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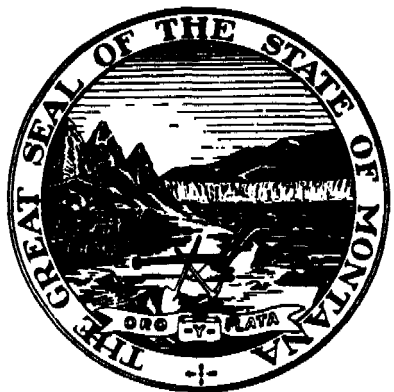
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**OF MONTANA  
MONTANA  
ADMINISTRATIVE  
REGISTER**

**DOES NOT  
CIRCULATE**

**1986 ISSUE NO. 17  
SEPTEMBER 11, 1986  
PAGES 1488-1522**



# MONTANA ADMINISTRATIVE REGISTER

## ISSUE NO. 17

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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 PRIVATE SECURITY  
PATROLMEN AND INVESTIGATORS

In the matter of the proposed	)	NOTICE OF PROPOSED AMENDMENTS
amendments of 8.50.431 con-	)	OF 8.50.431 INSURANCE
cerning insurance require-	)	REQUIREMENTS AND 8.50.437
ments and 8.50.437 concern-	)	FEE SCHEDULE
ing fees	)	

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On October 13, 1986, the Board of Private Security Patrolmen and Investigators proposes to amend the above-stated rules.

2. The proposed amendment of 8.50.431 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-1381, Administrative Rules of Montana)

"8.50.431 INSURANCE REQUIREMENTS (1) All licensees regulated by Title 37, chapter 60, MCA, except private investigators and security alarm installers who do not employ response runners, shall file with the board, a certificate of insurance evidencing a comprehensive general liability coverage for both licensees and employees for bodily injury, and property damage; the board form comprehensive general liability endorsement which includes the following: personal injury and property damage with endorsement for assault and battery and personal injury, including false arrest, false imprisonment, malicious prosecution, invasion of privacy, wrongful eviction or wrongful entry, mental anguish, defamation and discrimination. Security alarm installers shall only be required to have a comprehensive general liability insurance, but if the alarm installer employs alarm response runners, the alarm installer must then have the same insurance coverage as a contract security company is required to have."

Auth: 37-60-202, MCA, AUTH Extension, Sec. 10, Ch. 647, L. 1985 Imp: 37-60-101, 202, MCA

3. Justification for the rule change for insurance for alarm installers is that if they only install security systems and do not respond to alarms, they do not need the same coverage as contract security companies.

4. The proposed amendment of 8.50.437 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-1383, Administrative Rules of Montana)

"8.50.437 FEE SCHEDULE (1) through (5) will remain the same.

(6) Temporary ID card	\$10.00"
-----------------------	----------

Auth: 37-1-134, 37-60-202, MCA, AUTH Extension, Sec. 10,  
Ch. 647, L. 1985 Imp: 37-1-134, 37-60-202, 304, 308, 309,  
310, MCA

5. The justification for the fee for a temporary card is that the board is now requiring temporary employees to have a temporary ID card and is charging a \$10.00 fee for the card.

6. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Private Security Patrolmen and Investigators, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than October 9, 1986.

7. If a person who is directly affected by the proposed amendments, wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Private Security Patrolmen and Investigators, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than October 9, 1986.

8. If the board receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 40 based on the 400 licensees in Montana.

BOARD OF PRIVATE SECURITY  
PATROLMEN AND INVESTIGATORS  
CLAYTON BAIN, CHAIRMAN

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

Certified to the Secretary of State, August 29, 1986.

STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE BOARD OF RADIOLOGIC TECHNOLOGISTS

In the matter of the proposed ) NOTICE OF PROPOSED AMENDMENTS  
amendments of 8.56.409 con- ) OF 8.56.409 FEES SCHEDULE  
cerning fees and 8.56.607 ) AND 8.56.607 PERMIT FEES  
concerning permit fees )

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On October 13, 1986, the Board of Radiologic Technologists proposes to amend the above-stated rules.

2. The proposed amendment of 8.56.409 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-1562 and 8-1563, Administrative Rules of Montana)

"8.56.409 FEES SCHEDULE (1) through (1)(c) will remain the same.

(d) Renewal license fee - radiologic technologists ..... ~~30.00~~ 25.00

(e) and (f) will remain the same."

Auth: 37-1-101, 134, 37-14-202, 310, MCA Imp: 37-1-134, 310, MCA

3. The proposed amendment of 8.56.607 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-1575, Administrative Rules of Montana)

"8.56.607 PERMIT FEES (1) through (3) will remain the same.

(4) Renewal fee . . . . . ~~30.00~~ 25.00

(5) through (7) will remain the same."

