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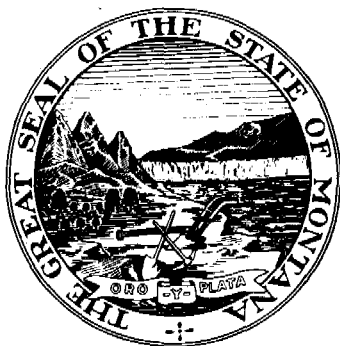
APR 08 1997

OF MONTANA

MONTANA ADMINISTRATIVE REGISTER

**DO NOT
CIRCULATE**

1997 ISSUE NO. 7
APRIL 7, 1997
PAGES 616-663



MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 7

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 PROPOSED
adoption of New Rule I) ADOPTION OF NEW RULE
pertaining to the use of)
pesticides in Alfalfa Seed)
Crops.)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On May 7, 1997, The Montana Department of Agriculture proposes to adopt the above stated new rule.

2. The proposed rule provides as follows:

NEW RULE I USE OF PESTICIDES ON PEST INFESTATIONS IN ALFALFA SEED CROPS (1) The pesticide Pirimor 50-DF (pirimicarb) is permitted for use on alfalfa seed as specified under the authority of Section 3(c)(7)(C) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended. Additionally, several pesticides registered for use in Montana under Section 24(c) of FIFRA for use on alfalfa seed only are covered by this rule. The use of these pesticide products is not permitted on fields producing alfalfa for livestock feed and no portion of the treated field, including seed, seed screening, hay forage or stubble, may be used for human food or animal feed.

(2) The current year's treated alfalfa seed crop may not be used or distributed for animal feed purposes such as cut for hay, green chop, pellets, meal, or stubble; nor can grazing take place on the current year's treated alfalfa seed crops.

(3) Screenings or other crop byproducts shall not enter feed channels by distribution and/or direct use. All alfalfa seed screenings and/or crop byproducts that were treated with Pirimor 50-DF or any of the FIFRA Section 24(c) pesticides for alfalfa seed production only must be immediately removed from the feed market, and disposed of in such a manner that they cannot be distributed or used for feed or food purposes. The alfalfa seed conditioner shall keep records of all alfalfa seed screenings and their disposal (site, method, amount and type of material, date of shipment) and shall furnish these records to the department upon request. Treated alfalfa seed must not be used or distributed for human food (sprouting).

(4) All alfalfa seed treated with Pirimor 50-DF or any of the FIFRA Section 24(c) pesticides registered for use in alfalfa seed production only shall be tagged at processing plants and such tag shall state **NOT FOR HUMAN CONSUMPTION AND/OR ANIMAL FEED**. It shall be the grower's responsibility to notify the processing plants of any seed crops treated with Pirimor 50-DF or any of the FIFRA Section 24(c) pesticides for use in alfalfa seed production only.

(5) All usage, in addition to the requirements of this rule, shall be in compliance with the Pirimor 50-DF label or the FIFRA Section 24(c) labels for the pesticides registered for use in alfalfa seed production only.

(6) Producers desiring to purchase and use Pirimor 50-DF or any of the FIFRA Section 24(c) pesticides for use in alfalfa seed production only will be required at the time of purchase to read and sign a form. Such form will acknowledge their receipt of the pesticide and secure their agreement to use the compound only as permitted by this rule and the pesticide label. The form will further secure their agreement that they will not allow any treated alfalfa seed, stock, screenings, or other similar material described above to enter into any human food or animal feed channels. The forms will be maintained in the Department of Agriculture office, Agricultural Sciences Division, P.O. Box 200201, Helena, MT 59620-0201, (406)444-5400. The department will make such forms available to the appropriate pesticide manufacturers, dealers, and growers through the Montana Alfalfa Seed Growers Association.

AUTH: 80-8-105, MCA

IMP: 80-8-105, MCA

REASON: Montana Alfalfa Seed Growers use a variety of pesticides, including herbicides and insecticides, to control pest problems in alfalfa seed production. These pesticides are registered for alfalfa seed production on the condition that the alfalfa seed be used for non-food uses only. Upon purchase of pesticides to be used for pest control in seed alfalfa, the user must sign a non-food crop status agreement with the Montana Department of Agriculture. In the agreement the user agrees not to: (1) feed the screenings from the alfalfa seed crop to livestock; (2) allow livestock to graze the crop or stubble within the calendar year of product application; (3) use or sell the seed for sprouting; (4) use the seed crop in any manner that might allow treated foliage or seed to enter into or be used for food or feed. In addition, all alfalfa crops treated with a pesticide(s) for alfalfa seed production only must be tagged or otherwise clearly marked: "For Non-Food Use Only". This requirement applies to alfalfa hay being shipped elsewhere for cleaning or for containers of cleaned seed.

This process was implemented to ensure that alfalfa crops grown for seed had pesticides available that are necessary for production of the crop and to prevent the use of seed or plant parts for food or forage.

The production of seed alfalfa would not be a viable industry in Montana without the use of certain pesticides.

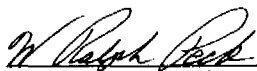
Recently, the U.S. Environment Protection Agency has required that this process be formalized by administrative rule for pesticides to be continued to be used to control pests in alfalfa grown for seed only.

3. Interested persons may submit their written data, views, or arguments concerning this proposed adoption to

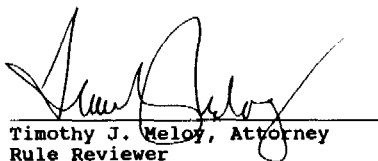
Gary Gingery, Administrator, Department of Agriculture, Agricultural Sciences Division, P.O. Box 200201, Helena, MT 59620-0201, Phone (406)444-2944, FAX (406)444-5409, or E-Mail: AGR@MT.GOV, no later than May 5, 1997.

4. If a party who is directly affected by the proposed adoption wishes to express his/her data, views, and arguments orally or in writing at a public hearing, he/she must make written request for a hearing and submit this request along with any written comments he/she has to Gary Gingery, Administrator, Department of Agriculture, Agricultural Sciences Division, P.O. Box 200201, Helena, MT 59620-0201, Phone (406)444-2944, FAX (406)444-5409, or E-Mail: AGR@MT.GOV no later than May 5, 1997.

5. If the department receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not fewer 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 five persons based on the 44 Alfalfa Seed Growers listed in the 1996 Montana Agricultural Buyers Directory.



W. Ralph Peck, Director
DEPARTMENT OF AGRICULTURE



Timothy J. Meloy, Attorney
Rule Reviewer

Certified to the Secretary of State March 21, 1997

BEFORE THE TRAVEL PROMOTION AND DEVELOPMENT DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING
adoption of a rule pertaining) ON THE ADOPTION OF NEW
to the Tourism Advisory) RULE I TOURISM ADVISORY
Council) COUNCIL

TO: All Interested Persons:

1. On April 28, 1997, at 1:00 p.m., a public hearing will be held in the upstairs conference room of the Department of Commerce, 1424 Ninth Avenue, Helena, Montana, to consider the adoption of new rule I pertaining to the Tourism Advisory Council.

2. The proposed new rule will read as follows:

"I TOURISM ADVISORY COUNCIL (1) The tourism advisory council is responsible for the distribution of funds to regional nonprofit tourism corporations for tourism promotion and to nonprofit convention and visitors bureaus in accordance with Title 15, chapter 65, part 1, MCA.

(2) The tourism advisory council hereby incorporates by reference the guide entitled "Regulations and Procedures for Regional/CVB Tourism Organizations, February 1997", setting forth the regulations and procedures pertaining to the distribution of accommodation tax revenue. The guide is available for public inspection during normal business hours at the Montana Tourism Development and Promotion Division, Department of Commerce, 1424 Ninth Avenue, Helena, Montana, 59620. Copies of the guide are available on request.

(3) Distribution of funds to regional nonprofit tourism corporations and to nonprofit convention and visitors bureaus is contingent upon compliance with the "Regulations and Procedures for Regional/CVB Tourism Organizations, February 1997".

