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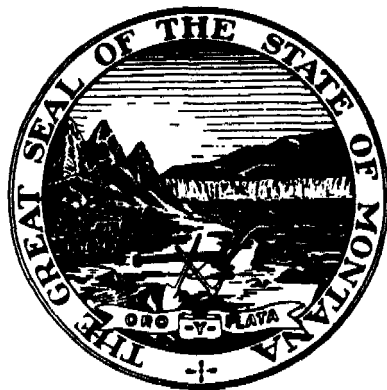
**MONTANA
ADMINISTRATIVE
REGISTER**

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1986 ISSUE NO. 11

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 11

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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

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STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF PUBLIC ACCOUNTANTS

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING ON
amendments of 8.54.612 con-	)	AMENDMENT OF 8.54.612
cerning client information,	)	CONFIDENTIAL CLIENT IN-
8.54.702 and 8.54.703 con-	)	FORMATION, 8.54.702 EN-
cerning enforcement pro-	)	FORCEMENT AGAINST PERMIT
cedures, 8.54.817 concerning	)	HOLDERS, 8.54.703 EN-
continuing education credits	)	FORCEMENT PROCEDURES -
and proposed adoption of new	)	INVESTIGATORS, 8.54.817
rules concerning profession	)	CREDIT FOR SERVICE AS
monitoring rules	)	LECTURER, DISCUSSION
	)	LEADER, OR SPEAKER;
	)	REVIEWERS UNDER THE
	)	POSITIVE ENFORCEMENT
	)	PROGRAM, AND PROPOSED
	)	ADOPTION OF NEW RULES
	)	UNDER SUB-CHAPTER 9
	)	CONCERNING PROFESSION
	)	MONITORING RULES

TO: All Interested Persons.

1. On July 31, 1986 at 10:00 a.m., a public hearing will be held in the Conference Room of the Department of Commerce, 1424 9th Avenue, Helena, Montana, to consider the proposed amendment of 8.54.612, 8.54.702, 8.54.703, 8.54.817 and the proposed adoption of new rules under sub-chapter 9 concerning profession monitoring rules.

2. The proposed amendment of 8.54.612 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-1497 and 8-1498, Administrative Rules of Montana)

"8.54.612 CONFIDENTIAL CLIENT INFORMATION (1) through (2)(c) will remain the same.

(d) preclude a firm or permit holder from responding to any inquiry made by the board or any investigative or disciplinary body established by law or formally recognized by the board, or

(e) relieve a firm or permit holder of the requirement to file reports under new rule IV.

(3) will remain the same."

Auth: 37-50-203, MCA Imp: 37-50-203(2)(h), MCA

3. The proposed amendment would make the rule consistent with the proposed rules on professional monitoring.

4. The proposed amendment of 8.54.702 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-1503 and 8-1504, Administrative Rules of Montana)

"8.54.702 ENFORCEMENT AGAINST PERMIT HOLDERS (1), (a) and (b) will remain the same.
(c) failure on the part of a holder of a certificate, license or permit to maintain compliance with the requirements for issuance of a certificate, license, or annual permit including failure to comply with the profession monitoring rules of sub-chapter 9;

(d) through (3) will remain the same."

Auth: 37-50-203, MCA Imp: 37-50-203(2)(h), MCA

5. The proposed amendment would provide an enforcement provision for those failing to comply with the proposed professional monitoring rules.

6. The proposed amendment of 8.54.703 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-1504 and 8-1505, Administrative Rules of Montana)

"8.54.703 ENFORCEMENT PROCEDURES - INVESTIGATIONS

(1) through (4) will remain the same.

(5) The board may request assistance from permit holders having appropriate experience and competence to review reports submitted by the positive enforcement coordinator or submitted under the profession monitoring rules of sub-chapter 9, in the determination of reasonable cause for the board to initiate disciplinary proceedings.

(6) and (7) will remain the same."

Auth: 37-50-203, MCA Imp: 37-50-203(2)(h), MCA

7. The proposed amendment would provide for investigations, where warranted, based on information received by the professional monitoring rules being proposed.

8. The proposed amendment of 8.54.817 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-1515, Administrative Rules of Montana)

"8.54.817 CREDIT FOR SERVICE AS LECTURER, DISCUSSION LEADER, OR SPEAKER; REVIEWERS UNDER THE POSITIVE ENFORCEMENT PROGRAM

(1) will remain the same.

(2) Report reviewers under the board's positive enforcement program set out in ARM 8.54.703 (5) may claim continuing education credit for actual time spent in conducting reviews. The maximum credit for such reviews shall not exceed 20 hours per year. These credits shall qualify towards the requirement related to reporting on financial statements as set out in ARM 8.54.802(2)."

Auth: 37-50-203, MCA Imp: 37-50-203(2)(h), MCA

9. The proposed amendment would allow continuing education credit for those licensees who conduct reviews of reports under the proposed professional monitoring rules.

10. The proposed new rules under sub-chapter 9 will read as follows:

"I. INTRODUCTION Pursuant to section 37-50-203 (2)(h), MCA, the purpose of these rules shall be to provide for the monitoring of the profession of public accounting."

Auth: 37-50-203, MCA Imp: 37-50-203(2)(h), MCA

"II. DEFINITIONS As used in this section:

(1) "Practice Unit" means each permit holder who practices public accounting as an individual or sole proprietor or each separate office of a sole proprietorship, partnership, or professional corporation which practices public accounting, or a governmental organization which employs a permit holder in a public accounting capacity.

(2) "Peer Review" means a review under a formal peer review program sponsored by the Division of Firms of the American Institute of Certified Public Accountants or such other formal peer review program approved by the board of public accountants (board)."

Auth: 37-50-203, MCA Imp: 37-50-203(2)(h), MCA

"III. STATEMENT BY PERMIT HOLDERS (1) Every individual applying for a permit to practice or renewal thereof must submit a statement to the board which describes his/her level of association with public accounting reports that indicates expert knowledge of accounting or auditing. This statement shall disclose the practice unit, if any, of which the permit holder is a member. This statement shall be used to determine if the permit holder is required to comply with new rule IV.

(2) Permit holders shall be required to file a report with the board as set out in new rule IV, if they:

(a) sign reports which indicate an expert knowledge of accounting or auditing; or

(b) allow their name and designation as a CPA or LPA to be included on a report that indicates expert knowledge of accounting or auditing; or

(c) are members of a practice unit and who have the final authority to issue a report that indicates an expert knowledge of accounting or auditing.

(3) Permit holders shall not be required to file a report with the board as set out in new rule IV, if they:

(a) do not sign reports which indicate an expert knowledge of accounting or auditing; or

(b) do not allow their name and designation as a CPA or LPA to be included on a report that indicates expert knowledge of accounting or auditing; or

(c) are members of a practice unit but do not have the final authority to issue a report that indicates an expert knowledge of accounting or auditing.

(4) In unusual circumstances, the board will decide whether a report is required to be filed under new rule IV."

Auth: 37-50-203, MCA Imp: 37-50-203(2)(h), MCA

"IV FILING OF REPORTS (1) Every permit holder who is required to file a report under new rule III shall file with the board a copy of the highest level of public accounting work performed by the holder, which may be any of the following:

(a) an audit report (including the complete financial statements reported on); or

(b) a review report (including the complete financial statements reported on); or

(c) a compilation report (including the complete financial statements reported on); or

(d) any other report (complete with the information reported on) that indicates the permit holder has expert knowledge of accounting or auditing.

(2) The report submitted must have been issued within the past calendar year and must have the client's or employer's name and similar identifying information deleted.

(3) This requirement will be satisfied by the submission of a report by the practice unit of which the permit holder is a member. One report filed by a practice unit may be used to meet the filing requirement for all members of that practice unit who are required to file a report."

Auth: 37-50-203, MCA Imp: 37-50-203(2)(h), MCA

"V. ALTERNATIVES AND EXEMPTIONS (1) A practice unit which has undergone a peer review within 3 calendar years may satisfy the requirements of new rule IV by filing a complete copy of the peer review report including all findings and recommendations and the practice unit's responses to such findings and recommendations.

(2) The board reserves the authority to exempt permit holders who would otherwise be required to file a report under new rule IV for good cause, based upon facts and circumstances."

Auth: 37-50-203, MCA Imp: 37-50-203(2)(h), MCA

"VI. ENFORCEMENT The reports submitted to the board under this sub-chapter shall be subject to review, investigation and enforcement under sub-chapter 7."

