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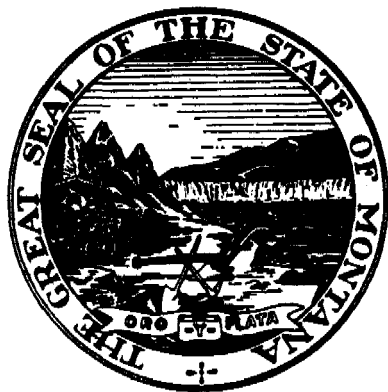
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# **MONTANA ADMINISTRATIVE REGISTER**

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**1986 ISSUE NO. 8**  
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**PAGES 589-701**



MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 8

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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

In the matter of the proposed) NOTICE OF HEARING ON THE  
amendment of Rules 4.10.101 ) PROPOSED REPEAL OF RULES  
through 4.10.1501 concerning ) 4.10.318, 4.10.402, 4.10.505,  
pesticide sale and use ) 4.10.601, 4.10.602, 4.10.603,  
 ) 4.10.604, 4.10.902, THE  
 ) AMENDMENT OF RULES 4.10.101,  
 ) 4.10.102, 4.10.103, 4.10.106,  
 ) 4.10.201, 4.10.202, 4.10.203,  
 ) 4.10.204, 4.10.205, 4.10.206,  
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 ) 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, Agriculture/Livestock Building, Sixth and Roberts, Helena, Montana, a public hearing will be held to consider the amendment of Rules 4.10.201 through 4.10.1501 pertaining to the sale and use of pesticides in Montana.

2. The rules as proposed to be amended read as follows: (new matter underlined, deleted matter interlined) (full text of the rules are located on pages 4-211 through 4-284, Administrative Rules of Montana).

4.10.101 FINANCIAL RESPONSIBILITIES (1) thru (3)  
Remains the same.

(4) Commercial pesticide seed treatment and elevator pest control applicators, whether at farm sites or their own business locations, ~~these seed-treaters-using-fumigants;~~ vertebrate pest control applicators using ground applied baits and public utility, and non-commercial and-feed manufacturing-and-processing applicators applying pesticides in or on properties managed by them public-utility-or-feed manufacturer-or-processor are exempt from the financial responsibilities required in ARM 4.10.101 through 4.10.103. Demonstration and Research Pest Control applicators may be exempt from the financial responsibilities required in ARM 4.10.101 through 4.10.103 upon appropriate application for exemption duly approved by the department. The department will evaluate each applicant's situation as shown on the waiver application considering particularly the following factors: actual pesticide applications by the applicant, the use of co-operators, the size of plots, and the hazards and drift potential of pesticides utilized. All applicators shall comply with the requirements in ARM 4.10.104 through 4.10.108, inclusive.

(5) Remains the same.

AUTH: 80-8-214, MCA IMP: 80-8-214, MCA

4.10.102. TYPES AND CONDITIONS OF FINANCIAL RESPONSIBILITY (1) Remains the same.

(2) The department may accept a liability insurance policy in the proper face amount that contains a deductible clause in an amount not to exceed five hundred dollars (\$500.00) for aerial-applications, and two hundred-fifty dollars (~~\$250.00~~) for all other applicators all applicators. The department may allow a deductible greater than \$500 if an applicant submits documentation that a deductible of \$500 or less is not available from any insurer. This exception shall only be based upon the lack of availability of the established deductible, not the increase or decrease in premium value of a higher deductible. When the deductible is greater than \$500, the applicator shall be required to obtain a bond or an indemnity as specified in 4.10.102(1)(c) for any amount greater than \$500. If the license has not satisfied the requirements of the deductible amount of any prior damage claim, such deductible clause in a currently submitted policy shall not be accepted by the department to satisfy the licensing requirements unless and until the applicant satisfies the prior damage claim. Insurance policies may have the pollution exclusion clause removed.

(3) Remains the same.

AUTH: 80-8-214, MCA IMP: 80-8-214, MCA

4.10.103. APPROVAL, MODIFICATION, AND CANCELLATION OF FINANCIAL RESPONSIBILITY ELEMENTS (1) Remains the same.

(2) The department shall be notified by registered mail ten (10) days prior to any proposed modification of the liability insurance policy or surety bond requested by the licensees. Such modification must be approved by the department before the proposed modification can become final. Ten (10) days notice by registered mail to the department is required prior to the surety or insurer cancelling the licensee's surety bond or liability insurance, and prior to settlement of claims made against licensee's bond or insurance. Modification of the indemnity trust fund, for any reason by any party, shall not be completed until the department has approved the proposed modification by written authorization to the licensee and the bank, trust, or other financial official or institution.

(a) If the financial responsibility is to be cancelled, the requirements and procedures established in ARM 4.10.108 shall be followed.

AUTH: 80-8-214, MCA IMP: 80-8-214, MCA

4.10.106. REVOCATION OF LICENSE (1) The department shall revoke the license(s) of any applicator not satisfying

8-4/24/86

MAR Notice No. 4-14-15

the final judgement rendered against or agreed to by him, within thirty (30) calendar days from the date the judgement is filed with the department or in the time period established in the judgement. The revocation shall remain in effect and no license shall be issued to the applicator unless and until the judgement is satisfied or until the applicator files with the department his written direction to his financial responsibility guarantors to respond in full to the damages specified in the judgement.

(2) Remains the same.

AUTH: 80-8-214, MCA

IMP: 80-8-214, MCA

#### 4.10.201 PESTICIDE APPLICATOR LICENSING REQUIREMENTS

(1) Remains the same.

(2) A person shall apply for a license on the department's application form. The application shall be completed in its entirety, accompanied by the licensing fee and a completed statement of financial responsibility.

~~----- (a) The department may enclose a list of restricted use pesticides with each application submitted to applicants. The applicant may indicate, by appropriate marking on the list, the restricted use pesticides, if any, he desires to use or apply during the licensing period. An applicant may be certified licensed to use one or more restricted pesticides or a group or class of restricted pesticides. It shall be illegal for a pesticide applicator to purchase or apply any restricted use pesticide for which certification is not received.~~

~~----- (b) Applicants submitting incomplete applications and not meeting the conditions and standards expressed in the Act and department rules will be notified of such deficiencies and the procedure for correcting the deficiencies. The department will return the application along with the notice.~~

(3) thru (5) Remains the same.

(6) Those individuals who cannot be classified as a commercial, public utility, or government certified pesticide applicator or who cannot be classified as a private farm applicator, but desire the use of restricted use pesticides, shall be considered to be certified non-commercial applicators. The non-commercial applicators desiring to use restricted use pesticides in the state shall be required to meet the same application, examination, qualification, general and specific competency standards, recordkeeping, requalification, and other related pesticide usage and application standards as required of commercial applicators by the Act. These individuals shall be classified into one of the eleven categories established for commercial and government applicators. Certified non-commercial applicators may only use restricted use pesticides on lands owned, rented, or leased by his employer or himself. Non-commercial applicators, whether certified or not, violating the Act or rules promulgated thereunder

shall be subject to the same penalties and administrative procedures as commercial applicators.

(7) ~~Once the applicant meets all application requirements, the applicant shall take a written examination. Applicants for a pesticide license or certification license shall be required to show proof to the department's authorized representative supervising an examination session that all required application forms, fees, and other licensing requirements have been received by the department. The department will notify applicants that all application requirements have been met and that the applicant may take the required examination; or the applicant may submit all application forms and fees prior to the examination to the authorized representative conducting the examination. No licenses or certification licenses shall be issued to any person until the application fees and all examination or regualification requirements are fulfilled and approved by the department.~~

(8) Remains the same.

(9) ~~An applicator not renewing and maintaining the his license each year of the four-year and qualification after the established qualification period shall be required to retake and pass the complete examination series prior to the issuance of a new license. The applicator may maintain his qualifications by attending approved regualification programs for a time period not to exceed five years. The applicator will be required to maintain his records of regualification 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. Applicators canceling their financial responsibility at the end of a spray season as provided by the liability rules and relicensing by examination within a qualification period.~~

~~----(10) It shall be illegal for any person defined as a commercial, public utility, or government applicator to use or apply pesticides without a current license in the appropriate applicator classification. An applicant shall not proceed with any pesticide operation, use, or application until a license is issued. Such illegal operations shall subject the person to penalties of the Act and/or modification of his license and/or denial of his license application for the current licensing period.~~

~~----(11)(10) Applicators and their employees licensed as applicators or operators shall reveal their his license upon request or by any individual or business, for whom the applicator or his employee is performing pesticide applications or to an authorized representative of the department.~~

(a) ~~When an applicator shall upon termination of their his employment, transfers his of their license, or modification or cancellation of their his license, return to the department all employee operator licenses issued~~



under the applicator's name and license are terminated, modified, or cancelled. Employees licensed as applicators may retain their license provided that their financial responsibility is still valid. New licenses will be issued to employee operators previously licensed or qualified once the business has appointed a new supervisory licensed applicator.

AUTH: 80-8-105, MCA

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

4.10.202 CLASSIFICATION OF PESTICIDE APPLICATORS (1)

Remains the same.

(a) an applicant using general use pesticides shall be classified and licensed as either a licensed commercial, public utility, or government pesticide applicator.

(b) Remains the same.

~~----- (c) all applicants shall be further classified as either aerial or ground applicators for the purpose of determining the type of examination the applicant must pass in regard to equipment utilized, its operation, maintenance, calibration, and any other equipment feature or procedure affecting the use of application of a pesticide.~~

(2) A person All applicants, whether commercial, public utility, or government, licensed or certified licensed, aerial or ground, shall be further classified into one or more of the specific classifications set forth in this rule. The specific classification(s) shall determine the type, substance, and comprehensiveness of each applicant's examinations and shall establish the specific areas, classes of pesticides, and conditions by which the applicant may conduct pesticide operations.

(a) A person Applicants licensed as an applicator may use general use pesticides for which they are he is qualified throughout the state. ~~They may use restricted use pesticides under the direct supervision of a certified licensed applicator.~~ Applicants A person certified licensed as an applicator may use general and restricted use pesticides for which they are he is qualified throughout the state.

(i) A licensed commercial applicator may use a restricted pesticide under the following conditions:

~~----- (A) Under the special supervision of a certified licensed applicator.~~

~~----- (B) Under the direct supervision of a certified licensed applicator but within 100 miles of the certified applicator.~~

(ii) A licensed government applicator may use a restricted pesticide under the following conditions:

~~----- (A) Special supervision of a certified licensed applicator.~~

(B) Direct supervision of a certified-licensed applicator but within the respective jurisdiction of the certified applicator.

(b) thru 3) (a) Remains the same.

(i) Plant. This classification includes any applicator using or supervising the use of pesticides in the production of agricultural crops, including without limiting the foregoing: small grains, feed grains, soybeans and forage, vegetables, small fruits, tree fruits and nuts, as well as on grasslands and non-crop agricultural lands.

(ii) thru (iii) (c) Remains the same.

(d) Seed Treatment and Elevator Pest Control. This classification includes any applicator using or supervising the use of pesticides onto seeds, the use of fumigants in seed storage areas or on or in seeds and the use of pesticide in or around the elevator seed storage facilities.

(e) Aquatic Pest Control. This classification includes any applicator using or supervising the use of pesticides purposefully applied to standing or running water, excluding applicators engaged in public health related activities included in Classification (3) (ji).

(f) Public-Utility-Applicators---This classification includes any public-utility applicator or an employee of a public-utility using or supervising the use of pesticides to land or structure owned or leased by a public-utility.

-----(g) Right-of-Way Pest Control. This classification includes any applicator using or supervising the use of pesticides in the maintenance of public roads, electric power lines, pipe lines, railway rights-of-way, or other similar areas.

{h}(g) Industrial, Institutional, Structural, and Health Related Pest Control. This classification includes any applicator using or supervising the use of pesticides in, on, or around food handling and manufacturing establishments, human dwellings, institutions such as schools and hospitals, industrial establishments including warehouses and grain elevators, and any other structures and adjacent areas, public or private, and for the protection of stored, processed, or manufactured products.

-----(h) Wood Product Pest Control---This classification includes any applicator using or supervising the use of pesticides for pole framing, piling applications, railroad tie repair, pressure treatment applications, some home and farm uses, brush on treatments, sapstain control, and uses in non-pressure treatment plants for the protection of wood products.

-----(i)---Food-Manufacturing-Processing---This subclassification applies to those individuals who are employed by food-manufacturers and processing establishments and who use and apply restricted-use pesticides in and around these establishments.

(i) Public Health Pest Control. This classification includes state, federal, or other governmental employees or contracted commercial applicators using or supervising the

use of pesticides in public health programs for the management and control of pests having medical and public health importance, ~~provided that, the~~ jurisdictional health officer, state veterinarian, their duly authorized representatives, and governmental research personnel are exempt from licensing when applying general use pesticides to experimental areas.

(j) Remains the same.

(k) Demonstration and Research Pest Control. This classification includes (1) individuals who demonstrate to the public the proper use and techniques of application of restricted pesticides or supervise such demonstrations; and (2) individuals conducting field research with pesticides and in doing so, use or supervise the use of restricted use pesticides. Included in the first group are such individuals as Extension Specialists and County Agents, Commercial Representatives demonstrating pesticide products, and those individuals demonstrating methods used in public programs. The second group includes state, federal, commercial, and other individuals conducting field research on or utilizing pesticides. Demonstration and Research applicators shall qualify in one or more of the classifications (3)(a) through (j) that best represents their operations or responsibilities.

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

4.10.203. COMPETENCY STANDARDS FOR LICENSING AND CERTIFICATION-LICENSING OF PESTICIDE APPLICATORS (1) An individual applying for a commercial, public utility, or governmental applicator's license or a ~~commercial-public utility, or government-applicator's~~ certification-license shall be required to pass a written examination prior to issuance of a license or certification-license. Examinations may be taken at the department's Helena office or the applicant may make arrangements for examination at other locations in the state or in other states at the convenience and approval of the department. Any individual applying for a license or a certification-license shall be ~~required to pass a written examination prior to licensing or~~ certification-licensing, meeting the general and specific competency standards of ARM 4.10.204 and 4.10.205. The competency of applicants shall be determined by their knowledge and passage of written examinations on the subjects set forth in the department's designated manuals for applicators, including revisions, and any other manual, guide, or materials as designated by the department. Examination questions will be derived from these manuals and their degree of difficulty will be based upon the degree of importance established by the department for the various subject areas:

(a) The department may accept licensee the applicant's examination scores from other states if the examination or examinations are equivalent to the department's examination.

However, all other standards and requirements of the department must be met by the applicant. ~~All out-of-state applicators will be required to take and pass an examination based on the Montana Pesticide Act and rules adopted thereunder. The scores required are set forth in (3)(a) and (b) of this rule. licensee--The department will attempt to establish reciprocal licensing and certification agreements to assist in limiting the examination process for licensees.~~

(2) An applicator's examination shall consist of:

(a) A basic examination consisting of, but not limited to, questions ~~based on pesticide legislation, laws, rules, regulations, definitions and guidelines, labeling, safety, and toxicology, effects on animals, plants, and the environment, safety equipment, first aid, pesticides in the environment, fish and wildlife, and alternatives to chemicals, pollinating insects, selection of control methods, factors affecting pesticide applications, general equipment and definitions.~~

~~(b) Equipment examinations consisting of, but not limited to, questions on equipment calibration, maintenance, pesticide dilution and mixing, which will be specific as possible to the applicant's pesticide operation.~~

~~-----~~(c) A specific examination or examinations consisting of, but not limited to, questions ~~based on~~ the pests to be controlled, ~~various control methods, and the pesticides utilized, environmental and safety considerations, pesticide formulations, and equipment calibration and maintenance, in the specific classification or classifications the~~ applicator chooses for licensing or certification licensing.

(3) The minimum passing score for applicants shall be:

(a) In the case of applicants qualifying for general use pesticides, seventy percent (70%) for the basic examination, and seventy percent (70%) for each respective equipment and specific examination required.

(b) In the case of applicants qualifying for restricted use pesticides, eighty percent (80%) for the basic examination, and eighty percent (80%) for each respective equipment and specific examination required.

(4) An applicant not receiving a passing score on one or more of the examinations shall be required to retake and pass the failed examination(s) prior to issuance of a license. The applicant taking more than one specific examination may elect to be licensed only for the specific examination(s) passed if the applicant has passed the basic, equipment, calibration, and dilution examinations and at least one specific examination.

(a) Applicants failing the basic examination or any other examination the first time shall not be allowed to retake the examination(s) for ~~seven (7) fifteen (15) days~~ after notification of failure by certified mail. Applicants failing the examination(s) a second time may retake the examination(s) ~~fifteen (15) thirty (30) days~~ after notification by certified mail. Applicants failing the examination(s) a third time shall not be allowed to retake

the examination(s) until the next licensing period beginning January 1 of the next year. Re-examination may be taken at any reasonable time after the time limitations expressed for the first and second examinations at the department's Helena office or the applicant may make arrangements for examination or re-examination at other locations in the state or in other states at the convenience and approval of the department.

(5) Requalification. Applicants maintaining their license for four (4) consecutive licensing periods shall be required to requalify for licensing prior to every fifth licensing period. The department has a staggered four year requalification time period designated by applicator classification and subclassification. Applicant classification will requalify by December 31 of the year given.

CATEGORY	YEAR
<u>Agricultural Pest Control:</u>	
Plant	1988
Animal	1988
Vertebrate	1989
Forest Pest Control	1986
Ornamental and Turf Pest Control	1986
Seed Treatment and Elevator pest Control	1987
Aquatic Pest Control	1986
Right-of-Way Pest control	1989
Industrial, Institutional, Structural, and	
Health Related Pest Control	1987
Wood Product Pest Control	1986
Public Health Pest Control	1988
<u>Regulatory Pest Control:</u>	
Mosquito Abatement	1988
Predator	1989
Quarantine	1988
Rabid Skunk	1989
Rodent	1989
Weed	1989
<u>Demonstration and Research Pest Control</u>	1987

Thereafter the qualification period extends from January 1 through December 31 of the next four year cycle. Applicant requalification shall be accomplished by either passing the complete examination series or by attending twelve (12) hours of training approved by the department. Courses must be either a minimum of six (6) hours of training (referred to as a long course) or three (3) hours of training (referred to as a short course). A long course shall satisfy 1/2 of the training required in a qualification period. A short course shall satisfy 1/4 of the training required in a qualification period, an acceptable applicant training course approved by the department. An applicant requalifying for licensing by attending a pesticide training courses shall be required to have the sponsor of the

training-course-submit-to-the-department-a must have written verification of the-applicator's his attendance and an agenda-of-topics-and-speakers. The department retains the right to approve or disapprove such training courses relative to meeting the qualifications for re-licensing. Training course sponsors must petition the department for approval of their courses at least thirty (30) days prior to being held. The petition must include dates, time, location, projected attendance, speakers and a synopsis of their presentations. The only training courses that will be reviewed for approval will be those attended by the applicator during the last half of the third licensing period or the fourth licensing period of a qualification period. The department may require applicators to pass an examination during any licensing period on major new pesticide technology which applies to the applicator's classification.

-----~~(a) Applicators examined for licensing in 1976 or 1977 may be required by the department to requalify for licensing prior to the fifth licensing period one time only to allow for staggering the requalification for classes of applicators. Thereafter, all applicator classes shall requalify prior to the fifth licensing period.~~

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

4.10.204 GENERAL STANDARDS OF COMPETENCY FOR ALL APPLICATORS (1) (a) thru (b) (ii) Remains the same.

(iii) precautions necessary to regard guard against injury to applicators and other individuals in or near treated areas.

(iv) thru (vi) Remains the same.

(vii) proper identification, storage, transport, handling, mixing procedures, and disposal methods for pesticides and used pesticide containers, including precautions to be taken to prevent children from having access to pesticides and pesticide containers.

(c) thru (f) Remains the same.

(g) Application techniques. Factors including:

(i) methods ~~of~~ and procedures used to apply various formulations of pesticides, solutions, and gases together with a knowledge of which technique of application to use in a given situation;

(ii) thru (h) Remains the same.

