 pint of product per 5 gallons of water per acre (1pt/5 gal water); 2 oz. of product per 1 gallon water (2 oz/1 gal water); 1 pint of product per 100 pounds of fertilizer per acre.

(f) The amount of area treated (number of acres, trees, livestock, square feet or yards, etc.) or for structural applications, indicate the type of treatment.

(g) The primary pest or pests involved.

(h) The crop or site treated and stage of crop development, if applicable.

(i) The weather conditions. For those operators operations, such as aerial, in which the temperature and wind velocity could affect the effectiveness of the application was well as present a hazard to humans property sensitive crops or animals in the areas

(2) Applicators utilizing two or more pesticides in a tank mixture shall be required to record all data into any format desired as required for each pesticide in the tank mix. The records may also contain such other information and data as the applicator desires. The records may be computerized or placed into a coded form provided that a key to the system is provided to the department.

(3) Applicators shall maintain application records on a daily basis not to exceed twenty-four (24) hours from the time of the last application.

~~43~~ (4) Applicator records shall be open to inspection by authorized employees of the department at during all reasonable business hours. This may include visits prior to 8:00 A.M. or after 5:00 P.M. depending on the work schedule of the applicator. Applicators shall also be required to submit written copies of their records or any portion of the records that are requested in writing by the department.

~~44~~ (5) The department may establish by policy from time to time special recordkeeping systems for applicators conducting special or emergency pest management or control programs or for other applicators handling extremely hazardous pesticides which could have a significant effect on the environment or on human health. Seed treaters, and wood product treaters are exempt from this rule. shall only be required to maintain records on the volumes of pesticides applied and the other items set forth in (1) (d). Certain other similar applicators as determined by the department may be exempt from some recordkeeping requirements of this rule. Provided that these exempted applicators shall be required to meet all other requirements of this rule and to maintain an inventory by invoice of pesticides purchased for their operations.

~~45~~ (6) Individual applicator records shall not be public records except in those cases established and set forth by a district court. Provided that the department may summarize records for publication for groups of or classifications of applicators. As ruled by opinion of the Montana Attorney General, (Vol. No. 38, Opinion No. 1), pesticide applicator and dealer records held by the Department of Agriculture are subject to public disclosure, unless the department finds that the applicators or dealers right to privacy clearly outweighs the public's right to

know. Such determination will be considered under department policy on a case by case basis.

There will however be no department publication of any information of these records which may disclose operations of selling, production or use of pesticides by any person. Such prohibition has been declared under Section 80-8-107 MCA and confirmed under department interpretation of a letter of explanation to the above cited opinion from the Attorney General.

(1) (1) (a) Applicators shall ~~provide~~ submit to the department ~~a true and~~ an accurate typed or printed ~~report~~ record of each application performed with all restricted pesticides. The ~~reports~~ records shall be ~~provided within five (5)~~ submitted within fourteen (14) calendar days after the end of ~~each~~ the calendar month that the pesticide or pesticides were applied. The ~~applicator shall use the standard form for record keeping,~~ records shall be submitted on the standard form provided by the department, or ~~shall~~ ~~own~~ on forms ~~if~~ approved by the department. The ~~report~~ record shall contain the following items listed in ~~section 111(d) through 12 of~~ this rule/ (1)(a), (b)(i), (iii), (d), (e), (f), (g), (h) and (2). The record may contain all the items listed in sections (1) and (2).

(b) If no applications of restricted use pesticides are made during a given month this shall be documented to the department.

(2) (a) Applicators shall submit to the department an accurate typed or printed annual report of their use of general use pesticides. The report shall include a summary of use of these pesticides by county, month, total acreage, amount of the formulated product used, crop or site treated and the product used by company name and trade name. The annual report shall be submitted to the department within 14 days after the end of the calendar year. The report shall be submitted on the standard form provided by the department, or on forms approved by the department.

(b) If no application of general use pesticides are made during the calendar year, this shall be so documented to the department.

(9) Farm applicators are exempted from the requirements of this rule, unless a specific reporting requirement is established in another rule.

4.10.208 VIOLATIONS (1) It shall be a violation for applicators to:

(a) ~~Refuse or neglect~~ Fail to maintain application records or ~~reports~~ required by ~~this regulations- rule~~  
4.10.207.

(b) Make false or fraudulent records or reports.

(c) ~~Refuse~~ Fail to submit written records or ~~reports~~ as required or as requested by the department, ~~in writing~~



(d) Refuse an authorized representative of the department to inspect or record the applicator's records during ~~at reasonable~~ business hours.

(e) Not ~~update~~ maintain their records ~~within on a daily basis not to exceed twenty-four (24) hours of every from the time of the application.~~

(f) ~~Fail to comply with provisions of rule 4.10.209.~~

~~(g)~~ (g) Use or recommend use of a pesticide in a manner inconsistent with the labeling, with the agency or department registration for that pesticide, or with any the agency or department restrictions that have been placed on the use of that pesticide.

4.10.209 NOTIFICATION BY LICENSED OR CERTIFIED-LICENSED APPLICATIONS (1) Applicators applying Environmental Protection Agency restricted pesticides of other pesticides designated by the department on someone else's property shall notify the owner, lessee or manager of the property of all precautions, and restrictions and directions of use prior to applying application of the restricted pesticides. The property owner or lessee shall be provided a copy of the label, if requested. The applicator, if requested, shall provide a copy of the label to the owner, manager or lessee. Applicators applying Environmental Protection Agency restricted pesticides in an easement or right-of-way situation shall not be required to notify any person, if the applicator is employed by or specifically contracted by the person holding or managing the easement or right-of-way.

BASIC PURPOSE AND EXPLANATION OF THE RULE - APPLICATOR RECORDS. The proposed rule on applicator record keeping amended the existing rule 4.10.207 ARM which requires applicators to maintain records. The amendments as finalized would require licensed and certified commercial, government and public utility applicators and certified non-commercial applicators (farmers and ranchers are excluded) to submit monthly records on their use of restricted pesticides and summarize reports on their use of general pesticides annually.

The primary purpose of this rule is to ensure that the state knows within a reasonable period of time who, where and why a restricted pesticide has been used. These reports allow the department to evaluate the significance of pest infestations, the use and possibly misuse of restricted pesticides and the information necessary to establish a special monitoring and/or investigative program on specific restricted pesticides. The lag time in obtaining all of the information of the sale and use of endrin affected the department's response to the endrin problem in 1981.

The annual report required of applicators summarizing their use of general pesticide will assist the department in

planning its future monitoring and investigative programs and in resolving special pesticide problems or issues.

**RULE MODIFICATIONS AND EXPLANATIONS.** The changes made in the proposed rule are discussed in the following narrative.

The proposed rule would have required applicators to state the location of each application of a pesticide by township, range and section numbers. The final rule would allow applicators to list locations either by township, range and section numbers or by local identifiable landmarks. The department needs to know the location of pesticide applications made by commercial, government, public utility and non-commercial applicators (farmer and ranchers are excluded) to fulfill its administrative and enforcement responsibilities. The department prefers and recommends that applicators use township, range and section numbers instead of local identifiable landmarks. The designation of which county a pesticide is applied in is extremely important, if only local identifiable landmarks are indicated by an applicator. Right-of-way and non-agricultural applicators are exempt from listing the township, range and section numbers, but they must list local landmarks or the facility, building and site for each and every application.