Auth: Sec. 2-15-1816, MCA; IMP, Sec. 2-15-1816, MCA

REASON: This rule is necessary because it implements section 2-15-1816 of the Montana Code which authorizes the Travel Advisory council to "oversee distribution of funds to regional nonprofit tourism corporations for tourism promotion and to nonprofit convention and visitors bureaus." The rule sets forth standards used to select, monitor, and critique regional nonprofit tourism corporations and nonprofit convention and visitors bureaus. The rule also sets forth the criteria for project funding eligibility, marketing cost eligibility, administrative cost eligibility, and the reporting requirements for regional nonprofit tourism corporations and nonprofit convention and visitors bureaus.

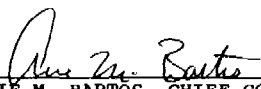
3. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Travel Promotion and Development Division, Department of Commerce, 1424 Ninth Avenue, Helena, Montana 59620, to be received no later than 5:00 p.m., May 5, 1997.


4. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you wish to request an accommodation contact the Department no later than 5:00 p.m., April 14, 1997, to advise us of the nature of the accommodation that you need. Please contact Greg Overturf, Department of Commerce, 1424 Ninth Avenue, Helena, Montana 59620; telephone (406) 444-3553, Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-2903. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Greg Overturf.

5. Greg Overturf, attorney, has been designated to preside over and conduct this hearing.

TRAVEL PROMOTION AND DEVELOPMENT DIVISION

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, March 24, 1997.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PUBLIC HEARING
amendment of Montana's	)	ON PROPOSED AMENDMENT OF
prevailing wage rates,	)	PREVAILING WAGE RATES-
pursuant to ARM 24.16.9007	)	SERVICE OCCUPATIONS AND
	)	CERTAIN BRICKLAYER RATES

TO ALL INTERESTED PERSONS:

1. On May 2, 1997, at 10:00 a.m., a public hearing will be held in Room 104 of the Walt Sullivan Building (Department of Labor and Industry Building), 1327 Lockey, Helena, Montana, to consider proposed amendments to the prevailing wage rate rule, ARM 24.16.9007. The Department proposes to incorporate by reference the 1997 service occupation rates. The Department also proposes to amend the 1996 building construction occupation rates by correcting errors in the District 1 and 2 rates for bricklayers, stonemasons, tile setters and bricklayer forepersons.

The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the Department by not later than 5:00 p.m., April 28, 1997, to advise us of the nature of the accommodation that you need. Please contact the Research and Analysis Bureau, Job Service Division, Attn: Ms. Kate Kahle, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-3239; TTD (406) 444-0532; fax (406) 444-2638.

2. The Department hereby proposes to adopt and incorporate by reference the 1997 edition of "State of Montana Prevailing Wage Rates-Service Occupations" which sets forth the service occupation prevailing wage rates. A copy of the proposed prevailing wage rates may be obtained from Kate Kahle, Research and Analysis Bureau, Job Service Division, Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624-1728. AUTH: 18-2-431 and 2-4-307, MCA
IMP: 18-2-401 through 18-2-432, MCA

REASON: Pursuant to 18-2-402 and 18-2-411(5), MCA, the Department is updating the standard prevailing wages for service occupations. The Department updates the prevailing wages for these service occupations every two years. Prevailing wages for service occupations were last updated in 1995. Use of prevailing wage rates is required in public contracts by 18-2-422, MCA.

3. The Department hereby proposes to amend the rates contained in the 1996 edition of "State of Montana Prevailing Wage Rates-Building Construction" for specific occupations in District 1 and 2 only, as follows: (new material underlined,

deleted material stricken)

Tile Setter (page 6)	Dist. 1	Dist. 1	Dist. 2	Dist. 2
Prevailing Wage Rate	\$21.30	<u>\$17.31</u>	\$21.30	<u>\$17.31</u>
Health/Welfare	1.50	<u>2.50</u>	1.50	<u>2.50</u>
Pension	.50	<u>2.00</u>	.50	<u>2.00</u>
Vacation	1.50	<u>.00</u>	1.50	<u>.00</u>
Training	.27	<u>.00</u>	.27	<u>.00</u>

Travel Matrix (Dist. 1 and 2)

0-25 miles	free zone	<u>free zone</u>
25-34 miles	\$ 5.00/day	<u>\$ 6.00/day</u>
35-59 miles	\$10.00/day	<u>\$12.00/day</u>
60-89 miles	\$20.00/day	<u>\$24.00/day</u>
over 90 miles	\$25.00/day	<u>\$30.00/day</u>

Bricklayer

Foreperson (page 7)	Dist. 1	Dist. 1	Dist. 2	Dist. 2
Prevailing Wage Rate	\$21.30	<u>\$18.30</u>	\$21.30	<u>\$18.30</u>
Health/Welfare	1.50	<u>2.50</u>	1.50	<u>2.50</u>
Pension	.50	<u>2.00</u>	.50	<u>2.00</u>
Vacation	1.50	<u>.00</u>	1.50	<u>.00</u>
Training	.27	<u>.00</u>	.27	<u>.00</u>

Travel Matrix (Dist. 1 and 2)

0-25 miles	free zone	<u>free zone</u>
25-34 miles	\$ 5.00/day	<u>\$ 6.00/day</u>
35-59 miles	\$10.00/day	<u>\$12.00/day</u>
60-89 miles	\$20.00/day	<u>\$24.00/day</u>
over 90 miles	\$25.00/day	<u>\$30.00/day</u>

Bricklayer (page 8)	Dist. 1	Dist. 1	Dist. 2	Dist. 2
Prevailing Wage Rate	\$21.30	<u>\$17.31</u>	\$21.30	<u>\$17.31</u>
Health/Welfare	1.50	<u>2.50</u>	1.50	<u>2.50</u>
Pension	.50	<u>2.00</u>	.50	<u>2.00</u>
Vacation	1.50	<u>.00</u>	1.50	<u>.00</u>
Training	.27	<u>.00</u>	.27	<u>.00</u>

Travel Matrix (Dist. 1 and 2)

0-25 miles	free zone	<u>free zone</u>
25-34 miles	\$ 5.00/day	<u>\$ 6.00/day</u>
35-59 miles	\$10.00/day	<u>\$12.00/day</u>
60-89 miles	\$20.00/day	<u>\$24.00/day</u>
over 90 miles	\$25.00/day	<u>\$30.00/day</u>

Stonemason (page 9)	Dist. 1	Dist. 1	Dist. 2	Dist. 2
Prevailing Wage Rate	\$21.30	<u>\$17.31</u>	\$21.30	<u>\$17.31</u>
Health/Welfare	1.50	<u>2.50</u>	1.50	<u>2.50</u>
Pension	.50	<u>2.00</u>	.50	<u>2.00</u>
Vacation	1.50	<u>.00</u>	1.50	<u>.00</u>
Training	.27	<u>.00</u>	.27	<u>.00</u>

Travel Matrix (Dist. 1 and 2)

0-25 miles	free zone	<u>free zone</u>
25-34 miles	\$5.00/day	<u>\$6.00/day</u>
35-59 miles	\$10.00/day	<u>\$12.00/day</u>
60-89 miles	\$20.00/day	<u>\$24.00/day</u>
over 90 miles	\$25.00/day	<u>\$30.00/day</u>

AUTH: 18-2-431 and 2-4-307, MCA
IMP: 18-2-401 through 18-2-432, MCA

REASON: It has recently been brought to the attention of the Department that the 1996 bricklayer, tile setter, stonemason and bricklayer foreperson rates in District 1 and 2 were set at a rate higher than the collectively bargained rate. The Department has obtained a copy of the collective bargaining agreement applicable to District 1 and 2 for those occupations, and the rates are being adjusted so as to comply with the requirements of 18-2-402(3), MCA.

4. Interested parties may submit their data, views, or comments, either orally or in writing, at the hearing. Written data, views, or comments may also be submitted to:

Kate Kahle
Research and Analysis Bureau
Job Service Division
Department of Labor and Industry
P.O. Box 1728
Helena, Montana 59624-1728

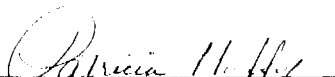
so that they are received by not later than 5:00 p.m., May 9, 1997.

