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**MONTANA  
ADMINISTRATIVE  
REGISTER**

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1993 ISSUE NO. 5  
MARCH 11, 1993  
PAGES 325-358



MAR 1 1993

## MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 5

OF MONTANA

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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

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BEFORE THE BOARD OF LANDSCAPE ARCHITECTS  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PROPOSED AMENDMENT  
amendment of a rule pertaining ) OF 8.24.409 FEE SCHEDULE  
to fees )

NO PUBLIC HEARING CONTEMPLATED

TO:

1. On April 10, 1993, the Board of Landscape Architects proposes to amend the above-stated rules.

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

"8.24.409 FEE SCHEDULE (1) through (3)(b) will remain the same.

(c) Examination - Test 1	<del>15.00</del>	<u>19.00</u>
Test 2	<del>20.00</del>	<u>24.00</u>
Test 3	<del>65.00</del>	<u>70.00</u>
Test 4	<del>60.00</del>	<u>65.00</u>
Test 5	<del>60.00</del>	<u>85.00</u>
Test 6	<del>70.00</del>	<u>75.00</u>
Test 7	<del>35.00</del>	<u>37.00</u>

(d) through (4) will remain the same."

Auth: Sec. 37-1-134, 37-66-202, MCA; IMP, Sec. 37-1-134, 37-66-202, 37-66-305, 37-66-307, MCA

**REASON:** This amendment is necessary to make fees commensurate with examination costs per section charged by the Council on Landscape Architectural Registration Boards.

3. Interested persons may present their data, views or arguments concerning the proposed amendment in writing to the Board of Landscape Architects, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., April 8, 1993.

4. If a person who is directly affected by the proposed amendment wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Landscape Architects, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., April 8, 1993.

5. If the Board receives requests for a public hearing on the proposed amendment from either 10 percent 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 hearing will be held

at a later date. Notice of the hearing will be published in the Montana Administrative Register.

BOARD OF LANDSCAPE ARCHITECTS  
BRUCE LUTZ, CHAIRMAN

BY: Annie M. Bartos  
ANNIE M. BARTOS, CHIEF COUNSEL  
DEPARTMENT OF COMMERCE

Annie M. Bartos  
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, March 1, 1993.

BEFORE THE BOARD OF OUTFITTERS  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PROPOSED AMENDMENT  
amendment of a rule pertaining ) OF 8.39.502 LICENSURE--  
to outfitter qualifications ) OUTFITTER QUALIFICATIONS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On April 10, 1993, the Board of Outfitters proposes to amend the above-stated rule.

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

"8.39.502 LICENSURE--OUTFITTER QUALIFICATIONS

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

(5) The board may waive the experience requirement of an applicant for an outfitter license provided that:

(a) the applicant owns an outfitting business;

(b) the business has previously had an approved operations plan on file with the board; and

(c) the applicant has worked with a properly licensed outfitter as a licensed guide in operating the business owned by the applicant for not less than twelve months."

Auth: Sec. 37-1-131, 37-47-201, MCA; IMP, Sec. 37-47-101, 37-47-201, 37-47-301, 37-47-302, 37-47-307, 37-47-308, MCA

**REASON:** This rule change needs to be enacted to clarify the board's intent that the buyer-applicant gain relevant experience as a licensed guide before becoming licensed as an outfitter. Under the current language, this intent is not as clear as the board would like.

3. Interested persons may present their data, views or arguments concerning the proposed amendment in writing to the Board of Outfitters, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., April 8, 1993.

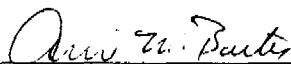
4. If a person who is directly affected by the proposed amendment wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Outfitters, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., April 8, 1993.

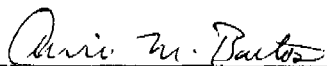
5. If the Board receives requests for a public hearing on the proposed amendment from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendment, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision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

members who will be directly affected, a 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 1 based on the 10 licensed guides in Montana who applied for licensure as an outfitter under subsection (5) in the last year.

BOARD OF OUTFITTERS  
IRVING L. "MAX" CHASE, CHAIRMAN

BY:

  
ANNIE M. BARTOS, CHIEF COUNSEL

  
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, March 1, 1993.