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

4.10.205 SPECIFIC STANDARDS OF COMPETENCY FOR EACH APPLICATOR CLASSIFICATION (1) Licensed or

~~certified~~-licensed commercial, public utility, and government pesticide applicators shall be particularly examined and qualified with respect to the practical knowledge standards elaborated below:

(a) Agricultural Pest Control

(i) Plant. Applicators must demonstrate practical knowledge of crops grown and the specific pests of those crops on which they may be using restricted-use pesticides. The importance of such competency is amplified by the extensive areas involved, the quantities of pesticides needed, and the ultimate use of the quantities of pesticides needed, and the ultimate use of many commodities as food and feed. Practical knowledge is required concerning soil and water problems, pre-harvest intervals, reentry intervals, phytotoxicity, and potential for environmental contamination, non-target injury, and community problems resulting from the use of restricted-use pesticides in agricultural areas.

(ii) Remains the same.

(iii) Vertebrate. Applicators must demonstrate practical knowledge of vertebrates for which they may be using restricted-use pesticides. They should possess practical knowledge of the cyclic occurrence of certain pests and specific population dynamics as a basis for programming pesticide applications. The applicator must demonstrate a practical knowledge of control and application methods which will minimize the possibility of secondary problems such as unintended effects on wildlife. These applicators must demonstrate knowledge of the use of these pesticides which will minimize or prevent hazards to humans, pets, and other domestic animals.

(b) and (c) Remains the same.

(d) Seed treatment and Elevator Pest Control.

Applicators shall demonstrate practical knowledge of the types of seeds that require pesticide chemical protection against pests, and factors such as seed coloration, carriers, and surface active agents which influence pesticide binding and may affect germination. They must demonstrate practical knowledge of hazards associated with handling, sorting and mixing, and misuse of treated seed such as introduction of treated seed into food and feed channels as well as proper disposal of unused treated seeds. Applicators must demonstrate proper use of grain fumigants to protect seeds, knowledge of the safe handling and application techniques, worker exposure and protection considerations, and reentry standards into fumigated structures. They must demonstrate practical knowledge of using herbicides around and rodenticides and avicides in and around these structures.

(e) Aquatic Pest Control. Applicators shall demonstrate practical knowledge of the secondary effects which can be caused by improper application rates, incorrect formulations, and faulty application of restricted-use pesticides used in this classification. They shall demonstrate practical knowledge of various water use situations and the potential of downstream effects. Further, they must have practical knowledge concerning potential pesticide effects on plants, fish, birds, beneficial insects, and other organisms which may be present

in aquatic environments. These applicators shall demonstrate practical knowledge of the principles of limited area application.

(f) Public-Utility-Applicators and Right-of-Way Pest Control. Applicators shall demonstrate practical knowledge of a wide variety of environments since right-of-way can traverse many different terrains, including waterways. They shall demonstrate practical knowledge of problems on runoff, drift, and excessive foliage destruction, and ability to recognize target organisms. They shall also demonstrate practical knowledge of the nature of herbicides and the need for containment of these pesticides within the right-of-way areas, and the impact of their application activities in the adjacent areas and communities.

(g) Remains the same.

(h) Wood Product Pest Control. Applicators shall demonstrate practical knowledge of the specific wood preservative products used in their operation (creosote, pentachlorophenol, inorganic arsenicals). They shall be knowledgeable about the protective clothing and equipment requirements and the requirements for proper care and disposal of work clothing and equipment. They shall demonstrate practical knowledge of application techniques which will prevent direct exposure to domestic animals and livestock, or in contamination of food, feed or drinking and irrigation water. They shall be aware of the prohibitions against eating, drinking and smoking and other potential avenues of work exposure while applying wood preservative chemicals. They must demonstrate practical knowledge of hazards of handling treated products as well as the requirements for proper disposal of pesticide waste. They must be familiar with the Consumer Awareness Program (CAP) which will be implemented through the use of Consumer Information Sheets (CIS's) provided to the end users of the products (consuming public).

(i) Public Health Pest Control. Applicators shall demonstrate practical knowledge of vector-disease transmission as it relates to and influences application programs. A wide variety of pests are involved. It is essential that they be known as recognized and appropriate life cycles and habitats be understood as a basis for control strategy. These applicators shall have practical knowledge of a great variety of environments ranging from streams to those conditions found in buildings. They should also have practical knowledge of the importance and employment of such non-chemical control methods as sanitation, waste disposal, and drainage.

(j) Regulatory Pest Control. Applicators shall demonstrate practical knowledge of regulated pests, applicable laws relating to quarantine and other regulation of pests, and the potential impact on the environment of restricted-use pesticides used in suppression and eradication programs. They shall demonstrate knowledge of factors influencing introduction, spread, and population



dynamics of relevant pests. In the case of some federal agency applicators, their knowledge shall extend beyond that required by their immediate duties since their services are frequently required in other areas of the country where emergency measures are invoked to control regulated pests, and where individual judgments must be made in new situations.

(k) Demonstration and Research Pest Control. Persons demonstrating the safe and effective use of pesticides to other applicators and the public will be expected to meet comprehensive standards reflecting a broad spectrum of pesticide use. Many different problem situations will be encountered in the course of activities associated with demonstrations. Practical knowledge of problems, pests, and population levels occurring in each demonstration situation is required. Further, they should demonstrate an understanding of pesticide organism interactions and the importance of integrating pesticide use with other control methods. In general, it would be expected that applicators doing demonstration pest control work possess a practical knowledge of all the standards detailed in ARM 4.10.204. In addition, they shall meet the specific standards required for classifications (1) (a) through (1) (g) of this rule applicable to their particular activity. Persons conducting field research or method improvement work with restricted use pesticides should be expected to know the general standards required for classifications (1) (a) through (1) (j) of this rule, applicable to their particular activity, or alternatively, to meet the more inclusive requirements listed under "Demonstration".

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

4.10.206. INDIVIDUALS REQUIRING A PESTICIDE OPERATOR'S LICENSE (1) Remains the same.

(2) Licensed operators shall be allowed to use and apply only those pesticides that the licensee or certified-licensed applicator he is supervised by is qualified to use and apply. A licensed operator may use general or restricted use pesticides within a radius of ~~the fifty-(50)~~ one hundred (100) miles of the applicator's business location when he is under the direct supervision of a licensed or certified-licensed applicator, respectively. Licensed operators may ~~not~~ apply general or restricted use pesticides beyond the ~~the fifty-(50)~~ one hundred (100) miles of ~~the applicator~~ radius only when under the special supervision of a licensed or certified-licensed applicator, respectively.

(3) and (4) Remain the same.

(5) Individuals using and applying general or restricted use pesticides shall qualify for an operator license by:

(a) passing a department examination; or

(b) attending a department examination training course;  
or

(c) receiving training from a certified-licensed or licensed applicator of the business or government agency who must certify the individual's completion of the training.

(6) The training or examination shall include knowledge of pesticide legislation law and rules, labels and labeling, safety, first aid and toxicology, effect of pesticides, factors affecting pesticide application, equipment calibration, dilution and mixing of pesticides, recognition of common pests to be controlled. The examination or training for operators will shall be as specific as possible to their operations and responsibilities. Examinations may be written or oral and will be given at the convenience and approval by of the department or its authorized representative. The department shall cooperate with individual applicators or groups of applicators in establishing the training materials and examination questions, and may provide assistance to applicators in training applicants for an operator's license. The passing score for the examination shall be seventy percent (70%). Operators who pass the examination may not be required to pass another examination. Operators may renew their license each year by receiving in-service business or government agency training or by attending a training course approved by the department.

(7) Government operators shall meet all the standards established for commercial operators in this regulation. Government operators shall only operate within their respective governmental boundaries regardless of the number of miles from the government certified-licensed or government licensed applicator's business location. Government operators or their employers shall not be required to pay a licensing fee

----- (8) --- The department will, under special conditions, issue a temporary license in letter form to applicant operators if requested by a licensed applicator. --- The temporary license will set forth the operator's and applicator's name, business address, and information of the pesticides the operator may use and apply. --- Temporary licenses shall be issued to an individual only once and the license shall be limited to fourteen (14) calendar days. --- It is expected that the operator will qualify for permanent licensing within the fourteen (14) day period.

AUTH: 80-8-105, MCA IMP: 80-8-205, 80-8-206, MCA

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:

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

(b) thru (c) remain the same.

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

(e) Remains the same.

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

(g) and (h) remain the same.

(i) weather conditions. Weather conditions such as wind speed, direction and temperature if applicable. Outdoor applications generally require the recording of some weather conditions.

(2) thru (4) remain the same.

(5) Seed treaters and wood product treaters shall only be required to maintain records on the volumes of pesticides applied and the other items set forth in (1) (a), (b), (i), (d), (e), and (f).

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

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

(7) (a) Applicators, upon written request of the department, shall submit to the department an accurate typed or printed record of each application performed with all restricted pesticides, or those restricted pesticides specifically named by the department. The records shall be submitted within fourteen (14) calendar days of the department's request or as otherwise requested by the department. The request for records may include the records for the complete calendar year after the end of the calendar month that the pesticide or pesticides were applied. The records shall be submitted on the standard form provided by the department or on forms approved by the department. The record shall contain the following items listed in this rule: (1) (a), (b) (i), (iii), (d), (e), (f), (g), (h) and (2). The record may contain all the items listed in sections (1) and (2).

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

(8) (a) Applicators shall submit to the department an accurate typed or printed annual report of their use of restricted and general use pesticides every fifth year beginning in calendar year 1990 and thereafter every five years. The report shall include a summary of use of these pesticides by county, month, total acreage, amount of the formulated product used, crop or site treated, and the product used by company name and trade name, and the EPA registration number or the type of formulation for the fifth year only. The annual report shall be submitted to the department by January 31 of the next year within fourteen (14) days after the end of the calendar year. The report shall be submitted on the standard form provided by the department or on forms approved by the department.

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

(9) Remains the same.

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

4.10.208 INCONSISTENT USE VIOLATIONS ~~-(1)-it shall be a violation for applicators to-~~

~~----- (a) -- fail to maintain application records or reports required by rule 4-10-207;~~

~~----- (b) -- make false or fraudulent records or reports;~~

~~----- (c) -- fail to submit written records or reports as required or as requested by the department;~~

~~----- (d) -- refuse an authorized representative of the department to inspect or record the applicator's records during business hours;~~

~~----- (e) -- not maintain records on a daily basis not to exceed twenty-four (24) hours from the time of the application;~~

~~----- (f) -- fail to comply with provisions of rule 4-10-209;~~

~~----- (g) No person shall use or recommend use of a pesticide in a manner inconsistent with the registered labeling, with the agency or department registration for that pesticide, or with the agency or department restrictions that have been placed on the use of that pesticide.~~

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

4.10.312 SALE OF AQUATIC HERBICIDES Remains the same.

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

Agency is exempt from the requirements of this rule if it is sold only for terrestrial uses.

(2) Remains the same.

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

4.10.313 USE OF AQUATIC HERBICIDES thru (1) remains the same.

(2) To maintain qualification for certification, the applicator must attend at least one department-approved aquatic training course in a four-(4)-year period, starting January 1, 1988. To maintain qualifications for certification, commercial and government applicators must comply with rule 4.10.203(6). Farm applicators must attend one six hour aquatic training course to maintain qualifications. The permit issued will conform to the qualification period established for the district in which the farm applicator resides. The department may require additional training if significant changes occur in aquatic herbicide use patterns or aquatic vegetation control techniques.

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

4.10.314 APPLICATION OF AQUATIC HERBICIDES thru (2) remains the same.

(3) Allow an inspection of the treatment area prior to application 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) Remains the same.

(5) Submit, upon request of the department, a postseason application report to the department by November 15th to include:

(a) thru (h) remains the same.

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

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

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

4.10.401. FARM APPLICATOR CERTIFICATION (1) A farm applicator desiring to use and apply restricted use pesticides shall be required to make application for an annual special use permit or certificate on a form approved by the department. Each application form shall be completed in its entirety prior to processing by the department. A fee for the certificate shall not be required by the department.

(a) Applicants, who have completed the application form, paid the fee, and have passed the required examination or have attended an approved training course and have taken an ungraded quiz at the conclusion of the course, shall be issued a certificate by the department to purchase and use restricted use pesticides. Passage of the required examination or attendance at a training course shall mean that qualify applicators will be qualified for five (5) consecutive years, provided that the applicators shall obtain an annual certificate with the limitations set forth in these rules. The applicator's first regualification and recertification date will be based upon the staggered schedule established for the permit district in which the person resides.

(b) The certificate shall be in effect for five years from the date of issuance to December 31 of the fifth year except as provided in rule 4.10.401(1)(a) through the following December 31. Farm applicators may annually renew their certification to purchase and use restricted use pesticides by submitting their application and fee a written renewal request to the department. Applicants may also renew their certificate in person at the department's Helena office or other departmental offices designated by the department, or at County Extension Service and approval by the department.

-----(c)---The department shall require authorized representatives of the department issuing certificates to maintain a list of recertified applicators on a form approved by the department.---The authorized representative shall submit the list of recertified applicators to the department.---The department may designate from time to time

(c) Training manuals and/or training materials for farm applicators will be designated by the department which may be of assistance in preparing for the examination. If the applicator elects to qualify by examination, these training manuals and/or training materials will serve as the basis for the examination.

(2) The farm applicator examination or training standards, as a minimum requirement, shall include ~~those set forth in 80-8-209(3) MCA.~~

~~----- (a) -- A farm applicator shall show that he possesses a practical knowledge of pest problems and pest control practices associated with his agricultural operations; proper storage, use, handling, and disposal of pesticides and containers and his related legal responsibility.~~

~~----- (b) -- Practical knowledge, including the ability to:~~  
~~----- (i) -- recognize common pests to be controlled and damage caused by them;~~

~~----- (ii) -- read and understand the label and labeling information, including the common name of pesticides applied, pest(s) to be controlled, timing and methods of application, safety precautions, any preharvest or re-entry restrictions, and any specific disposal procedures;~~

~~----- (iii) -- apply pesticides in accordance with label instructions and warnings, including the ability to prepare the proper concentration of pesticides to be used under particular circumstances taking into account such factors as area to be covered, speed at which application equipment will be driven, and the quantity dispersed in a given period of operation;~~

~~----- (iv) -- recognize local environmental situations that must be considered during application to avoid contamination;~~

~~----- (v) -- recognize poisoning symptoms and procedures to follow in case of a pesticide accident;~~

(3) Remains the same.

~~----- (a) -- Applicants who are unable to read and understand labels or who have failed their examination or received a score of less than fifty percent (50%) on the quiz may qualify for certification by passing an oral examination. This oral examination shall be as comprehensive as the farm applicator written examination and passing score shall be seventy percent (70%). -- Applicants failing the oral examination may be required to attend a training from a recognized pesticide training official or from a certified licensed applicator prior to taking additional oral examinations. -- Applicants requesting certification through oral examination shall be certified to use and apply only those individual restricted use pesticides for which the applicant becomes certified.~~

(4) Certified farm applicators shall requalify for certification to use restricted use pesticides prior to issuance of a certificate every sixth year. Requalification may be achieved by passing an examination or by attending a training course six hours of training approved by the department. Farm applicators required by the department to requalify for certification prior to the sixth licensing period one time only to allow for staggering the requalification of farm applicators. -- Thereafter, all farm applicators shall requalify prior to the sixth licensing

period- 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 Jefferson  
Broadwater Madison  
Deer Lodge Meagher  
Gallatin Powell  
Garfield Silver Bow  
Granite

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 VIOLATIONS--(1)--A violation of this act or any rule promulgated under the act by these credentialed individuals or the farm applicator shall be considered to be a violation by the farm applicator



~~because of his supervisory responsibility. The certified farm applicator's certificate shall be subject to revocation by the department for any violation committed by the farm applicator, his family, or his employees.~~

~~USE (1)(2) Use of No farm applicator, family member or employee shall use or recommend use of a pesticide in a manner inconsistent with registered the labeling, with the agency or department registration for that pesticide, 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.~~

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 APPLICATION FOR LICENSE (1) A person applying for a commercial pesticide dealer's license shall make application for the license on a standard application form provided by the department. Each application shall be completed in its entirety and the licensing fee paid prior to processing by the department. ~~Incomplete applications will be returned to the applicant.~~

(2) Non-resident applicants shall be required to submit the license application, fee, and a completed form of service of process in the state prior to processing the application by the department. The form shall be accompanied by the appropriate fee for filing, payable to the Secretary of State. The service of process shall remain valid until cancelled or modified.

(3) thru (6) remains the same.

AUTH: 80-8-105, MCA

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

4.10.503 PESTICIDE DEALERS REQUIREMENTS AND STANDARDS

(1) Remains the same.

(2) New applicants for a dealer license must pass a written examination prior to issuance of a license by the department. ~~Applicants must complete all applications for license prior to taking the examination.~~ An applicant not receiving a passing score on the first examination and upon notification of failure by certified mail, may retake the examination fifteen ~~(15)~~ seven (7) days after notification. Applicants failing the second examination and upon notification of failure by certified mail, may retake the examination thirty ~~(30)~~ 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.

(3) Remains the same.

(4) Dealers shall be required to requalify for licensing every prior to December 31, 1985, and by the end of every fourth year thereafter fifth-licensing-period. Dealer requalification shall be accomplished by either passing a dealer examination or by attending twelve (12) hours of training approved by the department. Courses must be either a minimum of six (6) hours of training (referred to as a long course) or three (3) hours of training (referred to as a short course). A long course shall satisfy 1/2 of the training required in a qualification period. A short course shall satisfy 1/4 of the training required in a qualification period. A dealer attending pesticide training courses must have written verification of his attendance. The department retains the right to approve or disapprove training courses relative to meeting the qualifications for re-licensing. Training course sponsors must petition the department for approval of their courses at least thirty (30) days prior to being held. The petition must include dates, time, location, projected attendance, speakers, and synopsis of their presentations. The department may require dealers to pass an examination during any licensing period on new pesticide technology. attendance-at-an-acceptable-dealer-training-course-approved-by-the-department. The department may require dealers to pass an examination on new major pesticide technology prior to issuance of a license every fifth-licensing-period.

(5) A dealer, not renewing and maintaining his license and qualification, after the established qualification period shall be required to retake and pass the examination prior to the issuance of a new license. The dealer may maintain his qualifications by attending approved requalification programs for a time period not to exceed five 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. A licensed-dealer-not-renewing-annually-and-maintaining-his-license-throughout-the-four-year-qualification-period-desiring-to-become-relicensed-within-the-four-year-qualification-period-shall-be-required-to-pass-a-dealer-examination-prior-to-issuance-of-a-license. Thereafter, the dealer shall complete requalification at the next scheduled qualification period for dealers. A person desiring to become licensed within a qualification period for the first time shall be required to pass a dealer examination prior to issuance of a license. Thereafter, the dealer shall complete requalification at the next scheduled qualification period for dealers.

-----~~(6) A dealer requalifying for licensing by attending a pesticide training course shall be required to have the sponsor of the training course submit a written verification of the dealer's complete attendance and an agenda of topics and speakers directly to the department. This does not apply to courses that are sponsored by the department. The department retains the right to approve or disapprove such training course relative to meeting the qualifications for relicensing. The only training courses that will be reviewed for approval will be those attended by the dealer that last half of the third licensing period or those attended by the fourth licensing period of a qualification period.~~

-----~~(7)~~(6) A licensed dealer changing his employment to another company or business within a licensing period shall be required to submit to the department the license and any employee credentials for cancellation by the department. The dealer, by submission of a written request or application, may request the issuance of a new license. If the dealer paid the license fee, the department will issue the license. If a dealership or company originally employing the dealer paid the license fee, the department shall not re-issue the dealer or the dealer's new employer. If the company paid for the licensing fee, the department will credit the fee to the company for issuance of another dealer's license by the department within the same licensing period. Provided that the license shall not be issued until the applicant passes the required written examination or is already a licensed dealer. Licenses and license fees shall not be transferable between licensing periods.