The rate of application provisions in this rule have been modified to clarify for applicators the data the department requires. The data needed includes the formulation rate, and the amount of diluent used. It is recognized that for some pesticides a diluent is not required, therefore, a record of diluent used would not be required in this case. Examples of the rate of application are set forth in the rule. The rate of application requirements were modified from the existing and proposed rule because some applicators would only list the active ingredient and others only the diluent.

The requirement for listing weather conditions has been modified from the existing and proposed rule. The extreme variation in reports made by applicators presently needs to be improved. The weather information of primary importance is wind direction and velocity and temperature.

Seed treatment and wood treatment applicators will be required by these revised rules to keep minimal records. These applicators under the existing rules were exempt from any record keeping requirements. Due to the extreme toxicity and health related problems of some of these pesticides, the need to collect records is deemed essential now and in the future.

The existing and proposed rule allows the department to create special record keeping requirements or exemptions from keeping records. The department has removed these requirements because the same concepts can be accomplished by passing rules for special record keeping or exemptions on an as-needed basis.

The present rule on applicator record keeping mandates that applicators keep records which are subject to field inspections or must be submitted upon written request. The proposed rule would have required applicators to submit records on their use of general and restricted use pesticides five (5) days after the end of each calendar month. The final rule will require applicators to submit their records on use of restricted use pesticides fourteen (14) days after the end of each calendar month. Records in a summarized form for general use pesticide would have to be submitted within fourteen (14) days after the end of each calendar year. Applicators would also have to document in lieu of the respective monthly and yearly reports if they did not use a restricted or general use pesticide.

In the final rule the department created a special provision exempting certified farm applicators from the requirements of rule 4.10.207. This provision is included because of industries and the farm communities confusion between a certified non-commercial applicator and a farm applicator. Existing rules 4.10.201 (6) and 4.10.1501 - "definitions" specifically state that non-commercial applicators are not farm applicators. For purposes of clarity the provision exempting farm applicators was included in the final rule. The department may, however, require farm applicators to keep records on individual pesticides. For example, the use of sodium cyanide in M-44's and some aquatic herbicides does require farm applicator record keeping.

Rule 4.10.407 (5) NCA concerning public access to records has been amended. The reason for this amendment is that section 80-8-107 of the act addresses the confidentiality of individual records of use, however this statute provision has been interpreted by an attorney general's opinion, and a letter of explanation thereof, submitted at the department's request. This opinion may be found in Volume No. 38, Opinion No. I of the Opinions of the Attorney General. The amended rule sets forth a summary of the opinion and clarification, in section (6).

COMMENTS ON TESTIMONY. Many farmers and ranchers expressed concerns and/or to any provisions in rule 4.10.207 that would require them to maintain records on use of pesticides in the same manner as licensed or certified commercial, government, public utility applicators and certified non-commercial applicators.

This rule does not now under the existing provisions nor will it under the revised provisions require farm applicators to maintain records. The confusion concerning this requirement is related to the term non-commercial applicator which, at first glance, could mean farm applicators.

A non-commercial applicator is defined in the existing definition rule 4.10.1408 and further delineated in existing

rule 4.10.201 (6). This type of an applicator is an individual who uses restricted pesticides in situations where they cannot be categorized as commercial government, public utility or farm applicators under the Montana Pesticides Act.

A non-commercial applicator is a person who may apply appropriate restricted use pesticides to control pests in a private cemetery or golf course or similar sites. This person must either be the owner, manager or employee of the private golf course, cemetery or similar site. The application of the restricted pesticides by these applicators cannot be associated with any form of agricultural production.

While there is not a technical need to exclude farm applicators from the applicator record keeping requirement of rule 4.10.207, for purposes of clarity and understanding a provision exempting farm applicators has been included as section (9) in this rule. However, it is noted in this rule and allowed by section 80-8-209 (4) MCA of the Pesticide Act that farm applicators may be required to keep records on certain pesticides.

Some individuals objected to other specific provisions of rule 4.10.207, if the amendments to the rule applied to farm applicators. However, since farm applicators are exempted, their specific objections have not been addressed.

Many commenters expressed their views on the specific details and impacts of the applicator record keeping requirements of the amended rule 4.10.207. A discussion of these comments and the reasons for accepting or rejecting these comments follows.

Two commenters recommended that farm applicators be required to keep application records on all pesticides. This recommendation was rejected by the department for three reasons. (1) The Federal Pesticide Act, FIFRA, as amended, does not mandate that farm (private) applicators keep records for restricted use pesticides or for general use pesticides. (2) The Montana Pesticides Act, MPA, while allowing the department to create record keeping requirements for farm applicators, limits the authorization to pesticides which are extremely toxic or for which an antidote is not available. Farmers and ranchers rely on the Environmental Protection Agency and the state to register pesticides which are safe and efficacious, if used properly. Federal tolerances established for agricultural commodities not only protect the public from illegal residues but ensure producers that the proper use of a pesticide will not result in illegal residues. Monitoring results over the last 10 years of agricultural products by federal and state agencies reveals very few problems with illegal residues.

Several commenters requested that several terms be defined. The following are the terms and the reference to the law or rule which already defines or explains the term.

Non-commercial Applicator	4.10.1408 ARM
Farm Applicator	4.10.102 (15) MCA; 4.10.1408 ARM
Pesticide	80-8-102 (30) MCA
Herbicide	80-8-102 (18) MCA
Operator	80-8-102 (7) MCA
Employee	4.10.403, 4.10.1408 ARM (i.e. "Restricted use Pesticide", "General use Pesticide", Conditions of use. . .)
Seed Treater	4.10.205 (1) (d) ARM
Wood Product Treater	4.10.205 (1) (b) ARM

A few commenters requested that the record keeping requirements not be amended. The department rejected this proposal because of a demonstrated need for improvement in record keeping and reporting, experienced with endrin in 1981.

Many commenters recommended that monthly reports on the use of general and restricted use pesticides be modified by excluding general use pesticides. Many of these same individuals recommended that the 5 day reporting requirement be modified. The department agrees the monthly reporting of the use of pesticides should include only restricted use pesticides. This change has been made in section (7) the final rule. The time for reporting the use of restricted pesticides has been extended from 5 days to 14 days which allows the applicators more time to compile and submit their records.

The department has retained, in a modified form, the requirement for reporting the use of general use pesticides. The final rule in section (8) requires applicators (not farm applicators) to report their use of general use pesticides annually. This report includes a summary of their use by county, month, total acreage, amount, crop or site treated, company name and trade name. The report must be submitted within 14 days after the end of each calendar year.