BEFORE THE BOARD OF MILK CONTROL  
OF THE STATE OF MONTANA

In the matter of proposed ) NOTICE OF PUBLIC HEARING  
amendments of rule 8.86.301 )  
as it relates to class I )  
producer prices and inter- )  
plant hauling rates ) DOCKET #16-93

TO: ALL LICENSEES UNDER THE MONTANA MILK CONTROL ACT  
(SECTION 81-23-101, MCA, AND FOLLOWING), AND ALL INTERESTED  
PERSONS:

1. On April 13, 1993, at 9:00 a.m. a public hearing  
will be held in the Dept. of Transportation auditorium, 2701  
Prospect Avenue, Helena, Montana to consider amendments of ARM  
8.86.301, sections (9) and (6)(a).

2. The rule proposed to be amended by Equity Supply Co.  
provides as follows: (text of present rule with matter to be  
stricken interlined and new matter added, then underlined)

"8.86.301 PRICING RULES

(1)-(8) remains the same.

(9) Freight allowances and handling charges for bulk  
milk involved in inter-plant transfers.

(a) The following maximum freight allowances may be  
charged producers of a licensed distributor or dealer, whose  
plant is located within Montana, on transfers of bulk milk, a  
major portion of which is used class I, between distributors  
situated more than twenty-five (25) road miles apart,  
regardless of the state where the receiving plant:

<u>DISTANCE</u>	<u>MAXIMUM FREIGHT ALLOWANCE</u>	
25 to 50 miles	\$ .25	\$ .45
51 to 75 miles	.40	.70
76 to 100 miles	.50	.90
101 to 150 miles	.64	1.15
151 to 200 miles	.85	1.50
201 to 250 miles	1.06	1.85
251 to 300 miles	1.28	2.25
301 to 350 miles	1.49	2.60

(10)-(14)(b) remains the same."

AUTH: 81-23-302, MCA

IMP: 81-23-302, MCA



3. The amendment of ARM 8.86.301(9) is necessary because the rule as promulgated is presently in violation of section 81-23-102(1)(k), MCA, which provides that it is the public policy of this state to insure and guarantee a reasonable profit to distributors of milk within the state. The rule as it exists now affects both the supply and quality of milk to the detriment of and against the best interest of the citizens of this state, whose health and well-being are being vitally affected adversely.

4. The rule proposed to be amended by Meadow Gold Dairies Inc provides as follows: (text of present rule with matter to be stricken interlined and new matter added, then underlined)

"8.86.301 PRICING RULES

(1)-(5) remains the same.

(6) Formula for fixing class I price at the producer and all resale levels.

(a) The minimum prices which shall be paid to producers by distributors in the state of Montana shall be calculated by either applying the flexible economic formula described below or the Minnesota-Wisconsin series plus ~~three dollars (\$3.00)~~ two dollars and ninety-three cents (\$2.93) whichever price is lower. The flexible economic formula utilizes a November 1969 base equalling 100, an interval of 4.5 and consists of seven (7) factors. The factors and their assigned weights are as follows:

	<u>FACTOR</u>	<u>WEIGHT</u>	<u>CONVERSION FACTOR</u>
(i)	Unemployment US (6.67 (3.8 - C) + 100) .05	5%	
(ii)	Unemployment MT. (6.67 (6.1 - C) + 100) .10	10%	
*(iii)	Weekly Wages - Total private (Revised and seasonally adjusted)	15%	.13297873
(iv)	Prices Received by Farmers - MT. ('47 - '49 = 100)	15%	.22960139
(v)	Mixed Dairy Feed	20%	.32258065
(vi)	Alfalfa Hay	12%	.48000000
(vii)	Prices Paid by Farmers - US ( '67 = 100)	23%	.41990335
		<u>100%</u>	

\*Note: The reported revised weekly wage - total private is seasonally adjusted by dividing each months revised figures by the following factors: Jan. - .9867; Feb. - .9832; March - .9809; April - .9822; May - .9911; June - 1.0053; July - 1.0165; August - 1.0261; Sept. - 1.0136; Oct. - 1.0192; Nov. -

1.0047; Dec. - .9905.