~~(8)~~(7) A licensed dealer or employees supervised by the dealer shall only sell restricted use pesticides to other dealers, certified-licensed commercial, public utility, or governmental applicators, to non-commercial certified applicators, or to certified farm applicators possessing a certificate or their credentialed family members or employees. The dealer or dealer's employees shall only sell to a certified applicator the pesticide or pesticides within the group or class of pesticides stated on the license or permit.

~~(9)~~(8) Dealers are allowed to sell restricted use pesticides to persons possessing proper identification or credentials issued by the department. These credentials will state that the person is purchasing the pesticide under the name and license or permit number of a certified applicator and that the certified applicator supervises the use of the pesticide by that person. Sale of restricted use pesticides to any person other than certified applicators or persons with departmental credentials is illegal. Such sales to any person shall subject a dealer to immediate revocation of the license. ~~Dealers may sell a restricted use pesticide to any farm applicator possessing an emergency use certificate issued by the department or its authorized representative. The dealer shall only sell the pesticide~~

and the quantity of the pesticide stated on the certificate. The dealer shall retain possession of the emergency-use certificate upon completion of the sale to the farm applicator. The certificate shall be retained by the dealer along with other required records for inspection and, if required, submission to the department.

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

4.10.504 RECORDS (1) thru (3)(a) remains the same.  
(b) the complete trade name or the EPA registration number;  
(c) thru (d) remains the same.  
(e) the signature of the certified applicator, employee or family member purchasing the restricted pesticide;  
(f) the name of the applicator, dealer, employee or family member address and telephone number of the farm applicator purchasing the restricted pesticides;  
----(g)----the county or counties in which the product may be used;

(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 the information in rule 4.10.504. The department may require the sales records of individual restricted pesticides. The department may also require the sales records on all or individual general pesticides contain the information in 4.10.504(a), (b), and (c). The records shall be submitted within fourteen (14) calendar days of the request after the end of the calendar month that the pesticides were sold. The records shall be made on the standard forms provided by the department or on forms approved by the department.

(b) If no restricted or general use pesticides are sold during the time period requested by the department a given month, this should be so documented to the department.

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

-----Example-----

-----ABC company---Weed-Killer-4---200-gallons

-----MNO company---Matathon-6---175-gallons

-----XYZ company---Granular-8-----500-lbs-

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

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

----- (a) -- Dealers shall submit to the department an accurate typed or printed report of their sale of restricted and general use pesticides every five years. The report is due for every fifth calendar year by January 31 of the next year. The report shall 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 for the fifth year only beginning in 1990 and thereafter every five years.

----- (b) -- Dealers must submit to the department annually, 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.

(6) thru (7) remains the same.

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 ENDRIN (i) The right to register, sell or otherwise distribute, purchase or use endrin, in the state of Montana, for use on small grains to control army and pale western cutworms, to control grasshoppers, or for control of meadow voles in apple orchards in the state of Montana, except as provided below, is suspended and cancelled on the effective date of this rule.

----- (2) -- Any existing stock for the registered use stated in No. 1 above purchased by and in the possession of a certified commercial or farm applicator on or before the effective date of this rule, may be applied only under the following conditions:

----- (a) -- That such use shall terminate no later than two (2) years from the effective date of this rule;

----- (b) -- That all such use shall strictly conform to the label requirements;

----- (c) -- That no aerial application shall be made within 1/4 mile, and no ground application shall be made within 1/8 mile of any lake, pond, river, stream, or irrigation system, whether public or private;

----- (d) -- That any intended use shall be reported by telephone or in writing by the applicator to the department prior to application, giving the following information:

~~----- (i) -- name of landowner;~~  
~~----- (ii) -- name of applicator;~~  
~~----- (iii) -- where the application will be made;~~  
~~----- (iv) -- when the application will be made~~  
~~----- (v) -- number of acres to be treated;~~  
~~----- In addition, certified commercial applicators shall~~  
~~make those post application reports as required by existing~~  
~~department rules.~~  
~~----- (e) -- That at the end of the two (2) year period, any~~  
~~remaining stock shall be disposed of according to procedures~~  
~~established by the Pesticide Act and its rules and the~~  
~~Hazardous Waste Act and its rules promulgated by the~~  
~~Department of Health and Environmental Sciences or returned~~  
~~to the manufacturer.~~  
~~----- (3) -- Except as specified in No. 2 above, any other~~  
~~existing stock, including that held by dealers, shall be~~  
~~returned to the manufacturer or disposed of in accordance~~  
~~with the Pesticide Act and rules, and Hazardous Waste Act and~~  
~~rules no later than 30 days from the effective date of this~~  
~~rule.~~  
~~----- (4) -- At such time as one or more of the alternatives to~~  
~~endrin, (now available through Sec. 18 FIFRA exemptions to~~  
~~registration) become registered by the EPA and the state of~~  
~~Montana, then the registration of endrin for purposes~~  
~~specified above shall be automatically cancelled. -- Existing~~  
~~stock may be used as specified in No. 2 above, if within the~~  
~~original two year period.~~  
~~----- (5) -- If during the period of this suspension at least~~  
~~one effective and economical alternative for cutworm control~~  
~~does not remain available, then the department will~~  
~~reconsider this suspension, along with other options~~  
~~available under federal and state law.~~  
~~----- (6) -- The cancellation of registration of endrin for~~  
~~grasshopper control, effective 3/31/84, is hereby continued.~~  
~~----- (7) -- The registration of endrin for control of meadow~~  
~~voles in apple orchards is hereby cancelled.~~

AUTH: 80-8-105, MCA IMP: 80-8-105, 80-8-201, MCA

4.10.1501. DEFINITION OF TERMS (i) These definitions  
 apply to all regulations and rules adopted under the Montana  
 Pesticides Act, Title 2780, Chapter 2, R-8-M-v-19478, MCA  
1985.

All definitions remain the same, but will be numbered  
 (1) through (107).

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

3. The Department proposes to repeal ARM 4.10.318 VIOLATION; 4.10.402 EMERGENCY PEST PROBLEMS; 4.10.505 VIOLATIONS; 4.10.601 RULES OF PRACTICE; 4.10.602 GRANTING, RENEWING, AND DENYING LICENSES, CERTIFICATES, AND PERMITS; 4.10.603 REVOCATION OF LICENSES AND PERMITS; 4.10.604 PERMANENT INJUNCTION OR REVOCATION; found on pages 4-230.1 through 4-241 of the Administrative Rules of Montana, and 4.10.902 VIOLATION, found on page 4-257. Authority sections for these repeals are 80-8-101, 8-8-105, 80-8-211, 80-8-306, 80-8-106, MCA.

4. It is necessary to update these rules to bring them into conformance with amendments to both the Montana Pesticide Act and the Environmental Protection Agency requirements as found in the Federal Insecticide, Fungicide and Rodenticide Act. Some of the existing rules contain requirements that are no longer mandated by state and federal law and hence are archaic or the language has been clarified to improve the meaning. Unless it is stated otherwise the amendments are necessary for the foregoing reasons. Other specific reasons of necessity are listed below. Deletions are necessary to eliminate redundancy with statutory language or language that appears elsewhere in the rules.

The amendment to rule 4.10.102 is necessary to give applicators flexibility in obtaining liability insurance.

The amendment to rule 4.10.201(1)(a) is necessary because the restricted pesticide list changes too frequently and the necessary information can be found on the individual pesticide labels. This amendment to rule 4.10.201(7) is necessary because this procedure is no longer practical. The amendment to 4.10.201(9) allows applicators to maintain their qualifications even though they may choose not to be licensed during a several year period. 4.10.201(10) is being deleted because it is covered by the statutes.

Rule 4.10.202(1)(c). This change is necessary because aerial and ground applicators both take the same examination. 4.10.202(2)(a). This change is necessary to clarify supervision and permits more flexibility in an applicator's business operation. 4.10.202(3)(d). This change combines seed treatment and elevator pest control people into the same category. Department records indicate most often that the same person makes both kinds of applications. This change removes elevator people from the Industrial, Institutional category with whom, it appears, they have nothing in common. 4.10.202(3)(f). This change eliminates redundancy, since the Right-of-Way category covers the same type of applications. 4.10.202(3)(h). This change is necessary because EPA has restricted the use of wood preservatives which means that any person using these products will have to be certified. Creation of the new category allows the department to bring them into the licensing and certification program. 4.10.202(3)(i). This

subcategory is not necessary, since the applicators already fall within the Industrial category and there are very few of these people in Montana.

4.10.203(4)(a). This change decreases the time period required between exams. This change potentially allows applicators a more rapid entrance into the system should they fail their first exam. 4.10.203(5). This change is necessary to make department policy into rule. It is also necessary for administrative purposes.

Rule 4.10.205(1)(a)(i)(iii)(e)(j). These changes are necessary to bring the language into conformity with the Montana Pesticide Act.

4.10.205(1)(d). This change is necessary to describe requirements of elevator pest control applicators. 4.10.205(1)(f). This change merely eliminates the Public Utility category. This change does not result in a change in department practice. 4.10.205(1)(h). This new category is necessary to conform to EPA's restriction of wood preservative products as previously discussed.

Rule 4.10.206(2). This change is necessary to allow more flexibility in an applicator's business operation. 4.10.206(7). This change is necessary because the statute requires operators to pay a fee. 4.10.206(8). This deletion reflects the ability of the department to get licenses out in a reasonable time and the department no longer issues temporary licenses.

4.10.207(1)(d). This change is necessary to allow the use of the EPA registration number as an alternative to the type of formulation.

4.10.207(7)(a)(b) (8)(a)(b). These changes eliminate the mandatory monthly and yearly reporting of records and requires that it be done only every fifth year. The elimination of this requirement is necessary to greatly reduce the cost of record keeping for the applicators as well as the department.

Rule 4.10.401(1)(a)(b)(c). These changes are necessary to bring the rules into compliance with changes in the law. 4.10.401(3)(a). This change is necessary because this procedure is no longer practical for the department. 4.10.401(4). This change is necessary to establish the recertification schedule policy into rule. It is being done for administrative purposes.

Rule 4.10.503(2). This change is necessary to decrease the time period required between exams. This change potentially allows dealers a more rapid entrance into the system should they fail their first exam.

4.10.503(5). This change allows dealers to maintain their qualifications even though they may choose not to be licensed during a several year period. 4.10.503(8). This change is necessary because the issuance of emergency licenses is no longer practical for the department.



Rule 4.10.504(3)(b). This change allows the use of the EPA registration number as an alternative to the type of formulation. 4.10.504(3)(f)(g). These changes reduce the amount of information on the records. It is available from other sources. 4.10.504(5). These changes eliminate the mandatory monthly and yearly reporting of records and requires that it be done only every fifth year. The elimination of this requirement is necessary to greatly reduce the cost of record keeping for the dealers as well as the department. 4.10.504(5)(d). This change is necessary to comply with the requirements of the Montana Noxious Weed Trust Fund Act (Title 80, Chapter 7, MCA 1985) to report the volume of sales of registered herbicides used in Montana on an annual basis.

Rule 4.10.903. The deletion of the majority of this rule is necessary because endrin has been cancelled and there are no longer any provisions for its continued use.

The amendments made in the definitions, rule 4.10.1501, are necessary to clarify, improve the language, or conform the language to the amendments.

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 Gary Gingery, Montana Department of Agriculture, Environmental Management Division, Capitol Station, Helena, MT 59620-0205, no later than May 30, 1986.

5. Garth Jacobson, Attorney, Helena, Montana, has been designated to preside over and conduct the hearing.

  
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Keith Kelly, Director

Certified to the Secretary of State April 14, 1986.

BEFORE THE DEPARTMENT OF AGRICULTURE  
OF THE STATE OF MONTANA

In the matter of adopting	) NOTICE OF HEARING REGARDING
new rules regarding	) THE PROPOSED NEW RULES
establishing civil penalties	) ESTABLISHING CIVIL
for pesticide act violations	) PENALTIES FOR PESTICIDE
	) ACT 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, a public hearing will be held to consider the proposed new rules establishing procedures for assessment of civil penalties for Pesticide Act violations.

2. The proposed new rules read as follows:

RULE 1 DEFINITIONS As used in this part the following definitions apply:

(1) "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.

(2) "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.

(3) "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 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.

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

(5) "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 ENFORCEMENT (1) Whenever the department has reason to believe that a violation of Title 80, Chapter 8, MCA, or any adopted rule thereunder has occurred and the department finds it is in the public interest to assess a civil penalty, it may initiate a civil penalty action pursuant to the Administrative Procedure Act.

AUTH: 80-8-105, MCA

IMP: 80-8-306, MCA

RULE III ABILITY TO STAY IN BUSINESS (1) Where a determination of the appropriate amount of the penalty must be made under 80-8-306(5)(c), the "effect on the person's ability to stay in business" will not be considered, until such time and to the extent the charged person places bonafide financial information in issue by presentation thereof, accompanied by appropriate documentary evidence.

AUTH: 80-8-105, MCA

IMP: 80-8-306, MCA

RULE IV 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 (suspension or revocation of licenses and permits) or other violations of the act or rules adopted thereunder with a proceeding under 80-8-306 (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 PENALTY DETERMINATION (1) Each violation of the Montana Pesticides Act and/or rules adopted thereunder is considered a separate offense. Each offense is subject to a separate penalty not to exceed \$1,000, with the exception of farm applicators whose penalty cannot exceed \$200 for the first offense.

(2) The penalty matrixes set forth in this rule establish the initial penalty value for each offense. The significance of the violation, the degree of care exercised and whether

significant harm resulted to health, environment, agricultural crops or livestock, may decrease or increase the matrix penalties listed below. A person may present information on their ability to stay in business, as set forth in rule III, petitioning for a reduction in the proposed civil penalty. The department shall have the option to select the most appropriate penalty and penalty value for each and every violation of the act.

# PENALTY MATRIX

Type of Violation	1ST Offense	2ND Offense	3RD and Subsequent Offense
(1) Misuse resulting in proven harm to:			
A. Humans			
1. Proven exposure subacute illness	500-1,000	1,000	1,000
2. Illness or death	1,000	1,000	1,000
3. Exposure chronic illness or death	1,000	1,000	1,000
B. Livestock			
1. Residues prevent marketing of the animal or their by-products	500-1,000	1,000	1,000
2. Illness	500-1,000	1,000	1,000
3. Death	1,000	1,000	1,000
C. Crops			
1. Residues that prevent or inhibit the marketing of all or part of the crop	500-1,000	500-1,000	500-1,000
2. Residue damage to crop	100-1,000	250-1,000	500-1,000
3. Crop destroyed	100-1,000	250-1,000	500-1,000
D. Environment			
1. Water			
a. poisoning or harm to aquatic plants or animals	100-1,000	500-1,000	750-1,000
b. cannot be used for domestic, livestock or irrigation purposes	500-1,000	750-1,000	1,000
c. ground or surface water contaminated at above state or federal health standards	500-1,000	750-1,000	1,000
2. Soil			
a. illegal residues that prevent growth of plants	100-500	250-750	750-1,000
b. erosion results	100-500	250-750	750-1,000

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c.	soil runoff that causes water contamination	100-500	250-750	750-1,000
d.	soil-animal relationships that are adversely affected	100-500	250-750	750-1,000
3.	Animals			
a.	illness	100-500	500-750	750-1,000
b.	death	250-1,000	500-1,000	750-1,000
c.	residues prevent or restrict consumption by humans	250-750	500-1,000	1,000
d.	habitat destruction, proven harm to animals	250-1,000	500-1,000	750-1,000
e.	bees - reduction in production*	100-1,000	250-1,000	500-1,000
4.	Plants other than crops			
a.	plant damaged, normal the following season	100-500	250-750	750-1,000
b.	plant damaged, abnormal the following season	250-500	500-750	750-1,000
c.	plant destroyed	250-1,000	500-1,000	1,000
5.	Air			
a.	contaminated at or above state or federal health standards in confined environments	100-1,000	500-1,000	1,000
(2)	Sale of a restricted pesticide to a person not certified or authorized to purchase said pesticide	100-500	250-1,000	500-1,000
(3)	Use or Sale of an unregistered pesticide			
A.	Registrant	500	500-1,000	750-1,000
B.	Others			
1.	General	100-250	250-500	750-1,000
2.	Restricted	250-500	500-1,000	750-1,000
C.	Use or Sale of a cancelled or suspended pesticide which is not registered except as provided for under state statute or allowed by the agency, whichever is more restricted.	100-500	500-1,000	750-1,000

\*The department, in determining the reduction in production, shall consider such factors as damage to brood, nurse bees, forage bees, time of year and the number of hives involved.

(4) Failure to maintain any individual pesticide application and sales records

A. Commercial, government, noncommercial or public utility applicators or dealers

1. General	100-250	250-500	500-1,000
2. Restricted	250-500	500-750	750-1,000

B. Farm Applicator

1. General	100	100-250	500-1,000
2. Restricted	100-200	200-500	500-1,000

(5) Use of a pesticide without having obtained the required license or permit

A. Commercial, government, public utility or noncommercial applicators or operators

1. General	100-250	250-750	750-1,000
2. Restricted	100-500	500-750	750-1,000

B. Farm Applicator

1. Restricted	100-200	200-500	500-1,000
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(6) Sale of a pesticide without having obtained the required license

A. General	100-250	250-750	750-1,000
B. Restricted	100-500	500-1,000	750-1,000

(7) Reoccurrence of any identical violation of this chapter (Title 80, Chapter 8, MCA) within the same calendar year excluding the major violations set forth above.

Type of Reoccurrence	1ST Reoc- currence	2ND Reoc- currence	3RD Reoc- currence
A. Violations dealing with permits, licenses and/or reports.	100-200	200-500	500-1,000
B. Violations dealing with general use pesticides.	100-250	250-500	500-1,000
C. Violations dealing with restricted use pesticides.	100-500	500-1,000	750-1,000
D. All other violations not covered in A., B., or C.	100-500	250-750	500-1,000

AUTH: 80-8-105, MCA

IMP: 80-8-306, MCA

RULE VI SIGNIFICANCE OF VIOLATIONS (1) The department, in determining the significance of a major violation as set

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forth in 80-8-306(5)(d), will consider certain factors. These factors are normally established by statute, rules, labeling and similar standards or requirements and will be documented to the violator. The factors set forth below are examples of standards that may be used. They are neither inclusive or necessarily additive in substance, order presented, or number. A violation may be considered more significant when:

- (a) A restricted use pesticide is involved versus a general use pesticide;
- (b) A more toxic pesticide is involved;
- (c) An antidote to the pesticide is not available;
- (d) Pesticide residue levels exceed established federal tolerances or action levels;
- (e) Pesticide residue levels exceed established federal or state standard or health guidelines for surface or ground water;
- (f) The extent, type, kind, nature and severity of the violation results in harm to health, environment, agriculture, crops, or livestock;
- (g) Use is inconsistent with label direction and precautions;
- (h) The person's history of compliance with the pesticides act, rules, and department orders illustrates continued noncompliance or disregard for compliance;
- (i) Ambient air levels of a pesticide exceed state or federal standards or guidelines;
- (j) A restricted pesticide is sold to or provided in any manner to a person not qualified, licensed, certified or permitted;
- (k) A person uses or sells a pesticide which is not registered or labeled, or a product which is cancelled, suspended or banned, except as allowed by statute, rule or order.
- (l) A person does not possess the proper license credential, permit or certificate to use, sell or purchase a pesticide, or is not supervised as required by the pesticide act or rules adopted thereunder;
- (m) Records are not maintained or are improperly maintained;
- (n) A person allows another person to use their license, certificate, permit or credential for the purpose of purchasing a pesticide, except as provided for by the act or rules;
- (o) A person purchases or uses a pesticide which he is not qualified to purchase or use.
- (p) The person has knowledge of the act and rules adopted thereunder which he violated.

AUTH: 80-8-105, MCA

IMP: 80-8-306, MCA

RULE VII DEGREE OF CARE - MISUSE (1) For purposes of these rules implementing civil penalties, the word "misuse", as used in 80-8-306(5)(d)(i) means the use of any pesticide;

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(a) In a manner inconsistent with label directions, cautions or warnings; or

(b) In violation of any provision of law including statutes, rules, or orders of the department or the agency.