5. The Department proposes to make these amendments effective July 1, 1997.

6. The Hearings Bureau of the Legal/Centralized Services Division of the Department has been designated to preside over and conduct the hearing.



David A. Scott
Rule Reviewer



Patricia Haffey, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: March 24, 1997.

BEFORE THE DEPARTMENT
OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the Matter of Proposed	)	NOTICE OF PROPOSED
Amendment to a Rule Pertaining	)	AMENDMENT TO ARM
to Motor Carrier Insurance	)	38.3.706.
Endorsements (applicable to)	
Large Motor Coaches).	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons

1. On May 9, 1997, the Department of Public Service Regulation proposes to adopt the amendment to the rule identified in the above title and described in the following paragraphs, related to motor carrier insurance endorsements and minimum required liability coverage.

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

38.3.706 ENDORSEMENTS (1) Remains the same.

(2) The following terms, conditions and requirements are hereby deemed a substantive part of all policies issued, and are hereby incorporated therein:

(a) Cargo insurance (Endorsement MV2) shall be issued in an amount no less than:

(i) \$1,000 for cargo transported in a vehicle designed, equipped, and primarily intended for transportation of 7 passengers or less or a vehicle of manufacturer's GVW rating of 10,000 pounds or less designed, equipped, and primarily intended for transportation of cargo;

(ii) \$10,000 for all other vehicles.

(b) Casualty (liability) insurance (Endorsement MV4) shall be issued in an amount no less than:

(i) \$100,000 for 7 passengers or less;

(ii) \$500,000 for 8 to 15 passengers;

(iii) \$750,000 for 16 to 30 passengers;

(iv) ~~\$1,000,000~~ \$5,000,000 for 31 passengers or more;

(v) except any motor carrier, other than as provided in (b)(i) above, operating under a certificate of public convenience and necessity authorizing passenger operations only within a particular city or 10 mile radius thereof is required to carry a minimum of \$500,000 insurance regardless of size of vehicle used;

(vi) \$100,000 for transportation of nonhazardous freight in a vehicle designed, equipped and primarily intended for transportation of 7 passengers or less or a vehicle of manufacturer's GVW rating of 10,000 pounds or less designed, equipped, and primarily intended for transportation of cargo;

(vii) \$500,000 for transportation of nonhazardous freight for all other vehicles;

(viii) the federal department of transportation minimum insurance limits for hazardous materials freight, as hazardous materials is defined by that department.

(3) Remains the same.

Auth: Sec. 69-12-201, MCA IMP, Sec. 69-12-402, MCA

3. Rationale: This amendment is reasonably necessary to ensure that the public, including motor coach passengers, is adequately protected through increased required minimum liability coverage. The existing minimum coverage (\$1,000,000) has become inadequate. The proposed minimum coverage (\$5,000,000) is identical to the federal requirement applicable to large motor coaches. 49 CFR § 387.33.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing (original and 10 copies) to Martin Jacobson, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601 no later than May 9, 1997.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has (original and 10 copies) to Martin Jacobson, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, no later than May 9, 1997.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be in excess of 25 persons based on the number of carriers and passengers affected.

7. The Montana Consumer Counsel, 34 West Sixth Avenue, P.O. Box 201703, Helena, Montana 59620-1703, (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.



DAVE FISHER, Chairman

CERTIFIED TO THE SECRETARY OF STATE MARCH 24, 1997.



Reviewed By Robin A. McHugh

BEFORE THE BOARD OF NURSING
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT, REPEAL
of rules pertaining to conduct) AND ADOPTION OF RULES PER-
of nurses, survey and approval) TAINING TO THE PRACTICE OF
of schools, annual report,) NURSING
definitions, registered nurse's)
responsibility to the nursing)
process, and the repeal and)
adoption of rules pertaining to)
standards for schools of nursing)
and standards for IV therapy)
and charge nurse for licensed)
practical nurses)

TO: All Interested Persons:

1. On October 24, 1996, the Board of Nursing published a notice of public hearing on the proposed amendment, repeal and adoption of rules pertaining to the practice of nursing at page 2638, 1996 Montana Administrative Register, issue number 20.

2. The Board has amended ARM 8.32.413, 8.32.806 and 8.32.1401; repealed ARM 8.32.805, 8.32.901 through 8.32.907, 8.32.909 through 8.32.911, 8.32.913 and 8.32.1001 through 8.32.1010; and adopted new rules I (8.32.1101) through V (8.32.1105), VIII (8.32.1108), IX (8.32.1109), XII (8.32.1112) through XVI (8.32.1116) and XVII (8.32.1117) exactly as proposed. The Board did not adopt proposed new rule XVIII. The Board amended ARM 8.32.802 and 8.32.1403 and adopted new rule VI (8.32.1106), VII (8.32.1107), X (8.32.1110), XI (8.32.1111), XIX (8.32.1408) and XX (8.32.1409) as proposed, but with the following changes: (authority and implementing sections remain the same as proposed)

"8.32.802 SURVEY AND APPROVAL OF SCHOOLS (1) through (3) will remain the same as proposed.

(4) Prior to a site visit a school will submit a self-evaluation narrative report to the board which provides evidence of compliance with the appropriate nursing education standards. The school will forward six copies of the self-evaluation narrative report and six copies of the school catalog to the board office by ~~January~~ February 1 of the year in which a program visit is scheduled.

(5) through (11) will remain the same as proposed."

"8.32.1106 CURRICULUM - SPECIFIC TO ASSOCIATE DEGREE

(1) through (1)(b)(v) will remain the same as proposed.

(c) As a member of the discipline of nursing the associate degree nurse must demonstrate basic knowledge in the following:

(i) through (iv) will remain the same as proposed.

(v) ~~introductory knowledge~~ of health care change and nursing research.

(2) will remain the same as proposed."

"8.32.1107 CURRICULUM REQUIREMENTS FOR PRACTICAL NURSING PROGRAMS (1) through (6) will remain the same as proposed.

(7) The practical nurse student shall successfully complete coursework related to the role of charge nurse in the following areas to prepare the graduate practical nurse to serve as a charge nurse, ~~upon meeting qualifications provided by ARM 8.32.1408:~~

- (a) through (e) will remain the same as proposed.
- (f) prioritization; ~~and~~
- (g) organization; ~~and~~
- (h) delivery of long term care.
- (8) through (10) will remain the same as proposed."

"8.32.1110 PROGRAM DIRECTOR (1) Baccalaureate and associate degree programs must be administered by a full-time program director who shall ~~devote appropriate time to the task of administration and~~ be responsible for program administration. ~~The director shall also be responsible for~~ preparation, presentation and administration of the budget of the nursing program. The directors of the professional programs shall possess the following licensure and experience qualifications:

(a) through (5) will remain the same as proposed."

"8.32.1403 STANDARDS RELATED TO THE REGISTERED NURSE'S RESPONSIBILITY TO APPLY THE NURSING PROCESS The registered nurse shall:

- (1) and (1)(a) will remain the same as proposed.
- (i) through (x) will remain the same as proposed, but the ending commas will be changed to semi-colons.
- (xi) will remain the same as proposed.
- (1)(b) through (4)(a) will remain the same as proposed.
- (i) through (iii) will remain the same as proposed, but the ending commas will be changed to semi-colons.
- (4)(a)(iv) through (5)(c) will remain the same as proposed."

"8.32.1408 STANDARDS RELATING TO THE LICENSED PRACTICAL NURSE'S ROLE IN INTRAVENOUS (IV) THERAPY (1) through (4)(1) will remain the same as proposed.

(m) monitor and report the client physiological and psychological response to IV therapy; ~~or~~

~~(n) under the direct supervision of a dialysis RN, an LPN may perform hemodialysis procedures that include:~~

- ~~(i) arterio-venous fistula/graft needle insertion;~~
- ~~(ii) administration of prescribed local anesthesia as needed prior to dialysis needle insertion;~~
- ~~(iii) accessing, blood draws, flushes and dressing changes of hemodialysis central-venous catheters; and~~
- ~~(iv) administration of prescribed doses of routine dialysis heparin.~~

(o) administration of prescribed injectable local anesthetics prior to venipuncture;

(p) dressing changes on central and arterial lines after the initial dressing change by the RN."