The following table will be used in computing producer prices:

**TABLE I**

Producer price determination using above formula with November, 1969 - 100 and an interval - 4.5

<u>FORMULA INDEX</u>	<u>PRICE PER CWT</u>	
201.5 - 205.1	<del>\$12.06</del>	\$12.79
206.0 - 209.6	<del>13.09</del>	13.02
210.5 - 214.1	<del>13.32</del>	13.25
215.0 - 218.6	<del>13.55</del>	13.48
219.5 - 223.1	<del>13.78</del>	13.71
224.0 - 227.6	<del>14.01</del>	13.94
228.5 - 232.1	<del>14.24</del>	14.17
233.0 - 236.6	<del>14.47</del>	14.40
237.5 - 241.1	<del>14.70</del>	14.63
242.0 - 245.6	<del>14.93</del>	14.86
246.5 - 250.1	<del>15.16</del>	15.09
251.0 - 254.6	<del>15.39</del>	15.32
255.5 - 259.1	<del>15.62</del>	15.55
260.0 - 263.6	<del>15.85</del>	15.78
264.5 - 268.1	<del>16.08</del>	16.01
269.0 - 272.6	<del>16.31</del>	16.24
273.5 - 277.1	<del>16.54</del>	16.47
278.0 - 281.6	<del>16.77</del>	16.70
282.5 - 286.1	<del>17.00</del>	16.93
287.0 - 290.6	<del>17.23</del>	17.16

(i)-(14)(b) remains the same."

AUTH: 81-23-302, MCA

IMP: 82-23-302, MCA

5. The amendment of ARM 8.86.301(6) (a) is necessary because economic market forces, specifically prices in adjacent and neighboring areas, justify a reduction in class I producer prices in order to induce processors to utilize Montana dairy products for sale in other states.

6. The Meadow Gold Dairy petitioner does further request that the reduction hereby proposed apply only to the producer price and that it not result in a corresponding decrease at the wholesale price level.

7. Persons known to have a possible interest in these two proposals are producers, distributors and consumers.

8. Specific factors which the board will take into consideration in these proceedings will include, but not be limited to the following:

a. The need, if any, for freight or transportation

charges to be deducted by distributors from producer prices for bulk milk.

b. Possible impact on the supply of milk in the state if the proposals are not adopted.

c. Possible impact of the proposed changes upon producers.

d. Per mile cost of over-the-road transportation of bulk milk.

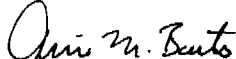
9. The board takes official notice that if the producer price had been reduced \$0.07/CWT and Montana milk had been used for all class I milk sold in Wyoming and Idaho by Montana processors, the quota price paid producers in January 1993 would have increased approximately an additional \$0.06/CWT.

10. Interested persons may participate and present data, views, either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Milk Control Bureau, 1520 East Sixth Avenue-Room 50, PO Box 200512, Helena, MT 59620-0512, no later than April 8, 1993.

11. Dennis Moreen, Attorney at Law, 208 N. Montana Avenue - Suite 101, Helena, MT 59601-3837, has been designated to preside over and conduct the hearing.

MONTANA BOARD OF MILK CONTROL  
MILTON J. OLSEN, Chairman

By:   
Andy J. Poole, Deputy Director  
Department of Commerce

By:   
Annie M. Bartos, Rule Reviewer  
Commerce Chief Legal Counsel

Certified to the Secretary of State March 1, 1993.

BEFORE THE DEPARTMENT OF  
FAMILY SERVICES OF THE  
STATE OF MONTANA

In the matter of the amendment )	NOTICE OF PROPOSED AMENDMENT
of Rules 11.14.103, 11.14.105, )	OF RULES 11.14.103,
11.14.109, 11.14.301, )	11.14.105, 11.14.109,
11.14.316, 11.14.401, and )	11.14.301, 11.14.316,
11.14.414, pertaining to day )	11.14.401, and 11.14.414
care facility licensing and )	PERTAINING TO DAY CARE
registration requirements. )	FACILITY LICENSING AND
	REGISTRATION REQUIREMENTS.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On May 27, 1993, the Department of Family Services proposes to amend Rules 11.14.103, 11.14.105, 11.14.109, 11.14.301, 11.14.316, 11.14.401 and 11.14.414 pertaining to day care facility licensing and registration requirements.

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

11.14.103 DAY CARE FACILITIES, REGISTRATION OR LICENSING APPLICATION Subsection (1) remains the same.

(2) Refer to ~~53-4-507~~ Section 52-2-722, MCA for applications for a license or registration certificate by Indians residing on Indian reservations.