(2) If conduct falls into any of the above defined categories, it shall constitute misuse per se, without regard to the standard of care he may have exercised. However, the charged party may present evidence of standard of care exercised, which may be considered by the department for purpose of determining and mitigating the amount of penalty [80-8-306(5)(c)]. Such evidence will be evaluated and categorized as follows:

(a) Misuse which occurs through little or no negligence of the charged party may mitigate the penalty;

(b) Misuse which occurs through negligence may have a neutral effect in either mitigating or enhancing the penalty.

(c) Misuse which occurs as a result of gross negligence may enhance the penalty.

(3) In further determining the applicability of the above categories, the following definitions will apply:

(a) No negligence means an inadvertent violation which was unavoidable by the exercise of reasonable care;

(b) Negligence means a failure to exercise reasonable care;

(c) Reasonable care means that degree of care exercised with a knowledge of the nature and probable consequences of the act or omission that a prudent man would ordinarily give in acting in his own concerns;

(d) Gross negligence means knowing, intentional or reckless conduct.

AUTH: 80-8-105, MCA

IMP: 80-8-306, MCA

RULE VIII DEGREE OF CARE - VIOLATIONS OTHER THAN MISUSE

(1) For purposes of Section 80-8-306(5)(b)(ii) through (vi) a violation is deemed to have occurred if the conduct falls under any of the enumerated categories, without regard to the standard of care exercised. However, the department may consider evidence thereof for purposes of determining and mitigating the amount of penalty. To the extent they are applicable, the department will evaluate the standard of care in the same manner as is stated for determining misuse under rule VII.

AUTH: 80-8-105, MCA

IMP: 80-8-306, MCA

3. These rules are necessary to establish guidelines for the assessment of civil penalties for Pesticide Act violations. The department finds it necessary to provide rules establishing the amount of the civil penalty for different types of violations of the act. The department considers the gravity, the degree of care exercised by the offender, the ability to stay in business, the public interest and the significant harm in its determination of the amount

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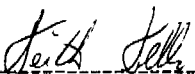


of the penalty. These rules therefore set forth the factors that will either enhance or mitigate the amount of the penalty to be assessed against the violator.

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 Gary Gingery, Montana Department of Agriculture, Environmental Management Division, Capitol Station, Helena, Montana 59620-0205, no later than May 30, 1986.

5. Garth Jacobson, Attorney, Helena, Montana, has been designated to preside over and conduct the hearing.

6. The authority of the department to make these rules is based upon Section 80-8-105 MCA and the rules implement Section 80-8-306 MCA.

  
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Keith Kelly, Director

Certified to the Secretary of State April 14, 1986.

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

In the matter of the adoption and amendment of proposed rules relating to the implementation of an EMT defibrillation training and certification program for EMT-Basic personnel	) NOTICE OF PROPOSED AMENDMENT OF RULES 8.28.904 DEFINITIONS, 8.28.906 APPLICATION - PROGRAM APPROVAL, 8.28.907 CANDIDATES - CERTIFICATION, 8.28.908 RECIPROCITY, 8.28.909 SUSPENSION OR REVOCATION, 8.28.1011 EMT-BASIC: COURSE REQUIREMENTS AND ADOPTION OF NEW RULES 8.28.1120 EMT - DEFIBRILLATION: ACTS ALLOWED, 8.28.1121 EMT - DEFIBRILLATION: COURSE REQUIREMENTS, 8.28.1122 EMT - DEFIBRILLATION: STUDENT ELIGIBILITY, 8.28.1123 EMT-DEFIBRILLATION: CERTIFICATION, 8.28.1124 EMT-DEFIBRILLATION: SERVICE APPROVAL
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NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On May 26, 1986, the Board of Medical Examiners proposes to amend and adopt the above-stated rules.

2. The proposed amendment of 8.28.904 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-879 through 8-882, Administrative Rules of Montana)

"8.28.904 DEFINITIONS (1) through (12) will remain the same.

(13) Defibrillation means the discharge of an electrical current through the myocardium for the purpose of restoring a perfusing cardiac rhythm.

(14) Defibrillator/monitor with dual channel recording capabilities is a device, meeting the specifications of the bureau, capable of continuously recording the electrocardiogram and simultaneously recording the events at the scene, and which manually, semi-automatically or automatically is capable of defibrillation according to approved protocols.

(15) Defibrillation protocol means a uniform protocol, adopted by the board for statewide use, and specific to the type of defibrillator being used. This protocol is not effective for an EMT-D unless used in an approved system and signed by the EMT-D program medical director and approved by the hospital medical staff of the hospital to which the EMT-D most commonly transports patients.

(13) through (15) will remain the same but will be renumbered as (16) through (18).

(19) Emergency medical technician-defibrillator (EMT-D) means an EMT-basic who has successfully completed the EMT-D curriculum as developed by the bureau and approved by the board and who is certified by the board.

(20) EMT-D program medical director means a Montana licensed physician who has completed a training program developed by the bureau and approved by the board and who is responsible for the supervision of the EMT-D training program and for providing off-line medical control to an EMT-D service. This person:

(a) is responsible for the application of EMT-D techniques and quality of care provided by the EMT-D;

(b) must be acknowledged, in writing, by the medical staff(s) of hospitals to which patients will be most commonly transported;

(c) must have current ACLS certification by the American Heart Association;

(21) EMT-D service means an arrangement of personnel, transportation, facilities, and equipment and communications sufficient to allow an EMT-D to function appropriately and consistent with his level of training and acts allowed. An EMT-D service must be approved by the board.

(16) through (34) will remain the same but will be renumbered as (22) through (40)."

Auth: 50-6-203, MCA Imp: 50-6-204, MCA

3. The proposed amendment of 8.28.906 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-882.1, Administrative Rules of Montana)

"8.28.906 APPLICATION - PROGRAM APPROVAL (1) No person, corporation, partnership or any other organization may initiate or conduct any program of EMT instruction until the board has approved an application submitted by a course committee. A copy of the written approval shall be provided to each student prior to initiation of training. The application for an EMT-D training program shall come from the EMT-D program medical director rather than a course committee. Coordination with existing course committees is recommended.

(2) A course committee seeking to establish a program shall complete an application form approved by the board and shall submit it to the bureau. The application for an EMT-D training program shall come from the EMT-D program medical director.

(3) Upon receipt of an application, the board and/or bureau may request from the course committee, or for an EMT-D program from the EMT-D program medical director, any information necessary for a proper evaluation of the proposed program including, but not limited to information concerning:

(3)(a) through (7) will remain the same."

Auth: 50-6-203, MCA Imp: 50-6-204, MCA

4. The proposed amendment of 8.28.907 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-882.2, Administrative Rules of Montana)

"8.28.907 CANDIDATES - CERTIFICATION (1) The board shall not certify a candidate as basic, defibrillation or advanced EMT until the candidate submits a completed application for certification on forms designated by the board, provides all the information necessary to establish eligibility for certification according to the requirements herein, and passes written and practical examinations specified by the board and administered by the bureau."

Auth: 50-6-203, MCA Imp: 50-6-204, MCA

5. The proposed amendment of 8.28.908 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-882.2 through 8-882.3, Administrative Rules of Montana)

"8.28.908 RECIPROCITY (1) A person certified as an EMT (basic, defibrillation or advanced) by the registry or by another state determined by the bureau to have training standards equivalent to those of Montana may receive provisional certification by the board when the person:

(a) and (b) will remain the same.

(c) is recommended by the course committee and the local medical advisor or medical director or, in the case of EMT-D, is recommended by the EMT-D program medical director.

(2) A person certified as an EMT-(basic, defibrillation or advanced) by another state with which Montana has a reciprocity agreement may receive provisional certification when the candidate:

(a) will remain the same.

(b) is recommended for certification by the course committee and by the local medical advisor or medical director, or in the case of EMT-D, if recommended by the EMT-D program medical director.

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

Auth: 50-6-203, MCA Imp: 50-6-204, MCA

6. The proposed amendment of 8.28.909 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-882.3 through 8-882.4, Administrative Rules of Montana)

"8.28.909 SUSPENSION OR REVOCATION OF CERTIFICATION

(1) The certification of an EMT-basic, EMT-defibrillation, or an EMT-advanced may be suspended or revoked if the EMT:

(a) and (b) will remain the same.

(c) is found by the board to be incapable of properly performing as an emergency medical technician at the level for which he/she is ~~certified~~ certified, or is adjudicated by a court to be mentally incompetent;

(1)(d) through (2) will remain the same.

(a) Any person having knowledge that an EMT-basic has engaged or ~~is~~ is engaging in any of the acts listed in subsection (1) above or who otherwise has a complaint about an EMT's performance, or about a course committee may also notify the board.

(3) Any person having knowledge that an EMT-defibrillation or EMT-advanced has engaged, or is engaging in any of the acts listed in subsection (1) above shall notify the local medical director or EMT-D program medical director who shall investigate the allegation. All complaints received about an individual EMT's performance shall be forwarded to the board and bureau along with a record of any action taken by the course committee or, for EMT-D's, by the EMT-D program medical director. A copy shall be provided to the EMT. The medical director or EMT-D program medical director may temporarily suspend the certification of the EMT-advanced or EMT-defibrillation, and may allow the EMT-advanced or EMT-defibrillation to practice at a basic level until a final ruling by the board.

(a) Any person having knowledge that an EMT-advanced or EMT-defibrillation has engaged or is engaging in any acts listed in subsection (1) above or who otherwise has a complaint about an EMT's performance, or about a course committee may also notify the board.

(4) and (5) will remain the same.

(6) Within 30 days from receipt of the bureau's report and considering the recommendations of the medical advisor, medical director, EMT-D program medical director and/or course committee, the board shall issue its finding and an appropriate order, providing a copy thereof to the EMT in question. Unless appealed under subsection (8) below, such order becomes final within 30 days.

(7) Where an EMT-basic, EMT-defibrillation or EMT advanced received a board order adversely affecting his status as an EMT, he/she may initiate the following appeal procedure;

(7)(a) through (d) will remain the same."

Auth: 50-6-203, MCA Imp: 50-6-204, MCA

7. The proposed amendment of 8.28.1011 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-884 through 8-

886, Administrative Rules of Montana)

"8.28.1011 EMT-BASIC: COURSE REQUIREMENTS (1) A basic EMT course shall be managed by a course committee under the supervision of a medical advisor and shall:

(a) be conducted according to the latest available curriculum furnished by the U.S. department of transportation;

(b) through (3)(a) will remain the same.

(b) the course ~~committee~~ coordinator;

(3)(c) through (5)(g) will remain the same.

(h) approve or disapprove faculty selections recommended by the course ~~committee~~ coordinator;

(5)(i) and (j) will remain the same."

Auth: 50-6-203, MCA Imp: 50-6-204, MCA

8. The proposed new rules will read as follows:

" RULE I EMT - DEFIBRILLATION: ACTS ALLOWED (1) The emergency medical technician-defibrillation (EMT-D):

(a) may perform all acts allowed the EMT-basic and, when properly trained, certified and functioning in an approved EMT-D service under an EMT-D protocol may:

(i) defibrillate the patient, and

(ii) perform cardiac monitoring of patients.

(b) may not perform any skill, except defibrillation and cardiac monitoring, which is otherwise specified by rule as allowed only at the EMT-intermediate or EMT-paramedic levels.

(2) The emergency medical technician-defibrillation may perform defibrillation only:

(a) when functioning in an approved EMT-D service according to the written state protocol which has also been approved by the EMT-D program medical director, and

(b) when using a defibrillation/monitor with dual channel recording capabilities and when both the on-scene events and the EKG are being recorded, and

(c) when the patient is in cardiac arrest.

(3) An EMT-defibrillation may not perform outside his/her approved EMT-defibrillation service and medical control."

Auth: 50-6-203, MCA Imp: 50-6-204, MCA

" RULE II EMT - DEFIBRILLATION: COURSE REQUIREMENTS

(1) An EMT-defibrillation program shall be managed by an EMT-D program medical director who may delegate various portions of the class but who shall retain ultimate responsibility for the content and conduct of the training.

(2) The EMT-D program shall:

(a) be conducted according to the latest curriculum written by the bureau and approved by the board;

(b) be approved by the board prior to the beginning of training with a written copy of the approval provided to each student prior to the initiation of the training;

(c) be completed within two (2) months of the course starting date.

(3) The EMT-D program medical director shall:

(a) oversee the program for quality and consistency of training and for adherence to statewide protocols;

(b) approve statewide protocols for use on a local level and coordinate with the medical staff(s) of the hospital(s) to which the patients are most commonly transported;

(c) recommend persons for certification, recertification or decertification to the board.

(4) The EMT-D program medical director shall be responsible for:

(a) overseeing the quality of patient care and adherence to protocol by retrospective patient care audits of all EMT-D runs;

(b) providing requested documentation of every run to the bureau for review by a statewide physician audit committee;

(c) completing an application to conduct EMT-D training programs at least 30 days before the starting date of the program;

(d) establishing the course schedule;

(e) maintaining attendance, evaluation and examination records for each student;

(f) scheduling of instructors;

(g) selection of students."

Auth: 50-6-203, MCA Imp: 50-6-204, MCA

" RULE III EMT-DEFIBRILLATION: STUDENT ELIGIBILITY

(1) To be eligible for admission to an EMT-D course, a student must be:

(a) currently certified as an EMT-basic by the board, or have completed a board approved EMT program and be eligible for the EMT-basic examination;

(b) approved for admission by the EMT-D physician medical director."

Auth: 50-6-203, MCA Imp: 50-6-204, MCA

" RULE IV EMT-DEFIBRILLATION: CERTIFICATION

(1) Certification shall be for a period of 18 to 33 months and shall become due for renewal on December 31. The EMT-D's certification shall terminate on March 31 following the date of expiration. If the individual's EMT-basic certification expires, EMT-D certification shall also expire.

(2) The board may only certify those persons who:

(a) submit their application on forms designated by the board and at least 30 days prior to the examination;

(b) successfully complete an approved training program prior to two years of the examination date and continuing, prior to certification, to maintain eligibility for the examination by completing the bi-monthly continuing education requirements of (3)(a)(b)(c)(d) of this section;

(c) receive the approval of the EMT-D program medical director;

(d) pass the written and practical examinations as adopted by the board;

(e) pay the designated fee as established by the board;

(f) provide from the emergency care service documentation that they have completed 6 months service as an EMT-defibrillation;

(g) are currently certified as an EMT-basic.

(3) The EMT-defibrillation must, every other month, attend a continuing education session approved by the EMT-defibrillation program medical director in which the EMT-defibrillation must:

(a) demonstrate proficiency with the use of their defibrillator;

(b) demonstrate their ability to recognize ventricular fibrillation from all other cardiac dysrhythmias;

(c) demonstrate their ability to recognize cardiac arrest from non-arrest (ability to perform according to protocol) including proficiency in one person CPR; and

(d) documentation shall be completed on forms provided by the bureau and shall be sent to the bureau following each bi-monthly continuing education session.

(4) If an EMT-D does not attend the bi-monthly session, the EMT-D physician program medical director shall not allow the individual to perform defibrillation until (3)(a)(b)(c) above have been demonstrated to the EMT-D physician program medical director's satisfaction. The EMT-D program medical director shall be responsible for maintaining records of all bi-monthly sessions and who is allowed to function under protocol."

Auth: 50-6-203, MCA Imp: 50-6-204, MCA

" RULE V. EMT-DEFIBRILLATION: SERVICE APPROVAL

(1) No person, corporation, partnership or any other organization may initiate or conduct any part of an EMT-defibrillation activity until the board has approved its application for an EMT-defibrillation service.

(a) A service approval shall be valid for 1 year from the date of approval;

(b) Applications for renewal of the advanced EMT service shall be submitted to the board through the bureau on designated forms at least 90 days prior to the expiration date. The bureau may issue service approval pending board action.



(2) Any person, corporation, partnership or any other organization seeking to establish an EMT-defibrillation service shall complete an application form approved by the board and shall submit the application to the bureau.

(3) Upon receipt of an application, the board and/or bureau may request from the applicant any information necessary for a proper evaluation.

(4) Within 90 days from receipt of the application or, if additional information is requested, within 90 days from receipt of such information, the board shall in writing approve or reject the application for an EMT-defibrillation service. The bureau may issue service approval pending board action.

(5) The board may disapprove any proposed EMT-defibrillation service application which, in its judgment, does not:

(a) provide all requested information;

(b) assure compliance with the rules and regulations herein.

(6) The board shall hear grievances and complaints and conduct inquiries regarding the conduct and performances of EMT-defibrillation services, local service management and quality control and shall take appropriate action thereon.

(a) The board may initiate an investigation and may request the assistance of the bureau;

(b) The board may revoke or suspend a service approval if, in their judgment:

(i) the rules and regulations are not being complied with,

(ii) considerations of public health, safety or welfare require immediate action.

(7) To be approved as an EMT-defibrillation service by the board, the applicant shall meet the following service criteria:

(a) be an entity organized and trained to provide pre-hospital emergency medical care;

(b) provide that all persons within the entity who may accompany the EMT-defibrillation be currently certified in CPR;

(c) assure that patients are transported by a Montana licensed ambulance service or an advanced life support aircraft;

(d) assure that the patient is always transported by a unit which can assure and document at least the same level of patient care enroute to the hospital including:

(i) assuring that the patient will always be transported by an ambulance service which is approved as an EMT-defibrillation service, or

(ii) assuring the patient is transported by an ambulance service which has a physician or nurse on board who are trained and allowed to defibrillate, or

(iii) assuring that arrangements are made, in writing, with the ambulance service for the EMT-defibrillation to accompany the patient to the hospital if the ambulance service is not providing at least EMT-defibrillation care.

(e) the ambulance service with the highest level of patient care shall be utilized to transport the patient when reasonable;

(f) assure that the EMT-defibrillation response is coordinated with the EMS system and emergency dispatch for the area including;

(i) simultaneous dispatch of an ambulance service with the dispatch of any non-transporting EMT-defibrillation entity;

(g) assure the EMT-defibrillation physician medical director reviews every EMT-defibrillation run and that the appropriate forms and transcriptions and EKG's are submitted to the bureau for statewide medical review in the manner prescribed by the board;

(h) failure to submit the required evaluation information shall result in immediate suspension, by the board, of the EMT-defibrillation service;

(i) use only defibrillators as defined in these rules and as authorized by the bureau;

(j) assure awareness of the hospital medical staff(s) of the EMT-defibrillation service and program;

(k) assure use of the defibrillation protocol."

Auth: 50-6-203, MCA Imp: 50-6-204, MCA

9. The reason for these amendments and adoptions is to establish rules for the implementation of an EMT-defibrillation training and certification program for EMT-Basic personnel.

10. Interested persons may submit their data, views or arguments concerning the proposed amendments and adoptions in writing to the Board of Medical Examiners, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than May 23, 1986.

11. If a person who is directly affected by the proposed amendments and adoptions 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 Medical Examiners, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than May 23, 1986.

12. If the board receives requests for a public hearing on the proposed amendments and adoptions from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendments and adoptions, 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 120 based on the 1200 licensees in Montana.

BOARD OF MEDICAL EXAMINERS

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

Certified to the Secretary of State, April 14, 1986.

STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE MONTANA ECONOMIC DEVELOPMENT BOARD

In the matter of the proposed ) NOTICE OF PROPOSED AMENDMENT  
amendment of 8.97.404 con- ) TO PERMISSIBLE INVESTMENT  
cerning permissible invest- ) RULE 8.97.404  
ments and deposits )

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On June 13, 1986, the Montana Economic Development Board proposes to amend the above-stated rule.

2. The proposed amendment of 8.97.404 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-3490, Administrative Rules of Montana)

"8.97.404 INVESTMENT AUTHORIZED BY RULE (1) As permitted by section 17-6-308, MCA, the board authorizes the investments and deposits established in ARM 8.97.405 through 8.97.411 8.97.415."

Auth: 17-6-324, MCA Imp: 17-6-309, MCA

3. The rule is being expanded to include all the permissible investments and deposits currently in the rules.

4. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Montana Economic Development Board, 1520 E. 6th Avenue, Helena, Montana, 59620-0401, no later than May 30, 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 Montana Economic Development Board, 1520 E. 6th Avenue, Helena, Montana, 59620-0401, no later than May 30, 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.

