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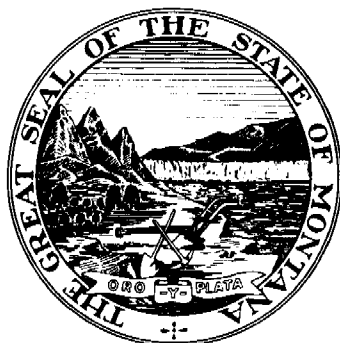
# **MONTANA ADMINISTRATIVE REGISTER**

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 22

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

In the matter of the proposed ) NOTICE OF PUBLIC HEARING ON  
amendment and repeal of rules ) THE PROPOSED AMENDMENT AND  
pertaining to hearing aid ) REPEAL OF RULES PERTAINING  
dispensers ) TO HEARING AID DISPENSERS

TO: All Interested Persons:

1. On December 11, 1996, at 10:00 a.m., a public hearing will be held in the conference room of the Professional and Occupational Licensing Bureau, 111 North Jackson, Helena, Montana, to consider the proposed amendment and repeal of rules pertaining to hearing aid dispensers.

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

"8.20.401. TRAINEESHIP REQUIREMENTS AND STANDARDS

~~(1) The licensed hearing aid dispenser (supervisor) shall:~~

~~(a) directly supervise every fitting made by the trainee. The supervisor shall approve the selection of the ear mold, and hearing aid, and shall approve the choice of which ear to fit prior to fitting. The supervisor shall directly supervise during the trainee's first 90 days of the training period.~~

~~(b) The dispenser shall have personal contact with all customers of the trainee who experience difficulty in fitting.~~

(1) For the purposes of 37-16-405, MCA, a "qualified licensed hearing aid dispenser," who will serve as a sponsor of a trainee, shall meet the following criteria:

(a) have been licensed and active in the state of Montana for at least one year; and

(b) have not had a final order of disciplinary action entered against his or her hearing aid dispenser license, in this or any state, in the two years preceding the request to sponsor a trainee.

(2) Both the trainee and the supervisor must shall immediately notify the board in writing, and provide the reason for of any break in, or termination of, the training program, stating reasons for such break in training or termination.

(3) A trainee who loses his or her supervisor for any reason shall immediately cease practice and shall not continue in a trainee status with a new supervisor until the trainee receives written notification approval is received by from the board, within 10 days of change, stating the reasons for such change in supervisor.

(4) A supervisor of a trainee who desires to terminate his or her supervisory responsibility shall give the trainee written notice of such termination, giving reasons, and shall immediately notify the board.

(5) When there is any break in a training program lasting more than six months, the trainee status terminates

and the trainee must make new application for original trainee status and pay fees as required.

~~(6) A licensed hearing aid dispenser who sponsors a trainee is directly responsible and accountable under the disciplinary authority of the board for the conduct of the trainee in his training activities, in accordance with section 37-16-405, MCA.~~

~~(7) The supervisor's name, business phone number, and title "supervisor" shall be included on all written materials distributed by a trainee, if such materials include the trainee's name.~~

~~(4) Credit toward the 180-day training period will be given only during the period of time during which a trainee is on record as having a sponsor. All breaks in the training period will toll the running of the 180-day training period.~~

~~(5) All written materials distributed by the trainee shall include the trainee's name and title, "trainee" and the supervisor's name, business phone number and title "supervisor".~~

Auth: Sec. 37-1-319, 37-16-202, MCA; IMP, Sec. 37-1-305, 37-16-301, 37-16-405, MCA

**REASON:** These amendments are necessitated by legislation in Senate Bill 95 that changed the training period from a total training period of 360 days that consisted of 90 days of direct supervision and 270 days of general supervision, to a total training period of 180 days of direct supervision throughout. Other subsections of the rule are proposed for deletion because they unnecessarily repeat statutory language. Other amendments clarify that a trainee shall cease practice during periods when the trainee does not have a supervisor and defines a "qualified licensed hearing aid dispenser" as that term is used in 37-16-405, MCA.

"8.20.403 EXAMINATION - PASS/FAIL POINT (1) will remain the same.

(2) The passing score on the written examination shall be ~~70% on each section of the examination.~~ The written examination shall include a Montana jurisprudence section.

(3) and (4) will remain the same."

Auth: Sec. 37-16-202, MCA; IMP, Sec. 37-16-403, 37-16-405, 37-16-406, MCA

**REASON:** Section 37-16-405, MCA, provides that an applicant must pass the "written portion" of the examination with a score of at least 70%. This language may be interpreted to preclude requiring a candidate to pass by 70% on each section of the written portion of the examination.

"8.20.404 RENEWALS (1) ~~The licenses will run from July 1st to June 30th. The board shall send renewal application forms to the licensee's address on file in the board office prior to the renewal deadline. Failure to receive a renewal application form in no way releases the licensee from the obligation to renew in a timely manner, and shall not constitute a defense for practicing without a license.~~

(2) Licensees shall present documentation of the appropriate continuing education requirements with the renewal application.

(3) Licensees may renew their licenses for a period of three years after the expiration date of the license by paying one renewal fee, one additional late fee and submission of documentation of continuing education that would have been required had the license remained active.

(4) A license that is not renewed within three years of the most recent renewal date automatically terminates. The terminated license may not be reinstated, and a new original license must be obtained by passing the licensing examination."

Auth: Sec. 37-16-202, MCA; IMP, Sec. 37-16-407, MCA

**REASON:** The proposed deletion is necessary to avoid repetition with Department rule on renewal of licenses under ARM 8.2.208. The new language is necessary to provide information to licensees and guidance to administrative staff in processing late renewals. Proposed (3) and (4) address the applicant who has not renewed and is presumed to be out of the practice of hearing aid dispensing. By this rule, the board has selected three years as the period of time after which a practitioner must demonstrate continued competency by retesting.

"8.20.407. RECORD RETENTION (1) All licensed hearing aid dispensers shall ~~maintain hearing tests and retain the following records on all persons clients to whom he they sell~~ hearing aids:-

(a) ~~dates and places client contacted;~~

(b) ~~method of contact, whether in home, office or by telephone, and the identity of the individual initiating the contact;~~

(c) ~~description of services delivered;~~

(d) ~~when applicable, a record of the return of the hearing aids for service, setting forth the date and problem, and a corresponding record of the return to the client setting forth the corrective action taken;~~

(e) ~~a copy of the sale contract, purchase agreement or bill of sale, signed by both parties, the original delivered to the client;~~

(f) ~~when applicable, a copy of the medical recommendation and receipt required pursuant to 37-16-303, MCA, the original delivered to the client;~~

(g) ~~a copy of the delivery verification form, in accordance with ARM 8.20.418, the original delivered to the client;~~

(h) ~~a copy of the receipt for refund as set forth in 37-16-304, MCA, the original delivered to the client;~~

(i) ~~a copy of all advertisements placed on behalf of the permanent place of business, including a written script of radio and television advertisements, in compliance with 37-16-301, MCA;~~

(j) ~~a record of hearing tests or evaluations performed on the client, in accordance with ARM 8.20.412; and~~

(k) a copy of the physician's statement regarding the client's candidacy for a hearing aid or the medical waiver in accordance with 21 CFR 801.421 (April, 1995).

(2) Records of deceased clients must be retained for one year after death and may then be destroyed. Failure to keep patient/client records for a minimum of seven years from the last recorded service date constitutes unprofessional conduct subject to discipline pursuant to 37-1-312, MCA. Records for deceased patients/clients must be kept for a minimum of one year.

Auth: Sec. 37-16-202, MCA; IMP, Sec. 37-16-301, 37-16-303, 37-16-304, 37-16-411, MCA

REASON: The proposed language summarizes under one rule various procedures and documentation requirements that are referenced or implied in various places throughout statutes and rules of the board. The proposed amendments are therefore necessary to ensure that the public is receiving the appropriate information regarding rights and duties of the licensed practitioners. The proposed changes under (2) clarify the need to maintain records for no more than 10 years rather than the entire lifespan of a client plus one year.

"8.20.408 UNETHICAL UNPROFESSIONAL CONDUCT (1) For the purpose of 37-16-411, MCA, unethical conduct shall include, but not be limited to, the following implementing the provisions of Title 37, chapter 1, MCA, and in addition to the unprofessional conduct provisions set forth at 37-1-316, MCA, the board defines unprofessional conduct as follows:

(a) through (e) will remain the same, but will be renumbered (1) through (5).

(6) failing to comply with the provisions of Title 37, chapter 16, MCA, or any rule promulgated thereunder;

(7) failing to comply with FDA regulations found at 21 CFR 801.420 and 801.421;

(8) failing to follow FDA recommendation as set forth in the warning statement in 21 CFR 801.420(c)(2);

(9) filing a complaint with, or providing information to, the board which the licensee knows, or ought to know, is false or misleading (does not apply to any filing of a complaint or providing information to the board when done in good faith);

(10) violating any state, federal, provincial or tribal statute or administrative rule governing or affecting the professional conduct of any licensee;

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

(12) acting in such a manner as to present a danger to public health or safety, or to any client including, but not limited to, incompetence, negligence or malpractice;

(13) performing services outside of the licensee's area of training, expertise, competence or scope of practice or licensure;

(14) failing to obtain an appropriate consultation or make an appropriate referral when the problem of the client is beyond the licensee's training, experience or competence;

(15) exercising influence on, or control over, a client, including the promotion or the sale of services, goods, property or drugs for the financial gain of the licensee or a third party;

(16) promoting for personal gain any drug, device, treatment, procedure, product, or service which is unnecessary, ineffective, or unsafe;

(17) failing to render adequate supervision, management, training or control of auxiliary staff or other persons, including licensees practicing under the licensee's supervision or control, according to generally accepted standards of practice;

(18) discontinuing professional services unless services have been completed, the client requests the discontinuation, alternative or replacement services are arranged, or the client is given reasonable opportunity to arrange alternative or replacement services;

(19) delegating a professional responsibility to a person when the licensee knows, or has reason to know, that the person is not qualified by training, experience, license or certification to perform the delegated task;

(20) accepting, directly or indirectly, employment from any person who is not licensed to practice the profession or occupation, or who is not licensed or authorized to operate a professional practice or business;

(21) failing to obtain informed consent from patient or patient's representative prior to selling a hearing aid, particularly in situations where the patient's competency is at issue;

(22) physical or verbal abuse of a client, or sexual contact with a client;

(23) failing to account for funds received in connection with any services rendered or to be rendered.

(2) Any person, firm, or corporation located outside the state of Montana, who engages in the business of distributing or advertising of hearing aids within this state, shall comply with all applicable statutes and rules of the board."

Auth: Sec. ~~37-1-319, 37-16-202~~, MCA; IMP, Sec. ~~37-16-411~~.  
MCA

REASON: The proposed amendments make uniform the reference to "unprofessional" conduct as opposed to "unethical" conduct to comply with Title 37, chapter 1, MCA. Former (2) is proposed for deletion because it unnecessarily repeats 37-16-401, MCA, that requires a license to sell, dispense or fit hearing aids in Montana. The remaining provisions provide broader, more accurate and precise grounds of unprofessional conduct. The proposed amendments utilize uniform language that will be applied to other boards in the Professional and Occupational Licensing Bureau to promote uniformity and efficiency.

"8.20.412 MINIMUM TESTING AND RECORDING PROCEDURES

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



~~(2) The licensee shall follow federal food and drug administration regulations on required referral of clients to a medical doctor under certain conditions.~~

(3) through (4) will remain the same, but will be renumbered (2) and (3)."

Auth: Sec. 37-16-202, MCA; IMP, Sec. 37-16-202, 37-16-411, MCA

**REASON:** Subsection (2) is being proposed for deletion because it is presently an incomplete statement of the FDA regulations. Reference to FDA regulations is proposed under ARM 8.20.408 Unprofessional Conduct.

"8.20.416 NOTIFICATION (1) The board ~~will~~ shall provide copies of all proposed amendments and new rules noticed under the Montana Administrative Procedure Act, to all licensed hearing aid dispensers and trainees."

Auth: Sec. 37-16-202, MCA; IMP, Sec. 37-16-202, MCA

**REASON:** The proposed amendments address grammar and clarification of the "Administrative Procedure Act" as the "Montana Administrative Procedure Act."

"8.20.417 DEFINITIONS (1) through (6) will remain the same.

(7) "Prominently display" means that the statement required pursuant to 37-16-303, MCA, be conspicuous and noticeable at once on the purchase agreement. To this end, the statement shall be as set forth in the example in ARM 8.20.418(5). The statement must appear in uppercase letters, extending the width of the page, two points larger than any other type face appearing on the document, but no smaller than 12 point type face, and quoted verbatim from the statute.