(3) Before a license may be granted, the following shall be submitted by the applicant at the time of application and annually thereafter:

(a) a certificate of approval from the state fire marshal or his official designee indicating the fire safety rules have been met;

(b) a certificate from public health authorities certifying the satisfactory completion of training or a certificate of approval following inspection by local health authorities in accordance with ARM 16.24.406 through ARM 16.24.418;

(c) proof of current fire and liability insurance coverage for the day care center;

(d) a schedule of daily activities;

(e) a sample weekly menu;

(f) a ~~ESDDFS~~ 33 personal statement of health for licensure form for each caregiver, aide or volunteer who has direct contact with the children in care;

(g) list of current staff with ages, addresses and telephone numbers;

(h) names, addresses, and telephone numbers of three personal references not related to the applicant who have knowledge of the applicant's character, experience and ability; and

(i) Such other information which may be requested by the department to determine compliance with the licensing require-

ments.

(4) Before a registration certificate may be granted, the following shall be submitted by the applicant at the time of application and annually thereafter:

(a) A ~~CSD~~DFS 33 personal statement of health form for each caregiver;

(b) Names, addresses and telephone numbers of three personal references not related to the applicant(s) who have knowledge of the applicant's character, experience and ability;

(c) Proof of current fire and liability insurance coverage for the provision of day care in the home;

(d) Such other information which may be requested by the department to determine compliance with registration requirements. Subsections (5) and (6) remain the same.

AUTH: Section 52-2-704, MCA. IMP: Sections 52-2-702; 52-2-704, MCA.

**REASON:** The first change to ARM 11.14.103 is necessary as a result of the re-numbering of what was Section 53-4-507, MCA. This statute is now codified as Section 52-2-722, MCA. The amendments to ARM 11.14.103 also correct the references in the rule to the personal statement of health form used by the department. The name of the form has been changed from CSD 33 to DFS 33. Finally, the rule is changed to add a specific reference to the rules of the Montana Department of Health & Environmental Sciences covering health requirements for day care centers.

11.14.105 DAY CARE FACILITIES, REGISTRATION AND LICENSING PROCEDURES

Subsections (1) through (3) remain the same.

(4) A provisional registration certificate or license may be issued for a period of up to three months when the day care facility does not meet all of the requirements if the facility is attempting to comply. A second three month provisional certificate or license may be issued in special circumstances, at the discretion of the community social worker supervisor ~~III~~, the total not to exceed six months.

(a) A plan for full compliance with requirements for registration or licensure must be submitted by the day care facility to the department before issuance of a provisional certificate or license.

(b) Written notification of the granting of a provisional certificate or license by the department must be made to the licensee, registrant or applicant specifying the reason, duration and conditions for continuing or terminating the provisional certificate or license.

(c) The department may not issue a provisional license to any day care center which has not been approved by the state fire marshal and the department of health and environmental sciences.

(d) The department may not issue a provisional certificate or license to any day care facility which does not have current public liability insurance and fire insurance.

Subsections (5) through (11) remain the same.

AUTH: Section 52-2-704, MCA. IMP: Sections 52-2-702; 52-2-704, MCA.

**REASON:** The single change to ARM 11.14.105 is to the title of the department staff person who decides whether to allow for a second provisional license. The title for this job position has been changed to community social worker supervisor.

11.14.109 FAMILY DAY CARE HOME AND GROUP DAY CARE HOME REGISTRATION SERVICES PROVIDED Subsections (1) and (2) remain the same.

(3) The department will visit and inspect at least ~~15%~~ 20% of all registered family day care homes and group day care homes in each of the governor's planning regions annually.

Subsection (4) remains the same.

AUTH: Section 52-2-704, MCA. IMP: Sections 52-2-702; 52-2-704; 52-2-733, MCA.

**REASON:** The number of homes visited under ARM 11.14.109 is controlled by Section 52-2-733, MCA. In 1989, Section 52-2-733, MCA, was amended to require annual visits of 20% of the covered facilities. The department is proposing to amend the rule to bring it into compliance with the statute.

11.14.301 GROUP DAY CARE HOMES, PROVIDER RESPONSIBILITIES AND QUALIFICATIONS Subsections (1) through (3) remain the same.

(4) The providers and all persons responsible for children in the group day care home shall be physically, mentally and emotionally competent to care for children and free from communicable disease. The provider shall comply with tuberculosis testing requirements set out in ARM 16.28.1005. No provider, caregiver or other person present in the home while the children are in care shall:

(a) have been convicted of a crime involving harm to children or physical or sexual violence. Any provider, caregiver or other person charged with a crime involving children or physical or sexual violence and awaiting trial may not provide care or be present in the home pending the outcome of the trial;

(b) be currently diagnosed or receiving therapy or medication for a serious mental illness which might create a risk to children in care. Serious mental illness which might create a risk to children in care shall be determined by a licensed psychologist or psychiatrist. The department may request a provider, caregiver or other person to obtain a psychological or psychiatric evaluation at his or her own expense if there is reasonable cause to believe a serious mental illness exists;

(c) be chemically dependent upon drugs or alcohol. Chemical dependence on drugs or alcohol shall be determined by a licensed physician or certified chemical dependency counselor. The department may request the provider, caregiver or other person to obtain an evaluation at his or her own expense if there is reasonable cause to believe chemical dependence exists;

(d) have been named as a perpetrator in a substantiated report of child abuse or neglect.