These two systems, monthly restricted use pesticides and yearly general use pesticide reports, will reduce the department's manpower requirement, of 24 man months or 2 F.T.E.'s, expended now once every 5 years to collect and review applicator records by 9 man months or 0.75 F.T.E.'s. The costs of handling the new records yearly is \$7,480 or \$37,400 in five years. The current system of collecting applicator records once every five years costs the department \$70,500. Additional personnel will not be necessary to handle this record keeping system. Storage of the records after their evaluation will add some costs.

A number of commenters expressed concern on the confidentiality of applicator records and the public's access to the records. The present rule 4.10.207 (5) sets forth that the records are confidential. The final rule excluded

this provision because: (1) The Montana Pesticides Act 80-8-107 states that publication of individual records or the sale, use of production of pesticides is prohibited, and (2) The attorney general's opinion concerning this subject states that unless the department finds that the applicators or dealers right to privacy clearly outweighs the public's right to know, the records are subject to public disclosure. Such determination will be considered under department policy on a case-by-case basis. The department has been advised that the attorney general's opinion has the force of law until a district court rules on the matter or the legislature modifies this provision.

Various commenters expressed concern for the proposed provision requiring applicators to indicate the location of each application by only township, range and section numbers. The department agrees that such a requirement would be difficult for applicators to presently implement and record. The final rule will allow applicators to list the location by township, range and section or local identifiable landmarks. The department's field personnel utilizing county maps and highway department maps now utilize township, range and section numbers for its pesticide and pest surveillance activities. We certainly recommend that this procedure be implemented by applicators.

Several commenters expressed concern on the existing requirements that an application be recorded by an applicator within 24 hours. Some of these same commenters stated that some applications may take more than one day to complete and questioned the need for daily records versus completion of job records.

The department has had very few enforcement problems with the 24 hours reporting requirements. The past problems experienced highlight the need for immediate record keeping because individual applicators have been unable to provide the specific data when more than 24 hours has passed since the last application. The reason daily records are required versus completion of a job record is that certain conditions change which may relate to the pesticides effectiveness or other problems experienced with the pesticides applied. For example; time of day, location, weather conditions, formulation and other factors must relate to the individual application per day. The weather conditions, etc. for a two day job becomes meaningless in terms of use, misuse and enforcement.

A number of commenters requested that applicators be required to maintain their application records for more than 2 years as presently required. The department rejected this request for these reasons: (1) The department's primary function is to enforce the requirements of the Pesticides Act and adopted rules. The need to review records in nearly all enforcement cases occurs within the first few months after the application. (2) The monthly and yearly reports required by this rule will be retained by the department for

more than two years which will allow for the review of these data over time in terms of future health, environmental and agricultural problems. (3) To determine the adverse effects of a pesticide used in the field, scientifically designed studies are needed to measure all the variables experienced in the field. Once the proper research is done these records may be compared to the research results.

#### BASIC PURPOSE AND EXPLANATION OF THE RULE - NOTIFICATION.

The reason for this rule 4.10.209 ARM relates to the sale and use of endrin in 1981. Many producers utilizing commercial applicators reported to the department the following problems:

(1) The primary problem was their lack of knowledge concerning endrin and the one year waiting period prior to allowing their livestock to graze the treated stubble or to be fed the baled straw.

(2) A few producers did not know which pesticide was used on their fields.

(3) A number of producers did not know that according to the Environmental Protection Agency approved label endrin could not be used within 1/4 mile by aerial application or 1/8 mile by ground application of rivers, streams and lakes.

(4) A number of producers did not know of the health and environmental precautions on the label which serve to protect them, their farm and the public.

Endrin and other restricted pesticides due to their toxicities, residue potentials and other unique characteristics can be dangerous to human health, the environment and to the agricultural community. This danger is significantly reduced by applicators following all the labeling precautions, restrictions and directions. While it is the responsibility of individuals contracting applicators to know all the particular ramifications of using a pesticide (whether classified as restricted or general use) the endrin situation certainly indicated a lack of communication between some parties. The purpose of this rule is to help correct this communication problem and to allow producers to make better decisions on which pesticide to use to control pest problems on their property.

RULE MODIFICATIONS AND EXPLANATIONS. The department has made several modifications to the rule on notification based upon the testimony received. The rule will only apply to Environmental Protection Agency restricted pesticides, not to pesticides classified as restricted by the department. The applicator will have to tell the individual contracting his services of the precautions and restrictions set forth on the Environmental Protection Agency approved label. The label use direction requirements has been deleted from this rule. If the individual decides to use the restricted

pesticide, then the department believes this individual should be responsible for jointly determining with the applicator the applicable directions for use. The rule states that individuals may request the applicator to provide the actual label.

Applicators applying Environmental Protection Agency restricted pesticide within easements of right-of-way sites, that are employed or contracted by the owner or manager, would not have to notify any additional people. Application or drift onto property outside the easement or right-of-way is a violation of the Pesticide Act.

COMMENTS ON TESTIMONY. Several commenters expressed concern for having to notify landowners adjacent to right-of-ways and easements prior to application of a restricted pesticide on the right-of-way or easement. The department has addressed this problem by stating in the rule that if the applicator is employed or contracted by the person holding or managing the easement or right-of-way, notification is not required. Easement agreements requiring landowners notification supersedes the notification requirement of this rule.

One commenter requested that farm applicators be included in this rule. Should they be included in this rule, then they would be, in fact, notifying themselves. The department rejected this recommendation.

Another commenter recommended that certified non-commercial applicators be exempted from this rule especially if farm applicators are non-commercial applicators. As previously noted farm applicators are not certified non-commercial applicators. In addition certified non-commercial applicators are not included in rule 4.10.209. This rule only refers to applications by applicators on lands or property of another person. Non-commercial applicators can only apply restricted use pesticides on lands or property owned or managed by them and agricultural production cannot be involved. This recommendation was rejected.

Several commenters requested that the agency differentiate between Environmental Protection Agency restricted pesticides and pesticides restricted by the department. The department accepted their recommendation by including the term "Environmental Protection Agency" prior to the words "restricted pesticides" in this rule.

A few commenters expressed concern that it would be impossible to spray cities and town for mosquitoes or other pests if each landowner would have to be notified. This is not a problem because there are no Environmental Protection Agency restricted pesticides registered for this type of application.

A number of government agencies expressed a concern for rural mosquito control programs and county weed control programs and the need to notify landowners. This is not a



serious problem because insecticides registered for larval mosquito control are classified as general use pesticides, not restricted. In the case of weed districts the only restricted pesticide applicable is Tordon. Weed district operations are generally confined to right-of-way applications or to providing direct assistance to rural individuals in resolving their noxious weed problems. The rule provides an exemption for right-of-way applications. When a district plans to use Tordon on a property owners land, the owner should by notification know the precautions and restrictions on the Tordon label.

One commenter requested that the notification rule be deleted because it would be impossible to contact absentee landowners. The department rejected this request. The rule requires that the applicator notify either the owner, manager or lessee. The rule does not require that the owner be notified if the manager or lessee is notified.