MONTANA ECONOMIC DEVELOPMENT  
BOARD  
D. PATRICK MCKITTRICK,  
CHAIRMAN

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

Certified to the Secretary of State, April 14, 1986.

8-4/24/86

MAR Notice No. 8-97-15

BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF PUBLIC HEARING  
of Rule 10.57.403, Class 3 ) ON PROPOSED AMENDMENT OF  
Administrative Certificate ) RULE 10.57.403, CLASS 3  
 ) ADMINISTRATIVE CERTIFICATE

TO: All Interested Persons

1. On May 19, 1986 at 11:00 a.m., or as soon thereafter as it may be heard, a public hearing will be held in the Board of Regents' Conference Room, 33 South Last Chance Gulch, Helena, Montana, in the matter of the amendment of Rule 10.57.403, Class 3 Administrative Certificate.

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

10.57.403 CLASS 3 ADMINISTRATIVE CERTIFICATE (1)  
Term: 5 years - renewable.

(2) Effective September 1, 1985, a master's degree in an approved school administration program or the equivalent will be required for administrative endorsement. Individuals enrolled in any approved master's program or administrative program at an accredited college before September 1, 1985, that would result in certification in Montana will be eligible for administrative certification under the former regulations until September 1, 1988. Administrators currently holding a valid administrative certificate may continue to renew it under the academic minimums by which it was issued. Other renewal requirements must be met. Lapsed certificates cannot be renewed. For reinstatement requirements, see ARM 10.57.208.

(3) Renewal: Verification of one year of successful experience or the equivalent in the area of endorsement.

(4) Reinstatement: 6 quarter (4 semester) credits or one year experience or the equivalent earned within the 5-year period preceding the effective date of the certificate. Requirements must be met that are in force at the time of reinstatement. (See guidelines for reinstatement of certificates allowed to lapse 15 years or more.)

(5) Superintendent endorsement: Master's degree in school administration or the equivalent to include:

(a) Eligibility for the class 1 or class 2 teaching certificate,

(b) Full eligibility for a principal endorsement in

Montana,

(c) Twelve (12) graduate quarter credits beyond the master's degree, ~~to include:~~ The following courses must be found in the graduate course work.

- (i) school management/facilities,
- (ii) school negotiation,
- (iii) school finance (economics of education), and
- (iv) public relations,

(d) Twelve (12) graduate quarter credits in elementary education to include elementary administration and elementary curriculum if endorsed as a teacher at the secondary level; twelve (12) graduate quarter credits in secondary education to include secondary administration and secondary curriculum if endorsed as a teacher at the elementary level, and

(e) Experience: 3 years of teaching experience from the date fully qualified as a principal, or one (1) year of administrative experience as an appropriately certified administrator (principal, assistant principal or supervisor), or one (1) year of a supervised administrative internship as superintendent.

(6) through (9) Remain the same.

AUTH: Sec. 20-4-102 MCA

IMP: Sec. 20-4-106, 20-4-106(1)(c), 20-4-108 MCA

3. The purpose of the amendment is to clarify the existing standard.

4. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or argument may also be submitted to Ted Hazelbaker, Chairman, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620, no later than May 22, 1986.

5. Ted Hazelbaker, Chairman, and Hidde Van Duym, Executive Secretary to the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana, have been designated to preside over and conduct the hearing.

*Ted Hazelbaker*

TED HAZELBAKER, CHAIRMAN  
BOARD OF PUBLIC EDUCATION

BY: *Hidde van Duym*

Certified to the Secretary of State April 11, 1986

BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF PUBLIC HEARING  
of Rule 10.57.405, Class 5 ) ON PROPOSED AMENDMENT OF  
Provisional Certificate ) RULE 10.57.405, CLASS 5  
 ) PROVISIONAL CERTIFICATE

TO: All Interested Parties

1. On May 19, 1986 at 11:00 a.m., or as soon thereafter as it may be heard, a public hearing will be held in the Board of Regents' Conference Room, 33 South Last Chance Gulch, Helena, Montana, in the matter of the amendment of Rule 10.57.405, Class 5 Provisional Certificate.

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

10.57.405. CLASS 5 PROVISIONAL CERTIFICATE (1)  
through (7) Remain the same.

(8) Administrative endorsement:

(a) Superintendent endorsement: Class 5 certification with a plan of professional intent leading to a class 3 (administrative) certificate with a superintendent endorsement may be issued to applicants who meet the following minimum requirements:

(i) Eligibility for a class 1, 2, or 5 teaching certificate at the appropriate level,

(ii) 3 years of teaching experience from the date fully qualified as a principal, or 1 year of administrative experience as an appropriately certified administrator (principal, assistant principal or supervisor) or 1 year of a supervised administrative internship,

(iii) Master's degree in school administration or the equivalent to include:

(A) Completed school administration program for principal (must include core outlined for principal),

(B) At least 12 graduate quarter (8 semester) credits, or the equivalent, in elementary education if the applicant does not qualify for elementary endorsement on the class 1 or 2 teaching certificate; or, at least 12 graduate quarter (8 semester) credits, or the equivalent, in secondary education if the applicant does not qualify for secondary endorsement on the class 1 or 2 teaching certificate,

(iv) The plan of professional intent leading to regular certification must have in the program 12 graduate quarter credits in administration beyond the master's degree. to include:

(v) The following courses must be found in the graduate course work.

- (A) school management/facilities,
- (B) school negotiations,
- (C) school finance (economics of education), and
- (D) public relations.

(b) Principal endorsement: Class 5 certification with a plan of professional intent leading to a class 3 (administrative) certificate with principal endorsement may be issued to applicants who meet the following minimum requirements, and have a minimum of three years of appropriate teaching experience (see ARM 10.57.403 (6) (c) and (7) (c)).

(i) Eligibility for a class 1, 2, or 5 teaching certificate at the appropriate level,

(ii) Master's degree in a field offered for certification in Montana, and

(iii) 21 graduate quarter (14 semester) credits to include the following courses:

- (A) general school administration,
- (B) specific area administration as appropriate (elementary or secondary),
- (C) administration of guidance services,
- (D) supervision of instruction/evaluation at the appropriate level,
- (E) school curriculum at the appropriate level,
- (F) school finance (budgeting), and
- (G) school law.

(iv) These applicants must complete an approved school administration program during the term of the class 5 certificate.

(iv)-(v) Class 5 certification with a plan of professional intent leading to class 3 (administrative) certification for principal may also be issued to applicants who within the last five years have been fully eligible for administrative certification in Montana endorsed in one of the general areas (elementary principal, secondary principal, superintendent or supervisor) but who may not meet the new course requirements. ~~for other general areas.~~ In addition, the class 5 certificate may be approved for individuals in programs that have been authorized by the superintendent of public instruction. All administrative certificates are based on a minimum of a master's degree in administration or the equivalent with state specified course work, and a minimum of three years of appropriate teaching experience.

(v)-(vi) Class 5 certification with a plan of professional intent leading toward the class 3 (administrative) certificate for principal may be issued to applicants who hold valid certification in another



state in general administrative areas but who may not meet Montana's specific course requirements. The current certification must have been based on not less than a master's degree, and the completed approved program in school administration of a college accredited for administrative preparation; and a minimum of three years of appropriate teaching experience.

(9) through (11) Remain the same.

AUTH: Sec. 20-4-102 MCA

IMP: Sec. 20-4-106, 20-4-106(1)(e), 20-4-108 MCA

3. The purpose of this amendment is to assure that the preparation of future principals will conform to higher standards as recommended by both professional organizations and accrediting body.

4. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or argument may also be submitted to Ted Hazelbaker, Chairman, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620 no later than May 22, 1986.

5. Ted Hazelbaker, Chairman, and Hidde Van Duym, Executive Secretary to the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana have been designated to preside over and conduct the hearing.

*Ted Hazelbaker*

\_\_\_\_\_  
TED HAZELBAKER, CHAIRMAN  
BOARD OF PUBLIC EDUCATION

BY:

*Hidde van Duym*  
\_\_\_\_\_

Certified to the Secretary of State April 11, 1986

BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF PUBLIC HEARING  
of Rule 10.57.501, School ) ON PROPOSED AMENDMENT OF  
Psychologists, Social Workers ) RULE 10.57.501, SCHOOL  
Nurses and Speech and Hearing ) PSYCHOLOGISTS, SOCIAL  
Therapists ) WORKERS, NURSES AND SPEECH  
 ) THERAPISTS

TO: All Interested Persons

1. On May 19, 1986 at 11:00 a.m., or as soon thereafter as it may be heard, a public hearing will be held in the Board of Regents' Conference Room, 33 South Last Chance Gulch, Helena, Montana, in the matter of the amendment of Rule 10.57.501, School Psychologists, Social Workers, Nurses and Speech and Hearing Therapists.

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

10.57.501 SCHOOL PSYCHOLOGISTS, SOCIAL WORKERS,  
NURSES AND SPEECH AND HEARING THERAPISTS (1) through (3)  
Remains the same.

(4) Class 6 (specialist) certificate. School psychologists.

(a) Term: 5 years, renewable.

(b) Basic education. Master's degree ~~or fifth-year~~ program in school psychology or equivalent related areas to include the following minimums.

(i) through (6) Remains the same.

AUTH: Sec. 20-4-102 MCA.

IMP: Sec. 20-4-102 MCA

3. The board proposes the deletion of the fifth year program because it presents an option no longer used.

4. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or argument may also be submitted to Ted Hazelbaker, Chairman, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620, no later than May 22, 1986.

5. Ted Hazelbaker, Chairman, and Hidde Van Duym, Executive Secretary to the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana, have been designated to preside over and conduct the hearing.

*Ted Hazelbaker*

TED HAZELBAKER, CHAIRMAN  
BOARD OF PUBLIC EDUCATION

BY:

*Walter D. Dym*

Certified to the Secretary of State April 11, 1986

BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF PUBLIC HEARING  
of Rule 10.58.103, Visitations) ON PROPOSED AMENDMENT OF  
) RULE 10.58.103, VISITATIONS

TO: All Interested Persons

1. On May 19, 1986 at 11:00 a.m., or as soon thereafter as it may be heard, a public hearing will be held in the Board of Regents' Conference Room, 33 South Last Chance Gulch, Helena, Montana, in the matter of the amendment of Rule 10.58.103, Visitations.

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

10.58.103 VISITATIONS (1) All teacher education programs shall be visited for approval every five years or upon request of an institution.

(2) Joint visitations and cooperation with other accrediting agencies will be encouraged.

(3) A review by the National Council for Accreditation of Teacher Education (NCATE) of the same material covered in Sub-Chapters 2, 3 and 4 may be accepted in lieu of the state review.

AUTH: Sec. 20-2-114 MCA

IMP: Sec. 20-2-121 MCA

3. The board proposes this amendment in order to avoid duplicative reviews wherever possible.

4. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or argument may also be submitted to Ted Hazelbaker, Chairman, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620, no later than May 22, 1986.

5. Ted Hazelbaker, Chairman, and Hidde Van Duym, Executive Secretary to the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana, have been designated to preside over and conduct the hearing.

*Ted Hazelbaker*

TED HAZELBAKER, CHAIRMAN  
BOARD OF PUBLIC EDUCATION

BY:

*Hidde Van Duym*

Certified to the Secretary of State

April 11, 1986

8-4/24/86

MAR Notice No. 10-3-104

BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the amendment ) NOTICE OF PUBLIC HEARING  
of Rule 10.58.303, Professional ) ON PROPOSED AMENDMENT OF  
Education ) RULE 10.58.303, PROFES-  
 ) SIONAL EDUCATION

TO: All Interested Persons

1. On May 19, 1986 at 11:00 a.m., or as soon thereafter as it may be heard, a public hearing will be held in the Board of Regents' Conference Room, 33 South Last Chance Gulch, Helena, Montana, in the matter of the amendment of Rule 10.58.303, Professional Education.

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

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

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

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

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

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

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

(iv) ability to teach effectively, work ethically and constructively with pupils, and articulate the nature and purposes of the curricula to professional peers, teachers, administrators, parents, and other concerned persons and organizations;

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

(vi) understanding of all education aspects of the school, including its purposes, administrative organization, finance aspects, board functions, and operations;

(vii) ability and willingness to analyze teaching so that teaching skills continually improve;

(viii) ability to teach thinking, listening, speaking, reading, and writing skills appropriate to the student level and the content of the field(s) of specialization, including:

(A) knowledge and use of the diagnostic techniques used to teach reading and writing in the content areas;

(B) knowledge of criteria used to select instructional materials and the application of the instructional techniques used to teach reading and writing for the content areas;

(C) knowledge of and ability to integrate study skills instruction into the content areas;

(D) ability to provide opportunities for the practical application of reading and writing in the content areas;

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

(x) knowledge of the legal, practical and philosophical basis of education equity and opportunity in Montana schools.

(c) through (f) Remain the same.

AUTH: Sec. 20-2-114 MCA

IMP: Sec. 20-2-121 MCA

3. The board proposes this amendment in order to ensure new teachers have an overview of affirmative action and equal opportunity as it applies in public schools.

4. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or argument may also be submitted to Ted Hazelbaker, Chairman, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620, no later than May 22, 1986.

5. Ted Hazelbaker, Chairman, and Hidde Van Duym, Executive Secretary to the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana, have been designated to preside over and conduct the hearing.

*Ted Hazelbaker*

TED HAZELBAKER, CHAIRMAN  
BOARD OF PUBLIC EDUCATION

BY:

*Hidde Van Duym*

Certified to the Secretary of State

April 11, 1986

8-4/24/86

MAR Notice No. 10-3-105

BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the amendment)	NOTICE OF PUBLIC HEARING
of Rule 10.57.101, Review of )	ON PROPOSED AMENDMENT OF
Policy )	RULE 10.57.101, REVIEW OF
)	POLICY

TO: All Interested Persons

1. On May 19, 1986 at 11:00 a.m., or as soon thereafter as it may be heard, a public hearing will be held in the Board of Regents' Conference Room, 33 South Last Chance Gulch, Helena, Montana, in the matter of the amendment of Rule 10.57.101, Review of Policy.

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

10.57.101 BIENNIAL REVIEW REVIEW OF POLICY (1)  
By authority of section 20-4-102, MCA, the board of public education adopts policies for the issuance of teacher certificates on the recommendations of the superintendent of public instruction.

(2) Recognizing that the periodic review of the certification policies is vital, the board regularly will consider recommendations for revision of the policies at any time it deems necessary. ~~on a biennial basis each odd-numbered year. Notwithstanding any changes made in any three year period, every three years the board shall have made a comprehensive review of certification policies to insure that such policies are meeting the needs of the state. Recommendations for changes in the policies will be submitted to the board through the superintendent of public instruction, who will establish a schedule and procedure to facilitate the biennial review process.~~

~~(3) Nothing in this policy precludes the board's authority to consider revision of the certification policies at any time it deems necessary.~~

AUTH: Sec. 20-4-102 MCA

IMP: Sec. 20-4-102 MCA

3. The purpose of the amendment is to clarify and regulate periodic review of the certification standards.

4. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or argument may also be submitted to Ted Hazelbaker, Chairman, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620, no later

than May 22, 1986.

5. Ted Hazelbaker, Chairman, and Hidde Van Duym, Executive Secretary to the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana, have been designated to preside over and conduct the hearing.

*Ted Hazelbaker*

TED HAZELBAKER, CHAIRMAN  
BOARD OF PUBLIC EDUCATION

BY:

*Hidde Van Duym*

Certified to the Secretary of State April 11, 1986



BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING  
Rule 10.55.101, Accreditation ) ON PROPOSED AMENDMENT OF  
Standards: Procedures ) RULE 10.55.101, ACCREDI-  
 ) TATION STANDARDS:  
 ) PROCEDURES

TO: All Interested Persons

1. On May 19, 1986 at 11:00 a.m., or as soon thereafter as it may be heard, a public hearing will be held in the Board of Regents' Conference Room, 33 South Last Chance Gulch, Helena, Montana, in the matter of the amendment of Rule 10.55.101, Accreditation Standards: Procedures.

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

10.55.101 ACCREDITATION PERIOD STANDARDS: PROCEDURES

(1) By authority of section 20-7-101, MCA, the board of public education adopts standards of accreditation on the recommendation of the superintendent of public instruction. Recognizing that the review of accreditation standards is vital, the board will consider recommendations for revision of standards at any time it deems necessary. Notwithstanding any changes made in any five year period, every five years the board shall have made a comprehensive review of all accreditation standards to ensure that such standards are meeting the needs of the state.

(2) (5) All rules published for adoption in the ARM prior to December 1 will be effective July 1 of the year following unless noted otherwise. They should be found in the Montana School Accreditation Standards and Procedures Manual which is updated and distributed by the superintendent in January of every year. School districts are responsible for filing and updating any information pertinent to the accreditation process.

(3) (2) By authority of section 20-7-102, MCA, and on the recommendation of the superintendent of public instruction, the board of public education historically has established the accreditation status of each Montana public elementary and secondary school in March of each year. Annual accreditation, therefore, occurs prior to school districts' adoption of preliminary budgets for the ensuing year and yet allows a period of time for analysis of the information on which accreditation recommendations are based. The information gathering and processing schedule

commences at the beginning of the school year for which accreditation is sought and is based primarily on data provided by school districts supplemented by visitations and/or inquiries initiated by the superintendent of public instruction.

(4) (3) It is the policy of the board of public education not to act on school accreditation in the interim between annual accreditation determinations. It is the consensus of the board that the established annual schedule provides ample opportunity both to schools and to the superintendent to prepare for annual accreditation.

(5) (4) Once the annual accreditation has been established by the board, any request from a school district for consideration of a change in its accreditation status will be entertained by the board only if it can be shown that an error occurred in reporting, interpreting or processing the data on which accreditation recommendations had been based.

AUTH: Sec. 20-7-101 MCA  
IMP: Sec. 20-7-102 MCA

3. The purpose of the amendment is to clarify and regulate periodic review of the accreditation standards, which determine eligibility for state equalization aid.

4. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or argument may also be submitted to Ted Hazelbaker, Chairman, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620 no later than May 22, 1986.

5. Ted Hazelbaker, Chairman, and Hidde Van Duym, Executive Secretary to the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana have been designated to preside over and conduct the hearing.

BY:

*Ted Hazelbaker*  
TED HAZELBAKER, CHAIRMAN  
BOARD OF PUBLIC EDUCATION  
*Hidde Van Duym*

Certified to the Secretary of State April 14, 1986

BEFORE THE DEPARTMENT OF AGRICULTURE  
STATE OF MONTANA

In the matter of the proposed )	ADOPTION OF NEW RULES
new rules concerning the )	REGARDING THE NOXIOUS
Noxious Weed Trust Fund )	WEED TRUST FUND
)	4.5.101 - 4.5.112

TO: All Interested Persons.

1. On February 19, 1986, at 10 a.m. in room 225 of the Agriculture/Livestock Building, Sixth and Roberts, Helena, the Department of Agriculture conducted a hearing regarding the above stated rules published on page 1, 1986 MAR issue number 1.

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

RULE I through RULE VII no changes.

RULE VIII. ~~RANKING-OF~~ CRITERIA FOR PROJECTS ~~(1)-The advisory council shall utilize a scoring system to rank all projects in regard to how well they meet the criteria for the program.~~

~~(2)~~ (1) The advisory council shall consider the following criteria in ranking determining which projects receive recommendations for funding.

(a) Projects which meet requirements specified in section 80-7-814, MCA, of the Noxious Weed Trust Fund

(b) Projects that involve community groups and weed districts.

(c) Projects which can be utilized statewide and will provide the most tangible returns to the county or state.

(d) Projects in areas where county weed district funding sources for noxious weed control are limited.

(e) Projects which include educational programs to increase weed awareness and improve weed control techniques.

(f) Projects which involve an integrated weed management plan including biological, cultural, and chemical control.

(g) Projects which will enhance the renewable resources.

(h) Projects which include matching funds (including in-kind services) from private, state, and/or federal entities.

~~(i) Projects which have not previously received funds from the program.~~

~~(j)~~ (i) Projects whose results will provide public benefits.