(5) The provider shall report immediately any child suspected of being abused or neglected to the county ~~welfare~~ department office of the department of family services or the child abuse hotline, 1-800-332-6100.

Subsections (6) through (9) remain the same.

(10) It is strongly recommended that the provider have training in cardio-pulmonary resuscitation or ~~multi-media first aid~~ standard first aid and be familiar with standard Red Cross first aid procedure.

AUTH: Section 52-2-704, MCA. IMP: Sections 52-2-702; 52-2-704; 52-2-731, MCA.

**REASON:** The first change to ARM 11.14.301 is in response to a recent amendment to the rules of the Montana Department of Health and Environmental Sciences (DHES) concerning communicable disease control in all day care facilities. See 1992 MAR, issue no. 24, page 2744. DHES now requires testing of providers and other procedures for control of tuberculosis in day care facilities. ARM 11.14.301 should be changed to coordinate implementation of the requirements. The other changes up-date references: the county office of the department rather than the county welfare office is the proper office to call to report abuse and neglect, and multi-media first aid is now referred to as standard first aid.

11.14.316. GROUP DAY CARE HOMES, HEALTH CARE REQUIREMENTS

(1) All family members and ~~other~~ children residing in the facility ~~under 12 years of age~~ shall be immunized as required in regard to children in care under subsection (2) of this rule. ~~against tetanus, rubella, diphtheria, polio, measles, and, if under 5 years of age, whooping cough. Any child with a history of measles is considered immunized. Such~~ Medical and immunization history will be recorded on forms provided by the department and on file.

(2) No child shall be admitted to a group day care home except in an emergency before obtaining from the parent the ~~"Medical Record of Children Receiving Day Care"~~ a completed Montana Certificate of Immunization form (HES) 101 prescribed by the department stating documenting that he the child is free from communicable disease and that he the child has been immunized or is in the process of being immunized against diphtheria, pertussis, tetanus, poliomyelitis, measles (rubeola), rubella, mumps and haemophilus influenza type "b" if under 5 years of age. A pertussis vaccination is not required for a child 7 years of age or older and, if under five years of age, whooping cough. Any child with a history of measles is considered immunized. These requirements would be waived only in the case of a signed statement by a physician indicating that immunizations would be contra-indicated for health reasons. Such medical records shall be on file at the home for each child.

Subsections (3) through (16) remain the same.

AUTH: Section 52-2-704, MCA. IMP: Sections 52-2-702; 52-2-704; 52-2-735, MCA.

**REASON:** The amendments to ARM 11.14.316 are necessary to update immunization requirements and forms documenting fulfillment of immunization requirements. The amendments also add a requirement for vaccination against Haemophilus influenza type "b", and mumps, in addition to up-dating vaccine terminology. These amendments also conform the rule to the current requirements of Section 20-5-403, MCA, which govern schools and preschools. In addition, the amendment adding the requirement for immunization of Haemophilus influenza type "b" accords with 1991 amendments to Section 52-2-735, MCA. Finally, all family members of the provider, regardless of age, will be required to be immunized.

11.14.401 FAMILY DAY CARE HOMES, PROVIDER RESPONSIBILITIES AND QUALIFICATIONS Subsections (1) through (3) remain the same.

(4) The provider and all persons responsible for children in the day care home shall be physically, mentally and emotionally competent to care for children and free from communicable disease. The provider shall comply with tuberculosis testing requirements set out in ARM 16.28.1005. No provider, caregiver or other person present in the home while the children are in care shall:

(a) have been convicted of a crime involving children or physical or sexual violence. Any provider, caregiver or other person charged with a crime involving children or physical or sexual violence and awaiting trial may not provide care or be present in the home pending the outcome of the trial.