(8) "Substantially equivalent," for the purposes of 37-1-304, MCA, means the applicant has successfully completed a written and practical examination administered by or authorized by a state other than Montana. The examination shall measure basic knowledge of the fitting and dispensing of hearing aids and comply with the requirements set forth in 37-16-403 and 37-16-404, MCA. In addition, the applicant shall have successfully completed a training period of direct supervision for no less than 90 days. To satisfy the substantial equivalency requirement, the board shall accept formal training, in its discretion, in lieu of the traineeship."

Auth: Sec. 37-16-202, 37-16-303, MCA; IMP, Sec. 37-1-304, 37-16-301, 37-16-304, 37-16-303, 37-16-414, MCA

**REASON:** Subsection (7) is necessary to define the words "prominently display" as used in 37-16-303(5), MCA, as the board has seen examples of contracts where the statement is not quoted from the statute verbatim, and to adequately notify members of the public of the Board of Hearing Aid Dispensers as a place to receive information regarding their consumer rights. Subsection (8) is necessary to assist the board to consistently evaluate applicants who are licensed in another state.

"8.20.418 REQUIREMENTS FOR BILL OF SALE, CONTRACT, PURCHASE AGREEMENT AND DELIVERY VERIFICATION FORM TRANSACTIONAL DOCUMENT REQUIREMENTS - FORM AND CONTENT (1) The following information shall be placed on In addition to the requirements of 37-16-303, MCA, all bills of sale, contracts, and purchase agreements, in addition to those items required by section 37-16-303, MCA, or other written memorialization of the sale, shall be on a form no smaller than 8 1/2 x 11 inches and conform to the terms set forth in this rule.

(a) purchaser has a 30 day cancellation or refund period beginning on the date of delivery, but not including periods of return for service, repair or re-make;

(b) refunds will be made if hearing aids are defective in fit or function, or dispenser has failed to correct a problem in fit or function;

(c) name and address of the board in addition to the statement required in section 37-16-403, MCA;

(d) the specific time limit between the time of signing the contract and the time of delivery, to be prominently displayed on the face of the contract, and orally presented to the client prior to signing of the contract;

(e) whether or not dispenser will retain a dispensing fee, which may be up to 20 percent of the total sale.

(2) The terms of the right to cancel found at 37-16-304, MCA, must be set off from surrounding text in a bold-lined box and include the statement required by 37-16-303, MCA. The text within the box must include the heading "Right to Cancel Provided by Montana Law" and appear in bold-face type, in no less than 10-point size font. The box shall be positioned immediately above the signature line of the purchaser and seller.

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

(4) Any trainee, who provides service to a client, must legibly print or type his or her name, the designation "trainee," and license number on the document along with the name and license number of the trainee's supervisor.

(5) Notice of cancellation must be given to the seller in writing within 30 days of the date of delivery of the hearing aid or related device, if the hearing aid or related device is defective in fit or function, or if the dispenser has failed to correct a problem in fit or function. The notice of cancellation may be delivered by mail or in person, and must indicate the purchaser's intent not to be bound by the sale. The purchaser shall return the hearing aid or related device in substantially the same condition as it was received. Under this provision, the hearing aid dispenser shall refund to the purchaser the amount paid, minus a dispensing fee, within 30 days of receipt of the written notice of cancellation. The dispensing fee may not exceed 10% of the total cost of the hearing aid or related device, including services related to acquiring and ensuring the operation of the hearing aid. IF YOU HAVE ANY QUESTIONS REGARDING YOUR CONSUMER RIGHTS, WITH RESPECT TO HEARING AIDS AND RELATED DEVICES, PLEASE CONTACT THE DEPARTMENT OF COMMERCE -- BOARD OF HEARING AID DISPENSERS."

Auth: Sec. 37-16-202, MCA; IMP, Sec. 37-16-303, MCA

**REASON:** The proposed amendments are necessary to adequately protect consumers of hearing aids and related devices and to ensure that they are adequately informed of their statutory rights to cancel the sale. It is the board's experience that the overwhelming number of consumers are under the impression that they have a 30-day free trial period on the hearing aids and are shocked to discover the narrow circumstances under which they may return the hearing aids and receive only a partial refund of their money.

8.20.420 LICENSEES FROM OTHER STATES (1) Upon payment of the proper license fee, the board may issue a license to a person who, at the time of application, holds a current active license in good standing, as a hearing aid dispenser, issued by the proper authority of any state. When a person applies for licensure under this provision receipt of a complete application, the board shall obtain information from the other state(s), and to determine whether the that state's licensure requirements for obtaining such other license(s) are substantially equivalent to or stricter than the requirements of Montana law this state.

(2) The board office shall request verification of applicant's current license in good standing shall be requested by the applicant to be sent directly from the other state. Applicant shall also submit to the board information concerning the nature of the prior examination, with their completed application forms.

(3) "License" shall mean only those granted by other states under statutory provisions.

(4) A completed application form shall be required from the applicant to initiate consideration for licensing.

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

Auth: Sec. 37-1-304, 37-16-202, MCA; IMP, Sec. 37-16-406, MCA

**REASON:** The proposed amendments are necessary to delete portions that unnecessarily repeat, or are in conflict with, 37-1-304, MCA.

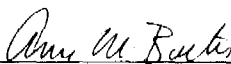
3. The Board is proposing to repeal ARM 8.20.405 (authority 37-16-202, MCA; implementing 37-16-301, MCA), 8.20.409 and 8.20.411 (authority 37-1-136, 37-16-202, MCA; implementing 37-16-411, 37-16-412, 37-16-404, MCA), text of which is located at pages 8-584 through 8-587, Administrative Rules of Montana. ARM 8.20.405 is being repealed because the current language of the rule unnecessarily repeats statutory language and impermissibly engrafts additional requirements upon the statute. ARM 8.20.409 is being repealed because the complaint process is now encompassed in 37-1-308, enacted by the 1995 Legislature under House Bill 518 (Uniform Professional Licensing and Regulation Procedures Act). The language contained in ARM 8.20.409 is in conflict with that new section. The reason for the proposed repeal of 8.20.411 is that the rule unnecessarily repeats 37-1-312, MCA, enacted by House Bill 518, and is in conflict with that statute.


4. 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 Board of Hearing Aid Dispensers, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., December 19, 1995.

5. R. Perry Eskridge, attorney, has been designated to preside over and conduct this hearing.

BOARD OF HEARING AID DISPENSERS  
DUDLEY ANDERSON, CHAIRMAN

BY:

  
ANNIE M. BARTOS, CHIEF COUNSEL  
DEPARTMENT OF COMMERCE

  
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, November 8, 1996.

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

In the matter of the proposed ) NOTICE OF PROPOSED AMENDMENT,  
amendment, repeal and adoption ) REPEAL AND ADOPTION OF RULES  
of rules pertaining to public ) PERTAINING TO PUBLIC  
accountants ) ACCOUNTANTS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 21, 1996, the Board of Public Accountants proposes to amend ARM 8.54.402, 8.54.403, 8.54.408, 8.54.410, 8.54.411, 8.54.415, 8.54.416, 8.54.617, 8.54.702, 8.54.703, 8.54.802, 8.54.809, 8.54.904 and 8.54.906; repeal ARM 8.54.615, 8.54.704 and 8.54.705 and adopt new rules pertaining to the practice of public accounting.

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

"8.54.402 EXAMINATIONS (1) through (3) will remain the same.

(4) The board hereby adopts the use and grading services of the American institute of certified public accountants (AICPA) and its examination schedule. Completed Applications, fees, plus all supporting documents (three moral character references, transcripts, and foreign academic credentials service, inc. (FACS) evaluation of foreign credentials) for the examination must be postmarked or received by the 15th day of the second month prior to each scheduled examination. Where the 15th day of the month falls on a Saturday, Sunday, or holiday, the postmark of the next business day will be accepted.

(5) through (6)(e) will remain the same.

(7) A candidate may request review of the candidate's examination through the AICPA candidate review of papers process. The candidate must make the request within 60 days of the candidate's receipt of the score, and must pay the appropriate fee. The candidate shall not, however, be allowed a further appeal of the exam score through the board."

Auth: Sec. 37-1-131, 37-50-201, 37-50-308, MCA; IMP, Sec. 37-1-101, 37-50-201, 37-50-308, MCA

"8.54.403 OUT-OF-STATE CANDIDATES FOR EXAMINATION (1) and (2) will remain the same.

(3) An out-of-state candidate will be considered a resident of his home state. Out-of-state residents wishing to sit as Montana candidates must take the examination at a Montana site."

Auth: Sec. 37-1-131, 37-50-201, 37-50-308, MCA; IMP, Sec. 37-1-101, 37-50-201, 37-50-200, 37-50-210, 37-50-308, MCA

"8.54.408 EDUCATION REQUIREMENTS (1) Prior to July 1, 1997, A candidate who has a previously approved and unexpired application for an examination administered prior to or in May, 1996, or a candidate who applied by transfer of grades for an examination prior to or in May of 1996, must, prior to certification or licensure, have graduated from a college or university accredited to offer:

(a) A baccalaureate degree, with a concentration in accounting; or

(b) A baccalaureate degree, with a concentration other than accounting, if supplemented by experience and the board determines that an equivalent education has been achieved; or

(c) A baccalaureate degree, with a concentration other than accounting, if supplemented by related courses in other areas of business administration and the board determines that an equivalent education has been achieved;

(d) A concentration in accounting will be interpreted by the board to include 24 semester hours (36 quarter hours) of accounting, auditing and tax courses, and 18 semester hours (27 quarter hours) in other areas of business such as business law, management, marketing, economics and finance. The 18 semester hours (27 quarter hours) shall include no more than 6 semester hours (9 quarter hours) in one area.

(e) Supplemental experience will be interpreted by the board to be five years of employment by a public accounting firm, or five years of employment in industry or government in a responsible financial position; and the board determines that an equivalent accounting education has been achieved.

(f) A concentration, other than accounting if supplemented by related courses in other areas of business will be interpreted by the board to include 12 semester hours (18 quarter hours) of accounting, auditing and tax courses and 9 semester hours (14 quarter hours) in other areas of business such as business law, management, marketing, economics and finance. The 9 semester hours (14 quarter hours) shall include no more than 3 semester hours (5 quarter hours) in one area.

(a) (2) A candidate for examination, to be approved to sit for the examination, who submits an initial application for an examination administered prior to July 1, 1997 in November, 1996 or May, 1997, or a candidate who applies by transfer of grades prior to July 1, 1997 for November, 1996 or May, 1997 examinations, must have completed 24 semester hours (36 quarter hours) of accounting, auditing and tax courses, and 18 semester hours (27 quarter hours) in other areas of business such as business law, management, marketing, economics and finance. The 18 semester hours (27 quarter hours) shall include no more than 6 semester hours (9 quarter hours) in one area.

(b) (a) Subsequent to successful passage of the exam, the candidate, to be certified or licensed as a public accountant, must have graduated from a college or university accredited to offer a baccalaureate degree.

(2) A candidate who has a previously approved application for an exam administered prior to or in May 1996, is still current under the provisions of ARM 8.54.405, and will not be

~~required to meet the educational requirements of (1) above prior to certification or licensure.~~

(3) A candidate submitting an initial application for an examination administered after July 1, 1997 in November, 1997 or thereafter, or a candidate whose approved application for examination has expired and is making reapplication for an examination administered after July 1, 1997 in November, 1997 or thereafter, or a candidate who applies by transfer of grades for the November, 1997 examination or thereafter after July 1, 1997, for certification or licensure as a public accountant must, prior to certification or licensure to be approved to sit for the examination, must have completed:

~~(a) have graduated from a college or university accredited to offer a baccalaureate degree.~~

~~(i) with an accounting concentration or its equivalent as determined by the board; and~~

~~(ii) with at least 150 semester hours of credit, including those earned toward the baccalaureate degree or its equivalent.~~

~~(b) A concentration in accounting or its equivalent is determined to have been met if the applicant:~~

~~(i) has at least 24 semester hours of upper division or graduate level accounting courses including at least one course in each of the following subject areas:~~

~~(A) (a) financial accounting;~~

~~(B) (b) auditing;~~

~~(C) (c) taxation; and~~

~~(D) (d) management accounting; and~~

~~(ii) (e) has at least 24 semester hours in upper division or graduate level business related courses. Examples of business related courses include information systems, business law, finance, economics, marketing, ethics, organizational behavior, quantitative applications in business, and communication skills;~~

~~(e) (f) An upper division course is normally defined as a course taken at the junior or senior level and would exclude introductory courses in accounting and economics;~~ and

(g) Subsequent to successful passage of the examination, the candidate, to be certified or licensed as a public accountant, must have graduated from a college or university accredited to offer a baccalaureate degree:

(i) with an accounting concentration or its equivalent as determined by the board; and

(ii) with at least 150 semester hours of credit, including those earned toward the baccalaureate degree or its equivalent.