~~(k)~~ (j) Projects with long term effect on natural resources.

~~(l)~~ (k) Projects which involve noxious weed emergencies.

~~(2)~~ (2) The results of ~~this scoring system~~ of the advisory council's findings will be submitted to the department for ~~final~~ ranking and determination of funding priority for grant requests. The department will use the same criteria in ranking reviewing the proposals.

AUTH: 80-7-802, MCA

IMP: 80-7-814, MCA

Montana Administrative Register

8-4/24/86

RULE X NOXIOUS WEED LIST (1) All plants or weeds listed on the labels of herbicide products registered and approved for sale by the Environmental Protection Agency and the department are hereby declared to be noxious weeds pursuant to the Noxious Weed Trust Fund Act section 80-7-801 (3) MCA.

(2) No changes.

AUTH: 80-7-802, MCA

IMP: 80-7-801, 80-7-802, MCA

RULE XI No changes

RULE XII No changes

3. The department received the following comments:

Comment: Several commentators objected to the department's definition of noxious weeds, section 80-7-801, MCA. They contend that the legislature intended a narrow definition of noxious weeds. They further contend that the legislature intended only to tax those herbicides used for treating noxious weeds established by the department for the County Noxious Weed Control Act. They recommend that the department consider industrie's noxious weed lists.

Response: The legislature passed two noxious weed laws in 1985; the County Noxious Weed Control Act and the Noxious Weed Trust Fund Act. These are two separate acts, and noxious weeds are defined differently to meet the legislative intent of each act.

By common definition, a weed is a plant growing where it is not wanted. The term noxious means harmful or offensive. So by common meaning a "noxious weed" is a harmful or offensive plant growing where it is not wanted. The use of any other noxious weed definition or list might run contrary to the plain common meaning.

The County Noxious Weed Control Act limits the number of noxious weeds to those that are very difficult to control and require immediate management throughout the state. These weeds that can be managed by the county weed control districts and are addressed in the county weed management plans. This list remains limited so as to permit manageable control programs.

The Noxious Weed Trust Fund Act considers all plants that are harmful or offensive to be noxious weeds. Target plants listed on herbicide labels, approved by the department, are, in fact, noxious weeds because they are plants that are harmful or offensive. This allows all plants having a detrimental impact in the state to be considered possible candidates for community noxious weed control project grants through the Noxious Weed Trust Fund Act. An example of a plant that would qualify under this definition is wild oats. An educational, control, or research project for wild oats could receive grant funds through the trust that would benefit grain farmers and decrease the economic impact of this weed in the state.

The legislature intended that all registered herbicides sold in Montana, except those labeled only for home, yard, or garden use, be subject to a surcharge of 1 cent per dollar on the retail sale value. This is indicated in the fiscal note for House Bill 506 which shows projected revenue from the surcharge of \$250,000.00 or 1% of the retail sale of all commercial herbicides

in the state. If only selected herbicides were subject to the surcharge, the projected revenue for the trust fund would be substantially less.

Comment: If the department considers all herbicides subject to a surcharge then the department should emphasize projects that involve noxious weeds which correspond to herbicides sold in the greatest volume. The benefit of the noxious weed trust fund should go towards these persons who pay the greatest incidence of the surcharged herbicides. The thrust of the argument comes from the idea that what you pay into the trust fund you should receive out of the trust fund.

Response: The department believes it is inappropriate at this time to establish a bias toward a particular segment of noxious weed projects. First, the initial \$1,000,000 for the trust fund came from the indemnity trust fund. This money can not be traced to any one segment of herbicide users. Therefore the money spent at the first can not be identified as responsive to the needs of any one segment of herbicide users. Second the department believes the incidence of the surcharge and the project types do not necessarily correspond as compared to the needs of the state. Many taxation schemes do not directly distribute proportional benefits back to the persons who pay the highest incidence of the tax. For example schools are funded by more persons or entities who don't have children attending the schools as compared to those who do. The department believes it not imperative to make proportional distribution of benefits to those who pay into the trust fund. The department believes that preventing the spread of weeds may justify disproportionate expenditures of funds. For example grain farmers in certain areas of the state would benefit economically if new exotic weeds do not become introduced in their areas. This justifies controlling noxious weeds in certain parts of the state, even though they are not a problem in all areas of the state.

Comment: The department received one comment concerning the use of listed targeted plants on herbicide labels as an impermissible delegation of department authority to chemical companies.

Response: The department controls herbicide products and their labels by registering them in Montana. Through the registration process the department has the right to accept or reject herbicide products and their labels (80-8-201, MCA). Therefore the department has not delegated it's authority to establish the noxious weeds from approved labels.

Comment: One commentator expressed concern that certain plants may be considered beneficial and may also be listed on herbicide labels as targeted plants and thereby be designated as noxious weeds.

Response: Although certain plants may at some time have beneficial uses they can at other times be noxious weeds and need to be controlled. This is a rare occasion but the department believes the flexibility must exist to control some possible beneficial plants that may become detrimental and pose a problem. For example, research indicates that some noxious weeds may be good forage for certain domestic animals. But even though beneficial uses may be found for these plants, they still need to be controlled.

Comment: A scoring system for project priority should not be used and proposed rules VIII (2) (h) and (2) (i) are contradictory.

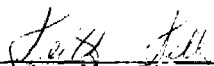
Response: The department agrees and has modified the rules to correct the objection.

4. The department received other comments and objections directed at the language of the statute and not at the proposed rules. The department therefore does not need to respond to those comments.

5. The department received many comments in support of the rules.

The authority of the department adopt the proposed rules is based upon section 80-7-802, MCA and implements sections 80-7-801, 80-7-805, 80-7-811, 80-7-812, 80-7-814, and 80-7-815, MCA.

BY:

  
Keith Kelly, Director

Certified to the Secretary of State, April 14, 1986.

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

In the matter of the	)	NOTICE OF ADOPTION
adoption of emergency rules	)	OF EMERGENCY RULES
pertaining to the Montana	)	
Insurance Assistance Plan	)	

TO: All Interested Persons

1. Statement of reason for emergency. Commercial liability insurance is currently unavailable for many risks resident, located, or to be performed in Montana. During its March, 1986 Special Session, the Forty-Ninth Legislature enacted the Montana Insurance Assistance Plan (plan). The plan is a temporary, voluntary plan to assist insurance consumers in this state in obtaining needed commercial liability insurance when no quotation is available from regular sources of insurance. The welfare of persons needing commercial liability insurance is in peril in that commercial liability insurance will not be more available until the plan is operational. The commissioner of insurance believes that the welfare of commercial liability insurance consumers would be protected most effectively if the plan were operational by June 1, 1986. The earliest that rules necessary to implement the plan could be adopted under regular procedures is June 17, 1986.

2. The text of the emergency rules is as follows:

RULE I DEFINITIONS As used in [Rules I through VIII], the following definitions apply:

(1) "Applicant" means a person who completes and signs a written application for assistance through the plan.

(2) "Cancel" means to terminate an insurance policy before the expiration of the period of time for which the policy was issued.

(3) "Commissioner" means the commissioner of insurance of the state of Montana.

(4) "Insurer" means any person authorized to transact insurance in this state.

(5) "Line" means a specific type of insurance coverage within commercial liability insurance such as political subdivision insurance, family day-care insurance, day-care center insurance, or liquor liability insurance.

(6) "Plan" means the Montana Insurance Assistance Plan.

(7) "Policy" means the written contract of or written agreement for or effecting insurance, by whatever name called, and includes all clauses, riders, endorsements, and papers attached thereto and part thereof.

(8) "Premium" is the consideration for insurance, by whatever name called, and includes any assessment or membership, policy, survey, inspection, service, or similar fee or charge in consideration for an insurance contract.

(9) "Rejected risk" means a risk which an insurer will not insure.

(10) "Renewal" means any agreement whereby an insurer and insured agree to an extension or continuation of an existing insurance policy.

(11) "Risk" means a person or thing insured.

(12) "Surplus line insurer" means an unauthorized insurer permitted to transact insurance in this state in accordance with The Surplus Line Insurance Law (33-2-301 through -317, MCA).

AUTH: Sec. 16, Ch. 11, Sp. IMP: Sec. 6, Ch. 11, Sp.  
L. March, 1986 L. March, 1986

RULE II AGENT COMMISSION The insurer that insures an applicant's risk shall pay the applicant's agent the commission it normally pays for the type of risk insured.

AUTH: Sec. 16, Ch. 11, Sp. IMP: Sec. 6, Ch. 11, Sp.  
L. March, 1986 L. March, 1986

RULE III APPLICATIONS AND APPLICATION FEES (1) Application forms are available to property and casualty insurance agents, licensed in this state, through the advisory committee.

(2) Each application must be executed by an agent, licensed in this state, and submitted to the commissioner.

(3) Each completed application must be accompanied by a non-refundable application fee made payable to the plan and paid by the applicant.

(4) The application fees are as follows:

(a) liability insurance for political subdivisions, as defined in 2-9-101(5), \$300;

(b) liability insurance for family day-care homes, as defined in 53-4-501(2)(h), \$25;

(c) liability insurance for day-care centers, as defined in 53-4-501(2)(c), \$100; and

(d) liability insurance for liquor liability, \$50.

(5) The advisory committee may adjust these fees or set new fees, if necessary, upon approval of the commissioner.

AUTH: Sec. 8, Ch. 11, Sp. IMP: Sec. 8, Ch. 11, Sp.  
L. March, 1986; Sec. 16, L. March, 1986  
Ch. 11, Sp. L. March, 1986

RULE IV FISCAL ARRANGEMENT (1) The advisory committee shall designate a fiscal agent for the plan. The fiscal agent is authorized to receive and hold funds submitted to the plan and to disburse them upon authorization of one other committee member. The funds may be used for the necessary expenses of the committees, including printing, postage, mailing, telephone, and such other expenses incurred by the plan as the advisory committee deems appropriate for payment.

(2) The fiscal agent shall maintain books and records of all receipts and disbursements and shall submit a quarterly financial statement to the advisory committee of



the plan. The commissioner or any advisory committee member shall have access to said books and records during normal business hours.

(3) The fiscal agent shall maintain a bank account under the name of the "Montana Insurance Assistance Plan". All checks drawn upon the account of the plan shall bear the signatures of the fiscal agent or such other person duly authorized by the advisory committee.

(4) It is the policy of the plan to make its operation self-supporting. If expenses from the plan's operation exceed income from current applications, such additional costs shall be prorated on the broadest possible voluntary basis as determined by the advisory committee. The advisory committee may make appropriate changes in application fees upon approval by the commissioner.

AUTH: Sec. 16, Ch. 11, Sp. IMP: Sec. 10, Ch. 11, Sp.  
L. March, 1986 L. March, 1986

RULE V UNAVAILABILITY An applicant is unable to procure insurance through ordinary methods, and insurance is unavailable when the applicant has been declined insurance coverage by a minimum of three insurers, including one surplus line agent.

AUTH: Sec. 16, Ch. 11, Sp. IMP: Sec. 8(1)(c), Ch. 11,  
L. March, 1986 Sp. L. March, 1986

RULE VI ELIGIBLE APPLICANTS An applicant who receives notice of cancellation or nonrenewal of an existing insurance policy does not currently have insurance.

AUTH: Sec. 16, Ch. 11, Sp. IMP: Sec. 10(1), Ch. 11, Sp.  
L. March, 1986 L. March, 1986

RULE VII LINES OF INSURANCE Insurance coverage that an insurer is qualified to write in this state is that line of insurance which the insurer is authorized to transact in this state.

AUTH: Sec. 16, Ch. 11, Sp. IMP: Sec. 12(3), Ch. 11, Sp.  
L. March, 1986 L. March, 1986

RULE VIII EFFECTIVE DATE OF POLICY The policy is effective when the insured accepts the insurer's quotation and pays the premium.


AUTH: Sec. 16, Ch. 11, Sp. IMP: Sec. 13, Ch. 11, Sp.  
L. March, 1986 L. March, 1986

RULE IX SEVERABILITY If any provision of these rules or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and its application to other persons or circumstances shall not be affected thereby.

AUTH: Sec. 16, Ch. 11, Sp. L. March, 1986 IMP: Sec. 1 through 16, Ch. 11, Sp. L. March, 1986

3. The rationale for the proposed rules is as set forth in the statement of reasons for emergency.

4. The authority of the agency to adopt the proposed rules is provided in sections 8 and 16, chapter 11, Special Laws, March 1986, and the rules implement sections 1 through 16, chapter 11, Special Laws, March, 1986.

  
Andrea "Andy" Bennett  
State Auditor and  
Commissioner of Insurance

Certified to the Secretary of State this 14<sup>th</sup> day of April, 1986.

STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE BOARD OF COSMETOLOGISTS

In the matter of the amendments )	NOTICE OF AMENDMENTS OF
of existing cosmetology rules )	RULES EXPANDING COSMETO-
to incorporate manicuring )	LOGY TO COVER MANICURISTS;
specifications granted by the )	ARM 8.14.401; 601-608;
1985 legislature )	801-816; and 8.14.1206

TO: All Interested Persons:

1. On November 29, 1985, the Board of Cosmetologists published a notice of amendments of the above-stated rules at page 1807, 1986 Montana Administrative Register, issue number 22.

2. The board has amended the rules as proposed with the following changes to 8.14.803, 8.14.812, 8.14.816 shown below.

"8.14.803 QUALIFICATIONS FOR EXAMINATION - MONTANA

STUDENTS

(1) through (5) will remain the same as proposed.

(6) Subsections (1)(a) and (2)(a) are essentially repeats of statutory language placed here for the convenience of the user. Subsections (2)(b), (c), (3)(b) and (c) are amplification of section 37-31-304, MCA."

"8.14.812 DUPLICATE LICENSES (1) ...

(2) Any licensee may receive a duplicate of ~~their~~ his or her license upon payment of a proper fee and ~~verified~~ statement as to why verification stating why such a duplicate license is needed."

"8.14.816 SALONS - COSMETOLOGICAL/MANICURING (1)

Definition: A cosmetology or manicurist salon is an establishment or area wherein any branch of cosmetology or manicuring is performed for compensation, other than a school of cosmetology or manicuring, and no other function or service shall be performed other than those described in 37-31-301, MCA.

(a) a licensed manicurist may work in a cosmetological establishment without a manicure salon license, ~~providing~~ if such service is limited to manicuring only.

(2) through (10) are the same.

(11)(a) Every beauty or manicuring salon is required to have at least 1 licensed cosmetologist or manicurist in attendance at all times that it is open for business.

(11)(b) Every manicuring salon is required to have at least 1 licensed manicurist in attendance at all times that it is open for business."

3. The Board of Cosmetologists has thoroughly considered all oral and written comments received:

STATEMENT: No public comments were received with regard to the proposed rules and no hearing was conducted.

A number of comments were received from the Administrative Code Committee and changes were made:

1. Extension of authority citations have been added to each rule.
2. The board has attempted to correct the grammatical or technical errors noted.
3. The implementing citation in 8.14.401 should be changed to 37-31-301, MCA; in 8.14.601 to 37-31-302, 311, MCA; in 8.14.605 to 37-31-304, 311, MCA; and in 8.14.606 to 37-31-304, 311, MCA.
4. Comments with regard to unnecessary repetition of statutory language in 8.14.803 are noted and appropriate acknowledgement is given. In 8.14.804, the Board believes no such repetition is present.
5. With respect to 8.14.603, the board believes the implementing section gives the board the authority to set student population per teacher at less than 25.
6. Similarly, the board believes that approved student work can be considered synonymous to training.
7. 8.14.816(11) has been clarified to show that a licensed cosmetologist must be in attendance at a beauty salon and a licensed manicurist must be in attendance at a manicuring salon.
8. 8.14.608 is proposed to be amended to comply with the new wording provided in Ch. 260, Laws 1985 which changed student training to 650 hours. The amendment also reflects the lack of requirement of medical certificates for cadet teachers.
9. The catch phrase on 8.14.602 should be INSPECTION instead of SCHOOL REQUIREMENTS.

4. No other comments or testimony were received.

BOARD OF COSMETOLOGISTS  
DOROTHY TURNER, PRESIDENT

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

Certified to the Secretary of State, April 14, 1986.

8-4/24/86

Montana Administrative Register

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

In the matter of the amendment ) NOTICE OF AMENDMENT OF  
of 8.58.401 concerning the ) 8.58.401 PURPOSE OF BOARD  
purpose of the board )

TO: All Interested Persons:

1. On March 13, 1986, the Board of Realty Regulation published a notice of amendment of the above-stated rule at page 307, 1986 Montana Administrative Register, issue number 5.
2. The board has amended the rule as proposed with one change. The section cite should be 37-1-136, MCA instead of 37-51-136, MCA.
3. No other comments or testimony were received.

BOARD OF REALTY REGULATION  
GEORGE PIERCE, CHAIRMAN

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

Certified to the Secretary of State, April 14, 1986.

STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE BOARD OF SOCIAL WORK EXAMINERS  
AND PROFESSIONAL COUNSELORS

In the matter of the adoption	)	NOTICE OF ADOPTION OF NEW
of rules pertaining to Continu-	)	RULES UNDER SUB-CHAPTER 6
ing Education Requirements	)	NUMBERED 8.61.601 HOURS,
	)	CREDITS, AND CARRY OVER, 8.61.
	)	602 ACCREDITATION AND
	)	STANDARDS, 8.61.603 REPORT-
	)	ING REQUIREMENTS, 8.61.604
	)	NONCOMPLIANCE

TO: All Interested Persons:

1. On March 13, 1986, the Board of Social Work Examiners and Professional Counselors published a notice of adoption of the above-stated rules at page 309, 1986 Montana Administrative Register, issue number 5.

2. The board has adopted the rules as proposed except that the authority and implementation sections were incorrectly cited under new Rule 8.16.601 Hours, Credits, and Carry Over. The authority section should be 37-22-201, MCA and the implementation section should be 37-22-201, MCA.

3. No other comments or testimony were received.

BOARD OF SOCIAL WORK EXAMINERS  
AND PROFESSIONAL COUNSELORS  
PATRICK KELLY, CHAIRMAN

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

Certified to the Secretary of State, April 14, 1986.

STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE BOARD OF SOCIAL WORK EXAMINERS  
AND PROFESSIONAL COUNSELORS

In the matter of the adoption ) NOTICE OF ADOPTION OF NEW  
of rules pertaining to Pro- ) RULES UNDER SUB-CHAPTER 12  
fessional Counselors ) NUMBERED 8.61.1201 LICEN-  
 ) SURE REQUIREMENTS, 8.61.1202  
 ) APPLICATION PROCEDURE, 8.61.  
 ) 1203 FEE SCHEDULE, 8.61.1204  
 ) ETHICAL STANDARDS

TO: All Interested Persons:

1. On March 13, 1986, the Board of Social Work Examiners and Professional Counselors published a notice of adoption of the above-stated rules at page 312, 1986 Montana Administrative Register, issue number 5.

2. The Board has adopted the rules as proposed with the following changes.

3. It was brought to the attention of the Board by the Legislative Council that the words "program" through "or", as shown in the rule below, were inadvertently omitted from the original notice in Subsection 1 in Rule I (8.61.1201) Licensure Requirements.

"I. LICENSURE REQUIREMENTS (1) A planned graduate program of study that is primarily counseling in nature is one which shows evidence of 66% of the credits within the program. An institution accredited to offer such a degree program is a college or university accredited by various associations of colleges and secondary schools. This list is available at the board office. Credits are available in the following areas:"

4. The Legislative Council also brought to the attention of the board that the implementation section in Rule IV (8.61.1204) Ethical Standards should be 37-23-103 instead of 37-23-211(1), MCA.

5. No other comments or testimony were received.

BOARD OF SOCIAL WORK EXAMINERS  
AND PROFESSIONAL COUNSELORS  
PATRICK KELLY, CHAIRMAN

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

Certified to the Secretary of State, April 14, 1986.