Auth: 37-1-134, 202, 310, MCA Imp: 37-1-134, 310, MCA

4. Justification for the rule change for lowering renewal fees is that the board feels that they can function at the same level by charging \$25.00 for renewal instead of \$30.00 which would result in the loss of \$3000.00 in revenue.

5. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Radiologic Technologists, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than October 9, 1986.

6. If a person who is directly affected by the proposed amendments, wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Radiologic Technologists, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than October 9, 1986.

7. If the board receives requests for a public hearing on the proposed amendments, from either 10% or 25, whichever

is less, of those persons who are directly affected by the proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 60 based on the 600 licensees in Montana.

BOARD OF RADIOLOGIC  
TECHNOLOGISTS  
LON ROMINGER, CHAIRMAN

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

Certified to the Secretary of State, August 29, 1986.

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

In the matter of the proposed ) NOTICE OF PROPOSED AMENDMENT  
amendment of 8.58.414 con- ) OF 8.58.414 TRUST ACCOUNT  
cerning trust account require- ) REQUIREMENTS  
ments )

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On October 13, 1986, the Board of Realty Regulation proposes to amend the above-stated rule.

2. The proposed amendment of 8.58.414 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-1607 through 8-1609, Administrative Rules of Montana)

"8.58.414 TRUST ACCOUNT REQUIREMENTS (1) through (15) will remain the same.

(16) Each broker shall authorize the board to examine such trust account(s) and business account(s) by a duly authorized representative of the board. Such examination shall be made at such time as the board may direct.

(a) any examination of the business account(s) shall only be done pursuant to alleged specific violations of section 37-51-321, MCA, section 8.58.419, ARM, or pursuant to those audit proceedings involving monetary distributions from trust account(s) into business account(s) for subsequent additional distributions in compliance with the provision(s) of section 8.58.414, ARM."

Auth: 37-1-103, MCA Imp: 37-51-203, MCA

3. The Board of Realty Regulation felt this rule was necessary to protect the earnest funds of the general public. This will allow the investigator/auditor positions to follow up on possible trust account fund violations.

4. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Realty Regulation, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than October 9, 1986.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Realty Regulation, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than October 9, 1986.

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



directly affected, a public hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 525 based on the 5253 licensees in Montana.

BOARD OF REALTY REGULATION  
JOHN DUDIS, CHAIRMAN

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

Certified to the Secretary of State, August 29, 1986.

BEFORE THE MONTANA FISH AND GAME COMMISSION

In the matter of a proposed ) NOTICE OF A PROPOSED  
rule closing a part of the ) ADOPTION OF A RULE  
Ruby River to public access ) CLOSING A PART OF THE  
RUBY RIVER TO PUBLIC  
ACCESS

NO PUBLIC HEARING CONTEMPLATED

TO: All interested persons.

1. On or about November 20, 1986, the Commission proposes to adopt Rule I.

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

3. The proposed rule provides as follows:

RULE I CLOSURE OF RUBY RIVER The Ruby River is closed to public access below the ordinary high water marks for a reach extending 1500 feet downstream from the foot of Ruby Dam.

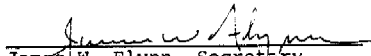
4. The Commission proposes this rule in response to a request from the Ruby River Water Users Association who have requested the closure for the safety of the general public and the security of the dam and its associated works and structures.

5. Written data, views, and arguments may also be submitted to Stan Bradshaw, Department of Fish, Wildlife, and Parks, 1420 East Sixth Avenue, Helena, Montana 59620, no later than October 31, 1986.

6. If a person who is directly affected by the proposed adoption wishes to express his views either 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 Stan Bradshaw no later than October 31, 1986.

7. If the Commission receives requests for a public hearing from 10% or 25, whichever is fewer, of the persons who will be directly affected by the proposed adoption, by a governmental subdivision or agency, by the administrative code committee, or by an association having not fewer than 25 members who will be directly affected, a hearing will be scheduled. Notice of Hearing will be published in the Montana Administrative Register.

8. The authority of the Agency to make the proposed rule is based on Section 87-1-303, MCA and the rule implements 87-1-303, MCA.

  
James W. Flynn, Secretary  
Montana Fish and Game  
Commission

Certified to the Secretary of State August 29, 1986.

BEFORE THE MONTANA HUMAN RIGHTS COMMISSION  
OF THE STATE OF MONTANA

In the matter of application of ) DR 8710003C70  
the Montana State Department )  
of Institutions, a state govern- ) NOTICE OF HEARING  
mental agency, for a declaratory )  
ruling under Sections 49-2-401 )  
and 49-3-105, MCA (1985), as to )  
whether it may employ only female )  
Cottage Life Attendants at its )  
correctional facility for female )  
youth under certain circumstances )

TO: The Montana State Department of Institutions and all  
interested persons:

PLEASE TAKE NOTICE that on October 14, 1986 at 10:00 a.m.  
at 1236 Sixth Avenue, Helena, Montana, the petition of the  
Montana State Department of Institutions for a declaratory  
ruling that it may employ females only as cottage life  
attendants at its correctional facility for female youth when  
there is only one cottage life attendant on duty without  
violating §§49-2-303 and 49-3-201, MCA, the Governmental Code  
of Fair Practices, or the Montana Human Rights Act will be  
heard. You have the right to be represented by counsel at the  
hearing. A copy of the petition is attached to this notice.  
James W. Zion, hearing examiner for the Commission will preside  
over and conduct the hearing.