Auth: 37-50-203, MCA Imp: 37-50-203(2)(h), MCA

11. The Board is proposing to adopt these new rules to implement section 37-50-203(2)(h), MCA, and provide for the monitoring of the work product of accountants holding permits to practice, in order to

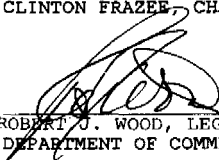
ensure and maintain the standard of service of the accounting profession. Work product to be monitored will include audits, reviews, compilations and financial projections by practice units. The primary function of the Board is to protect the public from loss or injury caused by incompetent or substandard work product of permit holders.

A program consisting of monitoring permit holders' work product in the field of financial reporting would benefit the public by identifying obviously incompetent or substandard work. Program responses could be corrective and remedial as well as punitive.

During fiscal year 1985, the number of complaints submitted to the Board doubled over the previous year. This could mean that the public is not adequately protected and that competency and quality of the accounting profession and its product is not adequately monitored. The only quality control in place now is the present complaint process, which acts after there has been an alleged loss or injury suffered by the public.

12. Interested persons may submit their data, views or arguments concerning the proposed amendments and adoptions either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Board of Public Accountants, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than July 14, 1986.

BOARD OF PUBLIC ACCOUNTANTS
CLINTON FRAZEE, CHAIRMAN

BY: 
ROBERT J. WOOD, LEGAL COUNSEL
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, June 2, 1986.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
STATE OF MONTANA

IN THE MATTER OF PROPOSED ADOPTION)	NOTICE OF PUBLIC HEARING
OF NEW RULES CONCERNING SPECIAL)	IN THE MATTER OF PROPOSED
EDUCATION TRANSPORTATION)	ADOPTION OF NEW RULES
)	UNDER SUBCHAPTER 25
)	ENTITLED "SPECIAL
)	EDUCATION TRANSPORTATION,"
)	OF CHAPTER 16, SPECIAL
)	EDUCATION

To: All Interested Persons:

1. On Friday, July 11, 1986, at 10:00 a.m., in the conference room of the Superintendent of Public Instruction's offices in Room 106 at the State Capitol, Helena, Montana, a public hearing will be held to consider the above-stated rules.

2. The rules as proposed will read as follows:

RULE I DEFINITION (1) Specialized transportation for handicapped children and youth is a related service which is necessary in order for a handicapped child or youth to benefit from special education. It includes, but is not limited to:

- (a) travel to and from school and between schools,
- (b) specialized equipment, i.e., special or adapted buses and lifts, if required to provide special transportation for handicapped child or youth,
- (c) travel to and from services listed in the student's Individual Education Plan (IEP).

AUTH: 20-7-442, MCA

IMP: 20-3-106, MCA

RULE II ELIGIBILITY (1) Specialized transportation needs must be documented in the handicapped child or youth's Individual Education Plan as a related service.

AUTH: 20-7-442, MCA

IMP: 20-3-106, MCA

RULE III FUNDING (1) For the purposes of capacity rating, the capacity of the bus prior to alteration for special education shall be the capacity used for reimbursement.

(2) All special education buses are deemed to have met the student load requirement of the law and are deemed to be full.

(3) On buses approved by the Superintendent of Public Instruction as special education buses, an additional one-third of the on-schedule amount shall be paid to the school district.

(4) On individual transportation contracts where a special education student is transported, an additional one-third of the on-schedule amount shall be paid to the district.

AUTH: 20-7-442, MCA

IMP: 20-3-106, MCA

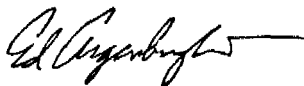
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MAR Notice No. 10-2-55

3. The rules are proposed to meet requirements in 20-7-442, MCA, requiring the Superintendent of Public Instruction to promulgate rules for state transportation reimbursement for special education children.

4. Interested parties may present their data, views and arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Gail Gray, Director of Special Education, Office of Public Instruction, State Capitol, Helena, Montana 59620, no later than July 15, 1986.

5. Rick Bartos, Attorney, Office of Public Instruction, has been designated to preside over and conduct the hearing.



ED ARGENBRIGHT
State Superintendent
Office of Public Instruction

Certified to the Secretary of State this 2nd day of June, 1986.

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

In the matter of the adoption	)	NOTICE OF PUBLIC HEARING ON
of a rule and amendment of	)	THE PROPOSED ADOPTION OF A
Rule 46.12.401 pertaining to	)	RULE AND AMENDMENT OF RULE
provider sanctions in the	)	46.12.401 PERTAINING TO
general relief medical	)	PROVIDER SANCTIONS IN THE
assistance program	)	GENERAL RELIEF MEDICAL
	)	ASSISTANCE PROGRAM

TO: All Interested Persons

1. On July 8, 1986, at 9:30 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the proposed adoption of a rule and amendment of Rule 46.12.401 pertaining to provider sanctions.

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

RULE I GROUNDS FOR SANCTIONING Sanctions may be imposed by the department against providers of medical assistance provided under this chapter in accordance with the provisions of ARM 46.12.400 et. seq.

AUTH: Sec. 53-2-803 and 53-6-111 MCA
IMP: Sec. 53-2-803 MCA

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

46.12.401 GROUNDS FOR SANCTIONING Sanctions may be imposed by the department against a provider of medical assistance, provided under title 46, chapters 12 and 25, of the administrative rules of Montana, for any one or more of the following reasons:

Subsections (1) through (26) remain the same.

AUTH: Sec. 53-2-201, 53-2-803, 53-4-111, 53-6-111 and 53-6-113 MCA

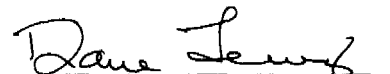
IMP: Sec. 53-2-306, 53-2-801, 53-2-803, 53-4-112 and 53-6-111 MCA

4. Chapter Number 370, Laws of Montana, 1985, requires the state to establish a system of penalties and sanctions applicable to providers of health-related services to indigent persons in state assumed counties under the general relief medical assistance program set forth in title 46, chapter 25, of the administrative rules of Montana. Rule I makes this requirement a part of the department's administrative rules

governing general assistance. The proposed amendment to ARM 46.12.401 is made to clarify the rule and ensure its consistency with the statute.

5. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than July 10, 1986.

6. The Office of Legal Affairs, Department of Social and Rehabilitation Services has been designated to preside over and conduct the hearing.



Director, Social and Rehabilitation Services

Certified to the Secretary of State June 2, 1986.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the) NOTICE OF AMENDMENT OF RULES
amendment of Rules) 4.10.101, 4.10.102, 4.10.106,
4.10.101 through) 4.10.201, 4.10.202, 4.10.203,
4.10.1501 concerning) 4.10.204, 4.10.205, 4.10.206,
pesticide sale and) 4.10.207, 4.10.208, 4.10.312,
use.) 4.10.313, 4.10.314, 4.10.315,
) 4.10.401, 4.10.404, 4.10.501,
) 4.10.503, 4.10.504, 4.10.903,
) 4.10.1501 CONCERNING PESTICIDE
) SALE AND USE.

TO: All Interested Persons

1. On May 28, 1986, at 9:00 a.m. in room 225, of the Agriculture/Livestock Building, Sixth and Roberts, Helena, Montana, the Department of Agriculture conducted a hearing regarding the above stated rules published on pages 587 through 617, 1986 MAR issue number 8.

2. The department has adopted the rules with the following changes: (text of the rule with matter stricken, interlined and new matter added, then capitalized).

4.10.101 and 4.10.102 adopted as proposed.

4.10.106 adopted as proposed.

4.10.201 PESTICIDE APPLICATOR LICENSING REQUIREMENTS

(1) through (8) adopted as proposed.

4.10.201(9) An applicator not renewing and maintaining his license and qualification after WITHIN the established qualification period shall be required to retake and pass the complete examination series prior to the issuance of a new license AT THE BEGINNING OF THE NEXT QUALIFICATION PERIOD. The applicator may maintain his qualifications by attending approved requalification programs for a time period not to exceed five four years. The applicator will be required to maintain his records of requalification for submission to the department for relicensing at-a-later date. The department will not continue to maintain qualification data. The department reserves the right to require special examination(s) on new requirements or technology.

(10) Applicators and their employees licensed as applicators or operators shall reveal THEIR his license upon request by any individual or business, for whom the applicator or his employee is performing pesticide applications or to an authorized representative of the department.

4.10.201(10)(a) adopted as proposed.

AUTH: 80-8-105, MCA

IMP: 80-8-105, 80-8-203, 80-8-204, 80-8-206,
80-8-210, and 80-8-213, MCA

4.10.202 through 4.10.206 adopted as proposed.

4.10.207 RECORDS (1) All licensed, certified licensed commercial, public utility, government, applicators and certified non-commercial applicators and their operators 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:

4.10.207(1)(a) through (9) adopted as proposed.