(4) through (4)(f) will remain the same, but the ending commas in (a) through (e) will be amended to semi-colons.

(5) Graduates of foreign schools shall have their education evaluated by an advisory evaluation service specified by the board or the foreign academic credentials service, inc. (FACS).

(6) will remain the same."

Auth: Sec. 37-50-203, MCA; IMP, Sec. 37-50-203, 37-50-302, 37-50-303, 37-50-305, MCA

"8.54.410 FEE SCHEDULE

~~(1) Certified public accountant application for uniform C.P.A. examination all original Montana applications.....\$130~~

~~(2) (1) Certified public accountant out-of-state application by reciprocity.....\$100~~

~~(3) through (11) will remain the same, but will be renumbered (2) through (10)."~~

Auth: Sec. 37-1-134, 37-50-203, MCA; IMP, Sec. 37-1-134, 37-50-204, 37-50-314, 37-50-317, MCA

"8.54.411 EXPIRATION - RENEWAL (1) Pursuant to 37-50-314 and 37-50-317, MCA, all certified public accountants and licensed public accountants certificates, licenses and permits to practice expire on December 31st of each year the date set by department rule in ARM 8.2.208.

~~(2) will remain the same.~~

~~(3) Certificate or license holders that are fully retired from active employment will be exempt from paying annual renewal fees upon submitting an inactive status request form to the board and receiving approval."~~

Auth: Sec. 37-1-131, 37-50-201, 37-50-203, MCA; IMP, Sec. 37-50-203, 37-50-314, 37-50-317, MCA

"8.54.415 RECIPROCITY - OTHER STATES LICENSURE OF OUT-OF-STATE APPLICANTS (1) through (1)(c) will remain the same.

(2) The board may issue a certificate or license or permit to practice to a holder of a certificate, license or permit issued by another state upon a showing that:

(a) The applicant passed the examination required for issuance of the applicant's certificate with grades that would have been passing grades at the time in this state; and

(b) The applicant has had five year's experience outside of this state in the practice of public accountancy after passing the examination upon which the applicant's certificate was based, within the 10 years immediately preceding the application; and

(c) The applicant's certificate, license or permit was issued more than four years prior to the application for issuance of an initial certificate in this state, that the applicant has fulfilled the requirements of continuing professional education meeting the requirements established under 37-50-314, MCA, and the regulations established thereunder.

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

Auth: Sec. 37-50-203, 37-50-302, 37-50-311, 37-50-312, 37-50-313, 37-50-317, MCA; IMP, Sec. 37-50-311, 37-50-312, 37-50-313, 37-50-317, MCA

"8.54.416 RECIPROCITY - LICENSURE OF FOREIGN-TRAINED APPLICANTS (1) The board may grant a certificate or permit to



practice to a foreign-trained applicant if all of the following requirements are met:

(a) the applicant has met the educational requirements established under 37-50-302 and 37-50-303, MCA, and all regulations established thereunder, and had their education evaluated by the foreign academic credentials service, inc. (FACS) or other advisory evaluation service specified by the board;

(b) the applicant has taken and passed the AICPA uniform CPA examination in all appropriate parts;

(c) the applicant has met the continuing professional education requirements established under 37-50-314, MCA, and the regulations established thereunder; and

(d) an applicant for a permit to practice must meet the experience requirements established under 37-50-203, 37-50-302, 37-50-303 and 37-50-314, MCA, and the regulations established thereunder.

~~(1) (2) The AICPA has no program or facilities to evaluate the education of a foreign applicant so that the education can be proved comparable to that required under section 37-50-305, MCA, or for evaluating the licensing examinations of foreign countries or to compare them to the uniform CPA examination. Therefore, reciprocity with holders of endorsement of certificates or licenses from foreign countries will not be recognized."~~

~~Auth: Sec. 37-1-131, 37-50-203, MCA; IMP, Sec. 37-50-311, 37-50-312, MCA~~

"8.54.617 OTHER TECHNICAL STANDARDS (1) A firm or permit holder shall comply with proper technical standards when providing clients with management advisory services or accounting and review services. For purposes of this rule, the technical standards are considered to be defined by pronouncements issued by the American institute of CPA's committees on "Management Advisory Services" and "Accounting and Review Services"."

~~Auth: Sec. 37-50-203, MCA; IMP, Sec. 37-50-203, MCA~~

"8.54.702 ENFORCEMENT AGAINST LICENSEES (1) Pursuant to sections 37-1-136 and 37-50-321, MCA, and the Montana Administrative Procedure Act, the board may revoke any certificate, license or permit issued under Title 37, chapter 50, MCA, suspend any such certificate, license, or permit for a period of not more than one year, refuse to renew such certificate, license or permit, censure or place on probation, any certificate holder, license holder, or permit holder all with or without terms, for any one or more of the following reasons The following terms shall be cause for imposition of disciplinary action:

(a) fraud or deceit in obtaining a certificate, license, or permit;

(b) cancellation, revocation, suspension, or refusal to renew authority to practice as a certified public accountant or a licensed public accountant by any other state for any

cause other than failure to pay a renewal fee or to comply with a continuing professional education requirement in such other states;

(c) will remain the same, but will be renumbered (a).

~~(d) suspension or revocation of the right to practice before any state or federal agency;~~

~~(e) dishonesty, fraud or gross negligence in the practice of public accountancy;~~

(f) will remain the same, but will be renumbered (b).

~~(g) conviction of a felony or of any crime, an element of which is dishonesty or fraud, under the laws of any state of the United States;~~

(h) and (i) will remain the same, but will be renumbered (c) and (d).

~~(j) Reasons (a), (b), (d), (e), (f) and (g) are statutory reasons set forth in section 37-50-321, MCA.~~

~~(k) failure to respond to correspondence from, or comply with, orders of the board.~~

~~(2) In lieu of or in addition to any disciplinary actions specifically provided in subsection (1) of this section, the board may require of a licensee:~~

~~(a) satisfactory completion of such continuing professional education programs the board may specify;~~

~~(b) limitation of the scope of the accounting practice to those functions which the board may specify;~~

~~(c) reimbursement of board costs.~~

~~(3) The board may publish the enforcements implemented against licensees under subsections (1) and (2) of this section whenever the board determines that the public's right to know outweighs the licensee's right of privacy."~~

Auth: Sec. 37-1-131, 37-1-136, 37-1-312, 37-50-203, MCA;  
IMP, Sec. 37-1-136, 37-1-316, 37-1-312, 37-50-203, 37-50-321,  
MCA

#### "8.54.703 ENFORCEMENT PROCEDURES - INVESTIGATIONS

~~(1) The board may conduct investigations of suspected violations of Title 37, chapter 50, MCA or of the rules of the board to determine whether to institute proceedings against any person or firm under sections 37-1-136 and 37-50-321, MCA; but an investigation under this section shall not be a prerequisite to such proceedings.~~

(2) will remain the same, but will be renumbered (1).

~~(3) Upon finding of reasonable cause, the board may direct that notice be issued pursuant to section 37-50-321, MCA. If the subject of the investigation is not a permit holder, the board shall take appropriate action. Upon finding of no reasonable cause, the board shall close the matter and thereafter release information relating thereto only with the consent of the board and of the person or firm under investigation.~~

~~(4) The board may initiate investigation based upon a complaint or upon their own motion.~~

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

~~(6) After making a final determination and the entry of action taken in the public record, the board may exchange information relating to proceedings resulting in disciplinary action against permit holders with the board of accountancy of other states and with other public authorities or private organizations having an interest in such information."~~

Auth: Sec. 37-1-136, 37-1-319, 37-50-203, MCA; IMP, Sec. 37-1-136, 37-1-316, 37-1-319, 37-50-203, 37-50-321, MCA

"8.54.802 BASIC REQUIREMENT (1) will remain the same.

(2) At least 24 hours of the aforementioned 120 hours of acceptable continuing education credit must consist of subjects related to the reporting on financial statements as defined in ARM 8.54.204(1)(c) and (i) ~~in these regulations.~~

(3) As of July 1, 1998, at least four hours of the 120 hours of acceptable continuing education credit must consist of knowledge and the application of board rules and how board unprofessional conduct rules may compare and contrast with the codes of professional conduct of certified public accountant and licensed public accountant primary professional organizations. These four hours are not considered subjects related to the reporting on financial statements required in (2) above.

(3) and (4) will remain the same, but will be renumbered (4) and (5)."

Auth: Sec. 37-1-319, 37-50-201, 37-50-203, MCA; IMP, Sec. 37-1-306, 37-50-203, 37-50-314, MCA

"8.54.809 APPLICATION BY RECIPROCITY OUT-OF-STATE APPLICANTS CONTINUING EDUCATION REQUIREMENT (1) and (2) will remain the same.

(3) Except that such individual's basic continuing education requirements for purposes of this ~~reciprocity section~~ rule shall be no greater than if the individual's initial registration in such other jurisdiction was made in this state as explained in ARM 8.54.808."

Auth: Sec. 37-50-201, 37-50-203, MCA; IMP, Sec. 37-1-306, 37-50-203, 37-50-314, MCA

"8.54.904 FILING OF REPORTS (1) through (1)(d) will remain the same.

(2) The board may require a permit holder to submit workpapers prepared in support of the reports issued in (1)(a) ~~and (b) above.~~

(3) and (4) will remain the same."

Auth: Sec. 37-50-203, MCA; IMP, Sec. 37-50-203, MCA

"8.54.906 REVIEWS AND ENFORCEMENT (1) through (3)(f) will remain the same.

~~(g) certain restrictions on their permit to practice;~~

~~(h) suspension of the permit to practice; or~~

~~(i) revocation of the permit to practice.~~

(g) all other sanctions allowed by 37-1-312, MCA."

Auth: Sec. ~~37-1-319~~, 37-50-203, MCA; IMP, Sec. ~~37-1-312~~, 37-50-203, MCA

REASON: The proposed amendments will implement changes mandated by passage of the Uniform Professional Licensing and Regulation Procedures Act (HB 518), by the 1995 Legislature.

The proposed amendments will also clarify education requirements for current and future examinations, as the requirements change in July 1997 as a new statute becomes effective.

Other amendments clarify language in rules to avoid problems which have been brought to the Board's attention.

ARM 8.54.702 and 8.54.703 eliminated language which is now contained in 37-1-316, MCA. The unprofessional conduct will remain the same, but the language will be contained elsewhere.

3. The Board is proposing to repeal ARM 8.54.615 (authority 37-50-203, MCA; implementing 37-50-203, 37-50-321, MCA), 8.54.704 (authority 37-1-136, 37-50-203, MCA; implementing 37-1-136, 37-50-203, 37-50-321, MCA) and 8.54.705 (authority 37-1-136, 37-50-203, MCA; implementing 37-1-136, 37-50-321, MCA). The text of the rules is located at pages 8-1499, 8-1505 and 8-1506, Administrative Rules of Montana. The reason for the repeal is to implement changes mandated by passage of the Uniform Licensing and Regulation Procedures Act by the 1995 Legislature.

4. The proposed new rules will read as follows:

"I SCREENING PANEL (1) The board screening panel shall consist of three members who shall be the three longest serving professional members of the board. The chairman may reappoint screening panel members, or replace screening panel members as necessary at the chairman's discretion."

Auth: Sec. 37-50-203, MCA; IMP, Sec. 37-1-307, MCA

"II COMPLAINT PROCEDURE (1) A person, government or private entity may submit a written complaint to the board charging a licensee or license applicant with a violation of board statute or rules, and specifying the grounds for the complaint.

(2) Complaints must be in writing, and shall be filed on the proper complaint form prescribed by the board.

(3) Upon receipt of the written complaint form, the board office shall log in the complaint and assign it a complaint number. The complaint shall then be sent to the licensee complained about for a written response. Upon receipt of the licensee's written response, both complaint and response shall be considered by the screening panel of the board for appropriate action including dismissal, investigation, or a finding of reasonable cause of violation of a statute or rule. The board office shall notify both complainant and licensee of the determination made by the screening panel.

(4) If a reasonable cause violation determination is made by the screening panel, the Montana Administrative Procedure Act shall be followed for all disciplinary proceedings undertaken.