#### BASIC PURPOSE AND EXPLANATION OF THE RULE - VIOLATION.

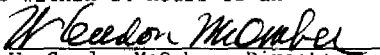
The basic purpose of rule 4.10.208 sets forth the statute conditions for which the statute imposes as violations.

**RULE MODIFICATIONS AND EXPLANATION.** The major revisions to this rule include: (1) insertion of the word "reports" to reflect the requirement in rule 4.10.207 for applicators to submit reports monthly and annually; and (2) a new provision sets forth that it is a violation not to comply with rule 4.10.209 notification.

**COMMENTS ON TESTIMONY.** Several commenters requested that the rule on violations be totally deleted. The department rejected this recommendation because the statute establishes violations and this rule is adopted for informational purposes.

One commentator requested that 4.10.208 (1) (a) be deleted if farm applicators are included in this rule and presumably in rules 4.10.207 and 4.10.209. The department rejected this recommendation because it has already documented that farm applicators are not included in rules 4.10.207, 4.10.208 or 4.10.209.

One commenter recommended that 4.10.208 (1) (e) the 24 hour record keeping requirement be deleted. The department rejected this request. Reference the previous discussion on completing application records within 24 hours of an application.

  
W. Gordon McOmber, Director  
Department of Agriculture

Certified to the Secretary of State March 15, 1982.

6-3/25/82

Montana Administrative Register

STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE BOARD OF BARBERS

In the matter of the amendments) NOTICE OF AMENDMENT OF ARM  
of ARM 8.10.403 concerning ) 8.10.403 EXAMINATIONS; 8.10.  
examinations; 8.10.602 concern-) 602 EXAMINATION; 8.10.1002  
examinations for apprentice ) TEACHING STAFF; 8.10.1008  
barbers; 8.10.1002 concerning ) IDENTIFICATION and ADOPTION  
teaching staff at barber col-) OF A NEW RULE 8.10.405 FEE  
leges; and 8.10.1008 concerning) SCHEDULE  
identification at barber )  
schools; and adoption of a new )  
rule setting a fee schedule. )

TO: All Interested Persons:

1. On February 11, 1982, the Board of Barbers published a notice of proposed amendment and adoption of the above stated rules at pages 118 through 121, 1982 Montana Administrative Register, issue number 3.

2. The board has amended and adopted the rules exactly as proposed with the following exception to 8.10.1002: (deleted matter interlined, new matter underlined)

"8.10.1002 TEACHING STAFF (1) No person shall be permitted to teach or assist in teaching barbering in any barber college in Montana, except as a registered barber holding a current Montana barber certificate and who has qualified as hereinafter provided.

(2) ~~Assistant-Instructor-Requirements:~~

~~{a}--No persons shall be approved by the board for employment as an assistant instructor in any barber college unless he or she has completed his or her apprenticeship and can show proof of at least 5 years of barbering immediately prior to making application, and has received a high school diploma or its equivalent. Any person properly qualified as such, may be employed as an assistant instructor, provided that within 30 days after the commencement of such employment the barber college shall submit to the board his or her qualifications.~~

~~{3}- Barber colleges shall terminate the employment of any instructor or assistant instructor who fails to make the application for renewal."~~

3. The above change was made in response to a telephone call from David Niss, Attorney for the Legislative Code Committee in which Mr. Niss stated he felt the board did not have the authority for the requirements of subsection (2) (a) based on the Supreme Court decision which prompted the board to repeal subsection (2) (b). No other comments or testimony were received.

STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE BOARD OF REALTY REGULATION

In the matter of the amendment) NOTICE OF AMENDMENT OF ARM  
of ARM 8.58.411 concerning a ) 8.58.411 FEE SCHEDULE  
fee schedule. )

TO: All Interested Persons:

1. On February 11, 1982, the Board of Realty Regulation published a notice of proposed amendment of ARM 8.58.411 concerning the fee schedule at pages 141-142, 1982 Montana Administrative Register, issue number 3.
2. The board has amended the rule exactly as proposed.
3. No comments or testimony were received.

DEPARTMENT OF COMMERCE  
BEFORE THE BOARD OF PLUMBERS

In the matter of the Amendment) NOTICE OF AMENDMENT OF ARM  
of Rule A.R.M. 8.44.405 con- ) 8.44.405 RENEWALS  
cerning renewals. )

TO: All Interested Persons:

1. On February 11, 1982, the Board of Plumbers published a notice of public hearing on the proposed amendment of ARM 8.44.405 concerning renewals at pages 139 & 140, 1982 Montana Administrative Register, issue number 3.

2. The board has amended the rule exactly as proposed.

3. The public hearing was duly held before the board of plumbers at 10:00 a.m., March 5, 1982, in the conference room of the Department of Commerce, 1424 9th Avenue, Helena, Montana.

Comments were received from Mr. Joseph Martin, Mitch Mihailovich, Charles Shields, and Clifford Powell relating to the increase in the renewal fee and as to use of the funds by the board. Dan Antonietti, member of the Board of Plumbers spoke concerning the need for the increase in fees. He explained that due to sunset committee actions, the board had reduced fees in order to lower the earmarked revenue balance. However, because of the decrease in fees in the past years, the money available for the administration of the board had decreased to the point that an increase in fees was necessary.

The board met with the above named individuals as well as several other individuals who had raised a similar question after the hearing. After further explanation by the board, as well as presentation of financial statements and projected expense sheets, the objections to the fee increase were withdrawn.

STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE BOARD OF PHYSICAL THERAPY EXAMINERS

In the matter of the amendments )	NOTICE OF AMENDMENT OF ARM
of ARM 8.42.402 concerning exam- )	8.42.402 EXAMINATIONS, 8.42.
inations, 8.42.403 concerning )	403 FEES, 8.42.405 TEMPORARY
fees, 8.42.405 concerning tem- )	LICENSES, 8.42.406 RECIPROCITY
porary licenses, 8.42.406 con- )	LICENSES, 8.42.409 EXEMPTIONS;
cerning reciprocity licenses, )	REPEAL OF ARM 8.42.407 CODE
8.42.409 concerning exemptions; )	OF ETHICS - UNPROFESSIONAL
repeal of 8.42.407 concerning )	CONDUCT, 8.42.408 COMPLAINT
a code of ethics and 8.42.408 )	PROCEDURES; and ADOPTION
concerning complaint procedures; )	OF SUB-CHAPTER 6, GUIDE FOR
and adoption of new rules con- )	CONDUCT OF THE PHYSICAL THERA-
cerning a guide for conduct for )	PIST, rules 8.42.601 - 8.42.
physical therapists and new )	625 and SUB-CHAPTER 7,
rules for complaint procedures )	PROCEDURAL STEPS FOR PROCESSING
	OF REPORTED VIOLATIONS, rules
	8.42.701 - 8.42.706

TO: All Interested Persons:

1. On February 11, 1982, the Board of Physical Therapy Examiners published a notice of proposed amendments, repeals and adoptions of the above entitled matter at pages 125 through 138, 1982 Montana Administrative Register, issue number 3.
2. The board has amended, repealed and adopted the rules exactly as proposed.
3. No comments or testimony were received.