"8.32.1409 PROHIBITED IV THERAPIES (1) through (b)(xvii) will remain the same as proposed.

(c) administration of injectable local anesthetics prior to venipuncture;

(d) (c) performance of sticks, blood draws, dressing changes, flushes of central and arterial lines; or

(e) will remain the same as proposed, but will be renumbered (d)."

"8.32.1111 FACULTY (1) through (6)(e) will remain the same as proposed.

(f) providing service to the parent institution, nursing program, profession and community; and

(7) through (10) will remain the same as proposed."

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

COMMENT NO. 1: One comment was received pertaining to ARM 8.32.802(4). Commentors requested that the January 1 deadline to submit copies of the self-evaluation narrative report should be changed to February 1, so that schools have more time to prepare such reports.

RESPONSE: The Board concurred and the rule has been amended as shown above.

COMMENT NO. 2: One comment was received pertaining to new rule II. The commentor stated that subsection (1) should restate that the Board is responsible for the approval of Registered Nurse programs and not simply generic baccalaureate programs.

RESPONSE: The Board rejected this comment as it has no jurisdiction over these types of programs. The Board's jurisdiction is limited to educational programs leading to initial licensure as a professional nurse and, therefore, baccalaureate programs are not included, as those programs do not result in licensure.

COMMENT NO. 3: One comment was received pertaining to new rule IV stating that the Board should attempt to provide more guidance in subsection (4) with regard to the amount of content the Board will require in the individual subjects.

RESPONSE: The Board rejects this comment. The amount of content in a given subject matter needs to be flexible so that the program may more quickly respond to suggested curricular changes. Given the length of time required for formal rule changes by the board, it is appropriate to provide general

guidance through the rules and specific comments during the annual review and site surveys.

COMMENT NO. 4: One comment was received pertaining to new rule VI stating that subsection (1)(c)(iv) does not follow grammatically from the introductory phrase. The commentor suggests using language similar to that found in subsection (2).

RESPONSE: The Board concurred and the rule has been amended as shown above.

COMMENT NO. 5: One comment was received pertaining to new rule VII recommending that the Board insert language which would require an LPN to receive instruction resulting in a basic knowledge of long term care settings.

RESPONSE: The Board, given the comments and responses to new rule XVIII below, concurs with the comments and has amended the rule as shown above.

COMMENT NO. 6: One comment was received pertaining to (7) of new rule VII stating that the language in (7) should be eliminated on the basis that the Board of Nursing is without statutory authority to determine the scope of practice for an LPN.

RESPONSE: Because the Board has decided to not adopt new rule XVIII as discussed below, the Board does not adopt the language proposed in (7).

COMMENT NO. 7: Two comments were received pertaining to new rule X. One commentor suggested that the word "appropriate" in subsection (1) should be defined. The other comment, pertaining to (2) and (3), suggested the Board should take this opportunity to specify whether a director's "preparation in education and administration" should be part of a doctoral program or simply part of a director's background.

RESPONSE: The Board concurred with the comment to (1) and has amended the rule as shown above. The Board rejected the comment pertaining to (2) and (3) because it felt that being more specific does not clarify the Board's intention any further than the proposed language.

COMMENT NO. 8: One comment was received pertaining to new rule XII. The commentor suggests amending the proposed rule to state, "... have preparation for teaching in their clinical area of teaching and shall be licensed ...". The commentor believes that this language would ensure that teachers have the appropriate education in the clinical area for which the teacher is responsible.

RESPONSE: The Board rejected this comment as the Board believes that further clarity is not required and that the Board reviews teacher credentials to ensure that the teachers have experience in the clinical area of expertise.

COMMENT NO. 9: Twenty-two comments were received with respect to new rule XVIII. A majority simply provided general opposition to the rule. Those specific comments received are set forth as follows:

(1) Lack of Authority - Three commentors set forth the argument that the Board lacks sufficient statutory authority to limit the scope of practice for an LPN or to dictate in what settings the LPN may practice.

(2) Ability to Serve as LPN in the Absence of RNs - The concern expressed on behalf of certain facilities is that a prohibition on allowing an LPN to serve as charge nurse when an RN is present would, in essence, require that only an RN serve as a charge nurse at those times that an RN is present in the facility. Commentors state that it is illogical to state that it is safer to have LPNs serve as charge nurses when an RN is not present at the facility than when RNs are present at the facility.

(3) Federal Waiver - Four commentors addressed the issue of the federal waiver. All agreed that the waiver was very difficult to obtain and one commentor stated that no facility has the federal waiver.

(4) Staffing - Three commentors addressed staffing issues. In essence, the commentors wish to have the discretion to staff as they feel appropriate. In many instances, specific wings or units may occupy the same hallway and the rule, as written, would prohibit LPNs from serving as the charge nurse for an entire facility or for more than one unit or wing or for less than a whole unit or wing. One commentor representing a thirty-bed facility in two "wings" stated that this would require the use of two LPNs as charge nurses when, in fact, one would be more than adequate.

(5) Experience - Four commentors stated that the experience requirement set forth in (3) was inappropriate for a variety of reasons. In addition to the commentors' consensus that the rule lacked a rational basis for requiring one year of experience, one commentor noted that a facility, under the rule as proposed, could hire an LPN with the requisite experience outside a facility who would not be nearly as qualified as an LPN who had spent nine months in a long-term care facility.

(6) Education - Six commentors stated that it would be entirely appropriate for the Board to institute additional educational requirements to ensure that LPNs, following graduation, are qualified to assume the duties of a charge nurse.

RESPONSE: The Board, after considering the comments, made the decision not to adopt proposed new rule XVIII. With regard to the comments about additional education, the Board has addressed the issue and determined that the current standards meet the educational needs of LPNs.

COMMENT NO. 10: Sixteen commentors provided comments pertaining to XIX and XX. A majority of the commentors stated that the rules will have a detrimental impact as most dialysis units employ LPNs working under the direct supervision of RNs.

One commentor states that LPNs serving in the dialysis unit have training in the insertion of needles in A/V fistula or grafts following the administration of a local anesthetic, accessing central venous catheters, administration of prescribed anticoagulants, cleaning and dressing central venous catheters, and drawing blood for clinical lab testing. Commentor states that the procedures are appropriate for LPNs as the procedures are routine and performed under the direct supervision of an RN. Moreover, dialysis is a part of the LPN standard of practice across the nation.

One commentor advocates revising (4)(n) and provided suggested language.

One commentor encouraged the Board to review LPN education pertaining to IV therapy.

RESPONSE: The Board concurred with the comment pertaining to (4)(n) and has amended the rule as shown above.

With regard to the comments pertaining to education and standard of practice, the Board agrees and believes that the new school standards address these issues.

COMMENT NO. 11: Seven comments were received pertaining to new rule XX as follows:

(1) One commentor stated that, while commentor did not oppose the rule, commentor did not approve of the laundry list manner in which the rule is drafted.

(2) Three commentors stated that the administration of a local anesthetic prior to venipuncture, under (1)(c), was entirely appropriate.

(3) Three commentors stated that the changing of dressings, under (1)(d) was appropriate for the LPN. One of the commentors suggested revision of the subsection and provided suggested language.

RESPONSE: The Board agrees that a "laundry list" is not the preferred rule format, but is at a loss for a better method of presenting this information. The Board agrees with the administration of a local anesthetic, but would take this opportunity to clarify that such anesthetics are only administered by prescription.

The Board concurred with the comments pertaining to "changing of dressings" and has amended new rule XIX and XX, to move the information pertaining to dressing changes to new rule XIX.

COMMENT NO. 12: Staff of the Administrative Rules Bureau of the Secretary of State's office noted that (1)(a)(i) through (x) ended in commas and suggested that, to be consistent with other department rules, the commas should be changed to semi-colons.

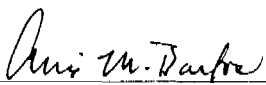
RESPONSE: The rule has been amended as shown above.