(5) The screening panel shall review anonymous complaints to determine whether appropriate investigative or disciplinary action may be pursued, or whether the matter may be dismissed for lack of sufficient information."

Auth: Sec. 37-50-203, MCA; IMP, Sec. 37-1-308, 37-1-309, MCA

"III INACTIVE STATUS AND REACTIVATION (1) A licensee may place the license on inactive status by either indicating on the renewal form that inactive status is desired, or by informing the board office, in writing, that an inactive status is desired, and paying the appropriate fee. It is the sole responsibility of the inactive licensee to keep the board informed as to any change of address during the period of time the license remains on inactive status.

(2) A licensee may not practice accounting in the state of Montana while the license is in an inactive status.

(3) Upon application and payment of the appropriate fee, the board may reactivate an inactive license if the applicant does each of the following:

(a) signifies to the board, in writing, that upon issuance of the active license, the applicant intends to be an active practitioner in the state of Montana;

(b) presents satisfactory evidence that the applicant has complied with the continuing education rules of the board under ARM 8.54.802;

(c) submits certification from the licensing body of all jurisdictions where the licensee is licensed or has practiced that the applicant is in good standing and has not had any disciplinary actions taken against the applicant's license, or if the applicant is not in good standing by that jurisdiction, an explanation of the nature of the violation(s) resulting in that status; including the extent of the disciplinary treatment imposed.

(4) Certificate or license holders who are fully retired from active employment will be exempt from paying annual renewal fees upon submitting an inactive status request form to the board and receiving approval."

Auth: Sec. 37-1-319, 37-50-203, MCA; IMP, Sec. 37-1-319, MCA

REASON: The proposed new rules will implement changes mandated by the passage of House Bill 518, the Uniform Professional Licensing and Regulation Procedures Act, by the 1995 Legislature.

5. Interested persons may submit their data, views or arguments concerning the proposed amendments, repeals and adoptions in writing to the Board of Public Accountants, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by


facsimile to (406) 444-1667, to be received no later than 5:00 p.m., December 19, 1996.

6. If a person who is directly affected by the proposed amendments, repeals and adoptions 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 Public Accountants, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., December 19, 1996.

7. If the Board receives requests for a public hearing on the proposed amendments, repeals and adoptions from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendments, repeals and adoptions, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a 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 302 based on the 3018 licensees in Montana.

BOARD OF PUBLIC ACCOUNTANTS  
JAMES SMRCKA, CHAIRMAN

BY:

  
ANDY POOLE, DEPUTY DIRECTOR  
DEPARTMENT OF COMMERCE

  
CAROL GRELL, RULE REVIEWER

Certified to the Secretary of State, November 8, 1996.

BEFORE THE TRANSPORTATION COMMISSION  
OF THE STATE OF MONTANA

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

TO: All Interested Persons.

1. On December 16, 1996, at 9 a.m., a public hearing will be held in the auditorium of the Department of Transportation building at 2701 Prospect Ave., Helena, Montana, to consider the adoption of new rules I through XV.

2. The proposed new rules provide as follows:

RULE I 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 motorists positive warning of the approach or presence of a train.

(2) "Circuitry" means electronic equipment which activates a signal.

(3) "Damage maintenance cost" means the cost of any crossing signal or activation equipment partially or wholly destroyed where replacement value cannot be obtained from persons responsible for such destruction.

(4) "Diagnostic review" means an on-site evaluation of a public highway railroad at-grade crossing to determine safety needs of a specific crossing.

(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) "Free standing project" means a crossing surface installation on a state route independent of a highway construction project.

(7) "Improved crossing surface" means prefabricated material for placement at a public at-grade crossing to make the crossing surface smoother from end of tie to end of tie.

(8) "Montana department of transportation (MDT)" means the agency set forth in 2-15-2501, MCA.

(9) "Overlay project" means an MDT construction project where the pavement is widened two feet or less on each shoulder.

(10) "Priority index" means a value established using a number of factors to evaluate a public highway railroad at-grade crossing for active traffic control devices.

(11) "Public highway railroad at-grade crossing" means a public roadway as defined in 60-1-103, MCA, which crosses railroad tracks at the same elevation.

(12) "Railroad" means a railroad as defined in 69-14-101 and 61-1-317, MCA, and used appropriately as per section.

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

(14) "Traffic control device" means an official traffic control device as defined in 61-1-403, MCA.

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

RULE II THE DIAGNOSTIC REVIEW PROCESS (1) A diagnostic review will be conducted by a diagnostic review team at the site for each public at-grade railroad crossing considered for:

- (a) Proposed signals;
- (b) Upgrade of existing signals;
- (c) Proposed removal of signals;
- (d) Circuitry upgrade;
- (e) Road approach work;
- (f) Closure;
- (g) Other safety improvements deemed necessary by the diagnostic review team; and
- (h) Interconnection between railroad signals and traffic control signals.

(2) The road authority, railroad or MDT can request a diagnostic review be initiated to address specific or unusual needs at a public at-grade crossing.

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

RULE III INFORMAL REVIEW PROCESS (1) An informal review of a public at-grade crossing can be conducted by an MDT representative and other parties to perform:

- (a) Accident review;
- (b) Corridor study;
- (c) Area safety review; and
- (d) Recommendation to initiate a diagnostic review.

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

RULE IV SIGNALIZATION (1) All public at-grade crossings will be placed on a priority index by MDT. The priority index system is used to rate each public at-grade railroad crossing to determine the sequence in which public at-grade crossings will be considered for signals or additional signal work.

(a) These signal projects are funded by the MDT safety program. This program does not preclude the road authority or railroad paying for railroad signals to be installed at any public at-grade crossing.

(2) Non-signalized public at-grade railroad crossings will be considered for signalization based on the following criteria:

- (a) Available funding;
- (b) The priority index; and
- (c) A recommendation of the diagnostic review team based upon an on-site review.



(3) The diagnostic review team can recommend installation of signals at a non-signalized at-grade railroad crossing independent of the priority index if, in the opinion of the diagnostic review team, safety considerations are such that the public at-grade crossing should be signalized.

(4) The diagnostic review team will determine the scope of signal work which may include the following:

- (a) Installation of flashing light signals, flashing light signals with gates, or cantilever signals;
- (b) Maintaining the existing level of protection;
- (c) Removing an existing signal; or
- (d) Other safety improvements deemed necessary by the diagnostic review team.

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

RULE V ROAD APPROACH WORK (1) The diagnostic review team will determine if road approach work is necessary which may include:

- (a) Constructing the approaches to road authority standards;
- (b) Improving the horizontal and vertical alignment;
- (c) Increasing sight distance; or
- (d) Other safety improvements deemed necessary by the diagnostic review team.

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

RULE VI SIGNAL UPGRADE (1) On a schedule determined by the MDT, all railroad companies will be requested to submit information to MDT concerning existing public at-grade signals which need to be upgraded including the following information:

- (a) Age of the signal circuitry and other signal equipment and availability of parts;

- (b) Condition of the system; and
- (c) Proposed scope of work.

(2) MDT will compile a list of circuitry upgrade projects for all railroads using the following criteria:

- (a) Available federal funding; and
- (b) The recommendation of the railroad companies.

(3) A diagnostic review will be made of each public railroad at-grade crossing considered for circuitry upgrade to determine a scope of work which may include:

- (a) Improving the road geometric design;
- (b) Upgrading the existing signal circuitry or other equipment;
- (c) Installing new signals, gate arms, or cantilevers;
- (d) Improving sight distance;
- (e) Removing the signals; and
- (f) Recommending other safety improvements deemed necessary by a diagnostic review team.

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

RULE VII. SIGNAL REMOVAL (1) A diagnostic review will be conducted to determine the following:

(a) Recommending removal of a signal from a public at-grade crossing, and the level of traffic control required if a signal is removed;

(b) Retaining a signal due to unusual circumstances; and

(c) Recommending other safety improvements deemed necessary by the diagnostic review team.

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

RULE VIII. CROSSING CLOSURE (1) Public highway railroad at-grade crossings should be evaluated for closure by the diagnostic review team to determine the feasibility of closing or consolidating public at-grade crossings. A diagnostic review will be conducted to determine the following:

(a) Crossings to be closed;

(b) Crossings to be opened to facilitate the closure of other crossings;

(c) Road authority and railroad work necessary to accomplish closure;

(d) Cost sharing responsibility; and

(e) Recommending other safety considerations as deemed necessary by the diagnostic review team.

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

RULE IX. SIGNALIZATION HEARINGS (1) If requested by the board of county commissioners under 60-2-121, MCA, the Montana transportation commission shall conduct a public hearing for proposed signalization of any public at-grade railroad crossing.

(2) The Montana transportation commission shall fix a reasonable time for a hearing pursuant to (1) above and give public notice thereof to the county commission, parties requesting notice of the hearing, and the public by publishing notice in a newspaper of general circulation in the community for three consecutive weeks at least 30 and not more than 120 days prior to such hearing.

(3) The hearing may be conducted by a hearings examiner appointed by the Montana transportation commission.

(4) The hearings examiner, if one is appointed, shall make a written recommendation within 30 days to the Montana transportation commission. If no hearings examiner is appointed, the matter shall be heard by the Montana transportation commission. The decision of the Montana transportation commission shall be final.

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

RULE X. CROSSING CLOSURE AND SIGNAL REMOVAL HEARINGS

(1) The road authority will publish a notice of proposed closure of any public at-grade crossing or of proposed removal of a railroad signal for any public highway railroad at-grade crossing in a newspaper of general circulation in the county in

which the closure or signal removal is to be made. The notice of proposed closure or signal removal is to be given not less than 30 days or more than 120 days prior to the proposed closure or signal removal. Publication shall occur on three consecutive weeks.

(2) If requested in writing, by an interested party, railroad, or a government entity, the road authority shall hold a public hearing to determine whether the crossing shall be closed or the signal removed.

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

RULE XI OWNERSHIP AND MAINTENANCE RESPONSIBILITIES FOR PUBLIC AT-GRADE RAIL HIGHWAY CROSSINGS (1) The road authority will own the railroad signal.

(2) The road authority is responsible for installation and maintenance of the roadway, signs and pavement markings. The road authority is responsible for the roadway between multiple tracks.

(3) The road authority will pay for the repair or replacement cost (damage maintenance cost) of the signal and activation equipment in the event of damage and the responsible party for the damage cannot be identified or will not pay.

(4) The railroad is responsible for maintaining the signals and crossbuck signs and the crossing surface from end of the railroad tie to the other end of the railroad tie.

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

RULE XII SIGNAL REARRANGEMENT, RELOCATION, OR ALTERATION RESPONSIBILITY FOR PUBLIC AT-GRADE HIGHWAY CROSSINGS (1) When a project improvement necessitates a rearrangement, relocation, or alteration of the signals at a crossing, the party whose improvement causes such change will pay the cost thereof.

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

RULE XIII IDENTIFICATION OF PUBLIC AT-GRADE CROSSINGS

(1) The railroad company will place and register a U.S. department of transportation number at each public highway railroad at-grade crossing, and notify the MDT. Federal railroad authority rules will be followed for numbering or reassignment of numbers.

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

RULE XIV IMPROVED CROSSING SURFACE PROJECTS, MAJOR CONSTRUCTION OR RECONSTRUCTION PROJECTS (1) The road authority will nominate the improved crossing surface to be installed in conjunction with a road construction project.

(2) All costs associated with the installation will be charged against the project.

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

RULE XV IMPROVED CROSSING SURFACE PROJECTS, OVERLAY CONSTRUCTION PROJECTS AND FREE STANDING PROJECTS (1) The road authority and railroad must agree to the installation of the improved crossing surface.

(2) Construction and cost sharing responsibilities will be allocated as follows:

(a) MDT, using road authority funds, shall pay for the improved crossing surface material;

(b) The railroad, at its expense, will prepare the track roadbed, drainage, and install the crossing surface material;

(c) The roadway through the crossing will be closed to traffic during the installation;

(d) The road authority will install and maintain detours and traffic control;

(e) If a detour requires major construction, the detour construction and necessary traffic control can be charged against the project.

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

3. Adoption of these new rules is necessary because under the authority of chapter 359, Laws of Montana 1989, certain functions formerly under the authority of the Public Service Commission have been transferred to the Montana Transportation Commission requiring the Transportation Commission to adopt rules to prioritize the expenditure of funds on public railroad crossings and conduct public hearings. In addition under 2-3-103, MCA, agencies are to give the public an opportunity to participate in agency decisions that are of significant interest to the public. It is believed that signalization and signal removal and crossing closure are agency decisions of significant interest to the public.