DEPARTMENT OF COMMERCE

BY: 

GARY BUCHANAN, DIRECTOR

Certified to the Secretary of State, March 15, 1982.

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

In the matter of the amendment	)	NOTICE OF AMENDMENT OF
of rules in sub-chapter 2,	)	RULES IN SUB-CHAPTER 2
chapter 20, Title 16, Public	)	CHAPTER 20, TITLE 16
Water Supplies	)	(Public Water Supplies)

TO: All Interested Persons

1. On November 25, 1981, the Board of Health and Environmental Sciences published notice of a proposed amendment of rules in sub-chapter 2, chapter 20, Title 16, Public Water Supplies at pages 1543 to 1558 of the 1981 Montana Administrative Register, issue number 22.

2. The Board has amended the rules as proposed.

3. No comments or testimony were received other than background information from the Department of Health and Environmental Sciences supporting the proposed action.

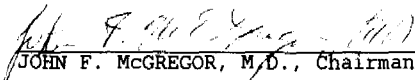
In the matter of the repeal	)	NOTICE OF REPEAL OF RULES
of rule 16.20.209 relating	)	16.20.209 and 16.20.218
to laboratory analyses and	)	
rule 16.20.218 relating to	)	
control tests of groundwater	)	(Public Water Supplies)
supplies	)	

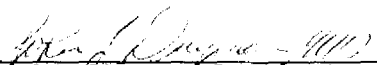
To: All Interested Persons

1. On November 25, 1981, the Board of Health and Environmental Sciences published notice of a proposed repeal of rules 16.20.209 relating to laboratory analyses and 16.20.218 relating to control tests of groundwater supplies at page 1542 of the 1981 Montana Administrative Register, issue number 22.

2. The Board has repealed the rules as proposed.

3. No comments or testimony were received other than background information from the Department of Health and Environmental Sciences supporting the proposed action.

  
JOHN F. MCGREGOR, M.D., Chairman

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

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

In the matter of the adoption ) NOTICE OF ADOPTION  
of rules concerning variances ) OF RULES  
and exemptions for public )  
water supply systems ) (Public Water Supply Systems)  
16.20.250 through 16.20.260

To: All Interested Persons

1. On December 31, 1981, the Board of Health and Environmental Sciences published notice of a proposed adoption of rules establishing terms, conditions and procedures for variances and exemptions for public water supply systems at pages 1838 to 1843 of the 1981 Montana Administrative Register, issue number 24.

2. The Board has adopted the rules as proposed.

3. No comments or testimony were received other than background information from the Department of Health and Environmental Sciences supporting the proposed action.


In the matter of the repeal ) NOTICE OF REPEAL  
of rules 16.20.230 through ) OF RULES  
16.20.233 concerning )  
variances )


To: All Interested Persons

1. On December 31, 1981, the Board of Health and Environmental Sciences published notice of a proposed repeal of rules 16.20.230 through 16.20.233 concerning variances for public water supplies at page 1844 of the 1981 Montana Administrative Register, issue no. 24.

2. The Board has repealed the rules as proposed.

3. No comments or testimony were received other than background information from the Department of Health and Environmental Sciences supporting the proposed action.

  
JOHN F. MCGREGOR, M.D., Chairman

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

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

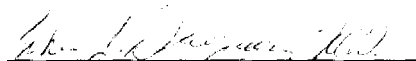
In the matter of the repeal	)	NOTICE OF THE REPEAL
of rules 16.24.401, defini-	)	OF RULES
tions; 16.24.402, physical	)	
facilities; 16.24.403,	)	
children receiving care,	)	
16.24.404, program, and	)	
16.24.405, health care	)	(Day Care Centers)
requirements	)	

To: All Interested Persons

1. On December 31, 1981, the department published notice of a proposed repeal of rules 16.24.401 through 16.24.405 concerning requirements for day care centers at page 1854 of the 1981 Montana Administrative Register, issue number 24.

2. The department has repealed rules 16.24.401, 16.24.402, 16.24.403, 16.24.404, and 16.24.405, found on pages 16-1141 through 16-1147 of the Administrative Rules of Montana.

3. No comments or testimony were received concerning the repeal.

  
JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State March 15, 1982

BEFORE THE DEPARTMENT OF JUSTICE  
OF THE STATE OF MONTANA

In the Matter of the Adoption )	NOTICE OF ADOPTION
Of a Sample Form for Use With )	OF A SAMPLE FORM
The Attorney General's Model )	
Rules. )	

TO: All Interested Persons:

1. On February 11, 1982, the Department of Justice published notice of the proposed adoption of an additional sample form for use with the Attorney General's Model Rules at page 151 of the 1982 Montana Administrative Register.

2. The proposed form was adopted substantially as proposed.

BEFORE THE (name of agency)  
OF THE STATE OF MONTANA

In the Matter of the Adoption )	NOTICE OF ADOPTION
Of an Amendment to a federal )	OF AN AMENDMENT TO A
agency rule pertaining to )	FEDERAL AGENCY RULE
)	PRESENTLY INCOR-
)	PORATED BY REFERENCE
)	IN (rule number,
)	catchphrase)
)	
)	NO PUBLIC HEARING
)	CONTEMPLATED

TO: All Interested Persons:

1. The (agency) hereby gives notice of the adoption and incorporation by reference of a later amendment to (citation to federal agency rule). (Citation to federal agency rule) is presently incorporated by reference in (rule number, catchphrases). The amendment sets forth (substance of amendment). A copy of (citation to federal agency amendment) may be obtained from the (agency name and address).



2. The effective date for the adoption of the latter amendment is (effective date may be no sooner than 30 days after the date upon which the notice is published unless the 30 days causes a delay that jeopardizes compliance with federal law or qualification for federal funding in which event the effective date may be no sooner than the date of publication--section 2-4-307(5), MCA.)

3. If the agency receives requests for a public hearing under 2-4-315, MCA, 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 ( ) persons based on ( ) --for ex.: the 200 licensed plumbers in Montana.

4. The authority of the agency to make the proposed rule is based on section \_\_\_\_\_, MCA, and the rule implements section \_\_\_\_\_, MCA.

By: (authorized person's signature)

Certified to the Secretary of State \_\_\_\_\_,  
1982.

3. Comments were received from the Administrative Code Committee suggesting incorporation of a code reference. This suggested change was made.

4. The authority to make the proposed form is based on section 2-4-202, MCA, and the form implements section 2-4-202, MCA.

By:   
MIKE GREELY

Attorney General

Certified to the Secretary of State on March 15,  
1982.

6-3/25/82

Montana Administrative Register

BEFORE THE DEPARTMENT OF JUSTICE  
OF THE STATE OF MONTANA

In the Matter of the	)	NOTICE OF AMENDMENT
Amendment of Rule 23.2.101	)	OF RULE 23.2.101
Adopting the Model Rules of	)	
Procedure	)	

TO: All Interested Persons

1. On February 11, 1982, the Department of Justice published notice of a proposed amendment to rule 23.2.101, which adopts the Attorney General's Model Rules of Procedure, at page 150 of the 1982 Montana Administrative Register, issue number 3.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received.