AUTH: 80-8-105, MCA IMP: 80-8-105, MCA

4.10.208 adopted as proposed.

4.10.312 and 4.10.313 adopted as proposed.

4.10.314 APPLICATION OF AQUATIC HERBICIDES thru (2) adopted as proposed.

4.10.314(3) Allow an inspection of the treatment area by the department or its authorized agents prior to approval of the plan and application by the applicator. ~~The department may inspect all water areas prior to the management plan approval.~~ The department will notify the applicant of the plan's approval once any required inspections are completed. If the applicant desires an inspection of the treatment area, advance notice to the department of at least one week is recommended.

4.10.314(4) through 4.10.315 adopted as proposed.

4.10.401 FARM APPLICATOR CERTIFICATION (1) through (3) adopted as proposed.

4.10.401(4) Certified farm applicators shall requalify for certification to use restricted use pesticides prior to issuance of a certificate. Requalification may be achieved by passing an examination or by attending six hours of training approved by the department. Each farm applicator qualification period shall conform to the established staggered system set forth in this rule. The qualification period of each district ends December 31 of the year indicated and every five years thereafter. A listing of counties within each district follows:

DISTRICT I 1988

Flathead	Missoula
Lake	Ravalli
Lincoln	Sanders
Mineral	

DISTRICT II 1989

Beaverhead	<u>LEWIS AND CLARK</u>
Broadwater	Madison
Deer Lodge	Meagher
Gallatin	<u>PARK</u>
Garfield	Powell
Granite	Silver Bow
Jefferson	

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Montana Administrative Register

DISTRICT III 1990

Blaine	Liberty
Cascade	Pondera
Choteau	Teton
Glacier	Toole
Hill	

DISTRICT IV 1986

Carter	Prairie
Custer	Richland
Daniels	Roosevelt
Dawson	Rosebud
Fallon	Sheridan
Garfield	Treasure
McCone	Valley
Phillips	Wibaux
Powder River	

DISTRICT V 1987

Big Horn	Petroleum
Carbon	Stillwater
Fergus	Sweetgrass
Golden Valley	Wheatland
Judith Basin	Yellowstone
Musselshell	

AUTH: 80-8-105, MCA IMP: 80-8-105, 80-8-209, MCA

4.10.404 IMPROPER PURCHASE OR USE (1) No farm applicator, family member or employee shall use or recommend use of a pesticide in a manner inconsistent with registered labeling, or with any agency or department restrictions that have been placed on the use of that pesticide.

(2) No farm applicator, family member or employee shall purchase or use a restricted pesticide without either a permit or a credential. ALL APPLICATIONS MADE BY FAMILY MEMBERS OR EMPLOYEES SHALL BE UNDER THE DIRECT SUPERVISION OF A FARM APPLICATOR.

AUTH: 80-8-105, 80-8-211, 80-8-306, MCA

IMP: 80-8-105, 80-8-211, 80-8-306, MCA

4.10.501 adopted as proposed.

4.10.503 PESTICIDE DEALERS REQUIREMENTS AND STANDARDS

(1) adopted as proposed.

(2) New applicants for a dealer license must pass a written examination prior to issuance of a license by the department. An applicant not receiving a passing score on the first examination and upon notification of failure by certified staff, may retake the examination seven (7) days after notification. Applicants failing the second examination and upon notification of failure by certified staff, may retake the examination fifteen (15) days after notification. Applicants failing the third examination

shall not be allowed to retake the examination until the next licensing period beginning January 1 the next year. Applicants may be re-examined at the department's Helena office or the applicant may make arrangements for re-examination at other locations in the state or in other states at the convenience and approval of the department.

4.10.503(3) and (4) adopted as proposed.

4.10.503(5) A dealer, not renewing and maintaining his license and qualification, after WITHIN the established qualification period shall be required to retake and pass the examination prior to the issuance of a new license AT THE BEGINNING OF THE NEXT QUALIFICATION PERIOD. The dealer may maintain his qualifications by attending approved requalification programs for a time period not to exceed five FOUR years. The dealer will be required to maintain his records of requalification for submission to the department for relicensing-at-a-later-date. The department will not maintain qualification data for persons that have not relicensed. The department reserves the right to require special examination(s) on new requirements or technology.

4.10.503(6) through (8) adopted as proposed.

AUTH: 80-8-105, MCA IMP: 80-8-105, 80-8-207,
80-8-208, MCA

4.10.504 RECORDS (1) thru (3) adopted as proposed.

4.10.504(4)(a) Each dealer, including pharmacists, veterinarians and certified pharmacies selling restricted pesticides, upon request of the department, shall submit to the department written records containing PROVIDING the information in ruleARM 4.10.504(3). ~~The department may require the sales records of individual restricted pesticides.~~ The department may also require the sales records ~~on all or individual~~ OF general USE pesticides PROVIDING contain the information in 4.10.504(3)(a), (b) and (c). The records shall be submitted within fourteen (14) calendar days of the request. The records shall be made on the standard forms provided by the department or on forms approved by the department.

4.10.504(4)(b) through (5)(a) adopted as proposed.

4.10.504(5)(b) Dealers must submit to the department annually, A REPORT OF the sale of all herbicides, except for products solely registered for home, yard, lawn and garden use. The report must include the total volume sold, the trade name, the company name, and the EPA registration number or the type of formulation of each individual product. The herbicide report must be submitted to the department by January 31 of the following year. The reports shall be made on the standard forms provided by the department or on forms approved by the department.

4.10.504(6) thru (7) adopted as proposed.

AUTH: 80-8-105, 80-8-211, IMP: 80-8-105, 80-8-211,
80-7-802, MCA 80-7-812 MCA

4.10.903 adopted as proposed.

4.10.1501 adopted as proposed.

3. The reasons for repealing the rules noticed for repeal are set forth in following:

Rules 4.10.318, 4.10.505 and 4.10.902. These rules established the violations for the aquatic herbicide rules, pesticide dealers rules and for the use and sale of endrin. These violations are already established by statute or are set forth in other related rules. Repeal of these three rules eliminates duplication of standards already stated in law or rules.

Rule 4.10.402. This rule is being repealed for two reasons: 1) it has not been utilized, and 2) farm applicators may receive temporary permits, issued locally, once all the required qualification standards are met and an application and fee are sent to the department.

Rule 4.10.601, 4.10.602, 4.10.603 and 4.10.604. These rules set forth administrative practices of the department for the issuance, revocation or denial of pesticide licenses and procedures for obtaining an injunction. The department has determined that these administrative functions are adequately established by the Montana Administrative Procedures Act and the Montana Pesticides Act. Repeal of these rules eliminate duplication of standards.

4. The department received the following comments:

Comment: Dave Cogley of the Legislative Council, Legislative Code Committee, requested a number of editorial changes in rules 4.10.201(9), (10); 4.10.314; 4.10.503(5); and 4.10.504(4), (5)(b).

Response: The department agreed with these suggested changes and has incorporated them into the respective rules.

Comment: A district pesticide specialist noted that rule 4.10.401(4) incorrectly listed the counties in District II.

Response: The department is amending rule 4.10.401(4) by deleting "Garfield" county listed under District II and by inserting the counties "Lewis and Clark" and "Park."

Comment: The Environmental Protection Agency requested that the department insert into rule 4.10.404 a statement on direct supervision of employees and family members of farm applicators.

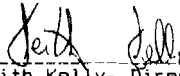
Response: The department concurred with this request and has modified the rule accordingly.

Comment: A pesticide specialist noted that in rule 4.10.503(2) that the words "by certified mail" in lines 6 and 9 had not been deleted as they were for rule 4.10.203(4)(a) and recommended that these words be deleted.

Response: The department concurred with this comment and has deleted these words in rule 4.10.503(2).

5. The other comments received by the department supported the proposed rule changes.

The authority of the department to adopt the proposed rules is based upon section 80-7-802, 80-8-105, 80-8-211, 80-8-214, MCA and implements section 80-7-812, 80-8-105, 80-8-201, 80-8-203, 80-8-204, 80-8-206, 80-8-207, 80-8-208, 80-8-209, 80-8-210, 80-8-211, 80-8-213, 80-8-214, 80-8-306, MCA.



Keith Kelly, Director
Montana Department

Certified to the Secretary of State June 2, 1986.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of proposed) ADOPTION OF NEW RULES
new rules regarding civil) REGARDING CIVIL PENALTIES
penalties for pesticide act) FOR PESTICIDE ACT VIOLATIONS
violations)

TO: All Interested Persons

1. On May 28, 1986 at 1:00 p.m. in Room 225,
Agriculture/Livestock Building, Sixth and Roberts, Helena,
Montana, the Department of Agriculture conducted a hearing
regarding the above stated rules published on pages 618
through 625, 1986 MAR issue number 8.