4. 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 Robert Fischer, Utilities Supervisor, Department of Transportation, P.O. Box 201001, Helena, MT 59620-1001, and must be received no later than 5 p.m. on December 20, 1996.

5. Nick A. Rotering has been designated to preside over and conduct the hearing.

MONTANA TRANSPORTATION COMMISSION

By: *Thorm Forseth*  
THORM FORSETH, Chairman

*Lyle Manley*  
Lyle Manley, Rule Reviewer

Certified to the Secretary of State November 1, 1996.

BEFORE THE DEPARTMENT OF PUBLIC  
HEALTH AND HUMAN SERVICES OF THE  
STATE OF MONTANA

In the matter of the amendment	)	NOTICE OF PUBLIC HEARING
of rules 46.12.1222 and	)	ON THE PROPOSED AMENDMENT
46.12.1241 pertaining to	)	OF RULES
provider changes under the	)	
Medicaid nursing facility	)	
services program	)	

TO: All Interested Persons

1. On December 17, 1996 at 9:30 a.m., a public hearing will be held in Room 107 of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment of rules 46.12.1222 and 46.12.1241 pertaining to provider changes under the Medicaid nursing facility services program.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the department no later than 5:00 p.m. on December 9, 1996, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970.

2. The rules as proposed to be amended provide as follows. New language that is being added is underlined. Language that is to be deleted is interlined.

46.12.1222 DEFINITIONS Unless the context requires otherwise, in subchapter 12 the following definitions apply:

(1) and (2) remain the same.

~~(3) "Closely held corporation" is defined as a corporation having 15 or fewer shareholders.~~

(4) through (13) remain the same in text but are renumbered (3) through (12).

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

IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-113, MCA

46.12.1241 CHANGE IN PROVIDER DEFINED (1) Except as provided in (2), a A change in provider will be deemed to have occurred if the events described in any one of the following (1)(a) through (d) occurs:

(1)(a) through (1)(b) remain the same.

(c) For corporation providers, a change in provider occurs where:

~~(i)~~ stock and the associated stockholder rights

representing an interest of more than 50% in the provider's corporation is acquired by an unrelated corporation, or

~~(ii) where the provider corporation is a closely held corporation as defined in ARM 46.12.1222, stock and the associated stockholder rights representing an interest of more than 50% in the provider's corporation is acquired by an unrelated party.~~

(1) (d) through (1) (d) (ii) remain the same.

(2) Regardless of the provisions of (1) through (1) (d), a change in provider will not be deemed to have occurred if the circumstances indicate that:

(a) a related party will acquire, retain or actually exercise substantial influence over the new entity; or

(b) the occurrence or transaction is undertaken primarily for the purpose of triggering a change in provider under this rule.

~~(2) (3)~~ For purposes of this section rule:

(a) "Provider" means the business entity having the right to control and manage the business of the nursing facility.

(b) "Related party" means:

(i) a person who is an owner, partner or stockholder in the current provider and who has a direct or indirect interest of 5% or more or a power, whether or not legally enforceable to directly or indirectly influence or direct the actions or policies of the entity;

~~(ii) A spouse, ancestor, descendant, sibling, uncle, aunt, niece, or nephew of a person described in (3) (b) (i) or a spouse of an ancestor, descendant, sibling, uncle, aunt, niece or nephew of a person described in (3) (b) (i); or~~

~~(iii) a sole proprietorship, partnership, or corporation or other entity in which a spouse, ancestor, descendant, sibling, uncle, aunt, niece, nephew or a spouse of an ancestor, descendant, sibling, uncle, aunt, niece or nephew person described in (3) (b) (i) or (ii) has a direct or indirect interest of 5% or more or a power, whether or not legally enforceable to directly or indirectly influence or direct the actions or policies of the entity.~~

~~(c) "Unrelated corporation" means a corporation that is not a related party and that is controlled and managed by a board of directors comprised of entirely different persons and by different officers. "Unrelated party" means a person or entity that is not a related party.~~

(3) and (4) remain the same in text but are renumbered (4) and (5).

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

IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-113, MCA

3. The proposed rule changes address issues that have arisen in the interpretation and application of ARM 46.12.1241.

The purpose of the change in the provider rules is to define the

occurrences and transactions that will trigger a medicaid nursing facility rate change under the interim rate provisions in ARM 46.12.1243 or use of a more recent cost report for purposes of setting the provider's prospective rate than used for providers generally. If a change in provider occurs, the new provider under some circumstances may be entitled to an interim rate increase based upon more recent cost data or estimates. In addition, the department may set the provider's prospective rate on the next July 1 using a cost report from a period more recent than the generally applicable base period. In some cases, this treatment may result in a substantially higher per diem rate under the medicaid nursing facility services program. Because of the potential rate benefits that may flow from a change in provider, some providers have attempted to use the rule as a "loophole" in the rate system, or as a means of gaining a higher rate without any substantial change in the ownership or control of the facility or business.

The department interprets the current rule to provide that a person or entity is a related party if the "new" provider is the same person as the current provider or if a person who is a 5% or greater owner, partner or stockholder in the current provider is also a 5% or greater owner, partner or stockholder in the "new" provider. Some providers have argued that the current rule does not treat the same person as a related party. For example, under some providers' reading of the current rule, a change in provider would occur where Mr. Jones, who owns 50% of the stock in a corporation, acquires an additional 40% of the stock in the corporation. Under this argument, Mr. Jones would not be a "related party" and the transaction would qualify under the closely held corporation stock transfer provision in ARM 46.12.1241(1)(c)(ii). In essence, the argument is that a person is not a related party to oneself for purposes of the rule.

The department believes that such arguments are contrary to its intent in adopting the current rule and that such interpretations would lead to absurd results. The absurdity of this interpretation is demonstrated by considering and comparing two hypothetical transactions.

In example #1, Mr. Jones owns a 75% interest in ABC Corporation and his spouse, Mrs. Jones, owns a 25% interest in ABC Corporation. XYZ Corporation acquires Mr. Jones' 75% interest, but Mrs. Jones retains her 25% interest. Under these facts, no change in provider has occurred because XYZ Corporation is a related party to ABC Corporation since Mrs. Jones, a spouse of Mr. Jones, has a 5% or more interest in both corporations.

In example #2, Mr. Dickens owns a 75% interest in ABC Corporation and Mrs. Jones, who is unrelated by blood or marriage to Mr. Dickens, owns a 25% interest in ABC Corporation. XYZ Corporation acquires Mrs. Jones' 25% interest, but Mr.

Dickens retains his 75% interest. Under these facts and the provider's proposed interpretation, XYZ Corporation is not a related party to ABC Corporation since Mrs. Jones is not related to herself, and therefore a change in provider has occurred. In example #1, a 75% interest was transferred to a new party and no change in provider occurs, yet in example #2, a change in provider occurs with a mere 25% transfer. This result would be absurd. The department rejects this interpretation of the rule. The proposed changes to the definition of "related party" in proposed ARM 46.12.1241(3)(b)(i) are necessary to remove any question about whether a person is related to oneself for purposes of the rule, and to thereby assure that inappropriate rate increases are not granted to providers under the rule.

The proposed changes to the definition of "related party" are also necessary to specify to whom the spouse, ancestor, descendant, etc., is related for purposes of the rule and to specify the meaning of the term "unrelated party".

The proposed deletion of current ARM 46.12.1241(2)(c) is necessary to remove a requirement for corporate provider changes that the department considers to be too restrictive. The current provision would treat a corporate stock acquisition by another corporation as a related party transaction and would prevent recognition of a change in provider if the two corporations shared any directors or officers. The department believes that rule is too restrictive. Even in transactions involving a complete change in ownership or control, a new entity may wish to maintain some elements of the current management structure to assure continuity of services, to preserve experience or historical knowledge of the operation or for other legitimate reasons. The department does not believe it should deny otherwise appropriate change in provider treatment based upon the retention of some current directors or officers, as long as the other rule requirements are met.

The proposed changes to ARM 46.12.1241(1)(c)(i) and (ii), and 46.12.1222(3) simplify the provision regarding corporate provider changes. The current rule distinguishes between closely held and other corporations. The department believes that this distinction unnecessarily complicates the rule. Use of the same rule for all corporate providers will achieve the department's objectives.

Proposed new ARM 46.12.1241(2) is necessary to prevent the use of this rule as a loophole to obtain rate increases inappropriately. The intent of the change in provider provision is to provide for an appropriate rate adjustment when providers undertake transactions for bona fide business reasons. The rule is not intended to be used as a loophole around which to structure a transaction for the primary purpose of triggering a rate increase. Many transactions are carefully structured to



meet the literal requirements of the definition while violating the spirit of the rule. The proposed rule will permit the department to consider, based upon all of the circumstances, the substance of the transaction in determining whether a change in provider has occurred. Thus, a change in provider would not occur where the circumstances indicate that a related party will acquire, retain or actually exercise substantial influence over the new entity where the occurrence or transaction is undertaken primarily for the purpose of triggering a change in provider under this rule.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604, no later than December 19, 1996.

5. The Office of Legal Affairs, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.

Dawn Sliva  
Rule Reviewer

Michael S. Billings, Jr.  
Director, Public Health and  
Human Services

Certified to the Secretary of State November 8, 1996.

BEFORE THE STATE ELECTRICAL BOARD  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the amendment, ) NOTICE OF AMENDMENT, REPEAL  
repeal and adoption of rules ) AND ADOPTION OF RULES  
pertaining to the electrical ) PERTAINING TO THE ELECTRICAL  
industry ) INDUSTRY

TO: All Interested Persons:

1. On August 8, 1996, the State Electrical Board published a notice of proposed amendment, repeal and adoption of rules pertaining to the electrical industry, at page 2065, 1996 Montana Administrative Register, issue number 15.

2. The Board has amended ARM 8.18.401 through 8.18.404 and 8.18.406 through 8.18.409; repealed ARM 8.18.405; and adopted new rules I (8.18.411), II (8.18.412) and III (8.18.413) exactly as proposed.

3. The Board has thoroughly considered all comments received by September 5, 1996. Those comments, in summary form, and the Board's responses thereto are as follows:

COMMENT NO. 1: One comment was received stating ARM 8.18.407, Fee Schedule, should not raise the renewal fee schedule for journeymen wiremen, and requested a hearing on the proposed change.

RESPONSE: The Board noted that the proposed fee changes were determined by the Board and its staff to ensure that revenues derived from renewal fees would be sufficient to fund the operation of the board, but not be in excess of the board's needs. The fee changes will allow coordination of the Board's needs with the need to keep all aspects of the program running. No extra revenue will be derived from the fee changes.

The Board additionally noted that no public hearing had been scheduled, so as to allow written comment only, and the low number of comments received, three, did not indicate a hearing was generally desired or required under the statutes.

COMMENT NO. 2: One comment was received stating the proposed fee change for renewals was too high for journeymen and residential wiremen, especially since the license is not reciprocal with other states.

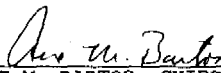
RESPONSE: See response to Comment No. 1 above. The Board also noted that reciprocity was not addressed in these rule changes, and a response is not therefore necessary on that topic at this time.

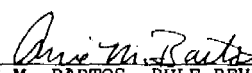
COMMENT NO. 3: One comment was received opposing the proposed fee increase for a journeyman license, as all states surrounding Montana have lower license fees. The comment stated many Montana licensees who do not currently work in Montana will not renew, and the Board will see a loss in license revenues.

RESPONSE: See response to Comment No. 1 above. The Board also noted that Montana's fees are comparable or lower than surrounding states. However, Montana's is a three year renewal, as opposed to many other annual renewals, so the fees are difficult to compare. The information available to the Board does not support the contention that surrounding states' fees are lower.

STATE ELECTRICAL BOARD  
CHARLES T. SWEET, CHAIRMAN

BY:

  
ANNIE M. BARTOS, CHIEF COUNSEL  
DEPARTMENT OF COMMERCE

  
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, November 8, 1996.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
AND THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE STATE OF MONTANA

In the matter of the amendment of )	NOTICE OF
rule 16.8.1906 and the repeal of )	AMENDMENT AND
16.8.301, 401-404, 805, 1104, 1507,) )	REPEAL OF RULES
1601, 1603 and 1904 regarding air )	
quality. )	

(Air Quality)

To: All Interested Persons

1. On August 22, 1996, the board published notice of the proposed amendment and repeal of the above-captioned rules at page 2260 of the Montana Administrative Register, Issue No. 16.

2. The rules were amended and repealed as proposed, with no changes. Although the notice of proposed repeal and amendment was issued by the Board of Environmental Review only, this notice is also issued by the Department of Environmental Quality because the authority to repeal ARM 16.8.1601 and 16.8.1603 lies with the department.