(b) be currently diagnosed or receiving therapy or medication for a serious mental illness which might create a risk to children in care. Serious mental illness which might create a risk to children in care shall be determined by a licensed psychologist or psychiatrist. The department may request a provider, caregiver or other person to obtain a psychological or psychiatric evaluation at his or her own expense if there is reasonable cause to believe a serious mental illness exists;

(c) be chemical dependent upon drugs or alcohol. Chemical dependency on drugs or alcohol shall be determined by a licensed physician or certified chemical dependency counselor. The department may request the provider, caregiver or other person to obtain an evaluation at his or her own expense if there is reasonable cause to believe chemical dependency exists.

(d) have been named as a perpetrator in a substantiated report of child abuse or neglect.

(5) The provider shall report immediately any child suspected of being abused or neglected to the county ~~welfare department~~ office of the department of family services or the child abuse hotline, 1-800-332-6100.

Subsections (6) through (9) remain the same.

(10) It is strongly recommended that the provider have training in cardio-pulmonary resuscitation or ~~multi-media first aid~~ standard first aid and be familiar with standard Red Cross first aid procedure.



REASON: See REASON section following proposed amendments to ARM 11.14.301.

AUTH: Section 52-2-704, MCA. IMP: Sections 52-2-702; 52-2-704, MCA.

11.14.414. FAMILY DAY CARE HOMES. HEALTH CARE REQUIREMENTS (1) All family members and other children residing in the facility ~~under 12 years of age~~ shall be immunized ~~as required in regard to children in care under subsection (2) of this rule.~~ ~~against rubella, tetanus, diphtheria, polio, measles, and, if under 5 years of age, whooping cough.~~ Any child with a history of measles is considered immunized. ~~Such medical and immunization history will be recorded on forms provided by the department and on file.~~

(2) No child shall be admitted to a family day care home except in an emergency before obtaining from the parent the ~~"Medical Record of Children Receiving Day Care" a completed Montana Certificate of Immunization form (HES) 101 prescribed by the department stating documenting that he the child is free from communicable disease and that he the child has been immunized or is in the process of being immunized against diphtheria, pertussis, tetanus, poliomyelitis, measles (rubeola), rubella, mumps and haemophilus influenza type "b" if under 5 years of age. A pertussis vaccination is not required for a child 7 years of age or older and, if under five years of age, whooping cough.~~ Any child with a history of measles is considered immunized. These requirements would be waived only in the case of a signed statement by a physician indicating that immunizations would be contra-indicated for health reasons. Such medical records shall be on file at the home for each child.

Subsections (3) through (9) remain the same.

REASON: See REASON section following proposed amendments to ARM 11.14.316.

AUTH: Section 52-2-704, MCA. IMP: Sections 52-2-702; 52-2-704; 52-2-735, MCA.

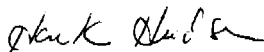
3. Interested persons may submit their data, views or arguments to the proposed amendment in writing to the Office of Legal Affairs, Department of Family Services, 48 North Last Chance Gulch, P.O. Box 8005, Helena, Montana 59604, no later than April 8, 1993.

4. If a person who is directly affected by the proposed amendment wishes to express data, views and arguments orally or in writing at a public hearing, that person must make a written request for a public hearing and submit such request, along with any written comments, to the Office of Legal Affairs, Department of Family Services, 48 North Last Chance Gulch, P.O. Box 8005, Helena, Montana 59604, no later than April 8, 1993.

5. If the Department of Family Services 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 are directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

DEPARTMENT OF FAMILY SERVICES



Hank Hudson, Director



John Melcher, Rule Reviewer

Certified to the Secretary of State, March 1, 1993.

BEFORE THE BOARD OF THE  
STATE COMPENSATION MUTUAL INSURANCE FUND  
OF THE STATE OF MONTANA

In the matter of the adoption ) NOTICE OF ADOPTION OF  
of amendments to rules ) AMENDMENTS OF RULES 2.55.324,  
pertaining to the ) 2.55.327, AND 2.55.402  
establishment of premium )  
rates.

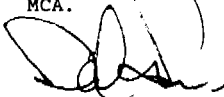
TO: All Interested Persons:

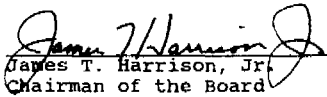
1. On January 14, 1993, the board published notice of public hearing on the proposed amendments of rules 2.55.324, 2.55.327, and 2.55.402 pertaining to the State Compensation Mutual Insurance Fund. The notice can be found on pages 1 through 5 of the 1993 Montana Administrative Register, Issue No. 1.