2. The department has adopted the rules with the
following changes: (text of the rule with matter stricken
interlined and new matter added, then capitalized):

(Rule I) 4.10.1001 DEFINITIONS As used in this part the
following definitions apply:

(1) "ANIMAL POISONING" MEANS A PESTICIDE EXPOSURE TO
HUMANS, LIVESTOCK OR DOMESTIC AND WILD ANIMALS RESULTING IN
ACUTE AND/OR CHRONIC ILLNESS, HARM OR DEATH NORMALLY
VERIFIED RESPECTIVELY BY A PHYSICIAN, A VETERINARIAN OR A
RECOGNIZED WILDLIFE PATHOLOGIST. THIS VERIFICATION SHOULD
INCLUDE DOCUMENTATION EITHER BY A LABORATORY BIOASSAY,
ANALYTICAL CONFIRMATION, OR ANOTHER DEPARTMENT APPROVED
SCIENTIFIC METHOD.

~~41(2)~~ (2) "Exposure" means the process and/or result of
introducing a pesticide by any method or route onto or into
humans, livestock, animals, crops, plants or the
environment.

~~42(3)~~ (3) "Harm" means the exposure due to the improper
use or misuse of a pesticide by direct application or
otherwise resulting from application or use, resulting in
but not limited to: (a) physical or biological acute,
subacute or chronic pesticide damage, injury or poisoning to
humans, livestock, animals, crops, plants or to the
environment; (b) pesticide residues that prevent the
planting, harvesting production, grazing, consumption or
sale of crops, livestock, plants or animals; (c)
contamination of potable drinking water or contamination of
ground or surface waters or air exceeding state or federal
standards.

~~43(4)~~ (4) "Pesticide poisoning" means ~~a-Animal-poisoning
means-a-pesticide-exposure-to-humans,-livestock-or-domestic
and-wild-animals-resulting-in-acute-and/or-chronic-illness,
harm-or-death-normally-verified-respectively-by-a-physician,
a-veterinarian-or-a-recognized-wildlife-pathologist.-this
verification-should-include-documentation-either-by-a
laboratory-bioassay,-analytical-confirmation-or-another
department-approved-scientific-method.-b-Plant-poisoning
means-a-pesticide-exposure-to-plants-or-crops-resulting-in~~

~~the acute or chronic destruction, loss, reduction or damage to the plants, verified by either a recognized plant pathologist, botanist or a trained department pesticide specialist. This verification should include documentation from either a laboratory bioassay, a laboratory analytical confirmation or another department approved scientific method.~~ c) Poisoning in animals or plants POISONING WHICH may result in discernible adverse effects on the physical structure, growth, population level, or reproduction rates of organisms verified by qualified animal or plant specialists in combination with either a laboratory bioassay, laboratory analytical confirmation or another department approved scientific method.

(5) "PLANT POISONING" MEANS A PESTICIDE EXPOSURE TO PLANTS OR CROPS RESULTING IN THE ACUTE OR CHRONIC DESTRUCTION, LOSS, REDUCTION OR DAMAGE TO THE PLANTS, VERIFIED BY EITHER A RECOGNIZED PLANT PATHOLOGIST, BOTANIST OR A TRAINED DEPARTMENT PESTICIDE SPECIALIST. THIS VERIFICATION SHOULD INCLUDE DOCUMENTATION FROM EITHER A LABORATORY BIOASSAY, A LABORATORY ANALYTICAL CONFIRMATION OR ANOTHER DEPARTMENT APPROVED SCIENTIFIC METHOD.

4)(6) "Significant harm" means having a measurable or verified observation of adverse effect(s), on health, environment, agricultural crops or livestock.

5)(7) "Proven harm" in cases of misuse means to establish the validity or authenticity of exposure, harm or poisoning by demonstrating adverse effects through verification by a recognized animal, plant, or pesticide specialist, which in most cases includes documentation of the pesticide by laboratory analytical or bioassay confirmations or other approved scientific methods.

AUTH: 80-8-105, MCA

IMP: 80-8-306, MCA

(Rule II) 4.10.1002 and (Rule III) 4.10.1003 adopted as proposed.

(Rule IV) 4.10.1004 OTHER PENALTIES (1) If the nature of a particular enforcement proceeding so warrants, the department may, in the interest of judicial economy, combine a disciplinary proceeding under 80-8-211, MCA (suspension or revocation of licenses and permits) or other violations of the act or rules adopted thereunder with a proceeding under 80-8-306(5), MCA ~~(civil penalties)~~. However, any appeal from resulting disciplinary action against the license or permit or other violations, shall be reviewed pursuant to the procedure established by the Montana Administrative Procedure Act.

AUTH: 80-8-105, MCA

IMP: 80-8-306, MCA

(Rule V) 4.10.1005 and (Rule VI) 4.10.1006,

(Rule VII) 4.10.1007 DEGREE OF CARE - MISUSE (1) through (3) (b) adopted as proposed.

(Rule VII) 4.10.1007 (c) Reasonable care means that degree of care exercised DEMONSTRATED with a knowledge of the nature

and probable consequences of the act or omission that a prudent man would ordinarily give EXERCISE in acting in his own concerns;

(Rule VII) 4.10.1007 (d) adopted as proposed.

AUTH: 80-8-105, MCA

IMP: 80-8-306, MCA

(Rule VIII) 4.10.1008 adopted as proposed.

3. The department received the following comments:

Comment: Dave Cogley, Legislative Council, recommended editorial changes in Rule I, Rule IV and Rule VII.

Response: The department concurred with the recommendations and has modified Rule I, Rule IV and VII.

4. The department did not receive any other comments on these rules.

5. The authority of the department to adopt the proposed rules is based upon section 80-8-105, MCA and implements section 80-8-306, MCA.

By: _____


Keith Kelly, Director

Certified to the Secretary of State June 2, 1986.

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

In the matter of the proposed) NOTICE OF AMENDMENT OF RULE
amendment of Rule 8.86.301) 8.86.301 (6) (g) AND (h)
(6) (g) and (h) as it relates)
to the Class I price formula) DOCKET #74-86
to establish a special whole-)
sale price for retail grocery)
stores.

TO: All Interested Persons:

1. On April 10, 1986 the Montana Board of Milk Control published notice of a proposed amendment of Rule 8.86.301 (6) (g) relating to the Class I price formula to establish a special wholesale price for retail grocery stores. Notice was published at pages 495 and 496 of the 1986 Montana Administrative Register, issue number 7, as MAR Notice No. 8-86-17.

2. The hearing was held on May 16, 1986 at 9:00 a.m. in the Department of Highways Auditorium. Nine persons appeared at the hearing to offer testimony and comment on the proposed rule amendments. Six spoke in favor of the proposed amendment and three spoke in opposition to the proposed amendment or parts thereof.

3. After thoroughly considering all of the testimony and comments received, the Board is adopting the following amendments to the rule.

The Board has adopted the proposed rule amendments with the following changes (matter stricken is interlined and new matter is underlined). Changes are to the rule as proposed in the April 10, 1986 notice:

The differences between the rule amendments as proposed and the rule amendments as adopted were as follows:

8.86.301 PRICING RULES (1) . . .

(6) . . .

(g) . . .

(i) A special wholesale price for retail grocery stores will be calculated by multiplying regular retail prices by a factor of eighty nine percent (89%) for full service delivery by a distributor. ANY MILK PURCHASED HEREIN MUST BE PAID FOR WITHIN FIFTEEN (15) DAYS AFTER INVOICING.

(ii) WHOLESALE DROP SERVICE FOR RETAIL STORES:

(a) DISTRIBUTOR DELIVERY SHALL BE LIMITED TO THE SERVICE DOOR OR REFRIGERATED STORAGE BOX.

(b) DELIVERIES SHALL BE LIMITED TO A MAXIMUM OF FOUR (4) TIMES PER WEEK, WITH A ONE HUNDRED FIFTY DOLLAR (\$150.00) MINIMUM SALE.

(c) THE RETAIL STORE SHALL ASSUME ALL RESPONSIBILITY FOR SERVICING THE DAIRY CASE AND ROTATING THE STOCK OF FLUID MILK PRODUCTS. IN STORE SERVICE BY THE DISTRIBUTOR IS NOT PERMITTED.

(d) THE RETAIL STORE SHALL ASSUME ALL RESPONSIBILITY FOR LOSS OF OCCASIONAL EXPIRATION OF PRODUCT CODE DATES.

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(e) THE MINIMUM RETAIL PRICE WILL BE MARKED DOWN BY SIX-TEEN PERCENT (16%) TO ARRIVE AT A MINIMUM WHOLESALE DROP SERVICE PRICE.