Any person or organization may petition to intervene in  
this proceeding by petitioning to intervene and making a  
showing of their interest, for the purpose of generally  
addressing the application or expressing a particular point of  
view concerning it.

A prehearing conference on the application to settle  
hearing procedure will be conducted on September 29, 1986 at  
2:00 p.m.

DATED: August 25, 1986.

MONTANA HUMAN RIGHTS COMMISSION  
MARGERY H. BROWN, CHAIR

By:

  
ANNE L. MACINTYRE  
ADMINISTRATOR  
HUMAN RIGHTS DIVISION

BEFORE THE HUMAN RIGHTS COMMISSION  
OF THE STATE OF MONTANA

In the matter of the	)	No. 8710003070
application of:	)	
	)	PETITION FOR
THE MONTANA DEPARTMENT OF	)	DECLARATORY RULING
INSTITUTIONS	)	
for a declaratory ruling.	)	

1. Petitioner is the Montana Department of Institutions, 1539 Eleventh Avenue, Helena, MT 59620.

2. Petitioner is a state agency that operates juvenile correctional institutions within the State of Montana. Mountain View School, 2260 Sierra Road East, Helena, Montana 59601, is operated by the department as a juvenile correctional facility for females aged 10 - 21 years of age who have been adjudicated as delinquent youth, or who are sent there for evaluation as such.

3. Mountain View presently houses approximately sixty (60) girls who reside in three (3) separate cottages. These cottages are staffed by cottage life attendants who are responsible for the care, custody and supervision of the students assigned to each cottage.

4. The mandatory job duties and the reasonable demands of the cottage life attendant positions include: supervision of toilet and shower facilities; conducting body searches such as skin searches and pat down searches; observation of residents in various stages of dress or undress, and assistance with feminine hygiene.

5. There are eighteen (18) individuals who are employed by petitioner as cottage life attendants at Mountain View School. These individuals cover, over a 7-day, 24-hour-a-day week, sixty-three (63) posts. Of these sixty-three posts, forty-five (45) are single-staffed and eighteen (18) are double staffed. Single staffing is the staffing pattern in Spruce Cottage on all shifts. Double coverage is provided in Cottonwood and Maple Cottages during the 3:00 p.m. to 11:00 p.m. shift every day and the 7:00 a.m. to 3:00 p.m. shift on weekends only. All other shifts are single coverage.

6. The statute as to which petitioner requests a declaratory ruling is Section 49-3-201(1), MCA (1985), which provides that state government officials shall recruit, appoint, assign, train, evaluate and promote personnel on the basis of merit and qualifications without regards to sex.

7. Petitioner contends that the reasonable demands of the cottage life attendant position require female only employment, on shifts where there is only one cottage life attendant on duty. This is due to the important privacy interests of the residents and the orderly operation of the institution. Males would not be excluded from all cottage life attendant positions, just those involving coverage by a single attendant.

8. The question presented for declaratory ruling by the Commission is whether an exemption as a bona fide occupational qualification (BFOQ) should be granted pursuant to 49-3-105.

9. Petitioner requests that the Commission rule that petitioner may recruit, appoint and assign only females as cottage life attendants for shifts involving coverage of a cottage by only one individual, without violation of Section 49-3-201 MCA (1985) or any other provision of the Governmental Code of Fair Practices or the Human Rights Act.

10. Petitioner knows of no party affected in a manner similar to that of the petitioner.

DATED: August 25, 1986.

s/Karl Nagel

KARL NAGEL

Special Assistant Attorney General  
for the Department of Institutions  
1539 11th Avenue  
Helena, MT 59620  
Attorney for the Petitioner

STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE BOARD OF DENTURITRY

In the matter of the adoption	)	NOTICE OF ADOPTION OF
of new rules concerning	)	NEW RULES FOR LICENSING,
licensing and appropriate	)	PROCEDURE, UNPROFES-
procedures, unprofessional	)	SIONAL CONDUCT, INSPEC-
conduct, inspections, disci-	)	TIONS, DISCIPLINARY
plinary issues and complaint	)	ISSUES AND COMPLAINT
procedures for denturitry	)	PROCEDURES FOR
	)	DENTURITRY

TO: All Interested Persons:

1. On May 15, 1986, the Board of Denturitry published a notice of adoption of the above-stated rules at page 732, 1986 Montana Administrative Register, issue number 9.