COMMENT NO. 13: Staff of the Administrative Rules Bureau of the Secretary of State's office also noted that 8.32.1411(6)(f) ended with the language "; and" in the original proposal but should end with a period as no other subsection follows (f).

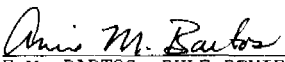
RESPONSE: The Board has amended the rule to strike the language "; and" so the subsection ends with a period.

BOARD OF NURSING
JEAN BALLANTYNE, RN, MN
PRESIDENT

BY:



ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE



ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, March 24, 1997.

BEFORE THE BOARD OF PRIVATE SECURITY
PATROL OFFICERS AND INVESTIGATORS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT AND
and repeal of rules pertaining) REPEAL OF RULES PERTAINING
to private security patrol) TO PRIVATE SECURITY PATROL
officers and investigators) OFFICERS AND INVESTIGATORS

TO: All Interested Persons:

1. On October 24, 1996, the Board of Private Security Patrol Officers and Investigators published a notice of public hearing to consider the proposed amendment and repeal of rules pertaining to Private Security Patrol Officers and Investigators, at page 2656, 1996 Montana Administrative Register, issue number 20.

2. The Board has amended ARM 8.50.423, 8.50.424, 8.50.425, 8.50.426, 8.50.427, 8.50.428, 8.50.433, 8.50.437, 8.50.801 and repealed ARM 8.50.435, 8.50.436, 8.50.805, 8.50.901 and 8.50.903 exactly as proposed. The Board has amended ARM 8.50.431, 8.50.438 and 8.50.801 as proposed, but with the following changes: (Authority and implementing sections remain the same as proposed.)

8.50.431 INSURANCE REQUIREMENTS (1) Persons regulated by Title 37, chapter 60, MCA, and licensed as a private investigator, a security alarm installer, a contract security company or a proprietary security organization shall file with the board, a yearly certificate of insurance ~~to run concurrent with the license year.~~

(a) through (1)(c)(i) will remain the same.

(2) Except as provided in ~~subsection~~ (4), all licensees must be insured by a carrier:

(a) through (4)(c) will remain the same.

8.50.438 PROBATIONARY PRIVATE INVESTIGATOR

(1) Will remain the same as proposed.

(2) Direct supervision for the purposes of (1) means daily contact while the probationary licensee is engaged in an investigation including one face-to-face meeting on a weekly basis. A probationary license holder may not conduct an independent business or act as an independent contractor.

(3) Will remain the same as proposed.

~~(4) Probationary license holders may not, in the performance of employment related duties, carry or possess a firearm.~~

8.50.801 UNPROFESSIONAL CONDUCT (1) through (6) will remain the same as proposed.

~~(7) Using a firm name, letterhead, publication, term, title, designation, or document which states or implies an ability, relationship, or qualification that does not exist,~~

(8) through (10) will remain the same as proposed, but

will be renumbered (7) through (9).

~~(11) Using any dangerous drug or controlled substance illegally while providing professional services;~~

(12) through (17) will remain the same as proposed, but will be renumbered (10) through (15).

~~(18) Notwithstanding any provision regarding privileged communications, failing to take reasonable steps to inform or protect a client's intended victim and inform the proper law enforcement officials in circumstances where the licensee becomes aware during the course of providing or supervising professional services, that a client intends or plans to inflict serious bodily harm to another person;~~

~~(19) Notwithstanding any provision regarding privileged communications, failing to take reasonable steps to protect a client in circumstances where licensee becomes aware during the course of providing or supervising professional services, that a client intends or plans to inflict bodily harm to himself or herself;~~

(20) through (21) will remain the same as proposed, but will be renumbered (16) and (17).

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

COMMENT NO. 1: Commentors stated that the Board should consider issuing temporary permits to license applicants after the applicant has completed the professional examination. Commentors expressed concern that a license applicant may do substantial harm to public safety within the sixty-day period preceding the administration of an exam.

RESPONSE: Mont. Code Ann. section 37-1-305(2)(1995), prohibits the issuance of a temporary permit until such time as the license applicant has met all licensure requirements, except the examination. Therefore, the Board must reject the comment as the statute which governs the construction of the rule does not allow for the issuance of the permit after the examination.

COMMENT NO. 2: Commentor stated that the particular date on which insurance coverage is effective is left to the discretion of the insurance company. Therefore, it is impossible for the licensee to control the effective date so that it may run concurrent with the licensure year.

RESPONSE: The Board accepts this comment based upon its recognition that the licensees are without authority to ensure that the insurance coverage date will run concurrently with the licensure date. Based on that comment, the Board will abandon the proposed amendment of subsection (1) of the rule.

COMMENT NO. 3: Commentors stated that the requirement for daily contact with a probationary license holder was overbearing and would not serve the purposes which the board sought to accomplish.

RESPONSE: The Board disagrees with the content of the comment but does believe that supervision of probationary licensees is appropriate for the protection of the public health, safety, and welfare. Therefore, the Board has decided to clarify that daily contact is still required when the probationary employee is engaged in an investigation and that the manner in which the contact is accomplished is left to the discretion of the supervisor. The Board does feel, however, that at least one face-to-face meeting between the supervisor and the probationary investigator is required and has amended the language to include such a requirement.

COMMENT NO. 4: Commentor stated that the prohibition of a probationary investigator carrying a firearm as contemplated in proposed subsection (4) is not appropriate if the candidate meets the Board's firearm qualifications.

RESPONSE: The Board reviewed the comment and agrees with the commentor. The rules pertaining to firearm certification are comprehensive and clearly apply to probationary licensees. Therefore, the Board is removing subsection (4).

COMMENT NO. 5: Commentors state that with respect to subsection (7), investigators are required to perform pretext calls which require the use of phoney firm names, letterheads, terms, titles, or designations which the investigator does not possess. The Board's proposed rule would place investigators in jeopardy of discipline for performing functions which are clearly within the scope of the investigator's practice.

RESPONSE: The Board agrees with the commentor and deletes the proposed subsection. The Board's concern was that an investigator may use a letterhead demonstrating that the investigator specializes in areas where the investigator does not possess the necessary qualifications. While this is a public protection issue, the Board will remove the subsection as it does not possess the authority to make such determinations and, therefore, would be unable to enforce such a rule.

COMMENT NO. 6: Commentor states that subsection (11) pertaining to the use of illegal drugs or controlled substances while providing professional services as unprofessional conduct was an unnecessary rule.

RESPONSE: The Board agrees with commentor. Mont. Code Ann. section 37-1-316(1) (1995), makes it unprofessional conduct for a licensee to be convicted of a crime relating to the use or sale of drugs. Because this issue is adequately addressed under the statutes, the Board will not adopt subsection (11).


COMMENT NO. 7: Regarding subsections (18) and (19), commentor states that he did not believe that this rule was within the Board's authority.

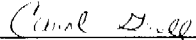
RESPONSE: The Board believes that while the licensee may have a responsibility to protect clients or persons under surveillance from harm, that it was not appropriate to make the

failure to do so unprofessional conduct. Therefore, the Board accepts that comment and deletes subsections (18) and (19) from consideration.

BOARD OF PRIVATE SECURITY PATROL
OFFICERS AND INVESTIGATORS
GARY GRAY, PRESIDENT

BY:


ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE


CAROL GRELL, RULE REVIEWER

Certified to the Secretary of State, March 24, 1997.

BEFORE THE BOARD OF PSYCHOLOGISTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment,) CORRECTED NOTICE OF
repeal and adoption of rules) AMENDMENT OF A RULE
pertaining to the practice of) PERTAINING TO THE PRACTICE
psychology) OF PSYCHOLOGY

TO: All Interested Persons:

1. On January 16, 1997, the Board of Psychologists published a notice of proposed amendment, repeal and adoption of rules pertaining to the practice of psychology at page 3, 1997 Montana Administrative Register, issue number 1. On March 24, 1997, the Board published an adoption notice amending, repealing and adopting the rules, some with changes, at page 538, 1997 Montana Administrative Register, issue number 6.