(iii) WHOLESALE DOCK PICKUP OR DELIVERY PRICE:

(a) DELIVERY SHALL BE F.O.B. THE DISTRIBUTOR'S DOCK OR F.O.B. THE WHOLESALE GROCER'S DOCK.

(b) THE MINIMUM RETAIL PRICE WILL BE MARKED DOWN BY TWENTY TWO AND THREE TENTHS PERCENT (22.3%) TO ARRIVE AT THE MINIMUM WHOLESALE DOCK PICKUP OR DELIVERY PRICE.

(c) ANY MILK PURCHASED HEREIN MUST BE PAID FOR WITHIN TEN (10) DAYS AFTER INVOICING.

(d) RESALE WILL BE BASED UPON THE WHOLESALE FULL SERVICE PRICE OR WHOLESALE DROP SERVICE PRICE, WHICHEVER IS APPLICABLE.

(e) A MINIMUM PICKUP OR DELIVERY WILL BE FIVE HUNDRED (500) GALLONS.

(h) Minimum jobber prices will be calculated by multiplying the difference between ~~the wholesale price~~ the applicable wholesale price and the raw product cost times a factor of 55.597% with the resulting answer being added to the current raw product cost. The jobber prices calculated will be ~~a minimum jobber price~~ the minimum jobber prices.

The authority for the Board to amend the Rule is in Section 81-23-302, MCA, and implements section 81-23-302, MCA.

3. Principal reasons for adoption of the amendments to the rule were as follows:

1. There was considerable chaos in the market place and the requested changes are needed to provide stability in the market place.

2. The action was needed to permit the petitioners to compete with the current marketing practices of one distributor and two retail chains.

3. The action was needed to safeguard Montana milk production.

4. Wholesale price levels are needed that would allow service to be provided by either distributors, jobbers or retailers in the distribution and sale of milk.

4. Principal reasons stated against adoption of the amendments were as follows:

1. Some distributors were not sure they comply with the proposed wholesale drop service and wholesale drop pickup without a loss.

2. The proposals need more study.

3. The proposals did not adequately address the problem.

5. The principal reasons stated for denying objections were as follows:

1. The grounds for adoption were compelling.

2. The grounds for opposition lacked merit.

3. Immediate action is necessary to avoid total chaos in the fluid milk industry, and preserve what remains of the industry in Montana.

4. A permanent order should be in place prior to expiration of the Board's emergency order dealing with the same subject, in order to provide continuity of orderly marketing of milk in this state.

MONTANA BOARD OF MILK CONTROL
CURTIS C. COOK, CHAIRMAN

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

Certified to the Secretary of State June 2, 1986.

BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT OF
of Rule 10.55.202, Board of) RULE 10.55.202, BOARD OF
Trustees) TRUSTEES

TO: All Interested Persons

1. On February 13, 1986, the Board of Public Education published notice of a proposed amendment concerning board of trustees on page 161 of the 1986 Montana Administrative Register, issue number 3.
2. The Board has amended the rule as proposed.
3. At the public hearing which was held March 20, 1986, three persons testified as proponents and no written comments were received prior to March 19, 1986, the date on which the Board closed the hearing record.

In the matter of the amendment) NOTICE OF AMENDMENT OF
of Rule 10.55.302, Certificates) RULE 10.55.302,
) CERTIFICATES

TO: All Interested Persons

1. On February 13, 1986, the Board of Public Education published notice of a proposed amendment concerning certificates on page 162 of the 1986 Montana Administrative Register, issue number 3.
2. The Board has amended the rule as proposed.
3. At the public hearing which was held March 20, 1986, four persons testified as proponents and one person submitted written testimony. Prior to March 19, 1986, the date on which the Board closed the hearing record, the written testimony proposed to add wording from 20-4-202, MCA, in order to clarify procedural options. The Board did not consider the addition necessary.

Ted Hazelbaker

Ted Hazelbaker, Chairman
Board of Public Education

BY:

Wanda Van Dym

Certified to the Secretary of State May 30, 1986

BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the adoption) NOTICE OF ADOPTION OF RULE
of Rule 10.57.212, Minimum) 10.57.212, MINIMUM SCORES
Scores on the National Teacher) ON THE NATIONAL TEACHER
Examination Core Battery) EXAMINATION CORE BATTERY

TO: All Interested Persons

1. On February 13, 1986, the Board of Public Education published notice of a proposed adoption concerning minimum scores on the National Teacher Examination Core Battery on page 158 of the 1986 Montana Administrative Register, issue number 3.

2. The Board has adopted the rule as proposed.

3. At the public hearing which was held March 20, 1986, four persons testified as proponents and no written comment was received prior to March 19, 1986, the date on which the Board closed the hearing record.

In the matter of the repeal) NOTICE OF REPEAL OF
of Rule 10.55.505, Safety) RULE 10.55.505, SAFETY

TO: All Interested Persons

1. On February 13, 1986, the Board of Public Education published notice of a proposed amendment concerning safety on page 163 of the 1986 Montana Administrative Register, issue number 3.

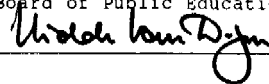
2. The Board repealed the rule as a result of the hearing.

3. At the public hearing which was held March 20, 1986, two persons testified as proponents of the proposed amendment. As a result of the hearing, Board consensus was that there is no need for the rule and that it should be repealed. No written comments were received prior to March 19, 1986, the date on which the Board closed the hearing records.



Ted Hazelbaker, Chairman
Board of Public Education

BY:



Certified to the Secretary of State May 30, 1986

11-6/12/86

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

In the matter of the amendment	)	NOTICE OF AMENDMENT
of rule 16.8.1404, limiting	)	AND
visible air contaminants; the	)	ADOPTION OF RULES
adoption of new rule I, prohibiting	)	16.8.1428 (Rule I),
wood stove combustion of certain	)	16.8.1204 (Rule II),
materials; and the repeal of	)	16.8.1205 (Rule III),
16.8.1201, 16.8.1202 and 16.8.1203	)	16.8.1206 (Rule IV)
and the adoption of new rules II,)	
III and IV, setting standards for	)	(Air Quality)
stack heights)	

TO: All Interested Persons:

1. On January 16, 1986 the board published a notice of public hearing to be held March 14, 1986 to consider the repeal/adoption of stack height rules, the amendment of ARM 16.8.1404 limiting visible air contaminants, and the adoption of a new rule prohibiting wood stove combustion of certain materials, at page 20 of the the 1986 Montana Administrative Register, issue number 1. Subsequently, the hearing date was changed from March 14, 1986 to March 7, 1986 by notice appearing at page 91 of the 1986 Montana Administrative Register, issue number 2.

2. On March 7, 1986, a public hearing was held on the above-referenced rules, at which time the board took action on the proposals concerning stack heights, but deferred action on the particulate emission and wood stove combustion rules until its board meeting on May 16, 1986, at which time it took action on the latter proposals.

3. The board has repealed/adopted the rules on stack heights as proposed. The board has amended rule 16.8.1404 as proposed and has adopted Rule I as proposed.

4. Comments made on the rules, and the board's responses, follow:

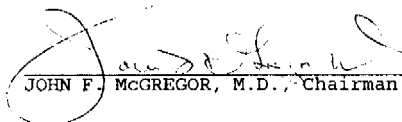
(a) Comment: The prohibition on burning railroad ties in wood stoves should be modified to allow stove owners who have stock-piled railroad ties to burn those ties.

Response: The health risks prevented by a blanket prohibition against the residential burning of treated railroad ties outweigh the short-term inconvenience to the few individuals who may have stock-piled ties treated with creosote and other preservatives.

(b) Comment: ARM 16.8.1404 should continue to be available as an enforcement tool against residential wood stoves.

Response: ARM 16.8.1404 is not a workable or effective tool for controlling emissions from wood stoves. Both state and federal air programs are seriously considering measures

for controlling wood stoves, including performance standards. Opacity standards for wood stoves will be considered by the state at a future date.



JOHN F. MCGREGOR, M.D., Chairman

Certified to the Secretary of State June 2, 1986.

BEFORE THE BOARD OF CRIME CONTROL
OF THE STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF AMENDMENTS OF
amendment of Rule 23.14.407	)	RULE 23.14.407 REQUIREMENTS
and proposed repeal of Rule	)	FOR THE ADVANCE CERTIFICATE,
23.14.416, Rule 23.14.417	)	AND REPEAL OF RULES
and Rule 23.14.418	)	23.14.416, THE BASIC COURSE,
	)	23.14.417, THE INTERMEDIATE
	)	COURSE, 23.14.418, THE
	)	ADVANCE COURSE

TO: All Interested Persons:

1. On April 10, 1986, the Board of Crime Control published notice of proposed amendment and repeal of rules at page 507 of the Montana Administrative Register, issue number 7.