2. The board has adopted the rules exactly as proposed.

The new rules will be numbered as follows: I. (8.17.101)

Board Organization, II. (8.17.201) Procedural Rules, III.

(8.17.202) Public Participation Rules, IV. (8.17.401) Board

Meetings, V. (8.17.402) Records of Minutes and Hearings, VI.

(8.17.403) Applications, VII. (8.17.404) Examination, VIII.

(8.17.501) Fee Schedule, IX. (8.17.701) License Form, X.

(8.17.702) Renewal - Continuing Education, XI. (8.17.703)

Reinstatement of License, XII. (8.17.801) Unprofessional

Conduct, XIII. (8.17.802) Inspections - Sanitary Standards,

XIV. (8.17.803) Grounds for Denial of a License, XV.

(8.17.804) Reprimand, Censure or Probation, XVI. (8.17.805)

Notification of Denial or Disciplinary Action, XVII.

(8.17.806) Complaint Procedure - Investigation, XVIII.

(8.17.807) Receipt of Complaint - Board Action.

3. Mary McCue, staff person for the Administrative Code Committee, advised that the statements of reasonable necessity, as shown in the original notice, were not adequate for the proposed new rules. The board concurred and is adding the following reasons for the adoption of the new rules.

The reason for the board organization (8.17.101), procedural (8.17.201) and public participation (8.17.202) rules is that they are required under 37-29-201, MCA and the board concurs with department rules.

ARM 8.17.401 and 8.17.402 provide for an annual meeting time, election of officers, procedures and recording of board meetings.

ARM 8.17.403 and 8.17.404 provide for application and examination process and provide security of examination documents.

ARM 8.17.501 and 8.17.701 through 8.17.703 provide for licensing process, including fees, form of license, renewal and continuing education procedures.

ARM 8.17.801 and 8.17.803 through 8.17.805 define unprofessional conduct and provide for disciplinary action for violations by licensees.

ARM 8.17.802 provides for inspection procedures and sets further sanitation requirements.

ARM 8.17.806 and 8.17.807 provide for handling of complaint and investigative procedures.

4. No other comments or testimony were received.

BOARD OF DENTURITRY  
BRENT KANDARIAN, PRESIDENT

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

Certified to the Secretary of State, August 29, 1986.

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

In the matter of the amendments	)	NOTICE OF AMENDMENTS OF
of 8.54.612 concerning client	)	8.54.612 CONFIDENTIAL
information, 8.54.702 and	)	CLIENT INFORMATION, 8.
8.54.703 concerning enforce-	)	54.702 ENFORCEMENT AGAINST
ment procedures, 8.54.817	)	PERMIT HOLDERS, 8.54.
concerning continuing	)	703 ENFORCEMENT PROCEDURES
education credits and	)	- INVESTIGATIONS, 8.54.817
adoption of new rules con-	)	CREDIT FOR SERVICE AS
cerning profession monitoring	)	LECTURER, DISCUSSION
rules	)	LEADER, OR SPEAKER,
	)	AND ADOPTION OF NEW
	)	RULES UNDER SUB-CHAPTER
	)	9 CONCERNING PROFESSION
	)	MONITORING RULES

TO: All Interested Persons:

1. On June 12, 1986, the Board of Public Accountants published a notice of public hearing to consider the proposed amendments and adoption of the above-stated rules at page 998, 1986 Montana Administrative Register, issue number 11.

2. The hearing was held on July 31, 1986, at 10:00 a.m., in the Scott Hart Building Auditorium, 303 Roberts, Helena, Montana. Fifteen persons appeared at the hearing to offer testimony and comments. Twelve spoke in favor of the rules, one spoke in opposition, one offered other comments, and one signed the register of persons attending as being in opposition but did not present any testimony. In addition, 21 letters were received regarding the proposed amendments and adoption. Eleven totally supported the adoption, two supported the adoption with the exception of the granting of CPE credit for report reviewers, seven opposed the adoption, and one offered other information. Petitions were presented at the hearing with the signatures of 118 certified public accountants supporting the adoption of the rules.

3. After considering all the oral and written comments, the board is amending and adopting the rules exactly as proposed, with the exception of 8.54.817-Credit for Service as Lecturer, Discussion Leader, or Speaker. The board has decided not to take any action on the proposed amendment of that rule. The new rules under sub-chapter 9 will be numbered as follows: I. (8.54.901) Introduction, II. (8.54.902) Definitions, III. (8.54.903) Statement by Permit Holders, IV. (8.54.904) Filing of Reports, V. (8.54.905) Alternatives and Exemptions, VI. (8.54.906) Enforcement.