2. ARM 8.52.603A should have been amended as follows in the original notice:

8.52.603A USE OF TITLE (1) and (1)(a) will remain the same.

(b) an individual pursuing postdoctoral training or experience in psychology, including persons seeking to fulfill the requirements for licensure under the provisions of this Act, ~~or,~~

~~(c) a qualified assistant employed by, or otherwise directly accountable to, a licensed psychologist.~~

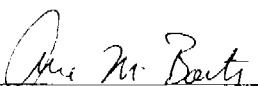
~~(2) Nothing in these rules shall be construed to prevent the teaching of psychology, the conduct of psychological research, or the provision of psychological services or consultation to organizations or institutions, provided that such teaching, research, or services does not involve the delivery or supervision of direct psychological services to individuals or groups of individuals who are themselves, rather than a third party, the intended beneficiaries of such services, without regard to the source or extent of payment for services rendered.~~

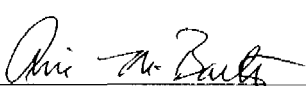
(3) will remain the same, but will be renumbered (2).

3. As indicated above, (b) should have been amended to delete the semi-colon and the word "or" and insert a period. Subsection (3) should have been renumbered (2) in the original notice.

4. Replacement pages for this rule will be submitted for the March 31, 1997 filing date.

BOARD OF PSYCHOLOGISTS
JEFF OLSGAARD, CHAIRMAN


ANNIE M. BARTOS
RULE REVIEWER

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

Certified to the Secretary of State, March 24, 1997.

7-4/7/97

Montana Administrative Register

BEFORE THE FISH, WILDLIFE AND PARKS COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment)	
of ARM 12.6.101 regarding)	NOTICE OF AMENDMENT
regulations for ice fishing)	OF RULE
shelters.)	

To: All Interested Persons.

1. On February 10, 1997, the Fish, Wildlife and Parks Commission (commission) published notice of the proposed amendment of the above-captioned rule at page 247, 1997 Montana Administrative Register, issue number 3.

2. The commission has amended the rule as proposed.

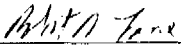
AUTH: 87-1-201 and 87-1-303, MCA
IMP: 87-1-303, MCA

3. No comments were received.

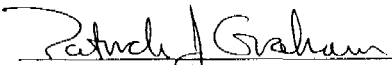
4. The rule has been reviewed and approved by the Department of Public Health and Human Services as required by 87-1-303(2), MCA, with a determination that the rule would not have an adverse impact on public health or sanitation.

RULE REVIEWER

FISH, WILDLIFE & PARKS COMMISSION



Robert N. Lane



Patrick J. Graham, Secretary

Certified to the Secretary of State on March 24, 1997.

BEFORE THE FISH, WILDLIFE AND PARKS COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 12.6.901 relating to the) OF RULE
restriction of motor-propelled)
water craft on various lakes in)
the Seeley Lake area and)
Beavertail Pond.)

To: All Interested Persons.

1. On January 27, 1997, the Fish, Wildlife and Parks Commission (commission) published notice at page 131, 1997 Montana Administrative Register, issue number 2, of its intent to consider the amendment of a rule regarding water safety regulations.

2. Public hearings were held on February 18, 19, 20, and 25, 1997, in Helena, Great Falls, Missoula and Seeley Lake, Montana, respectively. Written comments were accepted through February 28, 1997.

3. After consideration of the comments received on the proposed amendment, the commission has amended the rule as proposed with the following change (deletions indicated by ~~strikeout~~):

12.6.901 WATER SAFETY REGULATIONS (1) In the interest of public health, safety, or protection of property, the following regulations concerning the public use of certain waters of the state of Montana are hereby adopted and promulgated by the Montana fish, wildlife and parks commission.

(a) remains the same as the proposed rule.

(b) The following waters are closed to the use of all boats propelled by machinery of over 10 horsepower, except in cases of use for search and rescue, official patrol, or for scientific purposes:

(i) Remains the same.

(ii) other waters of the state as follows:

Hill County and Lincoln County remain the same.

Missoula County: (A) Blanchard Lake (on Clearwater River)

~~(B) Elbow Lake (on Clearwater River)~~

(c) through (2) remain the same as the proposed rule.

AUTH: 87 1 303, MCA IMP: 87-1-303, MCA

4. A total of 65 comments were received on the proposed amendment to the water safety regulations in 12.6.901. Thirty comments supported all restrictions proposed or restrictions on a specific body of water. Thirty-five comments opposed restrictions, with 33 specifically addressing the Elbow Lake restrictions. Two individuals were opposed to any restrictions,

regardless of the body of water. The following is a summary of comments received, with the commission's responses to those comments:

Comment 1: I am opposed to the proposed lifting of the horsepower restriction on Upsata Lake and other similar bodies of water.

Response 1: No horsepower restrictions exist on any of the lakes, and Upsata Lake has not had any restrictions in the past.

Comment 2: Why can't you save some small lake still water fishing for the tubers and canoe fishermen?

Response 2: The authority of the commission is limited to health, safety and property protection, which includes natural resource protection. Use preferences are not within its scope of authority. However, the rule addresses safety and water quality on twelve of the lakes, and, by so doing, provides the experience being sought by tubers and canoe fishermen.

Comment 3: The wake only restriction is unenforceable.

Response 3: A no-wake designation is just as enforceable as a horsepower restriction. The key is to have enforcement personnel available, and have other users report violations to wardens.

Comment 4: A no-wake designation would address safety just as well as a horsepower limitation.

Response 4: The horsepower restriction was proposed on Elbow and Blanchard Lakes, since they are actually part of the Clearwater River, and going upstream at certain times of the year is not possible without leaving a wake.

Comment 5: We have water skied on Elbow Lake for many years and have not had any safety issues arise. (33 commentors)

Response 5: Several cabin owners felt that a safety problem does exist, and asked for assistance in resolving potential health and safety issues. The commission has decided to drop Elbow Lake from the proposed rule amendment, pending further meetings between the cabin owners and lake users, who wish to find a solution other than a horsepower restriction. This lake will be revisited in the future to ensure any safety or wildlife issues actually present are addressed.

Comment 6: Water skiing and boat use on Elbow Lake present safety problems for swimmers and noise problems, generally. (10 commentors)

Response 6: See response to Comment No. 5.

Comment 7: There should be no restrictions placed on any public waters.

Response 7: The commission has a responsibility to promote safety, health and public and private resource protection by regulating recreational use of public waters. In carrying out this responsibility, the commission attempts to impose the least restrictive rules possible which will address the issue(s) identified.

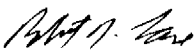
Comment 8: Waterfowl nesting (particularly loons) is disrupted by motorized use of Placid Creek, the Clearwater River, Elbow Lake, and others.

Response 8: The proposed restrictions were implemented in part to protect waterfowl and wildlife. With the exception of Elbow Lake, which is removed from this amendment, the proposed rules will protect nesting and rearing in most areas identified as needing restrictions.

5. The rule has been reviewed and approved by the Department of Public Health and Human Services as required by 87-1-303(2), MCA, with a determination that the rule would not have an adverse impact on public health or sanitation.

RULE REVIEWER

FISH, WILDLIFE & PARKS COMMISSION



Robert N. Lane



Patrick J. Graham, Secretary

Certified to the Secretary of State on March 24, 1997.

BEFORE THE TRANSPORTATION COMMISSION
OF THE STATE OF MONTANA

In the matter of the adoption of) NOTICE OF ADOPTION
the rules concerning railroad)
crossing signalization, signal)
removal and improved crossing)
surface installation.)

TO: All Interested Persons.

1. On November 21, 1996, the Department of Transportation published notice of a public hearing on the proposed adoption of new Rules I through XV concerning railroad crossing signalization, signal removal and improved crossing surface installation at page 3028 of the Montana Administrative Register, issue number 22.

2. The agency has adopted new Rules II (18.6.302), III (18.6.303), IV (18.6.304), V (18.6.305), VI (18.6.306), VII (18.6.307), VIII (18.6.308), IX (18.6.309), X (18.6.310), XII (18.6.312), XIII (18.6.313), XIV (18.6.314), and XV (18.6.315) as proposed.