STATE OF MONTANA  
BEFORE THE DEPARTMENT OF COMMERCE

In the matter of the proposed	)	NOTICE OF ADOPTION OF
adoption by reference of new	)	8.94.3702 INCORPORATION
rules for the administration	)	BY REFERENCE OF RULES FOR
of the 1986 federal community	)	ADMINISTERING THE 1986
development block grant pro-	)	COMMUNITY DEVELOPMENT
gram	)	BLOCK GRANT PROGRAM

TO: All Interested Persons:

1. On February 13, 1986, the Department of Commerce published a notice of public hearing on the adoption of application guidelines for the Fiscal Year 1986 Community Development Block Grant (CDBG) Program at page 156, 1986 Montana Administrative Register, issue number 3.

2. The hearing was held on March 5, 1986 at 2:30 p.m. in Room C209 of the Cogswell Building in Helena.

3. The department has adopted Rule 8.94.3702 as proposed with the changes discussed below.

4. Seven people appeared at the hearing to offer testimony and comment. In addition, ten persons submitted written comments regarding the proposed guidelines.

The principal comments regarding the 1986 CDBG Application Guidelines were as follows:

COMMENT: Consolidated governments should be allowed to submit two applications per grant competition, one for the rural area and one for the urban area. The current regulation penalizes consolidated governments for having a more efficient and cost-effective form of government.

RESPONSE: The department has incorporated a provision in the 1986 guidelines which would allow consolidated governments to submit one application for the rural area as counties may do now and one application for the urban area as municipalities may do at present. The department believes the change would allow consolidated city-county governments to be more responsive to the needs of the residents of their municipal and county jurisdictions.

COMMENT: A higher proportion of the CDBG funds on each project, particularly economic development projects, should go to low income, rather than low and moderate income persons.

RESPONSE: The department believes that the interests of low and moderate income persons and the CDBG program, as a whole, are best served by maintaining the current requirement which mandates that 51% of the non-administrative CDBG funds granted for each project be used for activities that will benefit low and moderate income persons and families. For economic development projects, this requirement means that a minimum of 51% of the jobs to be created or retained will be initially



available to low and moderate income persons. The federal regulations which govern the program require that the state's program, overall, demonstrates that at least 51% of the CDBG funds benefit low and moderate income persons. This means that the state could average projects providing lower than 51% benefit with higher benefit projects to meet this test. The state has gone beyond this minimum and requires that each individual project demonstrate that at least 51% of its CDBG funds will benefit low and moderate income persons. Federal law prohibits the use of CDBG funds in any manner which would discriminate against low income persons. In the absence of any federal guidance on this matter through statute or regulation, the department believes it would be inappropriate to likewise establish requirements which would discriminate against potential moderate income recipients of CDBG assistance. The consideration of benefit to low and moderate income persons is an important factor in the department's evaluation of any proposed CDBG economic development application. Also important are issues such as the economic soundness of the proposed enterprise, the amount of other private investment leveraged by the project, the number of jobs to be created, the potential community impacts of the proposal, the thoroughness of the applicant's hiring and training plan, and the growth potential and pay scale for the types of jobs to be provided. The department believes that the interests of low and moderate income persons are best served by assuring an open and fair competition for CDBG funds which rewards applicants for higher benefit to low and moderate income but which also assures a balanced consideration of other crucial issues.

COMMENT: The department should require that at least 75% of the workers on any CDBG project be low-income local residents.

RESPONSE: Current federal law already requires that to the greatest extent feasible, opportunities for training and employment must be given to lower-income residents of CDBG assisted project areas and that contracts for work in connection with CDBG projects be awarded to businesses which are located in or are owned by project area residents.

COMMENT: The department should incorporate the flexibility to restore grant ceilings to a higher level in the event that President Reagan's deferral of CDBG funding is overturned.

RESPONSE: The department has incorporated language in the final draft which would allow it to adjust 1986 grant ceilings in the event that President Reagan's deferral of FY 1986 CDBG funds is overturned by Congress or the courts.

COMMENT: The establishment of three opportunities annually to apply for economic development grants will increase the ability of communities to prepare a timely application.

RESPONSE: The department has established three opportunities to apply for CDBG economic development funds as part of the 1986 CDBG program. The specific dates were modified in the final draft to assure better coordination with timing of staff work activities dictated by the annual CDBG program cycle.

COMMENT: There should be no deadlines for economic development applications. Communities should be able to submit economic development applications at any time during the year as long as funds are available.

RESPONSE: The scheduling of three specific dates for submission of economic development applications reflects a compromise between the need for the department's staff to be able to plan their work activities for the CDBG program cycle on a reasonably predictable basis and the expressed need of local governments to have the opportunity to apply for CDBG economic development projects more often than the two application dates now provided.

COMMENT: The guidelines should eliminate any preference given to housing rehabilitation applications incorporating private sector leverage from local lenders.

RESPONSE: "Leverage" is a term used to describe the participation and use of non-CDBG resources in local CDBG projects. Since 1984, Montana's CDBG guidelines have included a policy statement which has encouraged applicants to seek out and coordinate with any other private or public sector resources in order to increase the impact of CDBG projects on local needs. Given the diminishing financial resources available at the federal, state and local levels, the department believes that this goal is more imperative than ever. All proposals for leveraging arrangements are evaluated during application ranking to assure that they are well-planned and will provide reasonable benefits to both low and moderate income families.

COMMENT: There should be greater emphasis on leveraging other state or federal funds in public facilities projects.

RESPONSE: The "Community Efforts" ranking criterion under the public facilities category rewards a community's past efforts to secure alternative or additional funds from appropriate state or federal sources to help finance a proposed project. In order to be successful in the grant competition, an applicant must make every reasonable effort to secure

assistance from other agencies. In recognition of the increasing difficulty of securing other funding, the criterion places primary emphasis on reasonable efforts to apply for those funds rather than just rewarding those who are successful.

5. On March 5, 1986, the Department of Commerce conducted a public hearing to consider an amendment of the rules governing the 1985 CDBG Program requested by a local government. That amendment, subsequently adopted, allowed applicants for CDBG funds to be awarded up to two grants in any program year; one from the economic development category and one from the housing, public facilities, or multipurpose categories. Previously the program guidelines had limited local governments to a maximum of one grant per program year. Language identical to the adopted amendment was also proposed for incorporation in the 1986 CDBG Application Guidelines. At the public hearing five persons spoke in favor of the proposed amendment and one spoke in opposition. Twenty-five letters were received regarding the proposed amendment; 13 supported the amendment and 12 opposed it. In the interest of brevity, the reasons stated for and against the amendment's adoption will not be re-stated here. A summary of the principal reasons stated for and against adoption of the amendment, as well as the department's reasons for overruling the considerations urged against its adoption may be found at page 542, 1986 Montana Administrative Register, issue number 7. After further considering the public comments on this issue, the department has modified the language of the amendment for the 1986 program year to provide that a local government jurisdiction may award a maximum of:

- one grant from the multipurpose category, or
- one grant from the economic development category and one grant from the public facilities or housing and neighborhood revitalization categories.

This change reflects the differential in the amounts for the grant ceilings for multipurpose and single purpose grants and comments that the department should avoid concentrating large amounts of CDBG funds in any one community in the face of federal budget reductions for the State CDBG Program.

6. No other comments or testimony were received.

DEPARTMENT OF COMMERCE

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

Certified to the Secretary of State, April 14, 1986.

BEFORE THE FISH AND GAME COMMISSION  
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF ADOPTION OF
proposed amendment of	)	PROPOSED AMENDMENT TO
Rule 12.9.207	)	RULE 12.9.207
		SEELEY LAKE GAME PRESERVE

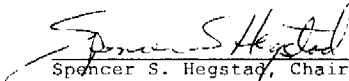
TO: All Interested Persons

1. On November 18, 1985, the Montana Fish and Game Commission gave public notice of a proposed amendment to Rule 12.9.207, concerning the description of the Seeley Lake Game Preserve at page 1696 of the 1985 Montana Administrative Register, Issue No. 21.

2. The Commission has amended Rule 12.9.207 as proposed.

3. No comments or testimony were received.

4. The authority for the amendment is Section 87-5-402, MCA and the implementing section is Section 87-5-402, MCA.

  
\_\_\_\_\_  
Spencer S. Hegstad, Chairman  
Montana Fish and Game  
Commission

Certified to Secretary of State April 14, 1986.

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

In the matter of the adoption	)	NOTICE OF ADOPTION
of rules requiring notification	)	OF NEW RULES
underground storage tanks and	)	16.45.101 - 16.45.103
interim prohibitions	)	(Underground Storage Tanks)

To: All Interested Persons

1. On March 13, 1986, the department published notice of the proposed adoption of Rules I, II, and III (to be codified as ARM 16.45.101, 16.45.102, and 16.45.103, respectively) concerning underground storage tanks at page 326 of the 1986 Montana Administrative Register, issue number 5.

2. The department has adopted the rules as proposed without amendment.

3. The department has thoroughly considered all comments received on the proposed rules. The following is a summary of the comments received from the public and the department's responses:

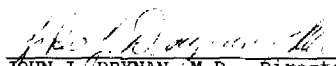
Comment: Russ Brown, Northern Plains Resource Council, stated that the proposed rules require that persons who deposit regulated substances in underground storage tanks make reasonable efforts to notify the tank owner or operator of his obligation to notify the department of the existence of his tank(s), but the department does not define what it will consider to be "reasonable efforts."

Response: This requirement is imposed on depositors of regulated substances by 42 U.S.C. 9002(5) of the Resource Conservation and Recovery Act, Subtitle I, and by 40 CFR 280.3(g). Neither Congress nor the Environmental Protection Agency through its rule attempted to specify what "reasonable efforts" included. It was felt that depositors should have flexibility in performing this task. The department has taken the same approach by not imposing a mandatory method or methods upon depositors. The EPA in Appendix III to 40 CFR 280.3 suggests, as has the department in its guidance to depositors of regulated substances, proposed notification language to be used on shipping tickets and invoices and in letters to customers who own tanks. Other methods include leaving a copy of the notification form with the customer or mailing certified letters to tank owners or operators. The department has provided a supply of notification forms to possible depositors of regulated substances for distribution to their customers. The department believes that each depositor of regulated substances should be allowed the flexibility to perform his obligations for advising his customers, based upon his business relationship with them, keeping in mind his liability for failure to make reasonable efforts to do so.

Comment: Representative Gene Donaldson of Helena, George Ochinski of the Montana Environmental Information Center, and Russ Brown of the Northern Plains Resource Council all commented that the proposed rules do not go far enough to regulate the environmental problems raised by leaking underground storage tanks. Comments were made specifically about the need for procedures for testing tanks for leakage, identification of leakage, and education about tank installation.

Response: The department acknowledges the need for all of these regulating steps. Rules I, II, and III are intended to be the first phase of a more substantial regulatory program which will address the concerns expressed by the testifiers. The department's program is presently funded with 95% federal grant monies. Initial grant tasks include state implementation of the tank owner notification process and enforcement of the federal interim prohibition on the installation of new unprotected tanks. Rules I, II, and III are purposely limited to these tanks. The EPA and the department believe that the assemblage of an inventory of existing underground tank information is the first step toward creating regulations designed to prevent environmental damage from tank leaks in Montana. Given the minimum resources currently available to the program, it will be more efficient to develop the inventory prior to the promulgation and enforcement of potentially costly tank management regulations than to develop the regulations and then attempt to discover the extent and characteristics of the inventory. Information about the existing tank population, such as age, location, and materials of construction, will assist the department in designing and justifying the type of regulations needed for Montana. Moreover, with the anticipated promulgation of national tank regulations by the EPA and the grant requirements that Montana's rules be at least equivalent to federal rules, the department believes it prudent to develop rules in concert with federal requirements or in advance with at least some federal guidance or sense of direction which is presently unavailable.

As a result of the comments, however, the department is reconsidering this position and may well propose additional regulations in advance of the EPA, depending on the federal regulatory schedule and Montana's efforts to obtain financial independence for its underground storage tank program.

  
JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State April 14, 1986.

STATE OF MONTANA  
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION  
BEFORE THE BOARD OF WATER WELL CONTRACTORS

In the matter of the adoption)	NOTICE OF ADOPTION OF A NEW
of new rules concerning )	RULE UNDER SUB-CHAPTER 4,
definitions and disciplinary )	36.21.401A DEFINITIONS AND NEW
action )	RULES UNDER SUB-CHAPTER 5,
)	36.21.501 - 36.21.506
)	DISCIPLINARY ACTION

TO: All Interested Persons

1. On February 27, 1986, the Board of Water Well Contractors gave notice of the proposed adoption of new rules concerning definitions and disciplinary action on page 235 of the 1986 Mt. Administrative Register, issue number 4.

2. On Friday, March 21, 1986 at 9:00 A.M., a public hearing was held in the main conference room of the Department of Natural Resources and Conservation, 1520 East Sixth Avenue, Helena, Montana.

3. Present were Jim Madden, who presided over and conducted the hearing, attorney, DNRC; Diana Cutler, Program Specialist for the Board of Water Well Contractors; and board members, Wesley Lindsay, Ron Guse, Wayne Van Voast, and Bill Osborne. In addition to the board members and staff, 12 persons attended.

The majority of the persons in attendance were in support of a letter submitted by Charles Graveley, Helena attorney, which was presented by Mrs. Graveley, as her husband was unable to attend. The points of the letter will be addressed in the comment and response area of this notice. One other letter of comment was received from Mike McLane of the Missoula DNRC Water Rights Field Office. Mr. McLane was generally in favor of the rules. He commented regarding three areas, which are addressed in other comments. A phone call was received from the Administrative Code Committee with suggestions for minor word changes, questions on the moral issues of the rules, additional statutory cites and more substantial reasons for the adoptions. Those suggestions will be incorporated into the rules.

Mr. Graveley's concerns are addressed as follows:

Comment: He questioned "adequate equipment" in Rule I as being strictly that "owned" by the contractor. He felt owned, leased, rented or borrowed would be more appropriate.

Response: Board agrees that the equipment can be "owned, leased, or rented". In the case of new applicants applying for contractors licenses, the board does not feel that borrowing equipment to start a business constitutes "adequate equipment."

Comment: Mr. Graveley questioned the definition of incompetency in Rule II, subsection (2). The Administrative Code Committee had pointed out that the statute refers to "incompetence" rather than "incompetency".

Response: Since Rule V will include most areas that might fall under incompetence as defined in this rule, and since this rule was merely a dictionary definition of the statutory term, the Board will delete this section from the adopted rules.

Comment: Mr. Graveley felt Rule III gave the board authority to initiate an action against a licensee without a sworn complaint. He also questioned an individual being unfit to practice without standards for unfitness.

Response: In response to the "unfitness to practice issue, the board is deleting this section, as again those areas will be covered in Rule V. In response to initiation of an action, the rule does give the board authority to start an investigation without a formal written complaint. This is authorized by statute, in 37-43-311(3), MCA. There may be instances when the board may wish to conduct an investigation of a contractor or driller based on information received through the DNRC field offices or other sources.

Comment: Mr. Graveley questioned Rule IV as to what constitutes proof of charges and also felt the rules should address what sanctions apply to what violation.

Response: The board considers proof to mean by a preponderance of the evidence. This is implied by the present rules not requiring a higher burden. As far as specifying the sanctions for violations, to do so would limit the disciplinary actions available. The board could be in a position of issuing continual reprimands in a case where repeated violations should result in greater disciplinary action.

Comment: Mr. Graveley questioned subsections (1)(a), (b), (f) and (g) of Rule V. The Administrative Code Committee also questioned these subsections with regard to difficulty of proving the items listed.

Response: Based on those comments and some concerns on the part of the board, these subsections will not be adopted.

Comment: The Code Committee brought to the board's attention that subsections (1)(h) and (1)(j) of Rule V are repetitive. Subsection (1)(h) will not be adopted.

Comment: Mr. Graveley questioned subsection (1)(e) as he felt technical competence should be established at the time of the exam.

Response: The board considers this section important because licensees need to keep current with changes in the drilling field. The wording, however, will be changed to "demonstration of" rather than "lack of" technical competence. Competence will be changed to incompetence.

Comment: Mr. Graveley commented the Rule V (1)(m) should refer to a "copy" of the well log. The Administrative Code Committee also requested the statutory section be cited which requires filing of well logs on subsection (1)(e) and (1)(n).

Response: The board is in agreement with both comments and will change these subsections to reflect the changes.

Comment: Mr. Graveley questioned the wording on Rule V, subsection (1)(p).

Response: The board has agreed to reword the subsection, but will also add wording to indicate prohibition of employment applies only to the hiring as a driller or contractor during the period of revocation.



Comment: The code committee asked that subsections (2)(a) through (e) of Rule V not be placed in the rule as they repeat statute (section 37-43-203).

Response: The board feels that it is necessary to leave these sections in the rule so the reader knows exactly what actions are available to the board without having to refer to a second document.

Comment: Mr. Gravely questioned to what purpose the forfeited bond would be used under subsection (2)(f) of Rule V.

Response: Rule VI, subsection (3) explains that the bond money would be used to remedy defects or compensate for damages caused by the licensee's violations. The well owner would be the recipient either of the remedies or the compensation.

Comment: Mr. Gravely felt subsection (1) of Rule VI appears to give the board the authority to prejudge a complaint without a hearing.

Response: The rule states that the board shall send notice to the surety company when it appears that the proposed action may result in forfeiture of the bond. The purpose of the provision is merely to notify the surety that an action is pending. No determination of the merits is made at that time.

Comment: Mr. Gravely questioned Rule VI, subsection (3) as to whom the damages are awarded and how the amount is determined.

Response: The damages would be awarded to the complaining party or parties and amounts would be determined on a case-by-case basis.

No other comments or testimony were received.

The reasons for adoption of these rules, in addition to those stated in the notice, are as follows:

Rule I is proposed to clarify the "Financial responsibility" and "adequate equipment" requirements for contractors and drillers. The statute is unclear whether these requirements apply to all licensees or just to contractors c.f. 37-43-305(1) and 37-43-306 MCA. The board has determined these should apply to the contractor, since he is the responsible person. Frequently a driller will not have any equipment or the financial responsibility that is required for a contractor. The rule allows for such drillers to become licensed so long as they are in the employ of a licensed and bonded contractor.

Rule II defines gross negligence. The term is referred to in section 37-43-311, MCA, for suspension or revocation of licenses, but previously had not been defined. The Board feels a minimum definition was necessary for the board, as well as licensees to have an idea as to what is meant by "gross negligence."

Rule III sets complaint procedures to be followed. The board feels a standard procedure is necessary so that all complaints are handled in the same manner.

Rule IV provides a specific hearing procedure. Again, the purpose is to establish a consistent procedure for all hearings.

Rule V provides reasons for disciplinary actions. The board has reviewed the complaints filed over a number of years and has addressed specific problem areas in the rules.

Rule VI deals with bond forfeiture. In the past, action has never been instituted against a bond. The board, with advice from legal counsel, has determined that actions may be taken against the bond and the rule provides a method.

Rule VII provides for reinstatement of a license after revocation. Section 37-43-203, MCA, requires a reinstatement procedure. This procedure outlined in the rules is what the board felt was necessary to reinstate a revoked license. The board felt reapplication, as well as additional training, will provide a method to guarantee that the person whose license has been revoked will not continue the practices for which the licensee was revoked.

(3) Based on the comments at the hearing, Mr. Gravely and Mr. McLane's letters, and a phone call from the administrative committee, as well as for the reasons stated above and in the notice, the rules are being adopted with the following changes: (new matter underlined, deleted matter interlined)

Rule I now "36.21.401A DEFINITIONS (1) . . .

(2) 'Adequate equipment,' as it pertains to applicants for Montana water well drillers licenses (section 37-43-305(1)(e), MCA), is means that equipment owned, leased, or rented by the responsible water well contractor in whose employ the driller will be working.

(3) 'Financial responsibility--contractor,' (section 37-43-305(1)(f), MCA) ~~shall~~ means the filing of the \$4,000 bond necessary to obtain a contractors license, required by section 37-43-306, MCA.

(4) 'Financial responsibility--driller,' (section 37-43-305(1)(f), MCA) will be satisfied by the verification of the driller's employment by a bonded, licensed water well contractor."