4. The principal reasons stated for adoption of the proposed rules and amendments were as follows:

It is unrealistic to expect the present situation of relying solely on complaints to maintain a high standard of accounting service, because complaints are made after the



fact. A pro-active program of continuing professional education and evaluation of work product is a better method of protecting the public, because it is applied before harm is done.

The proposed positive enforcement rules will strengthen the accounting profession and assist in uncovering and eliminating the sub-standard work.

The public accounting professions are dependent upon the confidence that the public has in the competency and quality of those practicing in the professions. The proposed monitoring rules will be an important step in maintaining the public's confidence.

The proposed rules reflect a sound approach in assuring quality of service in the accounting profession.

The Montana Society of Certified Public Accountants' Governmental Audit Control Committee has consistently found a high incidence of noncompliance with the reporting standards for financial statements issued for governmental units. The rate of substandard reporting has consistently been between thirty-five and forty percent. The society has no procedure to monitor the extent of noncompliance with the reporting standards for financial statements for nongovernmental entities. The proposed rules appear to provide the means for monitoring the quality of financial statements and reports issued by all practice units of certified public accountants and licensed public accountants to both the public sector and the private sector.

The proposed rules will encourage better quality work by public accountants and help ensure that audits of Montana local governments are done in accordance with all applicable professional standards and requirements set out in statutes, rules, regulations or contracts governing the audits of local governments.

The public's perception of the regulated accounting profession's abilities focuses on the accountant's skills in identifying fraud and other management indiscretions, as well as providing a valid and expert picture of the relative financial health of a specific entity.

5. The principal reasons stated against the adoption of the proposed rules and amendments were as follows:

The public accounting professions are among the most regulated professions there are in the state. They are adequately controlled by the present laws.

The proposal would put a much larger burden on the smaller firms than it would on the larger firms.

If substandard work that affects someone is done, there are the complaint process against the license and the judicial system for redress.

Licensing fees may be increased to support more bureaucracy.

The proposal interferes with the individual rights, especially of those practitioners who have had an excellent record in their practice for many years and of their respective clients.

The proposed rules are inadequate. The presentation of financial statements will result in "high-graded", or "cook-book" submissions that will provide no basis to evaluate or judge the preparer's work. Such a presentation offers no meaningful opportunity to assess the abilities in the firm, the due diligence exercised in the performance of the work, or the quality and depth of review.

The fact that the number of complaints has doubled does not of itself mean that the quality of the work product requires more drastic surveillance.

The requirement that a permit holder file a copy of its highest level of public accounting work violates the confidentiality of client and accountant.

The proposal would require time that the licensee cannot adequately devote to this program.

Report reviewers should not be given CPE credit as a compensation measure. Compensation should be provided and the cost be borne by the budget provisions. The proposed rule would allow reviewers to participate simply as a way of getting the necessary CPE credit at a minimum cost to themselves. This particular method of compensation may undermine the CPE program and could cut into the quality and quantity of courses offered. If report reviewers are allowed to claim CPE credit, then the individual performing an audit should be allowed credit. The purpose of CPE is to gain knowledge in an area where there exists a deficiency. The proposed rule would be a severe deterioration of the requirement.

6. After considering the above testimony, the board has decided not to proceed with the amendment of the rule which would have allowed CPE credit for report reviewers.

7. The board's reasons for overruling the other considerations urged against adoption are as follows:

The board has the statutory authority under Section 37-50-203(2)(h), MCA, to adopt rules to provide for the monitoring of the profession and to maintain the quality of the accounting profession.

The Legislative Auditor, in its 1978 Sunset Performance Review of the board, stated that "regulation in the interest of public protection should not be merely reactionary. Given a need for the protection of the public, the board should establish and monitor some system that assures that licensed accountants maintain the knowledge and competency necessary to properly protect the public...it is unreasonable not to monitor the conduct of those who perform the attest function."

During the past year, the Governmental Quality Control committee of the MSCPA reviewed 116 governmental audit reports

prepared by Montana permit holders. Approximately 40% of the reports reviewed were found to have significant deficiencies.

The authors of the Accountancy Practice Act did not intend to limit the public as the only monitors of the competency and quality of the accounting profession in Montana.

The estimated cost of the proposed monitoring program is within the present budget of the board.

The purpose of the proposed rules is to protect the public by monitoring the quality of reports prepared by permit holders.

BOARD OF PUBLIC ACCOUNTANTS  
ROBERT B. BRAGG, CHAIRMAN

BY:   
GEOFFREY BRAZIER, ATTORNEY

Certified to the Secretary of State, August 29, 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 (6) ) 8.86.301 (6) (i)  
(i) as it relates to the Class )  
I price formula to change on- ) DOCKET #76-86  
the-farm retail prices )

TO: All licensees under the Montana Milk Control Act (Section 81-23-101, MCA, and following), and to all interested persons:

1. On July 17, 1986, the Montana Board of Milk Control published notice of a proposed amendment of Rule 8.86.301 (6) (i) relating to the Class I price formula to change on-the-farm retail prices. Notice was published at page 1134 of the 1986 Montana Administrative Register, issue no. 13, as MAR Notice No. 8-86-18.