3. The agency has adopted new Rule I with the following changes:

RULE I (18.6.301) DEFINITIONS (1) "Active traffic control device" means a traffic control device activated by the approach or presence of a train, such as flashing light signals, automatic gates and similar devices, as well as manually operated devices and crossing watchmen, all of which ~~display to inform~~ motorists ~~positive warning~~ of the approach or presence of a train.

(2) through (4) same as proposed rule.

(5) "Diagnostic review team" means a team consisting of an MDT representative, a railroad representative and ~~may include~~ a road authority representative and other experts as helpful or needed to evaluate a public highway railroad at-grade crossing to determine safety needs.

(6) through (12) same as proposed rule.

(13) "Road authority" means the public entity having maintenance ~~over~~ responsibility for a specified public roadway.

(14) same as proposed rule.

AUTH: 60-2-121 and 2-3-103, MCA; IMP: 60-2-121 and 60-2-201, MCA

Comment No. 1: Written comments suggested that the term "positive warning" could mislead the public into believing that the devices listed are infallible and that there is no need to approach railroad grade crossings with caution.

Response: The Department does not believe the language as proposed is misleading, but believes that the language submitted

through the written comments is clearer. The Department therefore concurs in the proposed change.

Comment No. 2: Testimony at the hearing and the written comments stated that in (5) a representative of the road authority should be a mandatory member of the diagnostic review team.

Response: The agency recommends the rule be changed to make the road authority a mandatory member of the diagnostic review team.

Comment No. 3: Written comments stated that the proposed definition appeared to have missing words.

Response: The agency agrees the rule be changed to contain the language "responsibility for" and delete the word "over."

4. The agency has adopted new Rule XI with the following changes:

RULE XI (18.6.311) OWNERSHIP AND MAINTENANCE RESPONSIBILITIES FOR PUBLIC AT-GRADE RAIL HIGHWAY CROSSINGS

(1) same as proposed rule.

(2) Except in cases in which there is an encroachment onto the roadway by a railroad track, the road authority is responsible for installation and maintenance of the roadway, signs, except for crossbucks, and pavement markings in accordance with the Manual on Uniform Traffic Control Devices (MUTCD). A copy of the current MUTCD can be obtained from the Supervisor of the Utilities Section, Montana Department of Transportation, 2701 Prospect Avenue, Helena, MT 59620-1001. The road authority is responsible for the roadway between multiple tracks. In cases in which there is an encroachment onto the roadway by a railroad track, all construction and maintenance costs associated with the encroachment will be paid by the owner of the encroaching railroad track, including grade crossing signals if deemed necessary.

(3) and (4) same as proposed rule.

AUTH: 60-2-121 and 2-3-103, MCA; IMP: 60-2-121 and 60-2-201, MCA

Comment No. 4: Comments submitted at the hearing requested that the standard for signs and pavement markings should be specifically stated.

Response: The agency concurs and adopts the proposed rule to include a statement that signs and pavement markings be in accordance with the current Manual on Uniform Traffic Control Devices.

Comment No. 5: Comments submitted stated that an unnecessary burden has been placed on the road authority in cases where a rail line has been constructed onto an existing roadway such as a new spur line in an industrial area. In such cases, the road

authority should have the ability to require that all construction and maintenance costs associated with the crossing be the responsibility of the owner of the railroad track.

Response: The agency concurs and proposes language to clarify that in cases in which a railroad track owned by a private person or entity encroaches onto an existing roadway, the construction or maintenance costs will be the responsibility of the owner of the encroaching track.

Comment No. 6: Comments received stated subsection (3) of this rule be eliminated. Comments suggested that this rule places an unfair burden upon the road authority to pay for repair or replacement costs for damaged signals and equipment.

Response: The rule simply states existing practice. Currently, written agreements set forth the duties of the parties to the diagnostic review team. Currently, as a matter of contract, the road authority accepts responsibility for repair or replacement costs for damaged signals and equipment as a condition of receiving state administered funds for signalizing the crossing.

5. The following address comments received on new rules which have been adopted as proposed or comments concerning the rules generally.

Comment No. 7: Comments to Rule IV(1)(a) (18.6.304) asked whether this subsection meant that no minimum warranting criteria must be met before a crossing can be signalized. Comments to this subsection asked whether this subsection means that any crossing can be signalized as long as someone is willing to pay for it.

Response: The agency will only signalize crossings on public at-grade crossings which meet warrants for federal funding purposes. However, railroads can signalize crossings with their own funds for safety reasons. This rule was drafted to make it clear that railroads may signalize their crossings with their own funds, even though the crossing may not meet state warrants for federal funding purposes.

Comment No. 8: Comments indicate concern that the rules could be interpreted so strictly that they would require a "diagnostic review" for normal maintenance activities where equipment might have to be "upgraded" simply because existing equipment is not repairable and an exact replacement is no longer manufactured.

Response: These rules only apply to situations in which federal and state funds are administered by the state for signal upgrade or other improvements to railroad crossings. No diagnostic review team need be convened when, for example, a railroad upgrades or repairs its own signals with its own funds.

Comment No. 9: Comments submitted requested that proposed Rule VIII (18.6.308) include a requirement that the railroad remove all rail and ties from within the road right-of-way when a crossing is closed.

Response: The agency believes this is covered in the proposed rule as it currently exists. The rule provides that the diagnostic review team will determine road authority and railroad work necessary to accomplish closure. These matters are currently worked out by agreement through the members of the diagnostic review team.

Comment No. 10: A comment was received asking why hearing requests are limited to county commissioners.

Response: Section 60-2-121, MCA, provides that if requested by the board of county commissioners of any county, the commission shall conduct a public hearing in the affected county on the priority assigned any railroad crossing. Since this is statutory, the agency believes that it is appropriate that only the board of county commissioners has the authority to request a hearing for crossings within its jurisdiction.

Comment No. 11: Comments received stated that the term "interested party" as used in proposed Rule X (18.6.310) is too broad and requested a more restrictive term.

Response: The agency believes that the term "interested party" is appropriate. Given the requirements of section 2-3-103, MCA, requiring that the public has an opportunity to participate in agency decisions that are of significant interest to the public, the agency believes that any interested party should be allowed to request a hearing, and that the access to the hearing process should not be restricted.

Comment No. 12: Comments received stated that the provision in Rule XIV (18.6.314) that the road authority shall nominate locally funded street construction projects that involve a rail crossing is unduly restrictive. Likewise, comments received stated that the requirement that all costs be charged against the project is unduly restrictive.

Response: The agency notes that these rules only concern improved crossing surface projects and the like that are funded with federal funds administered by the Montana Department of Transportation. All such projects are nominated or suggested to the Department by the local road authority as that is the mechanism by which the state knows of local needs. The agreement, if any, between local government and the railroads concerning funds not administered by the state would not come under this rule. Since funds administered by the state are allocated to local governments, it is appropriate that these costs be charged against the project.

Comment No. 13: Comments received state that subsection (2)(c) of proposed Rule XV (18.6.315) should be deleted because the decision to totally close a roadway should be made on a case-by-case basis.

Response: The agency requires total closure of the roadway because proper installation of an improved crossing surface requires extensive construction work. In order to obtain a good product, closure of the roadway is required to get the extensive work done.

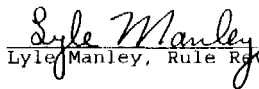
Comment No. 14: Comments received state that subsection (2)(d) of proposed Rule XV (18.6.315) should be rewritten to allow cost sharing agreements between a local road authority and the railroad.

Response: Again, these rules pertain to improved crossing surface projects that are administered by the state and funded with state and federal funds. As such, the cost of these projects would be a road authority cost.

MONTANA TRANSPORTATION COMMISSION

By:


THOM FORSETH, Chairman


Lyle Manley, Rule Reviewer

Certified to the Secretary of State March 24, 1997

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of rule 18.8.511A concerning the)
Motor Carrier Services program)

TO: All Interested Persons.