2. The agency has amended Rule 23.14.407, but the agency decided to amend, instead of repealing, Rules 23.14.416, 23.14.417 and 23.14.418 because of comments received. Starting at Page 23-426 the amended rules should read as follows:

23.14.416 THE BASIC COURSE (1) The amount of training for which certification will be granted in the basic course shall be a ~~total of 280~~ not less than 330 hours of instruction.

(2) Requirement - Successful completion of ~~280~~ not less than 330 hours of instruction in the following minimum prescribed subject areas at a training school certified to present the basic course:

(a) introduction to law enforcement and police ethics - 3 - 4 hours

(b) criminal law, procedures and liability - 37 37.5 hours

(c) criminal evidence crime scene protection, processing, evidence preparation and handling ~~20~~ 52 hours

(d) criminal investigation case preparation, courtroom procedure and moot court - ~~60~~ 16 hours

(e) patrol procedures - ~~70~~ 62 hours

(f) traffic - ~~8~~ 16 hours

(g) juvenile procedures - 2 4 hours

(h) defensive tactics - 12 hours

(i) firearms human behavior and abnormal behavior - 45 10 hours

(j) first aid - interpersonal communications and interviewing techniques - ~~6~~ 9.5 hours

(k) written examinations threat response - 7 12 hours

(l) firearms safety, fundamentals, maintenance and practical - 46 hours

(m) written examinations and graduation - 6 hours

(3) shall remain the same

Auth: 44-4-301, MCA Imp: 7-32-303, MCA

23.14.417 THE INTERMEDIATE COURSE (1) The amount of training for which certification will be granted in the intermediate course shall be a ~~total of 90~~ not less than 80 hours of instruction in the following minimum prescribed subject areas at a training school certified to present the intermediate course:

- (a) orientation - 1/2 hour
 - (b) ~~bank robbery investigation~~ legal update and the exclusionary rule - 2 6 hours
 - (c) ~~rape investigation~~ civil liabilities - 2 hours
 - (d) crime scene photography - 8 6 hours
 - (e) interrogations and interviews - 8 6 hours
 - (f) ~~responding to silent alarms~~ advanced abnormal psychology - 4 6 hours
 - (g) ~~new Montana criminal code~~ principles of investigation - 8 hours
 - (h) ~~safe burglary demonstration~~ death investigation - 4 6 hours
 - (i) ~~safe burglary investigation~~ arson investigation - 4 7.5 hours
 - (j) ~~forensic pathology~~ deviant sexual behavior - 4 6 hours
 - (k) ~~firearms safety~~ child abuse and domestic abuse - 1 4 hours
 - (l) ~~firearms training~~ rape, incest and child molestation - 23 6 hours
 - (m) ~~practical cases~~ surveillance techniques - 16 4 hours
 - (n) ~~press relations~~ proactive investigations - 2 4 hours
 - (o) ~~test~~ counterfeiting, forgery and false documents - 1 1/4 4 hours
 - (p) juvenile procedures - 2 hours
 - (q) written test - 2 hours
 - (3) remains the same
- Auth: 44-4-301, MCA Imp: 2-4-201, MCA

23.14.418 THE ADVANCED COURSE (1) The amount of training for which certification will be granted in the advanced course shall be a ~~total of 80~~ not less than 72 hours.

(2) Requirement - Successful completion of ~~80 hours~~ not less than 72 hours of instruction in the following minimum prescribed subject areas at a training school certified to present the advanced course:

- (a) orientation and introduction - 1 1/2 hour
- (b) ~~the criminal justice system~~ legal update, legal concepts and liabilities - 2 8 hours
- (c) ~~law and legal matters~~ management and supervision concepts - 16 4 hours
- (d) ~~human and community relations~~ media response - 16 2 hours
- (e) ~~advanced patrol procedures and techniques~~ current issues in policy - 16 4 hours

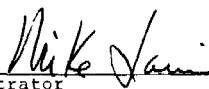
- (f) advanced investigative techniques and aids dealing with the mentally ill and handicapped - 16 4 hours
- (g) special weapons and tactics case management - 8 hours
- (h) police-juvenile relations crisis management update - 2 8 hours
- (i) examination and review advanced interrogation technique - 3 16 hours
- (j) officer stress and burn-out - 4 hours
- (k) physical fitness program - 3 hours
- (l) research project - 8 hours
- (m) examination - 2 hours
- (3) remains the same

Auth: 44-4-301, MCA Imp: 2-4-201, MCA

3. Comments were received from the Legislative Council requesting the Board of Crime Control to amend Rules 23.14.416, 23.14.417 and 23.14.418. The Board has complied with this request.

4. The Legislative Council commented that persons affected by these rules should be informed on the minimum requirements of each course including the subject titles and the minimum hours required to complete each subject.

5. The changes in the course curriculums are based on the results of a job task analysis conducted in 1982 and a training needs assessment on the three courses conducted in 1984 by the Board of Crime Control.



Administrator

Certified to the Secretary of State May 28, 1986

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION)	NOTICE OF THE ADOPTION of
of Rules I (42.16.107), II)	Rules I (42.16.107), II
(42.16.108), and III)	(42.16.108), and III
(42.16.109) relating to)	(42.16.109) relating to
adjusting a jointly filed tax)	adjusting a jointly filed tax
return.)	return.

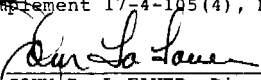
TO: All Interested Persons:

1. On April 10, 1986, the Department published notice of the proposed adoption of Rules I through III (42.16.107 through 42.16.109) relating to adjusting a jointly filed tax return at pages 509 and 510 of the 1986 Montana Administrative Register, issue no. 7.

2. The Department has adopted rules I through III (42.16.107 through 42.16.109) as proposed.

3. A public hearing was held on April 30, 1986, to consider the proposed adoption of the rules. No persons appeared to oppose the proposed adoption. C. Erwin Hall of the Income Tax Division and William Harrington and Thomas Pouliot appeared for the Child Support Enforcement Program of the Department. No other comments or testimony were received. Therefore, the Hearing Examiner deemed the rules be adopted as submitted.

4. The authority for the rules is 17-4-110, MCA, and § 2, Ch. 679, L. 1985, and the rules implement 17-4-105(4), MCA.


JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 06/02/86

VOLUME NO. 41

OPINION NO. 63

COUNTIES - Requirement that counties give Department of Fish, Wildlife, and Parks notice of planned repair and maintenance to bridges and roads;

GAME AND FISH - Requirement that counties give Department of Fish, Wildlife, and Parks notice of planned repair and maintenance to bridges and roads;

HIGHWAYS - Requirement that counties give Department of Fish, Wildlife, and Parks notice of planned repair and maintenance to bridges and roads;

NATURAL RESOURCES - Requirement that counties give Department of Fish, Wildlife, and Parks notice of planned repair and maintenance to bridges and roads;

SOIL AND WATER CONSERVATION - Requirement that counties give Department of Fish, Wildlife, and Parks notice of planned repair and maintenance to bridges and roads;

WATER AND WATERWAYS - Applicability of notice provision to counties planning repairs and maintenance to bridges and roads;

MONTANA CODE ANNOTATED - Sections 7-14-2203, 75-7-103, 75-7-111, 87-5-502 to 87-5-506;

OPINIONS OF THE ATTORNEY GENERAL - 37 Op. Att'y Gen. No. 15 (1977), 39 Op. Att'y Gen. No. 2 (1981), 40 Op. Att'y Gen. No. 71 (1984).

HELD: Counties must give notice to the Department of Fish, Wildlife, and Parks of planned repairs and maintenance to bridges and roads in accordance with section 87-5-502, MCA, except when an emergency threatens such a bridge or road.

27 May 1986

Russell R. Andrews
Teton County Attorney
Teton County Courthouse
Choteau MT 59422

Dear Mr. Andrews:

You have requested my opinion on the following question:

Does section 87-5-502, MCA, require counties to give notice to the Montana Department of Fish, Wildlife, and Parks of planned repairs and/or maintenance to existing bridges and roads?

I conclude that the relevant statutes require that such notice be given to the Department of Fish, Wildlife, and Parks, except in those circumstances where section 87-5-506, MCA, applies.

Chapter 5 of Title 87 of the Montana Code Annotated addresses wildlife protection. Stream protection is the subject of sections 87-5-501 to 509, MCA. These sections are prefaced with the following policy:

87-5-501. State policy. It is hereby declared to be the policy of the state of Montana that its fish and wildlife resources and particularly the fishing waters within the state are to be protected and preserved to the end that they be available for all time, without change, in their natural existing state except as may be necessary and appropriate after due consideration of all factors involved.