2. The hearing was held August 22, 1986 at 10:00 a.m. in the Department of Highways Auditorium. Two persons appeared at the hearing to offer testimony and comment on the proposed rule amendments. One spoke in favor of the proposed amendment and one spoke in opposition to the proposed amendment.

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 July 17, 1986 notice:

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

8.86.301 PRICING RULES

(6) . . .

(i) . . .

(i) the minimum on-the-farm retail price for pasteurized milk in any container size is the same as the ~~regularly~~ LOWEST calculated and established jobber ~~prices~~ PRICE.

(ii) the minimum on-the-farm retail price for raw milk sold in one half (½) gallon containers is ~~twenty-two-cents-(¢0.22)~~ eleven cents (\$0.11) less than the ~~regularly~~ LOWEST calculated and established ~~retail~~ jobber price for ~~pasteurized-and-home-~~ RAW MILK in such containers.

(iii) the minimum on-the-farm price for raw milk sold in one (1) gallon containers is ~~forty-four-cents-(¢0.44)~~ twenty two cents (\$0.22) less than the ~~regularly~~ LOWEST calculated and established ~~retail~~ jobber price for ~~pasteurized-and-home-~~ RAW MILK in such containers.

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

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

1. Since 1975 costs have increased. The margin between on-the-farm retail and retail have not.

2. Costs at the producer-distributor level are related to jobbers costs and therefore should be set in accordance with jobber prices.

3. The petitioner testified he has lost sales because of the percentage decrease in his margin, therefore the margin should be increased to give him the opportunity to restore his sales to previous levels.

4. The petitioner testified that operation of economic formulas are adequate to justify his contention that costs have increased.

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

1. Because it sets a precedent of setting prices below cost for a specific operation.

2. Proponent failed to demonstrate a need for adjusting the price.

3. Proponent failed to provide costs regarding transportation differential and dock costs.

4. Proponent provided no testimony to indicate his overall costs have decreased.

5. Proponent failed to prove that the lack of a price differential has been the cause of his lost business.

6. The principal reasons for denying objections were as follows:

1. The Board did not feel they needed the proponents specific costs because he had not asked for a fixed differential, but a change in the total concept of pricing for on-the-farm sales to determine whether it relates to jobber pricing or retail pricing.

2. The Board rejected opponents contention that proponent failed to prove that the lack of a price differential had been the cause of his lost business because percentage wise, the margin was less than it was in 1975.

3. The Board felt the proponent did not have to demonstrate a need for adjusting prices because the producer-distributor operation more closely resembles the jobbers operation than that of a retailer.

4. The Board felt testimony supported and no countervailing testimony indicated the on-the-farm price is below the cost of production.

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 August 29, 1986.

17-9/11/86

Montana Administrative Register

BEFORE THE STATE LIBRARY COMMISSION  
OF THE STATE OF MONTANA

In the matter of the adoption )	NOTICE OF ADOPTION OF RULES
of Rules I-III (10.102.5102 )	I-III (10.102.5102 through
through 10.102.5104) relating )	10.102.5104) RELATING TO
to state coal severance tax )	STATE COAL SEVERANCE TAX
funding to federations and )	FUNDING TO FEDERATIONS AND
grant programs and amendment )	GRANT PROGRAMS AND THE AMEND-
of Rule 10.102.5101. )	MENT OF RULE 10.102.5101.

To: All Interested Persons

1. On March 13, 1986, the Montana State Library Commission published notice of the proposed adoption of new Rules I (10.102.5102), II (10.102.5103), and III (10.102.5104) and the repeal of Rule 10.102.5101 relating to state coal severance tax funding to federations and grant programs at pages 324 and 325 of the 1986 Montana Administrative Register, issue no. 5.

2. The Commission has adopted the rules as proposed.

3. The Commission has not repealed Rule 10.102.5101 as found on page 10-1269 of the Administrative Rules of Montana as proposed. The Commission has amended Rule 10.102.5101 as follows:

10.102.5101 DESCRIPTION OF FEDERATION AREAS AND HEAD-  
QUARTERS (1)--(a)--The Pathfinder Federation consists of  
participating libraries in that area of the state covered by  
Blaine, Cascade, Chouteau, Glacier, Hill, Liberty, Pondera,  
Teton and Toole Counties-- A list of federation areas and  
headquarters libraries is available without charge from the  
Montana State Library.

(b)--The headquarters library of this federation is the  
Great Falls Public Library, Great Falls, Montana.

(2)--(a)--The Golden Plains Library Federation consists of  
participating libraries in that area of the state covered by  
Daniels, Phillips, Roosevelt, Sheridan and Valley Counties.