MIKE GREELY  
Attorney General

Certified to the Secretary of State March 15, 1982.

BEFORE THE DEPARTMENT OF JUSTICE  
OF THE STATE OF MONTANA

In the Matter of the Amendment	)	NOTICE OF AMENDMENT
of Rule 23.3.131 and 23.3.155	)	OF RULES 23.3.131
through 23.3.158, concerning	)	and 23.3.155 through
the requirement of a Social	)	23.3.158
Security Number on Driver	)	
License Applications and Changes	)	
in the Motorcycle Licensing Exams.	)	

TO: All Interested Persons

1. On February 11, 1982, the Department of Justice published notice of a proposed amendment of rules concerning changes in the information required on a driver license application and in the motorcycle licensing examinations at pages 154 through 161 of the 1982 Montana Administrative Register, issue number 3.

2. The agency has adopted the rule with minor editorial changes but substantially as proposed.

3. Oral and written comments were received from the staff of the Administrative Code Committee questioning the rulemaking authority cited in paragraph 7 of the Notice of Proposed Amendment. The Department agrees that section 44-1-103, MCA, applies to the Highway Patrol since the Highway Patrol and Motor Vehicle Divisions have been separated. Therefore, the History notation following the amended rule will include reference to rulemaking authority granted under section 61-5-111, MCA, with respect to the social security number amendment and to section 61-5-110, MCA, with respect to the motorcycle endorsement rules. In addition the second line of Rule 23.3.156 should refer to 23.155(2)(a) rather than (1)(a). No other comments were received.

By: 

MIKE GREELY  
Attorney General

Certified to the Secretary of State March 25, 1982.

6-3/25/82

Montana Administrative Register

BEFORE THE DEPARTMENT OF JUSTICE  
OF THE STATE OF MONTANA

In the Matter of the Amendment	)	NOTICE OF AMENDMENT
of Rule 23.3.202 concerning	)	OF RULE 23.3.202
the Driver Rehabilitation/	)	
Habitual Offender Point Systems	)	

TO: All Interested Persons

1. On February 11, 1982, the Department of Justice published notice of a proposed amendment of rules concerning changes in the driver rehabilitation point system at pages 162 through 175 of the 1982 Montana Administrative Register, issue number 3.

2. The agency has adopted the rule with minor editorial changes but substantially as proposed.

3. Oral and written comments were received from the staff of the Administrative Code Committee questioning the rulemaking authority cited in paragraph 7 of the Notice of Proposed Amendment and the reasons for the changes in paragraph 3 of the Notice. The Department agrees that section 44-1-103, MCA, applies to the Highway Patrol since the Highway Patrol and Motor Vehicle Divisions have been separated. Therefore, the History notation following the amended rule will include reference to rulemaking authority granted under sections 61-2-103(2)(e) and 61-11-203, MCA. In addition, paragraph 3 of the Notice of Amendment should read that the rule is amended to conform to amendments in the Montana Code. No other comments were received.

By: 

MIKE GREER  
Attorney General

Certified to the Secretary of State March 15, 1982.

BEFORE THE BOARD OF LIVESTOCK  
OF THE STATE OF MONTANA

In the matter of the amend-	)	NOTICE OF THE ADOPTION
ment of Rule 32.3.214 requir-	)	OF AN AMENDMENT TO RULE
ing a Tuberculosis test on	)	32.2.214 REQUIRING A
goats before they may be	)	TUBERCULOSIS TEST ON GOATS
brought into the state.	)	BEFORE THEY MAY BE BROUGHT
	)	INTO THE STATE.

To: ALL INTERESTED PERSONS

1. On November 25, 1981 at page 1570 of the 1981 Administrative Register, Issue Number 22, the Department of Livestock published notice of a public hearing to consider a proposed amendment to 32.3.214 ARM concerning tuberculosis test requirements for goats before they may be brought into the state.

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

32.3.214 SPECIAL REQUIREMENTS FOR GOATS

(1) same as proposed.  
(2) same as proposed.  
(3) (a) All goats brought into the state, except those for slaughter only, must be tested for tuberculosis, and found to be negative, before they may be brought into the state.

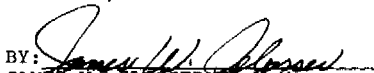
(b) same as proposed.

(c) same as proposed.

3. No comments or testimony were received.

4. The authority of the agency to make the proposed amendment is based on section 81-2-102, 81-2-103 and 81-2-703 MCA. They implement the same.

  
ROBERT G. BARTHELMESS  
Chairman, Board of Livestock

  
BY: JAMES W. GLOSSER, D.V.M.  
Administrator & State Veterinarian  
Animal Health Division

Certified to the Secretary of State March 15, 1982.

BEFORE THE BOARD OF LIVESTOCK  
STATE OF MONTANA

In the matter of the ADOPTION ) NOTICE OF ADOPTION OF RULES  
OF RULES specifying the powers ) CONCERNING QUARANTINE LIVE-  
and procedures of the Board of ) STOCK AND REPEAL OF A RULE  
Livestock when quarantining ) CONCERNING QUARANTINE OF  
livestock, and the REPEAL OF ) LIVESTOCK  
A RULE specifying certain pro- )  
cedures for the same.

To: ALL INTERESTED PERSONS

1. On December 31, 1981 at page 1869 of the 1981 Administrative Register, Issue No. 24, the Department of Livestock published notice of the proposed adoption of rules specifying the powers and procedures of the Board of Livestock when they are quarantining animals affected with or exposed to disease; and repealing Rule 32.3.101 which did the same.

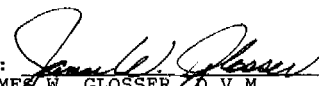
2. The department has adopted the rules as proposed and has repealed RULE 32.3.101 ARM, found on page 32-61 of the Administrative Rules of Montana.

RULE I 32.3.102 - Definition  
RULE II 32.3.103 - Subject Animals  
RULE III 32.3.104 - Subject Diseases or Conditions  
RULE IV 32.3.105 - Supplemental Quarantine provisions  
RULE V 32.3.106 - Quarantine - Who May Issue  
RULE VI 32.3.107 - Responsibility of Owner or Possessor  
RULE VII 32.3.108 - Quarantine and Release of Quarantine  
RULE VIII 32.3.109 - Animals in Transit  
RULE IX 32.3.110 - Breaking of Quarantine  
RULE X 32.3.111 - Epizootic Area

3. No comments or testimony were received.

4. The authority of the agency to make the proposed rules is based on Sections 81-2-102 and 81-20-101 M.C.A., and the rules implement Sections 81-2-102 and 81-20-101 M.C.A.

  
ROBERT G. BARTHELMLESS  
Chairman, Board of Livestock

BY:   
JAMES W. GLOSSER D.V.M.  
Administrator & State Veterinarian

Certified to the Secretary of State March 15, 1982.