That policy statement and the associated statutory sections have remained virtually intact since their enactment in 1965. 1965 Mont. Laws, ch. 10. These sections provide that any agency of state or local government must notify the Department of Fish, Wildlife, and Parks (hereinafter Department) of any planned construction that may change the natural environment of a stream. § 87-5-502, MCA. As such, these provisions complement the requirements of the Natural Streambed and Land Preservation Act of 1975, §§ 75-7-101 to 124, MCA, whereby any person planning a project altering a stream must present written notice to the local conservation district or board of county commissioners. §§ 75-7-111, 75-7-103(7), MCA. A person for purposes of that Act is defined as "any natural person, corporation, firm, partnership, association, or other legal entity not covered under 87-5-502." § 75-7-103(4), MCA. See generally 40 Op. Att'y Gen. No. 71 (1984), 39 Op. Att'y Gen. No. 2 at 9 (1981), 37 Op. Att'y Gen. No. 15 at 57 (1977).

Your inquiry concerns the applicability of section 87-5-502, MCA, to county maintenance of bridges and roads. Section 87-5-502, MCA, provides in full:

Notice of construction or hydraulic projects. An agency of state government, county, municipality, or other subdivision of the state of Montana, hereafter called applicant, shall not construct, modify, operate, maintain, or fail to maintain any construction project or hydraulic project which may or will obstruct, damage, diminish, destroy, change, modify, or vary the natural existing shape and form of any stream or its banks or tributaries by any type or form of construction without first causing notice of such planned construction to be served upon the department on forms furnished by the department as soon as preliminary plans are completed but not less than 60 days prior to commencement of final plans for construction. Such notice shall include detailed plans and specifications of so much of said project as may or will affect any such stream in any manner specified above.

Your question whether the quoted section has full effect because another section grants counties the power to alter streambeds to repair and maintain bridges. Section 7-14-2203, MCA, provides:

Repairs to streambeds, watercourses, and banks. The board of county commissioners may also make repairs to streambeds and watercourses and the banks thereof when any bridge is in danger of being damaged or lost because of erosion or changes in the beds or banks.

By its express language section 7-14-2203, MCA, does nothing more than grant county commissioners authority to make repairs under certain emergency conditions. It does not, either expressly or implicitly, waive compliance with section 87-5-502, MCA. Since both provisions can be given effect simultaneously, section 7-14-2203, MCA, should not be construed in a manner which impairs operation of section 87-5-502, MCA. See Shuman v. Bestrom, 42 St. Rptr. 54, 57, 693 P.2d 536,

538-39 (1985); 2A Sutherland Statutory Construction § 51.02 (4th ed. 1984).

You indicate that counties frequently undertake routine maintenance of bridges and highways near streams and that compliance with the 60-day notice requirement of section 87-5-502, MCA, is burdensome for local governments. However, the statute is clear that such construction falls within the parameters of the notice requirement as long as the work "may or will obstruct, damage, diminish, destroy, change, modify, or vary the natural existing shape and form of any stream or its banks." Obviously, maintenance or repair work that will not affect a stream or its banks is exempt from the notice requirement. For example, a frost-heaved highway passing over or adjacent to a stream could be repaired without notice as long as no equipment or paving materials entered the stream environment. The mere fact that maintenance or repair is routine or planned does not, however, exempt the work from the notice requirement. Where such work is anticipated by local government the notice requirement should not prove burdensome providing the Department acts promptly to review the construction plans in accordance with its statutory mandates. See §§ 87-5-503 to 505, MCA. Specifically, the Department must complete its initial review of a proposed project within 30 days of its receipt of construction plans from the applicant. § 87-5-504, MCA.

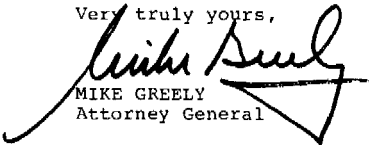
When an emergency exists that threatens a road or bridge with damage, the notice requirement is waived. Section 87-5-506, MCA, provides specifically that the streambed protection part of the Code does not operate "in emergencies such as floods, ice jams, or other conditions causing emergency handling." This provision supplements the previously discussed authority of counties to alter streambeds to save a threatened bridge. The application of section 87-5-506, MCA, is broader in that it applies to agencies of state government and municipalities as well as county government. In operation, the statute allows highway crews to repair road damage and alleviate dangerous conditions promptly without invoking the notice and review process. However, the emergency exception may not be used to justify reviewless construction occurring months after a particular emergency. By the language of section 87-5-506, MCA, review is suspended "in

emergencies," which I construe to include repairs immediately required and performed.

THEREFORE, IT IS MY OPINION:

Counties must give notice to the Department of Fish, Wildlife, and Parks of planned repairs and maintenance to bridges and roads in accordance with section 87-5-502, MCA, except when an emergency threatens such a bridge or road.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 41

OPINION NO. 64

COUNTIES - Delegation of approval of subdivision plats to planning board;
COUNTY COMMISSIONERS - Delegation of approval of subdivision plats to planning board;
COUNTY OFFICIALS AND EMPLOYEES - Delegation of approval of subdivision plats to planning board;
LOCAL GOVERNMENT - Delegation of approval of subdivision plats to planning board;
MUNICIPAL CORPORATIONS - Delegation of approval of subdivision plats to planning board;
MUNICIPAL GOVERNMENTS - Delegation of approval of subdivision plats to planning board;
SUBDIVISION AND PLATTING ACT - Delegation of approval of subdivision plats to planning board;
MONTANA CODE ANNOTATED - Sections 7-1-114, 76-3-604, 76-3-608;
MONTANA CONSTITUTION - Article XI, sections 5, 6;
OPINIONS OF THE ATTORNEY GENERAL - 38 Op. Att'y Gen. No. 98 (1980).

HELD: A county commission may not delegate the approval, conditional approval, or rejection of subdivision plats to a planning board or to an administrative officer on the planning board staff.

30 May 1986

Robert L. Deschamps, III
Missoula County Attorney
Missoula County Courthouse
Missoula MT 59802

Dear Mr. Deschamps:

I am writing in response to your request for an opinion concerning the following question:

May the approval of subdivision plats be delegated by the governing body to a planning board or to an administrative officer on the planning board staff?

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Your letter explains that a decision to approve, deny, or conditionally approve a plat is essentially a factual determination which answers the questions of whether (1) the plat conforms to the standards, and (2) the plat is in the public interest according to the eight criteria of section 76-3-608, MCA. You note that these decisions involve some discretion in reviewing the facts but that they do not involve rulemaking or legislative determinations. You provide authority for the proposition that the Legislature may delegate administrative functions to boards and commissions in carrying out the purposes of statutes and various governmental functions for more efficient administration of the laws. Billings Properties, Inc. v. Yellowstone County, 144 Mont. 25, 394 P.2d 182 (1964); State v. Stark, 100 Mont. 365, 52 P.2d 890 (1935); Antieau, 4 Local Government Law, County Law § 31.08 (Matthew Bender & Company, 1985 supp.).

I have previously addressed the authority of a local government unit to modify the procedural requirements set forth in state zoning laws. 38 Op. Att'y Gen. No. 98 (1980). In that opinion, I examined the powers of a local government with self-government powers to provide an optional appeal of decisions from the local zoning board of adjustment to the legislative body.

The 1972 Montana Constitution provided the framework for a local government to adopt a self-governing charter. Mont. Const. art. XI, § 5. A local government unit which adopts a self-government charter may exercise any power not prohibited by the constitution, law, or charter. Mont. Const. art. XI, § 6. A local government unit without self-government powers has only the general powers specifically provided or implied by law. City of Billings v. Weatherwax, 38 St. Rptr. 1034, 1035-36, 630 P.2d 1216, 1217-18 (1981). In that case, the Montana Supreme Court noted that local governments have only such power as is granted them by the Legislature. That decision was recently limited in light of the 1972 constitutional provision relating to self-government powers. D & F Sanitation Service v. City of Billings, 43 St. Rptr. 74, 79-81, 713 P.2d 977, 981-82 (1986). In D & F Sanitation Service, the Court took judicial notice of the fact that the Billings voters had adopted a self-government charter on November 14, 1976. In light of that charter and the new constitutional provisions, the Court recognized that the City of Billings, with its

self-government charter, has all powers save those expressly prohibited.

In my opinion at 38 Op. Att'y Gen. No. 98 (1980), I examined the limitation enunciated in section 7-1-114, MCA, on the actions of a local government with self-government powers. Section 7-1-114, MCA, provides:

(1) A local government with self-government powers is subject to the following provisions:

....