3. No comments were received.

BOARD OF ENVIRONMENTAL REVIEW

  
CINDY E. YUNKIN, Chairperson

DEPARTMENT OF ENVIRONMENTAL QUALITY

  
MARK A. SIMONICH, Director

Reviewed by:

  
JOHN F. NORTH, Rule Reviewer

Certified to the Secretary of State November 8, 1996.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE STATE OF MONTANA

In the matter of the transfer of ) CORRECTED NOTICE  
rules 26.4.101A through 26.4.1830, ) OF TRANSFER  
pertaining to reclamation, with )  
the exception of any repealed ) (Reclamation)  
rules. )

To: All Interested Persons

1. On October 24, 1996, the department filed notice of transfer of the above-captioned rules on page 2852 of the Montana Administrative Register, Issue No. 20. The transfer recodified the rules that implement the mined land reclamation statutes contained in Title 82, Chapter 4, MCA. The recodification was necessary because of the termination of the Department of State Lands and transfer of the reclamation functions of that agency to the newly created Department of Environmental Quality, which has been assigned ARM Title 17. The amendments noticed here pertain to the rules that implement the Montana Strip and Underground Mine Reclamation Act, which were contained within one chapter. Although the Department retained the same subchapters and subchapter numbers for the rules, the Department assigned new numbers for some of the rules within those subchapters. This would have created considerable confusion and inconvenience for coal mine permit holders because most coal mine operating permits are organized by rule and the sections of the permit are labelled using the rule numbers. In addition, within the permits there is considerable cross-referencing by rule number. The typical permit contains 10 to 15 large three ring binders of material. These transfers will retain the Title 26 rule numbering system within each subchapter (with two exceptions) and thereby eliminate the need to either reprint the permits or use an extensive cross-reference table, which would have, over a period of years, been time-consuming for employees of the Department and the permittees. Rule 26.4.1001A will be transferred to 17.24.1018 as this change will have no effect on the permits. Rule 26.4.1301 will not be transferred, but will be repealed at a later date as it has been determined that it is no longer necessary.

2. The Department of Environmental Quality has determined that the transferred rules will be renumbered as follows (number to be changed is interlined, new numbers are underlined):

Sub-Chapters 1 and 2 - same as previous notice  
17.24.301 through 17.24.306 - same as previous notice  
26.4.308     ~~17-24.310~~     17.24.308     Operations Plan  
26.4.310     ~~17-24.311~~     17.24.310     Blasting Plan  
26.4.311     ~~17-24.312~~     17.24.311     Air Pollution Control Plan  
26.4.312     ~~17-24.313~~     17.24.312     Fish and Wildlife Plan  
26.4.313     ~~17-24.314~~     17.24.313     Reclamation Plan  
26.4.314     ~~17-24.315~~     17.24.314     Plan for Protection of the  
   Hydrologic Balance  
26.4.315     ~~17-24.316~~     17.24.315     Plan for Ponds and  
   Embankments  
26.4.316     ~~17-24.317~~     17.24.316     Strip or Underground Mining  
   Near Underground Mining

26.4.317	<del>17.24.318</del>	<del>17.24.317</del>	Diversions
26.4.318	<del>17.24.319</del>	<del>17.24.318</del>	Protection of Public Parks and Historic Places
26.4.319	<del>17.24.320</del>	<del>17.24.319</del>	Relocation or Use of Public Roads
26.4.320	<del>17.24.321</del>	<del>17.24.320</del>	Plans for Disposal of Excess Spoil
26.4.321	<del>17.24.322</del>	<del>17.24.321</del>	Transportation Facilities Plan
26.4.322	<del>17.24.323</del>	<del>17.24.322</del>	Coal Conservation Plan
26.4.323	<del>17.24.324</del>	<del>17.24.323</del>	Grazing Plan
26.4.324	<del>17.24.325</del>	<del>17.24.324</del>	Prime Farmlands: Special Application Requirements
26.4.325	<del>17.24.330</del>	<del>17.24.325</del>	Coal Mining Operations on Areas or Adjacent to Areas Including Alluvial Valley Floors: Special Application Requirements
26.4.326	<del>17.24.331</del>	<del>17.24.326</del>	Auger Mining: Special Application Requirements
26.4.327	<del>17.24.332</del>	<del>17.24.327</del>	Coal Processing Plants and Support Facilities Not Located Within the Mine Permit Area: Special Application Requirements
Sub-Chapter 4 - Same as previous notice			
17.24.501	- Same as previous notice		
26.4.501A	<del>17.24.502</del>	<del>17.24.501A</del>	Final Grading Requirements
26.4.502	<del>17.24.503</del>	<del>17.24.502</del>	Cut-and-Fill Terraces
26.4.503	<del>17.24.504</del>	<del>17.24.503</del>	Small Depressions
26.4.504	<del>17.24.505</del>	<del>17.24.504</del>	Permanent Impoundments
26.4.505	<del>17.24.506</del>	<del>17.24.505</del>	Burial and Treatment of Waste Materials
17.24.507	- Same as previous notice		
17.24.510	- Same as previous notice		
26.4.514	<del>17.24.511</del>	<del>17.24.514</del>	Contouring
26.4.515	<del>17.24.512</del>	<del>17.24.515</del>	Highwall Reduction
26.4.516	<del>17.24.513</del>	<del>17.24.516</del>	Adjacent Strip and Underground Mining Operations
26.4.517	<del>17.24.514</del>	<del>17.24.517</del>	Slides and Other Damage
26.4.518	<del>17.24.515</del>	<del>17.24.518</del>	Buffer Zones
26.4.519	<del>17.24.516</del>	<del>17.24.519</del>	Monitoring for Settlement
26.4.519A	<del>17.24.517</del>	<del>17.24.519A</del>	Thick Overburden and Excess Spoil
26.4.520	<del>17.24.518</del>	<del>17.24.520</del>	Disposal of Excess Spoil
26.4.521	<del>17.24.526</del>	<del>17.24.521</del>	Temporary Cessation of Operations
26.4.522	<del>17.24.527</del>	<del>17.24.522</del>	Permanent Cessation of Operations
26.4.523	<del>17.24.528</del>	<del>17.24.523</del>	Coal Fires
26.4.524	<del>17.24.529</del>	<del>17.24.524</del>	Signs and Markers
17.24.601 through 17.24.634	- Same as previous notice		
26.4.635	<del>17.24.640</del>	<del>17.24.635</del>	General Requirements for Temporary and Permanent Diversion of Overland Flow, Through Flow, Shallow Ground Water Flow, and Ephemeral, Intermittent and Perennial Streams
26.4.636	<del>17.24.641</del>	<del>17.24.636</del>	Special Requirements for

		Temporary Diversions
26.4.637	<del>17-24-642</del>	<del>17.24.637</del> Special Requirements for Permanent Diversions
26.4.638	<del>17-24-643</del>	<del>17.24.638</del> Sediment Control Measures
26.4.639	<del>17-24-644</del>	<del>17.24.639</del> Sedimentation Ponds and Other Treatment Facilities
26.4.640	<del>17-24-645</del>	<del>17.24.640</del> Discharge Structures
26.4.641	<del>17-24-646</del>	<del>17.24.641</del> Acid- and Toxic-Forming Spoils
26.4.642	<del>17-24-647</del>	<del>17.24.642</del> Permanent and Temporary Impoundments
26.4.643	<del>17-24-650</del>	<del>17.24.643</del> Ground Water Protection
26.4.644	<del>17-24-651</del>	<del>17.24.644</del> Protection of Ground Water Recharge
26.4.645	<del>17-24-652</del>	<del>17.24.645</del> Ground Water Monitoring
26.4.646	<del>17-24-653</del>	<del>17.24.646</del> Surface Water Monitoring
26.4.647	<del>17-24-654</del>	<del>17.24.647</del> Transfer of Wells
26.4.648	<del>17-24-655</del>	<del>17.24.648</del> Water Rights and Replacement
26.4.649	<del>17-24-656</del>	<del>17.24.649</del> Discharge of Water into Underground Mines
26.4.650	<del>17-24-657</del>	<del>17.24.650</del> Post-mining Rehabilitation of Sedimentation Ponds, Diversions, Impoundments, and Treatment Facilities
26.4.651	<del>17-24-658</del>	<del>17.24.651</del> Stream Channel Disturbances and Buffer Zones
26.4.652	<del>17-24-659</del>	<del>17.24.652</del> Wells and Underground Openings: Safety
17.24.701 through 17.24.703		- Same as previous notice
26.4.711	<del>17-24-704</del>	<del>17.24.711</del> Establishment of Vegetation
26.4.713	<del>17-24-705</del>	<del>17.24.713</del> Timing of Seeding and Planting
26.4.714	<del>17-24-706</del>	<del>17.24.714</del> Cover Crops and Mulching
26.4.716	<del>17-24-707</del>	<del>17.24.716</del> Method of Revegetation
26.4.717	<del>17-24-708</del>	<del>17.24.717</del> Planting of Trees
26.4.718	<del>17-24-709</del>	<del>17.24.718</del> Soil Amendments and Other Management Techniques
26.4.719	<del>17-24-710</del>	<del>17.24.719</del> Livestock Grazing
26.4.720	<del>17-24-715</del>	<del>17.24.720</del> Annual Inspections for Revegetated Areas
26.4.721	<del>17-24-716</del>	<del>17.24.721</del> Eradication of Rills and Gullies
26.4.723	<del>17-24-717</del>	<del>17.24.723</del> Monitoring
26.4.724	<del>17-24-719</del>	<del>17.24.724</del> Use of Revegetative Comparison Standards
26.4.725	<del>17-24-720</del>	<del>17.24.725</del> Periods of Responsibility
26.4.726	<del>17-24-721</del>	<del>17.24.726</del> Vegetation Production in Cover, Diversity, Density and Utility Requirements
26.4.728	<del>17-24-722</del>	<del>17.24.728</del> Composition of Vegetation
17.24.730 through 17.24.733		- Same as previous notice
26.4.751	<del>17-24-740</del>	<del>17.24.751</del> Protection and Enhancement of Fish, Wildlife, and Related Environmental Values
26.4.761	<del>17-24-741</del>	<del>17.24.761</del> Air Resources Protection
26.4.762	<del>17-24-742</del>	<del>17.24.762</del> Post-mining Land Use

26.4.763	<del>17.24.743</del>	<u>17.24.763</u>	Coal Conservation
17.24.801 and 17.24.802	- Same as previous notice		
26.4.804	<del>17.24.803</del>	<u>17.24.804</u>	Alluvial Valley Floors: Monitoring
26.4.805	<del>17.24.804</del>	<u>17.24.805</u>	Alluvial Valley Floors: Significance Determination
26.4.806	<del>17.24.805</del>	<u>17.24.806</u>	Alluvial Valley Floors: Material Damage Determination
26.4.811	<del>17.24.810</del>	<u>17.24.811</u>	Prime Farmland: Soil Handling
26.4.815	<del>17.24.811</del>	<u>17.24.815</u>	Prime Farmlands: Revegetation
26.4.821	<del>17.24.816</del>	<u>17.24.821</u>	Alternate Reclamation: Submission of Plan
26.4.823	<del>17.24.817</del>	<u>17.24.823</u>	Alternate Reclamation: Approval of Plan and Review of Operation
26.4.824	<del>17.24.818</del>	<u>17.24.824</u>	Alternate Reclamation: Alternate Post-mining Land Uses
26.4.825	<del>17.24.819</del>	<u>17.24.825</u>	Alternate Reclamation: Alternate Revegetation
26.4.831	<del>17.24.825</del>	<u>17.24.831</u>	Auger Mining: General Requirements
26.4.832	<del>17.24.826</del>	<u>17.24.832</u>	Auger Mining: Specific Performance Standards
26.4.833	<del>17.24.827</del>	<u>17.24.833</u>	Auger Mining: Requirements for Permit
17.24.834 through 17.24.837	- Same as previous notice		
17.24.901 through 17.24.904	- Same as previous notice		
26.4.907	<del>17.24.905</del>	<u>17.24.907</u>	In Situ Uranium Processing Operation Performance Standards
26.4.911	<del>17.24.906</del>	<u>17.24.911</u>	Subsidence Control
26.4.912	<del>17.24.907</del>	<u>17.24.912</u>	Buffer Zones
26.4.920	<del>17.24.915</del>	<u>17.24.920</u>	Placement and Disposal of Underground Development Waste: Special Application Requirements
26.4.924	<del>17.24.916</del>	<u>17.24.924</u>	Disposal of Underground Development Waste: General Requirements
26.4.925	<del>17.24.917</del>	<u>17.24.925</u>	Disposal of Underground Development Waste: Valley Fill
26.4.926	<del>17.24.918</del>	<u>17.24.926</u>	Disposal of Underground Development Waste: Head-of-Hollow Fill
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26.4.1003	<del>17.24.1006</del>	<u>17.24.1003</u>	Renewal of Permits