BEFORE THE BOARD OF LIVESTOCK  
OF THE STATE OF MONTANA

In the matter of the amendment )	NOTICE OF AMENDMENT OF A
of rule 32.3.212 relating to )	RULE CONCERNING SPECIAL
the period in which cattle )	BRUCELLOSIS TEST REQUIRE-
must be retested for bruce- )	MENTS FOR CATTLE.
losis when brought into Montana)	

To: ALL INTERESTED PERSONS

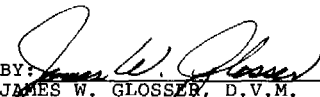
1. On December 31, 1981 at page 1866 of the 1981 Administrative Register, Issue No. 24, the Department of Livestock published notice of a proposed amendment to 32.3.212 ARM which mandates special requirements for imported cattle as regards the disease brucellosis and includes specific time periods in which imported cows must undergo retests for the disease.

2. The department has adopted the amendment as proposed.

3. No comments or testimony were received.

4. The authority to make the proposed amendment is based on section 81-2-102 and 81-2-701 MCA and implements the same.

  
ROBERT G. BARTHELMESS  
Chairman, Board of Livestock

  
BY: JAMES W. GLOSSER, D.V.M.  
Administrator, State Veterinarian  
Animal Health Division

Certified to the Secretary of State March 15, 1982.

BEFORE THE BOARD OF LIVESTOCK  
OF THE STATE OF MONTANA

In the matter of the adoption	)	NOTICE OF ADOPTION OF RULES
of Rules requiring a Tubercu-	)	REQUIRING A TUBERCULOSIS
losis test on wild species of	)	TEST ON WILD SPECIES OF
cloven-hoofed ungulates before	)	CLOVEN-HOOFED UNGULATES
they may be brought into the	)	BEFORE THEY MAY BE BROUGHT
state, and before a change of	)	INTO THE STATE AND BEFORE
ownership.	)	ANY CHANGE OF OWNERSHIP,
	)	UNLESS EXEMPTED.

To: ALL INTERESTED PERSONS

1. On November 25, 1981 at page 1572 of the 1981 Administrative Register, Issue No. 22, the Department of Livestock published notice of a public hearing to consider the adoption of proposed rules concerning Tuberculosis test requirements for wild species of cloven-hoofed ungulates.

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

RULE I 32.3.221 TUBERCULOSIS TEST, IMPORTATION OF WILD SPECIES OF CLOVEN-HOOFED UNGULATES.- same as proposed.

RULE II 32.3.222 TUBERCULOSIS TEST, CHANGE OF OWNERSHIP OF WILD SPECIES OF CLOVEN-HOOFED UNGULATES.

(1) (a) same as proposed.

(b) same as proposed.

(c) If there is no significant danger to public health, the state veterinarian may waive the change of ownership test requirement if all animals belonging to the seller have been tested and found negative and they have not been exposed to animals which have not been tested and found negative.

3. Written statements in opposition to the rules were received from Ward Swanser and Thomas Kempf requesting that the rule be limited to imports from states where there is a proven outbreak of tuberculosis and that the above amendment to the change of ownership test be accepted.

Written statements by Fred Scott in opposition, also requested the rule be limited to states of known outbreaks and commented that tuberculosis tests may cause the death of the animals by fright. Henry Stip and Floyd Farwood also opposed the rules because they are not necessary and may cause the death of the animals.

Written statements by Glen Childers supported the rules as proposed.


The amendment as suggested was adopted as it would propose no risk to public health. The other comments were overruled on the basis that tuberculosis outbreaks are not known if the animals are not tested and that the risk of death



by fright is minimal compared to the danger of an outbreak of tuberculosis.

4. These rules are authorized under sections 81-2-102, 81-2-103, and 2-4-303 MCA. They implement the same.

  
ROBERT G. BARTHELMESS  
Chairman, Board of Livestock

BY:   
JAMES W. GLOSSER, D.V.M.  
Administrator & State Veterinarian

Certified to the Secretary of State March 15, 1982.

BEFORE THE BOARD OF LIVESTOCK  
STATE OF MONTANA

In the matter of the adoption )	NOTICE OF ADOPTION OF RULE
of a rule relating to granting )	CONCERNING THE GRANTING OF
an exemption to research facil-) AN EXEMPTION UNDER THE	
ities to import certain animals)	"ANIMAL HEALTH CERTIFICATE
without a permit. )	ACT OF 1981"

To: ALL INTERESTED PERSONS

1. On December 31, 1981 at page 1873 of the 1981 Administrative Register, Issue No. 24, the Department of Livestock published notice of the proposed adoption of a rule granting an exemption to research facilities to import certain animals into Montana without a permit.

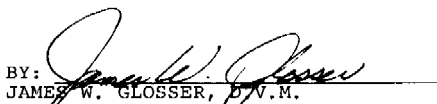
2. The department has adopted the rule as proposed.

RULE II 32.3.223 RESEARCH FACILITY EXEMPTION

3. No comments or testimony were received.

4. The authority of the department to make the proposed rule is based on sections 81-2-703 MCA, and the rule implements section 81-2-703.

  
ROBERT G. BARTHELMESS  
Chairman, Board of Livestock

BY:   
JAMES W. GLOSSER, D.V.M.  
Administrator  
Animal Health Division

Certified to the Secretary of State March 15, 1982.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

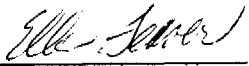
IN THE MATTER OF THE ADOPTION)	NOTICE OF ADOPTION OF RULE
of Rule I relating to the )	I, relating to the computa-
computation of the )	tion of the residential
residential property tax )	property tax credit for the
credit for the elderly. )	elderly. (42.15.506)

TO: All Interested Persons:

1. On February 11, 1982, the Department of Revenue published notice of the proposed adoption of a new rule relating to the computation of the residential property tax credit for the elderly, pages 187-188, MAR, Issue #3.

2. The Department has adopted the rule as proposed.

3. The rule was noticed with no public hearing contemplated. The Department received no written requests for a public hearing nor any public comments on the rule.

  
\_\_\_\_\_  
ELLEN FEAVER, Director  
Department of Revenue

Certified to Secretary of State 3/15/82

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

In the matter of the adoption	)	NOTICE OF THE ADOPTION OF
of Rules 46.5.508, 46.5.509 and	)	46.5.508, 46.5.509 AND
46.5.510 and the amendment of	)	46.5.510 AND THE AMENDMENT
Rule 46.5.501 pertaining to	)	OF RULE 46.5.501 PERTAINING
foster care reviews, the review	)	TO FOSTER CARE REVIEWS,
committee, review procedures	)	REVIEW COMMITTEES, AND
and defining department	)	DEFINING DEPARTMENT

TO: All Interested Persons

1. On December 17, 1981, the Department of Social and Rehabilitation Services published notice of the proposed adoption of rules and proposed amendment of Rule 46.5.501 pertaining to foster care reviews, the review committee, review procedures, and defining department at page 1733 of the 1981 Montana Administrative Register, issue number 23.