2. No comments or testimony concerning the rules were received.

3. The Board has adopted the rules as proposed.

4. The authority of the State Compensation Mutual Insurance Fund to adopt the proposed rules is based on sections 2-4-201, 2-3-103, and 39-71-2316, MCA and the rules implement sections 2-4-201, 2-3-103, 39-71-2311, 39-71-2316, MCA.

  
Dal Smilie, Chief Legal Counsel  
Rule Reviewer

  
James T. Harrison, Jr.  
Chairman of the Board

  
Nancy Butler, General Counsel  
Rule Reviewer

Certified to the Secretary of State March 1, 1993.

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

In the matter of the proposed	)	NOTICE OF ADOPTION OF
amendment of rules pertaining	)	AMENDMENTS TO RULES
to definitions, utilization	)	PERTAINING TO PHYSICIAN
plans, protocol, informed	)	ASSISTANTS-CERTIFIED
consent, prohibitions, super-	)	
vision; repeal of rules	)	
pertaining to prescriptions,	)	
allowable functions and revo-	)	
cation or suspension of approval;	)	
and adoption of new rules	)	
pertaining to prescribing/	)	
dispensing authority, scope of	)	
practice, termination and	)	
transfer and training of	)	
physician assistants-certified	)	

TO: All interested persons:

1. On December 24, 1992, the Board of Medical Examiners published a notice of public hearing on the proposed amendment of rules pertaining to definitions, utilization plans, protocol, informed consent, prohibitions, supervision; repeal of rules pertaining to prescriptions, allowable functions and revocation or suspension of approval; and adoption of new rules pertaining to prescribing/dispensing authority, scope of practice, termination and transfer and training of physician assistants, at page 2677, 1992 Montana Administrative Register, issue number 24. The hearing was held on January 13, 1993 at 9:00 a.m. in the downstairs conference room of the Department of Commerce Building, 1424 9th Avenue, Helena, Montana.

2. The Board has amended ARM 8.28.1501, 8.28.1502, 8.28.1503, 8.28.1504, 8.28.1507, 8.28.1510, 8.28.1512 and 8.28.1513; adopted new rules I (8.28.1516), II (8.28.1517), III (8.28.1518), and IV (8.28.1519); and repealed ARM 8.28.1509, 8.28.1511, 8.28.1514 and 8.28.1515 exactly as proposed. The Board amended ARM 8.28.5106 as proposed but with the following amendments:

"8.28.1506 UTILIZATION PLAN (1) through (1)(d) will remain the same as proposed.

(2) When a utilization plan describes remote site practice:

(a) the supervising physician and the physician assistant-certified must work together in direct contract for a minimum of two weeks before the physician assistant-certified delivers services in the remote site, EXCEPT IN THE CASE OF A LOCUM TENENS UTILIZATION PLAN; and

(b) the supervising physician must inspect the remote site, and review patient records and office procedures at least once every 30 days OR OTHER INTERVAL IN THE DISCRETION OF THE BOARD."

Auth: Sec. 37-20-201, MCA; IMP, Sec. 37-20-301, MCA

3. The Board has thoroughly considered all comments and testimony received. Those comments and the Board's responses thereto are as follows:

COMMENT: Comments were received endorsing the proposed amendments to ARM 8.28.1501, 8.28.1502, 8.28.1503, 8.28.1504 and 8.28.1507.

RESPONSE: The Board noted the comments.

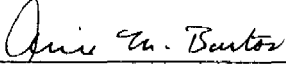
COMMENT: Comments were received which recommended additional amendments to Rule 8.28.1506 as follows: Add to subsection (2)(a) after the phrase "delivers services in the remote site" the language "except in the case of a locum tenens utilization plan." The comments noted that a requirement of a two week period of direct contact before a physician assistant-certified could take a two or three day locum tenens assignment would be so onerous and impractical that it would essentially cripple the ability of physician assistants to undertake locum tenens assignments.

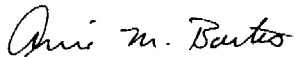
The comments also recommended that in subsection (2)(b), after the phrase "at least once every 30 days," there be added the language "or other interval in the discretion of the board." The comments noted that it would be onerous and impractical to require an on-site visit every thirty days for clinics in remote sites which were only open one or two days per week, and recommended that the board retain discretion to set on-site visits at intervals more suitable to the situation on a case by case basis.

RESPONSE: The Board accepts the reasoning and the language of the foregoing comments and has amended ARM 8.28.1506 as shown above.