(b)--The headquarters library of this federation is the  
Glasgow City County Library, Glasgow, Montana.

(3)--(a)--The Sagebrush Library Federation consists of  
participating libraries in that area of the state covered by  
Carter, Custer, Dawson, Fallon, Garfield, McCone, Powder River,  
Prairie, Richland, Rosebud, Treasure and Wibaux Counties.

(b)--The headquarters library of this federation is the  
Miles City Public Library, Miles City, Montana.

(4)--(a)--The South Central Library Federation consists of  
participating libraries in that area of the state covered by  
Big Horn, Carbon, Fergus, Golden Valley, Judith Basin,  
Musselshell, Petroleum, Stillwater, Sweet Grass, Wheatland and  
Yellowstone Counties.

(b)--The-headquarters-library-of-this-federation-is-the  
Harmly-Billings-Library,-Billings,-Montana-

(5)--(a)--The-Broad-Valleys-Library-Federation-consists-of  
participating-libraries-in-that-area-of-the-state-covered-by  
Beaverhead,-Broadwater,-Deer-bodge,-Gallatin,-Granite,  
Jefferson,-Lewis-and-Clark,-Madison,-Meagher,-Park,-Powell-and  
Silver-Bow-Countries-

(b)--The-headquarters-library-of-this-federation-is-the  
Bozeman-Public-Library,-Bozeman,-Montana-

(6)--(a)--The-Tamarack-Library-Federation-consists-of  
participating-libraries-in-that-area-of-the-state-covered-by  
Flathead,-Lake,-Lincoln,-Mineral,-Missoula,-Navalli-and-Sanders  
Countries-

(b)--The-headquarters-library-of-this-federation-is-the  
City-County-library-of-Missoula,-Missoula,-Montana-

(7)--A-list-of-counties-and-cities-participating-in  
federations-is-available-without-charge-from-the-Montana-State  
Library-

AUTH: 22-1-103(9)

IMP: 22-1-103(9)

4. Legislative Council staff gave comment on the Commission's proposed repeal of Rule 10.102.5101 stating that the rule meets the definition of a rule and falls under the agency's rulemaking authority; that the rule provides a written record of federation areas and headquarters and can be amended at such time as is necessary.

The Commission's response is that Rule 10.102.5101 will be amended rather than repealed.

Legislative Council staff also expressed concern as to whether the Commission interpreted the statutes to include grants to individual libraries and networks and not just "grants to federations" or "among federations."

The Commission feels that individual libraries and networks are to be included.

5. On May 3, 1986, a public hearing was held in Kalispell, Montana, regarding the Commission's proposed action on these rules.

(a) Sara Parker, Montana State Librarian, spoke in support of the proposed action stating the agency's legal services bureau attorney had concluded that the 1981 Legislature's intent was to provide for administrative rules which would cover both the support of federations and its services and grant programs.

(b) Ted Schmidt, Coordinator of the Tamarack Library Federation, Missoula, commented on Rules I (10.102.5102) and II (10.102.5103), stating that the Tamarack Federation Advisory Board had recommended "the Commission allocate all funds received up to \$750,000" rather than \$500,000. The Tamarack Federation Advisory Board further recommended that the Montana State Library Commission involve federation advisory boards in establishing a process to designate federation headquarters. Ellen Newberg, Coordinator of the South Central Library Federation, Billings, commented that the Montana federation

coordinators had voted in support of the Tamarack Federation Advisory Board's recommendations.


The Commission's response is that the amount should remain \$500,000 because there will be more flexibility with expending the funds if any amount over \$500,000 was ever realized.

No other comment was received.

6. Rules 10.102.5102, 10.102.5103, 10.102.5104 are adopted because there is a need for the Commission to provide guidance for the allocation of funding, to establish funding formulas and to determine what types of grants should be implemented. The rules are necessary to clarify the procedures, the formulas and priorities the Commission will use in allocating state funding.

7. Rule 10.102.5101 was amended because it is necessary for the Commission to maintain and provide a current list of designated federation areas and headquarters libraries while at the same time being able to quickly respond to specific situations in individual federations.

8. The authority of these Rules 22-1-103, MCA, and 22-1-413, MCA.

  
Sara Parker  
Montana State Librarian

Certified to the Secretary of State August 28, 1986.



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

In the matter of the adoption )	NOTICE OF ADOPTION
of a new rule authorizing )	OF A RULE
local departments or boards )	
of health to review minor )	
subdivisions )	(Subdivisions)

To: All Interested Persons

1. On July 17, 1986, the department published notice of a proposed adoption of a new rule authorizing local departments or boards of health to review minor subdivisions, at page 1139 of the 1986 Montana Administrative Register, issue number 13.