Rule II now "36.21.501 DEFINITIONS (1) "Gross negligence" as referred to in section 37-43-311(1)(c), MCA, is defined as a person means acting with gross negligence when he consciously disregards of a risk of which he the person is or should be aware. The risk must be of such nature and degree that disregarding it involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation. A 'gross deviation' is one that is considerably greater than lack of ordinary care.

(2) "Incompetency" as referred to in section 37-43-311(1)(d), MCA, shall mean lack of ability, legal qualification, or want of physical or intellectual or moral fitness to discharge the required duty."

Rule III now "36.21.502 VIOLATION AND COMPLAINT PROCEDURES

(1) Whenever the Board shall have reason to believe that any person to whom a license has been issued has become unfit to practice as a water well contractor or driller or has violated the provisions of Title 37, Chapter 43, MCA and/or Title 36, Chapter 21, Administrative Rules of Montana, or whenever written

complaint, charging the holder of a license with the violation of any provision of Title 37, Chapter 43, MCA and/or Title 36, Chapter 21, ARM, is filed with said board, it shall be the duty of said board to start an investigation within 30 days of receipt of said complaint. If from such investigation it shall appear to the board that the accused may have been guilty of the violations charged, a time and place shall be set by the board for a hearing to determine whether or not the license of the accused shall be suspended or revoked, the licensee placed on probation, or a letter of censure or reprimand issued, or an action taken against the contractor's bond."

Rule IV now 36.21.503 HEARING PROCEDURES is adopted as proposed.

Rule V now "36.21.504 DISCIPLINARY ACTIONS (1) For purposes of implementing section 37-43-203, MCA, the Board of Water Well Contractors may take action to revoke, suspend the right to practice for a period not to exceed one year, place a licensee on probation, issue a reprimand, censure a licensee or initiate an action against a contractor's bond for reasons which shall include, but not be limited to the following:

(a) habitual use of alcohol or drugs to the point where it interferes with the individual's job performance;

(b) being unfit to practice because of physical or psychological impairment;

(ea) misrepresentation or fraud committed as a holder of a license;

(db) false or misleading advertising;

(ec) fraud or misrepresentation in obtaining a license or renewal;

(f) knowingly making false statements regarding qualifications and abilities of other licensed water well contractors or drillers;

(g) failure to report, through proper channels, facts known to the individual regarding the incompetent, unethical, or illegal practice of any licensed contractor or driller;

(h) violation of the construction standards established by board rules;

(id) violation of federal, state, municipal or county ordinances or regulations affecting the construction of water wells;

(je) violation of Title 37, Chapter 43, Montana Codes Annotated and/or Title 36, Chapter 21, Administrative Rules of Montana;

(kf) lack of demonstration of technical incompetence to carry out water well construction;

(kg) failure to file well logs with the proper authorities within the required time period as per section 85-2-516, MCA;

(mh) failure to provide the customer with an accurate copy of the well log upon completion of the well as per ARM 36.21.632;

(ni) allowing his license number to be used on a well log when the licensee was not actually involved in the construction of the well;

(ej) knowingly making false statements on a well log;

(pk) during the period of revocation or suspension, hiring of employing an individual, as a driller or contractor, whose water well contractor's or driller's license has been suspended or revoked, during the period of revocation or suspension;

(el) failure to exercise proper supervision as required by board ARM 36.21.409;

(~~sm~~) drilling of water wells by a contractor who does not have a current bond or in lieu thereof, a cashier's check, certificate of deposit, or bank draft in the correct amount, on file in the board office;

(~~sn~~) performing as a contractor without a contractor's license and bond;

(~~to~~) falsifying apprenticeship records;

(2) . . ."

Rule VI now 36.21.305 FORFEITURE OF BOND OR OTHER SECURITY is adopted as proposed except for the addition of section 37-43-306, MCA as an implementing section.

Rule VII "36.21.506 LICENSURE REINSTATEMENT AFTER REVOCATION

(1) A license which has been revoked may be reinstated after the period of time specified in the revocation order has elapsed provided that the licensee complies with the requirements of sections 37-43-303, 305, and 306 and 37-43-305, MCA, including successful completion of the appropriate examination.

(2) . . ."

DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION  
BOARD OF WATER WELL CONTRACTORS

BY: Wesley Lindsay  
WESLEY LINDSAY, CHAIRMAN

Certified to the Secretary of State, April 14, 1986.

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

In the matter of the amend-	)	NOTICE OF THE AMENDMENT OF
ment of Rules 46.12.204,	)	RULES 46.12.204, 46.12.501
46.12.501 and 46.12.502 per-	)	AND 46.12.502 PERTAINING TO
taining to co-payments for	)	CO-PAYMENTS FOR LICENSED
licensed clinical social	)	CLINICAL SOCIAL WORKERS'
workers' services	)	SERVICES

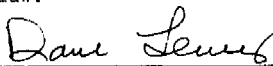
TO: All Interested Persons

1. On March 13, 1986, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.12.204, 46.12.501 and 46.12.502 pertaining to co-payments for licensed clinical social workers' services at page 330 of the 1986 Montana Administrative Register, issue number 5.

2. The Department has amended Rules 46.12.204, 46.12.501 and 46.12.502 as proposed.

3. No written comments or testimony were received.

4. These rule changes update these rule sections, particularly ARM 46.12.204, to be consistent with the Department's position on co-payments which is to impose nominal co-payments on all Medicaid recipients to the extent these changes are allowed by federal law.



Director, Social and Rehabilitation Services

Certified to the Secretary of State April 14, 1986.

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

In the matter of the amend-	)	NOTICE OF THE AMENDMENT OF
ment of Rules 46.12.3002,	)	RULES 46.12.3002,
46.12.3804 and 46.12.3805	)	46.12.3804 AND 46.12.3805
pertaining to eligibility	)	PERTAINING TO ELIGIBILITY
determinations for SSI- and	)	DETERMINATIONS FOR SSI- AND
AFDC-medically needy	)	AFDC-MEDICALLY NEEDY
assistance and Rule	)	ASSISTANCE AND RULE
46.12.3003 pertaining to	)	46.12.3003 PERTAINING TO
mandatory social security	)	MANDATORY SOCIAL SECURITY
number requirements	)	NUMBER REQUIREMENTS


TO: All Interested Persons

1. On March 13, 1986 the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.12.3002, 46.12.3804 and 46.12.3805 pertaining to eligibility determinations for SSI- and AFDC-medically needy assistance and Rule 46.12.3003 pertaining to mandatory social security number requirements at page 332 of the 1986 Montana Administrative Register, issue number 5.

2. The Department has amended Rules 46.12.3002, 46.12.3804, 46.12.3805 and 46.12.3003 as proposed.

3. No written comments or testimony were received.

4. These amendments correct technical inaccuracies, make these rules consistent with prior changes to other rules and delete antiquated references to the Code of Federal Regulations.

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

Certified to the Secretary of State April 14, 1986.

VOLUME NO. 41

OPINION NO. 57

NEPOTISM - Application of nepotism laws to tenured teachers;

NEPOTISM - Effect on nepotism laws of 1985 legislative amendments to Human Rights Act and Governmental Code of Fair Practices;

NEPOTISM - Overruling of previous nepotism opinions;

SCHOOL BOARDS - Effect of nepotism laws when tenured teacher is related to school board member;

TEACHERS - Application of nepotism laws to tenured teachers;

MONTANA CODE ANNOTATED - Sections 2-2-301 to 2-2-304, 20-4-201, 20-4-203 to 20-4-207, 49-2-303(3), 49-3-201(5);

OPINIONS OF THE ATTORNEY GENERAL - 18 Op. Att'y Gen. No. 23 (1939), 34 Op. Att'y Gen. No. 3 (1971), 37 Op. Att'y Gen. No. 6 (1977), 39 Op. Att'y Gen. No. 67 (1982).

- HELD: 1. The nepotism statutes, §§ 2-2-301 to 304, MCA, prohibit the rehiring of a tenured teacher where the teacher is within one of the prohibited relationships to a member of the school district board of trustees.
2. The 1985 amendments to the Human Rights Act and the Governmental Code of Fair Practices, §§ 49-2-303(3) and 49-3-201(5), MCA, overruled 39 Op. Att'y Gen. No. 67 (1982), insofar as it holds that the nepotism law does not apply to relationships by affinity.
3. 34 Op. Att'y Gen. No. 3 (1971) is overruled insofar as it is inconsistent with this opinion.

11 April 1986

James C. Nelson  
Glacier County Attorney  
Glacier County Courthouse  
Cut Bank MT 59427

Dear Mr. Nelson:

You requested my opinion on the following question:

Do the nepotism statutes, §§ 2-2-301 to 304, MCA, prohibit the rehiring of a tenured teacher where the teacher is within one of the prohibited relationships to a board member?

It is my opinion that tenured teachers are not exempt from the nepotism laws. This opinion overrules in part an opinion issued by my predecessor (34 Op. Att'y Gen. No. 3 (1971)), and an opinion issued by me in which I stated that a board of trustees could hire the sister-in-law of a board member (39 Op. Att'y Gen. No. 67 (1982)).

The current state of the law requires a reevaluation of the prior opinions expressed by this office. The law now requires that I reach a conclusion which will have an unfavorable, yet unavoidable, effect on tenured teachers and their relatives serving on school boards.

The nepotism statutes, §§ 2-2-301 to 304, MCA, were enacted in 1933 and have remained essentially unchanged. The intent of the statutes is to prevent favoritism and conflicts of interest by public agencies in hiring, and to concentrate on the applicant's merit and qualifications. § 2-2-301, MCA.

Section 2-2-302(1), MCA, provides:

It shall be unlawful for any person or any member of any board, bureau, or commission or employee at the head of any department of this state or any political subdivision thereof to appoint to any position of trust or emolument any person related or connected by consanguinity within the fourth degree or by affinity within the second degree.

Section 20-4-203, MCA, defines teacher tenure. It reads:

Whenever a teacher has been elected by the offer and acceptance of a contract for the fourth consecutive year of employment by a district in a position requiring teacher certification except as a district superintendent or specialist, the teacher



shall be deemed to be reelected from year to year thereafter as a tenure teacher at the same salary and in the same or a comparable position of employment as that provided by the last executed contract with such teacher unless the trustees resolve by majority vote of their membership to terminate the services of the teacher in accordance with the provisions of 20-4-204.

The teacher tenure laws also have specific purposes. They provide security in tenured teachers' positions and protection against removal for unfounded reasons. The tenure laws benefit the public as well by assuring a competent and efficient teaching force. Smith v. School District No. 18, 115 Mont. 102, 139 P.2d 518, 523 (1943); State v. District Court, Fergus County, 128 Mont. 353, 275 P.2d 209, 214 (1954). Tenure confers upon teachers a substantial valuable and beneficial right that cannot be taken away except for good cause. Massey v. Argenbright, 41 St. Rptr. 1393, 683 P.2d 1332, 1334 (1984).

Tenure differs from nontenure status in that a tenured teacher may not be removed without cause, nor without an opportunity to a statutorily-defined grievance procedure involving notice and opportunity to be heard on the reasons for removal. § 20-4-204, MCA; Massey v. Argenbright, supra. On the other hand, nontenured teachers may be removed without cause, and are not entitled to a hearing but only to a statement of reasons for their removal. § 20-4-206, MCA; Board of Trustees of Billings School District No. 2 v. State of Montana, 185 Mont. 89, 604 P.2d 770, 776 (1979).

While the nepotism statutes and the teacher tenure statutes have not undergone recent changes which affect this issue, there was an addition to the Montana statutes regarding employment discrimination and government hiring which is relevant. In 1985, the Legislature amended the Human Rights Act and the Governmental Code of Fair Practices by adding the following provision:

Compliance with 2-2-302 and 2-2-303, which prohibit nepotism in public agencies, may not be construed as a violation of this section.

§§ 49-2-303(3), 49-3-201(5), MCA. Such a statement evidences a legislative intent to require general compliance with the nepotism laws. Therefore, my conclusion in 39 Op. Att'y Gen. No. 67 (1982) that the Human Rights Act overrides the nepotism statutes in certain situations is no longer valid. The latter now specifically apply and require that nepotism be prohibited in all situations involving public hiring, including the hiring of tenured teachers.

In 34 Op. Att'y Gen. No. 3, the conclusion that tenured teachers were not subject to the nepotism laws was based on two cases. In one, the Florida Supreme Court found its state's particular nepotism laws inapplicable to tenured teachers, because in those situations merit was supposed to be the primary consideration. State ex rel. Robinson v. Keefe, 149 So. 638 (Fla. 1933).

In light of the current state of Montana law on this issue, I do not adopt the Florida Supreme Court's reasoning. First, Montana's nepotism laws make no distinction between jobs with prerequisite qualifications and jobs with none, as the Florida Court interpreted its laws. Second, if I were to take the Florida court's position, most public employment situations would be exempt from our nepotism laws. Clearly, that is not what our Legislature intends. See §§ 49-2-303(3), 49-3-201(5), MCA. Finally, unlike the Florida court, which held the school statutes to supersede the nepotism law, the Montana Supreme Court has unequivocally stated that the teacher's contract rights "are not governed by [the tenure laws] to the exclusion of all other applicable laws and circumstances." State ex rel. Hoagland v. School District No. 13 of Prairie County, 116 Mont. 294, 151 P.2d 168, 170 (1944).

The second case struck down a nepotism law as it affects principals, tenured teachers, and board members where the related board member did not need to exercise any power of supervision or employment over the teacher or principal. The court held that the effect of the nepotism law was not constitutionally sufficient to deprive the tenured employee of his valuable property right. Backman v. Bateman, 263 P.2d 561 (Utah 1953).

The holding of the Backman case is also inapplicable to Montana's nepotism and tenure laws. The nepotism law in

Utah addressed retention in employment as well as hiring, and prohibited relatives from employment situations in that regard. Furthermore, unlike the process in Utah, school boards in Montana are always involved in renewing teaching contracts: They have the final say in rehiring tenured teachers. Finally, tenure rights in Backman were not the same as those presently existing in Montana. The extent of tenure rights depends entirely on the tenure statutes. Day v. School District No. 21 of Granite County, 98 Mont. 207, 38 P.2d 595, 597 (1934).

The next question is at what point the nepotism laws affect tenured teachers. The nepotism statutes govern the hiring process. § 2-2-302(1), MCA. Therefore, they apply to the initial hiring of a teacher and the renewal of such a contract in following years. If tenured teachers are thereafter hired on a yearly basis, the nepotism laws will apply to the yearly renewal of the contract.

The pertinent statutes indicate that tenured teachers are hired on a yearly basis. Section 20-4-201, MCA, requires teachers to be employed by written contract. Sections 20-4-204 and 20-4-205, MCA, instruct the trustees to provide, by April 1 of every year, written notice to tenured teachers of a recommendation for termination or reelection. Upon receiving the notification of reelection, the teachers must provide the trustees with written acceptance of the conditions. Failure to provide the written acceptance constitutes conclusive evidence of nonacceptance. Therefore, compliance with section 20-4-205, MCA, fulfills the requirement of a written contract set by section 20-4-201, MCA. And because section 20-4-205, MCA, requires that notification be made each year, it can be said that the tenured teachers are hired on a yearly basis.

This conclusion is not inconsistent with the Montana Supreme Court's holding in Yanzick v. School District No. 23, 39 St. Rptr. 191, 641 P.2d 431 (1982), regarding the termination of tenured teachers. The Court initially recognized the distinction between the dismissal of a teacher and the termination of services of a teacher. The former relates to the "firing" of a teacher during a school year or contract period, pursuant to section 20-4-207, MCA; the latter refers to

the nonrenewal of a contract following a school year (§§ 20-4-204, 20-4-206, MCA). The Court stated:

By its terms [section 20-4-207] applies to the situation where trustees seek to dismiss a teacher before the expiration of his employment contract, that is, during the course of a normal school year. The Trustees here did not attempt to dismiss Yanzick during the term of his employment contract. They chose not to renew his contract for a subsequent school year.

The Court then concluded that section 20-4-207, MCA, does not apply to the termination of tenured teachers. It went on to determine whether Yanzick was properly terminated.

In holding that the dismissal statute does not apply to the termination of tenured teachers, the Court implied that a tenured teacher enjoys the same "contract year" as a nontenured teacher. A tenured teacher is terminated following a contract year, not during the contract year. At least in that respect the Court made no distinction between tenured and nontenured teachers.

The converse of the reasoning in Yanzick is that a tenured teacher can only be dismissed during the contract year in accordance with section 20-4-207, MCA. It thus follows that a teacher hired (or rehired) in violation of the nepotism law cannot be dismissed during the contract year, as that section does not allow dismissal on that basis.

It might be argued that although a tenured teacher is rehired each year by the board, there is little, if any, discretion exercised by the board of trustees in the rehiring process, because those teachers can only be removed for good cause. It may be true that tenured teachers are not evaluated each year to determine their qualifications to the same extent as are newly-hired teachers. However, if a question of cause for termination arises, the purpose of the nepotism laws again becomes apparent. The rehiring of the tenured teacher must then be considered on the basis of any allegations of cause for termination. The related board member will have the same opportunity to exercise bias

that he/she would have in considering that teacher's initial hiring.

The nepotism laws cannot be circumvented by the related board member's abstention. Montana has long considered boards to act as a single unit; the action of a quorum of the board is an action of the entire board. See 37 Op. Att'y Gen. No. 6 (1977); 18 Op. Att'y Gen. No. 23 (1939).

The next question concerns the tenure laws' requirement that a tenured teacher not be terminated without good cause. Do the prohibitions of the nepotism laws constitute "good cause" within the meaning of tenure rights? Montana's tenure statutes do not express or define the valid causes for termination of a tenured teacher; in fact, the requirement of termination for "cause" is not mentioned. See §§ 20-4-203, 20-4-204, MCA. The Montana Supreme Court, however, has recognized a valuable property right in tenure status, and has stated that under constitutional substantive due process concerns the tenured teacher enjoys security in his job absent "good cause" for his termination. State v. District Court, Fergus County, 275 P.2d at 214; Yanzick, 641 P.2d at 440-41.

Generally, due process safeguards are not infringed when the action in question is not arbitrary or unreasonable. Matter of C.H., 41 St. Rptr. 997, 683 P.2d 931, 936 (1984). In accordance with this principle, the term "good cause" has been held to mean a substantial reason that affords a legal excuse, or a reason which is in good faith and is not arbitrary, frivolous, or irrelevant. Allen v. Lewis-Clark State College, 670 P.2d 854, 862-63 (Idaho 1983); School Committee of Forborough v. Koski, 391 N.E.2d 708, 709 (Mass. 1979).

In Hoagland, *supra*, the Montana Supreme Court observed that automatic reelection may not apply to a tenured teacher who becomes legally incapacitated by such reasons as "mental incompetence, loss of certificate to teach, loss of citizenship by conviction of crime or otherwise, the nepotism statute, or any other circumstance or law disqualifying her for service." (Emphasis added.) Hoagland, 151 P.2d at 170.

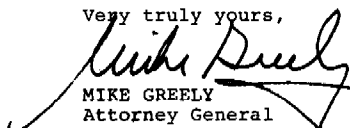
The nepotism statutes afford a legal basis for termination. Their purpose is not arbitrary, frivolous,

or irrelevant. Therefore, when the rehiring of a tenured teacher would conflict with the nepotism laws, the nepotism laws constitute good cause for not renewing the teacher's contract.

THEREFORE, IT IS MY OPINION:

1. The nepotism statutes, §§ 2-2-301 to 304, MCA, prohibit the rehiring of a tenured teacher where the teacher is within one of the prohibited relationships to a member of the school district board of trustees.
2. The 1985 amendments to the Human Rights Act and the Governmental Code of Fair Practices, §§ 49-2-303(3) and 49-3-201(5), MCA, overruled 39 Op. Att'y Gen. No. 67 (1982), insofar as it holds that the nepotism law does not apply to relationships by affinity.
3. 34 Op. Att'y Gen. No. 3 (1971) is overruled insofar as it is inconsistent with this opinion.

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.
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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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The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Procedure Act for inclusion in the ARM. The ARM is updated through December 31, 1985. This table includes those rules adopted during the period January 1, 1986 through March 31, 1986, and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through December 31, 1985, this table and the table of contents of this issue of the MAR.

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