1. On January 16, 1997, the Department of Transportation published notice of the proposed amendment of rule 18.8.511A which pertains to the use of flag or pilot vehicles for certain oversize loads on Montana highways. The notice of public hearing on the proposed amendment is found at page 21 of the 1997 Montana Administrative Register, issue number 1.

2. A hearing was held on this matter on February 5, 1997, during which several spoke in favor and in opposition to the proposed amendment. The Department also received a number of written comments, which will be set out more fully below.

3. The Department has amended the rule as proposed with the following changes:

IMP: ~~61-10-101 through 61-10-140, MCA~~
61-10-121, 61-10-122, and 61-10-124, MCA

4. The agency fully considered both written and oral submissions respecting the proposed amendment. The following contains the comments and a statement of reasons for and against adoption of the amendment. Finally, there is a statement of reasons for overruling the considerations urged against the amendment's adoption.

COMMENT: At the public hearing, the Department received the testimony of ten proponents and four opponents. The proponents were generally the agricultural implement dealer industry. The proponents were in favor of the proposed amendment because many of the loads which they now pull on Montana highways fall within the 12 foot and 12.5 foot range. It is expensive to use pilot cars to the extent presently required. The proponents further stated that the increase of .5 feet can be accomplished without endangering the safety of other motor vehicles on the highway. The current standard poses an economic burden on the agricultural community that it can ill afford at this time. Not only is there an economic burden, there is a loss of time when a pilot car is not readily available. One implement dealer testified that between \$8,000 to \$10,000 of his \$40,000 hauling cost has been for flagging, and the proposed amendment will alleviate some of that economic hardship. In addition, the Department received 11 written comments in favor of the proposed amendment. Those written comments generally repeated the foregoing reasons given in oral testimony for the adoption of the proposed amendment. Some of the written testimony suggested that the width be increased to 13 or even 16 feet.

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The Department, as noted above, received oral comments from four persons in opposition to the proposed amendment. The Department also received written comments from four parties opposed to the proposed amendment. Opposition to the proposed amendment came primarily from transporters of mobile homes. One member of the public, with connections to an escort service, also opposed the amendment. However, another escort service supported the amendment through written testimony. The oral testimony at the hearing which was in opposition to the proposed amendment generally focussed on safety concerns. Those concerns were that the increased width, without pilot cars, would be a source of increased accidents. There also seemed to be a sentiment among those opposed to the amendment that there was lax enforcement of the current requirements. However, general opposition, as noted above, centered on safety issues, because the roads in Montana are too narrow to accommodate 12.5 foot loads without the pilot cars.

Also during the oral testimony, there was some discussion that certain loads can be offset so that the increased width would be near the edge of the road rather than the centerline. All loads, though, cannot be offset because of balance problems. There was also some discussion of the need of certification of the drivers of pilot cars. It was noted that only three states certified the drivers of pilot cars, and Montana is not one of those states.

The Legislative Council also had two comments on the proposed amendment. The first comment was that the notice of adoption contained a statement of necessity which did not fully explain the necessity of the rule change. The Council also stated that the implementation statutes should be more narrowly defined.

Response: The change is necessary and was primarily at the request of the implement dealers which is a segment of the regulated community. As stated above, the increased width allows a substantial portion of wider loads to be transported without the onerous requirement of the additional pilot car. An analysis of Montana's two-lane roads shows that the average lane width is 11.8 feet with 82.2 percent of Montana's two-lane roads having 12 foot lanes. If the Department were to allow travel of up to 16 feet before requiring a pilot car, this would not provide adequate protection for oncoming traffic, especially when the load intrudes into the opposing lane by as much as four feet. The Department also considered having two standards within the state, one for eastern Montana and one for western Montana. This idea was rejected because it imposes a serious hardship for carriers who are crossing the state. In addition, the Department issues nearly 40,000 permits for travel by overdimensional vehicles, and having two sets of regulations would be a significant hardship for the Department. Furthermore, the Department is a member of the Western Regional Permit Agreement, and making the neighboring states be responsible for two standards in Montana would not be

reasonable. Further, there are many places in eastern Montana that may have difficult site problems also.

The opponents' major concern, as noted above, centered around the issue of whether the additional six inches was safe. Given that 82.2 percent of the two-lane roads in Montana have 12-foot lane widths and that many loads can be offset, which reduces the intrusion of the load on the left side of the vehicle, the increase of six inches does not create additional safety risks. In addition, wide loads at either the 12 foot or the 12.5 foot level are still required to have a wide load sign and flashing lights which provide adequate warning to oncoming traffic. There seems to be a split within the industry as to the safety risk, with the majority stating that the increased width would not be a safety hazard. Further, every member of the implement dealer industry, who pilot their own loads, testified that they did not think the change would impact safety. One member has been hauling loads over 60 years and has not had an accident. This testimony is deemed important given that the State's two-lane roads are considerably wider than they were 60 years ago. Further, as the transportation systems are upgraded by widening, the system should become safer. Also, the Department's experience has shown that as the State has relaxed restrictions over the last 10 years that involve oversize loads, the Department has not seen an increase in accidents related to those loads, nor an increase in complaints regarding those loads. A spokesman for the Montana Highway Patrol did not feel that the amendment would decrease safety.

Finally, given the strong support from the industry, the evidence that there would be substantial savings in both time and money for a substantial segment of the industry, it seems reasonable to adopt the amendment in that it is necessary for economical movement of these types of loads. In addition, by elimination of one pilot car, there will be a decrease in traffic congestion, thereby aiding safety in this fashion. These matters as set forth above give the necessity of the rule change, which was a concern of the Legislative Council. Also, the Department agrees with the Council in their comment regarding the implementation of the statutes. Rather than the implementation of sections 61-10-101 through 61-10-148, MCA, the implemented statutes are sections 61-10-121, 61-10-122, and 61-10-124, MCA.

For all of the reasons, the Department hereby adopts the proposed amendment with the changes shown for the reasons stated above.

MONTANA DEPARTMENT OF TRANSPORTATION

By: 

MARVIN DYE, Director

7-4/7/97

Montana Administrative Register



Lyle Manley, Rule Reviewer

Certified to the Secretary of State March 24, 1997 .

BEFORE THE DEPARTMENT
OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the Matter of Adoption of)	CORRECTED NOTICE OF
Rules Pertaining to Local)	ADOPTION OF
Exchange Competition and)	TELECOMMUNICATIONS RULES
Dispute Resolution in)	
Negotiations between Telecom-)	
munications Providers for)	
Interconnection, Services and)	
Network Elements.)	

TO: All Interested Persons

1. On February 10, 1997 the Montana Public Service Commission published a Notice of Adoption of Telecommunications Rules, at page 319, issue number 3 of the Montana Administrative Register. Rule (XXVII) 38.5.4065(6) contained an internal reference to rule XXXIII that was subsequently withdrawn. Paragraph (6) should have been amended as follows:

Rule XXVII 38.5.4065 UNBUNDLING OF LOCAL EXCHANGE NETWORK ELEMENTS

(6) Unbundled network elements shall be priced at cost based rates pursuant to the pricing standards in ~~(Rule XXXIII) section 252(d) of the 1996 Act as enacted on February 8, 1996.~~
AUTH: Sec. 69-3-103, MCA; IMP. Secs. 69-3-102 and 69-3-201, MCA

This correction will be submitted in the replacement pages for the March 31, 1997 filing.



DAVE FISHER, CHAIRMAN



Reviewed By Robin A. McHugh

CERTIFIED TO THE SECRETARY OF STATE MARCH 24, 1997.

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
Subject
Matter | 1. Consult ARM topical index.
Update the rule by checking the accumulative
table and the table of contents in the last
Montana Administrative Register issued. |
| Statute
Number and
Department | 2. Go to cross reference table at end of each
title which 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, 1996. This table includes those rules adopted during the period January 1, 1997 through March 31, 1997 and any proposed rule action that was 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, 1996, 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 1996 and 1997 Montana Administrative Registers.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number. These will fall alphabetically after department rulemaking actions. Accumulative Table entries will be listed with the department name under which they were proposed, e.g., Department of Health and Environmental Sciences as opposed to Department of Environmental Quality.

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