(e) All laws which require or regulate planning or zoning;

....

(2) These provisions are a prohibition on the self-government unit acting other than as provided. [Emphasis added.]

There I held that the statute applies to both procedural and substantive laws concerning zoning.

The question you ask is whether the approval of subdivision plats may be delegated by the governing body to a planning board or to an administrative officer on the planning board staff. Section 76-3-604, MCA, provides:

(1) The governing body or its designated agent or agency shall review the preliminary plat to determine whether it conforms to the local master plan if one has been adopted pursuant to chapter 1, to the provisions of this chapter, and to rules prescribed or adopted pursuant to this chapter.

(2) The governing body shall approve, conditionally approve, or reject the preliminary plat within 60 days of its presentation unless the subdivider consents to an extension of the review period.

(3) If the governing body rejects or conditionally approves the preliminary plat, it shall forward one copy of the plat to the

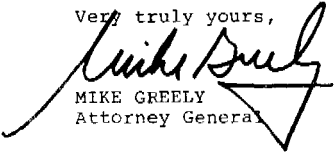
subdivider accompanied by a letter over the appropriate signature stating the reason for rejection or enumerating the conditions which must be met to assure approval of the final plat. [Emphasis added.]

Section 7-1-114, MCA, prohibits a local government unit which has adopted a self-government charter from modifying the procedures set forth in the zoning statutes. A local government unit which is not self-governing has only such power as is expressly granted by the Legislature. City of Billings v. Weatherwax, 38 St. Rptr. at 1035-36, 630 P.2d at 1217-18. It certainly cannot have more power to delegate authority than a self-governing local government unit would have. Generally, the municipal power to review and approve or disapprove subdivision plats is a delegated power, derived from an enabling act or a constitutional provision. Anderson, 4 American Law of Zoning § 23.08 (2d ed. 1977). Here, the Montana Legislature has not provided enabling legislation which would allow a county to delegate the approval, conditional approval, or rejection of a preliminary plat to a planning board or an administrative officer on the planning board staff. Had the Legislature so intended, it could have mirrored the language placed in subsection (1) to allow the governing body or its designated agent or agency to approve, conditionally approve, or reject the plat. It did not do so. The statute expressly provides that the governing body itself shall act to approve, conditionally approve, or reject the preliminary plat.

THEREFORE, IT IS MY OPINION:

A county commission may not delegate the approval, conditional approval, or rejection of subdivision plats to a planning board or to an administrative officer on the planning board staff.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 41

OPINION NO. 65

GAME AND FISH - Authority of landowner to restrict permission to hunt;
PROPERTY, REAL - Private landowner's right to restrict permission to hunt;
TRESPASS - Exceeding permission to hunt as;
MONTANA CODE ANNOTATED - Sections 45-2-101(53), 45-6-201, 45-6-203, 87-1-102(1), 87-3-304;
OPINIONS OF THE ATTORNEY GENERAL - 37 Op. Att'y Gen. No. 144 (1978).

HELD: A hunter who has been given permission to enter onto private property to hunt only for a specific kind of big game animal and who exceeds that permission by hunting another kind of animal may be charged with failure to obtain the landowner's permission.

2 June 1986

James W. Flynn, Director
Department of Fish, Wildlife, and Parks
1420 East Sixth Avenue
Helena MT 59620

Dear Mr. Flynn:

You have requested my opinion on a question which I have restated as follows:

If a hunter is given permission to enter onto private property to hunt only for a specific kind of big game animal, may the hunter be charged with criminal trespass to property or failure to obtain landowner's permission if he exceeds that permission by hunting another kind of animal?

Your letter states that there is some confusion among landowners as to the extent of their right to control hunting on their land. This question has confronted game wardens and others who must decide whether, for example, a hunter who has been given explicit permission to hunt on posted private land for a cow elk may be

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charged with an offense if he hunts a bull elk or a deer.

Every landowner has an exclusive common-law right to kill or capture game on his own land, subject to the regulatory action of the State in the preservation of all game for the common use. See 35 Am. Jur. 2d Fish and Game § 16. The Montana Supreme Court has long recognized this right; in Herrin v. Sutherland, 74 Mont. 587, 241 P. 328 (1925), the Court held that the exclusive right of hunting on land owned by a private individual is in the owner of the land or in those who have a right to be there by his permission.

The landowner's right to control hunting on his property is protected in Montana by two statutes. The violation of either of these statutes may be charged as a criminal offense, even though the landowner may also have a separate civil remedy as well.

First, section 45-6-203(1)(b), MCA, states that a person commits the offense of criminal trespass to property if he knowingly "enters or remains unlawfully in or upon the premises of another." Criminal trespass to property is a misdemeanor and may result in a fine not exceeding \$500, imprisonment in the county jail for any term not exceeding six months, or both. § 45-6-203(2), MCA.

The term "premises" is defined to include any real property. § 45-2-101(53), MCA. A person enters or remains unlawfully in or upon any premises "when he is not licensed, invited, or otherwise privileged to do so." § 45-6-201(1), MCA. The privilege to enter or remain upon land is extended by the explicit permission of the landowner or other authorized person and may be revoked at any time by personal communication to the entering party. Ibid.

The second statute requires hunters to obtain the permission of the landowner, lessee, or their agents before hunting big game animals on private property. § 87-3-304, MCA. Violation of this statute is also a misdemeanor; the penalty may be a fine of not less than \$50 or more than \$500, imprisonment in the county jail for not more than six months, or both. § 87-1-102(1), MCA. I have previously held that section 87-3-304, MCA, was not repealed or affected by enactment of the

criminal trespass statutes. 37 Op. Att'y Gen. No. 144 at 602 (1978).

Assuming that the private property has been posted in substantial compliance with section 45-6-201(2), MCA, and is therefore considered closed to public access unless explicit permission to enter is given by the landowner or his authorized agent (section 45-6-201(3), MCA), both section 45-6-203, MCA, and section 87-3-304, MCA, require a hunter to obtain the landowner's permission prior to hunting big game animals on the landowner's private property. A hunter who fails to obtain permission may be charged with a violation of either statute. The landowner has the right to refuse permission completely. He may, however, give limited permission to the hunter to hunt at certain times, in certain areas of the property, or for certain kinds of animals.

If the landowner gives a hunter explicit permission to hunt only for a specific kind of big game animal, he has extended to the hunter what is known as a "license" to hunt that kind of animal on his property. A license is the authority to do a particular act which, without the license, would be unlawful.

Generally, a license must be exercised only in the manner and for the special purpose for which consent was given. If the permission given is exceeded, the landowner may revoke the privilege to enter or remain upon his land by personal communication to the hunter. § 45-6-201(1), MCA. However, the hunter does not commit the offense of criminal trespass to property unless he stays on the land after the landowner or some other authorized person has notified the hunter to leave. See Criminal Law Commission Comments to § 45-6-203, MCA. I am guided by the Commission's view that criminal trespass is committed only if the offender, immediately prior to entry, receives oral or written notice that such entry is forbidden, or he remains on the land after being notified to leave.

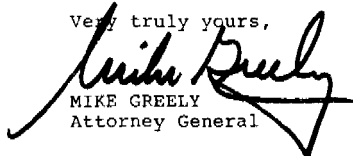
Nevertheless, the permission granted to a big game hunter by the landowner, lessee, or their agents under section 87-3-304, MCA, is permission not only to enter or remain upon private land but also to hunt big game animals. If the landowner has given the hunter explicit permission to hunt only for a specific kind of big game

animal, the hunter violates section 87-3-304, MCA, by exceeding the permission given and hunting another kind of animal. Such a hunter would be subject to prosecution under section 87-3-304, MCA.

THEREFORE, IT IS MY OPINION:

A hunter who has been given permission to enter onto private property to hunt only for a specific kind of big game animal and who exceeds that permission by hunting another kind of animal may be charged with failure to obtain the landowner's permission.

Very truly yours,



MIKE GREELY
Attorney General

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules or amendment or repeal of existing rules filed with the Secretary of State. Proposals of the Department of Revenue are reviewed only in regard to the procedural requirements of the Montana Administrative Procedure Act. The Committee has the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. In addition, the Committee may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt or amend a rule.

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

- | | |
|-------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Known
Subject
Matter | 1. Consult ARM topical index, volume 16. Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute
Number and
Department | 2. Go to cross reference table at end of each title which list MCA section numbers and corresponding ARM rule numbers. |

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 1986. This table includes those rules adopted during the period March 31, 1986 through June 30, 1986, and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 1986, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1986 Montana Administrative Register.

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