2. The agency has amended Rule 46.5.501 as proposed.

3. The agency has adopted the rules as proposed with the following changes:

46.5.508 FOSTER CARE REVIEW COMMITTEE (1) The committee will conduct a review of any child placed in a licensed family foster home, a child care agency, group home or treatment facility if the child is placed under the supervision of the department or placed by the department or the department pays for the care of the child.

(2) At least one committee shall be appointed in each judicial district in the state by the youth court judge in consultation with the field services bureau chief or his designee of the community services division of the department.

(3) The committee shall be composed of not less than four nor more than seven members including:

(a) a representative of the department;

(b) a representative of the youth court;

(c) someone knowledgeable in the needs of the children in foster care placements not employed by the youth court or department;

(d) a representative of a local school district.

(4) Three of the four required committee members must be in attendance to constitute an official review.

(a) A chairperson shall be selected by the committee prior to each meeting.

(5) Except for initial reviews under this rule, there shall be a foster care committee review once every six months on each child who has been in foster care for a period of more than six months.

~~(a) -- The committee shall meet no less than annually for foster care reviews.~~

(6) The person responsible for the placement of a child should not be a committee member when the committee reviews that child's placement.

46.5.509 SUBJECT OF FOSTER CARE REVIEWS (1) Foster care reviews must specifically consider the following:

(a) Are the child, parents, foster parents receiving appropriate services designed to get the child home?

(b) Have reasonable efforts been made by the placing agency to return the child to his or her home?

(c) Can the child return home? If not, why not? What efforts must be made by the parents and agency before the child can return home?

(d) In the interim, is this placement the least restrictive, ~~(most-family-like)-available~~ most appropriate and as close as possible to the parents' home so as to facilitate visitation?

(e) Does the child's treatment plan need to be modified?

(f) By what date may it be expected that the child will return home, be placed for adoption or other alternative permanent placement situation (i.e., permanent foster care or guardianship)?

(g) To what extent have the parents visited the child, what attempts has the placing worker made to facilitate visitation, and any reason why visitation has not happened?

(2) The committee shall be provided with written information by the placing agency necessary to answer all questions found in subsection (1) of this rule ten days prior to their meeting date. This written information supporting documentation available for review at the committee meeting shall include:

(a) Current social information;

(b) placement history;

(c) treatment plan;

(d) description of activities and observations of worker;

(e) court orders;

(f) available psychological and psychiatric information regarding the child/family;

(g) placement worker's recommendation for continued placement or return to the family.

46.5.510 REPORTS OF FOSTER CARE REVIEW COMMITTEE

(1) The committee, after reviewing the information provided, shall submit a written report to the judge, the department and placing agency summarizing their findings and recommendations within 30 days of the review date. The report shall include:

(a) answers to questions in ARM 46.5.509;

(b) recommendations and reasons as to continuation or discontinuation of foster care;

(c) treatment needs of child.

(2) The following people may participate in foster care review meetings:

(a) committee members;

(b) placing workers and/or supervisor;

(c) ~~foster-parent~~ foster care provider, parents and child/youth (if appropriate) may attend if they wish;

(d) child's guardian ad litem;

(e) other people as appropriate.

(3) Confidentiality of foster care review.

(a) All members of the committee and all persons present at committee meetings are bound by the confidentiality policies of the department and shall be informed of the confidentiality of any information discussed at the meeting. Members and persons present are required to keep all information about the subject individuals confidential.

(b) All reports or written records of the committee shall be kept confidential subject to the requirements of the department (except as provided elsewhere in this rule).

4. The department has thoroughly considered all verbal and written commentary received:

Comment: The provision in Rule 46.5.508 relating to how often a placement is to be reviewed is unclear. Section (5) and subsection (5)(a) are contradictory.

Response: To clarify how often a placement is to be reviewed and how often the committee must meet, the rule has been changed to simply provide that reviews will be every six months of any child in placement for more than six months and the committee must meet that often. The rule excepts initial reviews since it is expected that initially the committee will have to meet more often to review all existing cases of children in care for more than six months.

Comment: Since the initial reviews will be time-consuming, will persons be allowed to alternate on the committee and will reviews need to be scheduled all at one time.

Response: It is anticipated that each group being represented on the committee (youth court, the department, etc.) may have more than one designated representative allowing some alternating. Scheduling other than stated in the rules is discretionary with the committee.

Comment: It would not be appropriate for the person with responsibility for the placement to serve on the committee which is determining the appropriateness of the placement.

Response: This comment was well founded and section (6) is being added to Rule 46.5.508 to reflect that concern.

Comment: In Rule 46.5.509(1)(f) the wording permanent should be defined or should be changed from "permanent placement situation" to "continued placement situation."

Response: The ultimate goal in foster care placements is permanency for the child whether it is return to home, adoption or permanent foster care. The rule adequately reflects that goal. The definition of permanency may vary from case to case and will be left to the review committee. The department will share its definition with the committees in the form of a handbook.

Comment: Asking the review committee to consider whether the placement is the least restrictive available encourages social workers to push children through the system to the most appropriate placements and children may be forced to fail their way to that placement.

Response: Rule 46.5.509(1)(d) is changed to refer to placements that are both the most appropriate and the least restrictive given that appropriateness standard.

Comment: Parental visitation deserves more inquiry. The review committee not only determines to what extent the parents have visited the child but also what attempts the placing worker has made to maintain contact between parent and child. It was also suggested that the reference to parental visits be deleted since sometimes its difficult to make parent contact.

Response: Rule 46.5.509(1)(g) is changed to include inquiry into what efforts the placing worker has made to maintain parent/child contact. The inquiry into any reasons why the visitations have not happened adequately covers those instances in which visitation is not in the best interest of the child or the parent is not available.

Comment: References in Rule 46.5.509(1)(a) and (b) to efforts to return the child home should be deleted.

Response: The initial goal of foster care placement is to deal with the problems in the home and with the family members so that the child may be returned to the family. Inquiry into

what efforts have been made to that end are key to the review committee determining the appropriateness of the placement.

Comment: The list of people who may participate in the review meeting in Rule 46.5.510 speaks of foster care parents which seems to exclude other care and treatment providers.

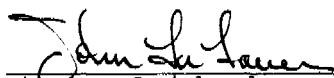
Response: Rule 46.5.510 is being changed to use the more inclusive term "foster care provider" rather than "foster care parents."

Comment: The list of people who may participate in the review meetings limits participation to only those people.

Response: Although the review meetings are not intended to be open to the public, the rule is changed to allow participation by "other people as appropriate." The appropriateness will be determined by the committee.

Comment: The confidentiality sections in Rule 46.5.510 are unclear, is the exchange of information between the agency, child study teams, etc. still possible?

Response: Rule 46.5.510 is clarified to indicate that committee members are bound by the confidentiality policies of the department and all reports of the committee are subject to the same confidentiality policies.



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

Certified to the Secretary of State March 15, 1982.



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.

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 December 31, 1981. This table includes those rules adopted during the period January 1, 1982 through March 31, 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 December 31, 1981, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1981 and 1982 Montana Administrative Registers.

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