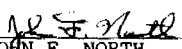
26.4.1004	<del>17.24.1007</del>	<del>17.24.1004</del>	Environmental Monitoring
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26.4.1013	<del>17.24.1016</del>	<del>17.24.1013</del>	Drilling
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26.4.1017	<del>17.24.1021</del>	<del>17.24.1017</del>	Bond Release Procedures for Drilling Operations
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26.4.1108	<del>17.24.1111</del>	<del>17.24.1108</del>	Bonding: Certificates of Deposit
26.4.1109	<del>17.24.1112</del>	<del>17.24.1109</del>	Bonding: Letters of Credit
26.4.1110	<del>17.24.1113</del>	<del>17.24.1110</del>	Bonding: Replacement of Bond
26.4.1111	<del>17.24.1114</del>	<del>17.24.1111</del>	Bonding: Bond Release Application Contents
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26.4.1113	<del>17.24.1116</del>	<del>17.24.1113</del>	Bonding: Inspection of Site and Public Hearing or Informal Conference
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26.4.1115	<del>17.24.1118</del>	<del>17.24.1115</del>	Bonding: Hearing on Bond Release Decision
26.4.1116	<del>17.24.1119</del>	<del>17.24.1116</del>	Bonding: Criteria and Schedule for Release of Bond
26.4.1116A	<del>17.24.1125</del>	<del>17.24.1116A</del>	Reassertion of Jurisdiction
26.4.1117	<del>17.24.1126</del>	<del>17.24.1117</del>	Bonding: Procedure for Forfeiture
26.4.1118	<del>17.24.1127</del>	<del>17.24.1118</del>	Bonding: Effect of Forfeiture
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Sub-Chapter 18 - Same as		previous notice

Reviewed by:

  
JOHN F. NORTH  
Rule Reviewer

  
MARK A. SIMONICH, Director  
Department of Environmental Quality

Certified to the Secretary of State November 8, 1996.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF  
rules 26.4.301 and 26.4.1303, and ) AMENDMENT AND  
repeal of 26.4.121-132, 26.4.221- ) REPEAL OF RULES  
232, and 26.4.1231-1242, for the )  
abandoned mine reclamation program.)

(Abandoned Mines)

To: All Interested Persons

1. On August 22, 1996, the Board published notice of proposed amendment and repeal of the above-captioned rules at page 2265 of the Montana Administrative Register, Issue No. 16.

2. The rules were amended and repealed as proposed, with the following changes:

26.4.301 DEFINITIONS The following definitions apply to all terms used in the Strip and Underground Mine Reclamation Act and subchapters 3 through 13 of this chapter:

~~(1) "Abandoned mine land reclamation fund" means the fund defined in ARM 26.4.1231(1).~~

~~(1)(2) "Abandoned" is defined in 82-4-203, MCA, and ARM 26.4.1231(1).~~

(3)-(36) Remain the same but are renumbered (2)-(35).

~~(37) "Emergency" is defined in ARM 26.4.1231(2).~~

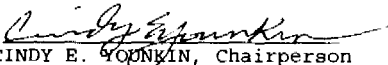
(38)-(40) Remain the same but are renumbered ((36)-(38).

~~(41) "Extreme danger" is defined in ARM 26.4.1241(4).~~

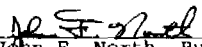
(42)-(138) Remain the same but are renumbered (39)-(133).

3. No comments were received on the rules, but the department found that they should have deleted three other sections in the definitions rule (26.4.301 (1), (37), and (41)) since those definitions refer to a rule that is being repealed. Therefore, ARM 26.4.301 was further amended.

BOARD OF ENVIRONMENTAL REVIEW

by   
CINDY E. YOUNKIN, Chairperson

Reviewed by

  
John F. North, Rule Reviewer

Certified to the Secretary of State November 8, 1996.

BEFORE THE DEPARTMENT OF PUBLIC  
HEALTH AND HUMAN SERVICES OF THE  
STATE OF MONTANA

In the matter of the repeal of	)	NOTICE OF THE
rules 11.2.101, 11.2.102,	)	REPEAL OF RULES
16.2.216, 16.2.218, 46.2.301,	)	
46.2.302 and 46.2.320	)	
pertaining to department	)	
procedures	)	

TO: All Interested Persons

1. On September 19, 1996, the Department of Public Health and Human Services published notice of the proposed repeal of rules 11.2.101, 11.2.102, 16.2.216, 16.2.218, 46.2.301, 46.2.302 and 46.2.320 pertaining to department procedures at page 2423 of the 1996 Montana Administrative Register, issue number 18.

2. The Department has repealed rules 11.2.101, 11.2.102, 16.2.216, 16.2.218, 46.2.301, 46.2.302 and 46.2.320 pertaining to department procedures as proposed.

3. No comments or testimony were received.

*Juan Gilia*  
Rule Reviewer

*Michael S. Bielins Jr*  
Director, Public Health and  
Human Services

Certified to the Secretary of State November 8, 1996.

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      | 1. Consult ARM topical index.                 |
| Subject    | Update the rule by checking the accumulative  |
| Matter     | table and the table of contents in the last   |
|            | Montana Administrative Register issued.       |
| Statute    | 2. Go to cross reference table at end of each |
| Number and | title which lists MCA section numbers and     |
| Department | 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 June 30, 1996. This table includes those rules adopted during the period July 1, 1996 through September 30, 1996 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 June 30, 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 1995 and 1996 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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- 6.6.2007 and other rules - Unfair Trade Practices on Cancellations, Non-renewals, or Premium Increases of Casualty or Property Insurance, p. 869, 1370, 2159
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- 6.6.8301 Updating References to the NCCI Basic Manual for Workers Compensation and Employers Liability Insurance, 1996 ed., p. 1348, 1827
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## BOARD APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the *Montana Administrative Register* a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments effective in October 1996, appear. Vacancies scheduled to appear from December 1, 1996, through February 28, 1997, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

### IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of November 1, 1996.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

BOARD AND COUNCIL APPOINTEES FROM OCTOBER, 1996

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Sanitarians (Commerce)	Governor	Switzer	10/4/1996
Mr. John Shea			7/1/1999
Anaconda			
Qualifications (if required):	public member		
Board of Outfitters (Commerce)	Governor	not listed	10/1/1996
Ms. Rita Orr			10/1/1999
Libby			
Qualifications (if required):	public member		
Flathead Basin Commission (Governor)	Governor	Allison	10/9/1996
Mr. Paul Smiley			6/30/1999
Columbia Falls			
Qualifications (if required):	public member		
Historical Preservation Review Board (Historical Society)	Governor	Olsen	10/1/1996
Mr. Steve Aaberg			10/1/2000
Lewistown			
Qualifications (if required):	archeologist		
Mr. Dennis L. Deppmeier	Governor	reappointed	10/1/1996
Billings			10/1/2000
Qualifications (if required):	historical architect		
Mr. Kirk Michels	Governor	reappointed	10/1/1996
Livingston			10/1/2000
Qualifications (if required):	architectural historian		
Montana Research and Development Task Force (Commerce)	Governor	not listed	10/24/1996
Mr. George Carlson			12/31/1996
Great Falls			
Qualifications (if required):	public member		

BOARD AND COUNCIL APPOINTEES FROM OCTOBER, 1996

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Research and Development Task Force (Commerce) Cont.			
Ms. Elinor Edmonds	Governor	not listed	10/24/1996
Helena			12/31/1996
Qualifications (if required):	public member		
Dr. Edwin Gaffney II	Governor	not listed	10/24/1996
Billings			12/31/1996
Qualifications (if required):	public member		
Mr. Claude Garon	Governor	not listed	10/24/1996
Hamilton			12/31/1996
Qualifications (if required):	public member		
Sen. Don Hargrove	Governor	not listed	10/24/1996
Belgrade			12/31/1996
Qualifications (if required):	public member		
Rep. Hal Harper	Governor	not listed	10/24/1996
Helena			12/31/1996
Qualifications (if required):	public member		
Mr. Ralph Hutcheson	Governor	not listed	10/24/1996
Bozeman			12/31/1996
Qualifications (if required):	public member		
Ms. Frances Lefcort	Governor	not listed	10/24/1996
Bozeman			12/31/1996
Qualifications (if required):	public member		
Mr. Don Peoples	Governor	not listed	10/24/1996
Butte			12/31/1996
Qualifications (if required):	public member		

BOARD AND COUNCIL APPOINTEES FROM OCTOBER, 1996

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Research and Development Task Force (Commerce) Cont.			
Mr. Rick Sampson	Governor	not listed	10/24/1996
Dagmar			12/31/1996
Qualifications (if required):	public member		
Mr. Leland Walker	Governor	not listed	10/24/1996
Great Falls			12/31/1996
Qualifications (if required):	public member		
Ms. Pauline Wood	Governor	not listed	10/24/1996
Butte			12/31/1996
Qualifications (if required):	public member		
Peace Officers Standards and Training Advisory Council (Justice)			
Mr. Mark Lerum	Governor	McGee	10/7/1996
Helena			2/15/1998
Qualifications (if required):	representing the Montana Police Protective Association		
Water and Wastewater Operators Advisory Council (Environmental Quality)			
Mr. Michael Holzworth	Governor	not listed	10/16/1996
Colstrip			10/16/2002
Qualifications (if required):	wastewater treatment plant operator		

VACANCIES ON BOARDS AND COUNCILS -- December 1, 1996 through February 28, 1997

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Agricultural Advisory Council (Revenue)		
Ms. Beth Murphy, Great Falls	Governor	1/23/1997
Qualifications (if required): representing urban interests		
Ms. Nancy Espy, Broadus	Governor	1/23/1997
Qualifications (if required): representing local government		
Mr. Mike Murphy, Helena	Governor	1/23/1997
Qualifications (if required): representing irrigation interests		
Mr. Myles Watts, Bozeman	Governor	1/23/1997
Qualifications (if required): representing Montana State University, College of Agriculture		
Mr. Mark Rasmussen, Hogeland	Governor	1/23/1997
Qualifications (if required): representing non-irrigated cropland interests		
Rep. Linda J. Nelson, Medicine Lake	Governor	1/23/1997
Qualifications (if required): State Senator and a Democrat		
Mr. Tim Gill, Helena	Governor	1/23/1997
Qualifications (if required): representing financial interests		
Rep. John 'Sam' Rose, Choteau	Governor	1/23/1997
Qualifications (if required): State Representative and a Republican		
Mr. Don Jenni, Lewistown	Governor	1/23/1997
Qualifications (if required): representing grazing interests		

VACANCIES ON BOARDS AND COUNCILS -- December 1, 1996 through February 28, 1997

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Alfalfa Seed Committee</b> (Agriculture) Mr. Tom Helm, Toston Qualifications (if required): representing Montana Seed Growers Association	Governor	12/21/1996
Mr. Kenneth M. Sagmiller, Ronan Qualifications (if required): represents Montana Seed Trade Association	Governor	12/21/1996
<b>Appellate Defender Commission</b> (Administration) Mr. Mark Parker, Billings Qualifications (if required): attorney	Governor	1/1/1997
<b>Blue Ribbon Telecommunications Task Force</b> (Administration) Ms. Cheryl Beatty, Anaconda Qualifications (if required): public member	Governor	1/1/1997
Mr. Mike Strand, Helena Qualifications (if required): public member	Governor	1/1/1997
Mr. Bill Cochran, Billings Qualifications (if required): public member	Governor	1/1/1997
Mr. Jeff Tabor, Billings Qualifications (if required): public member	Governor	1/1/1997
Ms. Dixie Swenson, Bozeman Qualifications (if required): ex-officio member	Governor	1/1/1997
Mr. Jim Hayhurst, Helena Qualifications (if required): public member	Governor	1/1/1997
Mr. Jim Pool, Helena Qualifications (if required): public member	Governor	1/1/1997