2. The department has adopted the rule with the following changes (new language is underlined):

16.16.116 (RULE 1) CERTIFICATION OF LOCAL DEPARTMENT OR BOARD OF HEALTH (1) A local department or board of health will, if it requests certification, be certified to perform the final review of divisions of land described in section 76-4-104(3), MCA, if the following requirements are met and the sanitarian or engineer is qualified as described in section (2):

- (a) (same as proposed)
- (b) (same as proposed)
- (c) the local department or board of health accurately completes at least 85% of all subdivision applications submitted to the department under ARM 16.16.108 during a one-year trial period prior to assumption of the program; those subjects of review permitting two or more interpretations may not be considered in determining this performance level.
- (2) (same as proposed)
- (3) (same as proposed)
- (4) (same as proposed)
- (5) (same as proposed)
- (6) (same as proposed)

3. Comments received by the department, and the department's responses, follow:

Comment: It was suggested that any requirements in the rule compelling a professional engineer to acquire a knowledge of certain subject matter, e.g., subdivision rules in ARM title 16, chapter 6, certificates of survey interpretation, site evaluation, or alternative water treatment systems, is an attempt to impose additional requirements over and above those imposed by the engineering registration board, or is an attempt to pre-empt that board's function.

Response: This comment was not accepted. The department has no jurisdiction to regulate engineers. The legislative mandate imposes an obligation on this department to create regulations to enable local reviewing authorities to review certain subdivisions. It is therefore obligated to establish rules that will qualify local departments and boards of health by requiring minimum knowledge of the subject matter, including alternative treatment systems.

Comment: It was suggested that the department conduct schools in which information required for subdivision review be provided to professional engineers but that the actual testing be performed by the board of registration.

Response: The department does intend to conduct schools encompassing information needed to properly conduct subdivision review. However, the department will conduct the test, since the department does not register engineers and it lacks jurisdiction to transfer the testing process to the board of registration. Conversely, the legislative mandate to permit local review of subdivisions obligates the department to qualify local departments or boards of health.

Comment: It was suggested that requiring the local departments or boards of health to accurately complete 85% of the application reviews is unachievable.

Response: This suggestion was not accepted. The department's review of subdivision applications indicates that a great majority of local departments or boards of health are meeting an 85% accuracy level. While department interpretation of rules is necessary on a case-by-case basis, the knowledge of these rules by the local departments or boards of health results in a uniform application of the rules to each fact situation.

Comment: It was suggested that the one-year trial provision may be confusing and result in more than one interpretation.

Response: This suggestion was accepted. The provision has been revised to specifically confine the one-year trial period at an 85% accuracy level to subdivision reviews performed under ARM 16.16.108.

Comment: Inquiry was made regarding the availability of a formal appeal process and the procedure that would be available in such a process when a local reviewing authority performed the initial review.

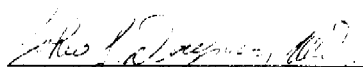
Response: The proposed rule does not direct itself to any appeal process or procedure. Section 76-4-126, MCA, provides an aggrieved party the right of a hearing before the Board of Health and Environmental Sciences or the reviewing authority. The "reviewing authority" definition in Section 76-4-102(9), MCA, includes the Department of Health and Environmental Sciences and the local departments or boards of health. Thus, a hearing provision for review purposes is

available when either the state department conducts the initial review or it is performed by the local departments or boards of health. In the former, review is available through the Board of Health and Environmental Sciences; in the latter, when a review is performed by the local department of health, the local board of health performs the review. Judicial review would then appear to be available following the Board of Health and Environmental Sciences review on a state level and following the local board of health review on a local level.

From a procedural aspect, Section 76-4-126, MCA, requires utilization of the Montana Administrative Procedure Act (MAPA) at such review hearings. While the Department of Health and Environmental Sciences and the Board of Health and Environmental Sciences follow MAPA (Section 2-4-102, MCA) and the Attorney General's model procedural rules (ARM 16.16.106 and 16.2.101), the local departments or boards of health may not have in place specific procedural rules regarding appeals. The mandatory application of MAPA in Section 76-4-126, MCA, would require local reviewing authorities to establish rules which would be the functional equivalent of the contested case provisions of MAPA (Section 2-4-601, MCA) including notice, hearing, and opportunity to be heard.

Comment: Inquiry was made as to whether all counties may participate in the local review under the provision regarding testing of sanitarians and professional engineers and the requirement that they have a minimum of one year experience performing subdivision review.

Response: Not all counties that seek to test sanitarians or engineers and require them to have one year's experience in subdivision review can automatically perform local review of some subdivisions. Only those counties contracting with the department to review subdivisions under ARM 16.16.108 qualify under this rule.

  
JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State August 29, 1986.

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.
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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.
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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 June 30, 1986. This table includes those rules adopted during the period June 30, 1986 through September 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 June 30, 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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