BOARD OF MEDICAL EXAMINERS  
PETER L. BURLEIGH, PRESIDENT

By:

  
ANNIE M. BARTOS, CHIEF COUNSEL  
DEPARTMENT OF COMMERCE

  
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, March 1, 1993.

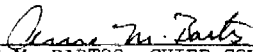
BEFORE THE BOARD OF OUTFITTERS  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

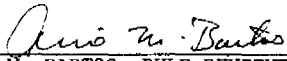
In the matter of the amendment ) NOTICE OF AMENDMENT OF  
of a rule pertaining to licen- ) 8.39.503 LICENSURE--  
sure--outfitter examination ) OUTFITTER EXAMINATION

TO: All Interested Persons:

1. On December 24, 1992, the Board of Outfitters published a notice of proposed amendment of the above-stated rule at page 2688, 1992 Montana Administrative Register, issue number 24.
2. The Board has amended the rule exactly as proposed.
3. No comments or testimony were received.

BOARD OF OUTFITTERS  
IRVING L. "MAX" CHASE, CHAIRMAN

BY:   
ANNIE M. BARTOS, CHIEF COUNSEL  
DEPARTMENT OF COMMERCE

  
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, March 1, 1993.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION  
OF THE STATE OF MONTANA

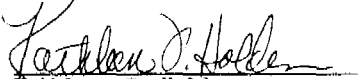
In the matter of the amend-	)	NOTICE OF AMENDMENT AND
ment and repeal of rules re-	)	REPEAL OF ARM 10.6.101
lating to school controversy	)	THROUGH 10.6.109; 10.6.113
contested cases rules of pro-	)	THROUGH 10.6.126
cedure	)	

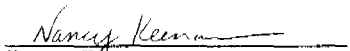
To: All Interested Persons

1. On September 24, 1992, the Superintendent of Public Instruction published notice of proposed amendment and repeal of the rules referenced above at page 2110 of the 1992 Montana Administrative Register, issue number 18.

2. No public hearing was held nor was one requested. On July 27, 1992, the Superintendent sent a draft of the proposed changes to all interested persons, including county superintendents, and some of the suggestions received were incorporated into the published notice referenced above. No written or oral comments were received after the published notice.

3. Based on the foregoing, the Superintendent of Public Instruction hereby amends and repeals the rules as proposed.

  
Kathleen F. Holden  
Rule Reviewer  
Office of Public Instruction

  
Nancy Keenan  
Superintendent  
Office of Public Instruction

Certified to the Secretary of State March 1, 1993.

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

In the matter of the                    ) NOTICE OF THE AMENDMENT OF  
amendment of rule 46.10.406        ) RULE 46.10.406 PERTAINING  
pertaining to AFDC resources        ) TO AFDC RESOURCES


TO: All Interested Persons

1. On January 28, 1993, the Department of Social and Rehabilitation Services published notice of the proposed amendment of rule 46.10.406 pertaining to AFDC resources at page 135 of the 1993 Montana Administrative Register, issue number 2.

2. The Department has amended rule 46.10.406 as proposed.

3. No written comments or testimony were received.

  
Rule Reviewer

  
Director, Social and Rehabilitation Services

Certified to the Secretary of State March 1, 1993.



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


In the matter of the	)	NOTICE OF THE AMENDMENT OF
amendment of rule 46.25.725	)	RULE 46.25.725 PERTAINING
pertaining to income for	)	TO INCOME FOR GENERAL
general relief assistance	)	RELIEF ASSISTANCE


TO: All Interested Persons

1. On January 28, 1993, the Department of Social and Rehabilitation Services published notice of the proposed amendment of rule 46.25.725 pertaining to income for general relief assistance at page 139 of the 1993 Montana Administrative Register, issue number 2.

2. The Department has amended rule 46.25.725 as proposed.

3. No written comments or testimony were received.

  
Rule Reviewer

  
Director, Social and Rehabilitation Services

Certified to the Secretary of State March 1, 1993.

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules, amendment or repeal of existing rules filed with the Secretary of State, except rules proposed by the Department of Revenue. Proposals of the Department of Revenue are reviewed by the Revenue Oversight Committee.

The Administrative Code 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<br>Subject<br>Matter          | 1. Consult ARM topical index.<br>Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute<br>Number and<br>Department | 2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers.   |

## ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through December 31, 1992. This table includes those rules adopted during the period January 1, 1993 through March 31, 1993 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, 1992, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1992 and 1993 Montana Administrative Registers.

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