VACANCIES ON BOARDS AND COUNCILS -- December 1, 1996 through February 28, 1997

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Blue Ribbon Telecommunications Task Force (Administration) Cont.		
Mr. Patrick Hogan, Butte	Governor	1/1/1997
Qualifications (if required): ex-officio member		
Ms. Doris Barta, Billings	Governor	1/1/1997
Qualifications (if required): public member		
Mr. Tony Herbert, Helena	Governor	1/1/1997
Qualifications (if required): ex-officio member		
Mr. Fred Lark, Lewistown	Governor	1/1/1997
Qualifications (if required): ex-officio member		
Ms. Joan Mandeville, Great Falls	Governor	1/1/1997
Qualifications (if required): public member		
Mr. Jim Ereaux, Pablo	Governor	1/1/1997
Qualifications (if required): public member		
Ms. Cathy Brightwell, Helena	Governor	1/1/1997
Qualifications (if required): public member		
Mr. Danny Oberg, Helena	Governor	1/1/1997
Qualifications (if required): ex-officio member		
Dr. John Cleveland, Missoula	Governor	1/1/1997
Qualifications (if required): ex-officio member		
Mr. David Owen, Helena	Governor	1/1/1997
Qualifications (if required): ex-officio member		
Ms. Cynthia Denton, Hobson	Governor	1/1/1997
Qualifications (if required): public member		

VACANCIES ON BOARDS AND COUNCILS -- December 1, 1996 through February 28, 1997

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Blue Ribbon Telecommunications Task Force (Administration) Cont.		
Mr. Tim Sweeney, Helena Qualifications (if required): ex-officio member	Governor	1/1/1997
Mr. Marc Wilson, Bigfork Qualifications (if required): ex-officio member	Governor	1/1/1997
Lieutenant Billi Heigh, Helena Qualifications (if required): ex-officio member	Governor	1/1/1997
Mr. Edward Van Tighem, Great Falls Qualifications (if required): ex-officio member	Governor	1/1/1997
Ms. B.J. Hawkins, White Sulphur Springs Qualifications (if required): ex-officio member	Governor	1/1/1997
Board of Aeronautics (Transportation)		
Mr. Byron Bayers, Twin Bridges Qualifications (if required): represents County Commissioners Association	Governor	1/1/1997
Mr. Joel Fenger, Chester Qualifications (if required): represents Montana Chamber of Commerce	Governor	1/1/1997
Mr. Douglas Freeman, Hardin Qualifications (if required): represents Montana League of Cities and Towns and an attorney	Governor	1/1/1997
Mr. Fred Booth, Highwood Qualifications (if required): represents Montana Pilots' Association	Governor	1/1/1997
Mr. Ronald S. Mercer, Helena Qualifications (if required): represents Montana Airport Management Association	Governor	1/1/1997



VACANCIES ON BOARDS AND COUNCILS -- December 1, 1996 through February 28, 1997

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Chiropractors (Commerce)		
Dr. Karlene Berish, Billings	Governor	1/1/1997
Qualifications (if required): chiropractor		
Board of Crime Control (Justice)		
Mr. Don Bjertness, Billings	Governor	1/1/1997
Qualifications (if required): public member		
Mr. Rick Day, Helena	Governor	1/1/1997
Qualifications (if required): represents Department of Corrections and Human Services		
Ms. Elaine Allestad, Big Timber	Governor	1/1/1997
Qualifications (if required): county commissioner		
Chief Mike Shortell, Havre	Governor	1/1/1997
Qualifications (if required): represents Chief of Police		
Mr. John Flynn, Townsend	Governor	1/1/1997
Qualifications (if required): represents county attorneys		
Sheriff Bill Slaughter, Bozeman	Governor	1/1/1997
Qualifications (if required): represents sheriffs		
Mr. John Pfaff Jr., Whitefish	Governor	1/1/1997
Qualifications (if required): private citizen		
Mr. Ken Stuker, Helena	Governor	1/1/1997
Qualifications (if required): educator with interest and knowledge in prevention/education as it relates to justice issues		
Mr. Jean A. Turnage, Helena	Governor	1/1/1997
Qualifications (if required): represents Supreme Court		

VACANCIES ON BOARDS AND COUNCILS -- December 1, 1996 through February 28, 1997

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Crime Control (Justice) Cont. Judge Dorothy B. McCarter, Helena Qualifications (if required): judge	Governor	1/1/1997
Board of Dentistry (Commerce) Ms. Fern Planagan, Helena Qualifications (if required): public member and senior citizen	Governor	1/4/1997
Board of Environmental Review (Environmental Quality) Mr. Joe Gerbase, Billings Qualifications (if required): representing planners	Governor	12/31/1996
Mr. Russell Hudson, Libby Qualifications (if required): public member	Governor	12/31/1996
Mr. Roger Perkins, Laurel Qualifications (if required): hydrologist	Governor	12/31/1996
Dr. Garon Smith, Missoula Qualifications (if required): scientist	Governor	12/31/1996
Board of Hail Insurance (Agriculture) Auditor Mark O'Keefe, Helena Qualifications (if required): state auditor	Governor	1/1/1997
Board of Health and Environmental Sciences (Health and Environmental Sciences) Ms. Verna Green, Helena Qualifications (if required): active interest in public health and economical welfare in state	Governor	1/1/1997
Dr. Raymond W. "Rib" Gustafson, Conrad Qualifications (if required): doctor of veterinary medicine licensed in state	Governor	1/1/1997

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VACANCIES ON BOARDS AND COUNCILS -- December 1, 1996 through February 28, 1997

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Health and Environmental Sciences (Health and Environmental Sciences) Cont. Dr. Frank Munshower, Bozeman Qualifications (if required): public member	Governor	1/1/1997
Dr. P.L. Kathrein, Great Falls Qualifications (if required): licensed professional in a human health service	Governor	1/1/1997
Board of Horseracing (Commerce) Dr. James A. Scott, Great Falls Qualifications (if required): represents District 3	Governor	1/20/1997
Ms. Isabelle Devlin, Terry Qualifications (if required): represents District 1	Governor	1/20/1997
Board of Housing (Commerce) Mr. William H. Oser, Billings Qualifications (if required): public member	Governor	1/1/1997
Mr. Paul Bankhead, Heron Qualifications (if required): public member	Governor	1/1/1997
Mr. Michael E. McKee, Hamilton Qualifications (if required): public member	Governor	1/1/1997
Mr. Robert J. Savage, Sidney Qualifications (if required): attorney	Governor	1/1/1997
Board of Investments (Commerce) Mr. James E. Cowan, Seeley Lake Qualifications (if required): represents Teachers' Retirement Board	Governor	1/1/1997
Mr. Bill Price, Lewistown Qualifications (if required): public member	Governor	1/1/1997

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VACANCIES ON BOARDS AND COUNCILS -- December 1, 1996 through February 28, 1997

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Board of Investments (Commerce) Cont.</b> Mr. Troy W. McGee, Jr., Helena Qualifications (if required): represents public employee retirement	Governor	1/1/1997
Ms. Sharon Walker, Helena Qualifications (if required): public member	Governor	1/1/1997
Mr. Warren Vaughan, Billings Qualifications (if required): public member	Governor	1/1/1997
<b>Board of Labor Appeals (Labor and Industry)</b> Mr. Daniel Johns, Kalispell Qualifications (if required): member not an employee of state government	Governor	1/1/1997
Mr. Joseph E. Thares, Helena Qualifications (if required): member not an employee of state government	Governor	1/1/1997
<b>Board of Natural Resources and Conservation (Natural Resources and Conservation)</b> Ms. Mary Ann Sharon, Dillon Qualifications (if required): attorney	Governor	1/1/1997
Mr. Barton Cooper, Boulder Qualifications (if required): public member	Governor	1/1/1997
Dr. John Brower, Butte Qualifications (if required): public member	Governor	1/1/1997
Ms. Mary Hinebauch, Rosebud Qualifications (if required): public member	Governor	1/1/1997
<b>Board of Occupational Therapy Practice (Commerce)</b> Ms. Linda Botten, Bozeman Qualifications (if required): occupational therapist	Governor	12/31/1996

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VACANCIES ON BOARDS AND COUNCILS -- December 1, 1996 through February 28, 1997

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Board of Oil and Gas Conservation</b> (Natural Resources and Conservation)		
Ms. Judy Ireland, Shelby	Governor	1/1/1997
Qualifications (if required): represents public at large		
<b>Mr. David Ballard, Billings</b>		
Qualifications (if required): represents oil and gas industry	Governor	1/1/1997
<b>Mr. Stanley Lund, Reserve</b>		
Qualifications (if required): represents public at large	Governor	1/1/1997
<b>Mr. George Galuska, Billings</b>		
Qualifications (if required): represents oil and gas industry	Governor	1/1/1997
<b>Board of Pardons</b> (Corrections and Human Services)		
Ms. Julene P. Kennerly, Browning	Governor	1/2/1997
Qualifications (if required): has knowledge of Native American issues		
<b>Mr. John G. Thomas, Helena</b>		
Qualifications (if required): none specified	Governor	1/2/1997
<b>Ms. Mary Jo Fox, Billings</b>		
Qualifications (if required): auxiliary member	Governor	1/1/1997
<b>Board of Passenger Tramway Safety</b> (Commerce)		
Mr. Kevin Taylor, Marysville	Governor	1/1/1997
Qualifications (if required): ski area operator		
<b>Mrs. Helen Nelson, Kalispell</b>		
Qualifications (if required): skiing public member	Governor	1/1/1997

VACANCIES ON BOARDS AND COUNCILS -- December 1, 1996 through February 28, 1997

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Board of Personnel Appeals</b> (Labor and Industry) Mr. Brad Talcott, Great Falls Qualifications (if required): represents general labor-management	Governor	1/1/1997
Mr. Thomas Schneider, Helena Qualifications (if required): represents labor	Governor	1/1/1997
Mr. Steven R. Henry, Billings Qualifications (if required): represents labor	Governor	1/1/1997
<b>Board of Physical Therapy Examiners</b> (Commerce) Mr. John Delano, Helena Qualifications (if required): public member	Governor	1/1/1997
Dr. Allen Weinert, Jr., Helena Qualifications (if required): medical doctor	Governor	1/1/1997
Ms. Christine Jensen, Clinton Qualifications (if required): public member	Governor	1/1/1997
<b>Board of Public Education</b> (Education) Mr. Ronald N. Fernelius, Missoula Qualifications (if required):	Governor	1/1/1997
<b>Board of Regents of Higher Education</b> (Education) Mr. Kermit R. Schwanke, Missoula Qualifications (if required): Republican from Western Congressional District	Governor	2/1/1997
<b>Board of Respiratory Care Practitioners</b> (Commerce) Mr. John H. Gildersleeve, Helena Qualifications (if required): respiratory care practitioner	Governor	1/1/1997

VACANCIES ON BOARDS AND COUNCILS -- December 1, 1996 through February 28, 1997

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Board of Respiratory Care Practitioners (Commerce) Cont.</b>		
Mr. Paul A. Bergman, Miles City Qualifications (if required): public member	Governor	1/1/1997
Ms. Iris L. Bungay, Cut Bank Qualifications (if required): respiratory care practitioner	Governor	1/1/1997
<b>Board of Science and Technology Development (Commerce)</b>		
Mr. Loren Smith, Great Falls Qualifications (if required): public sector representative	Governor	1/1/1997
<b>Board of Social Work Examiners and Professional Counselors (Commerce)</b>		
Mr. Ervin Booth, Roundup Qualifications (if required): licensed professional counselor	Governor	1/1/1997
Ms. Mary Meis, Conrad Qualifications (if required): licensed professional social worker	Governor	1/1/1997
Mr. Patrick Wolberd, Billings Qualifications (if required): licensed social worker	Governor	1/1/1997
Mr. C. James Armstrong, Fort Harrison Qualifications (if required): licensed professional social worker	Governor	1/1/1997
<b>Board of Speech Pathologists and Audiologists (Commerce)</b>		
Ms. Lynn Harris, Miles City Qualifications (if required): audiologist	Governor	12/31/1996
Ms. Linda Solem, Kalispell Qualifications (if required): speech pathologist	Governor	12/31/1996

VACANCIES ON BOARDS AND COUNCILS -- December 1, 1996 through February 28, 1997

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Capitol Advisory Council (Administration) Mr. Paul Putz, Vermillion Qualifications (if required): none specified	Director	1/25/1997
Children's Trust Fund Board (Family Services) Ms. Karen Ortman, Glasgow Qualifications (if required): public member	Governor	1/1/1997
Ms. Gail Plack, Hardin Qualifications (if required): public member	Governor	1/1/1997
Coal Board (Commerce) Mr. Roger Knapp, Hysham Qualifications (if required): resides in impact area	Governor	1/1/1997
Mr. Alan Evans, Roundup Qualifications (if required): resides in impact area	Governor	1/1/1997
Mr. Gerald Feda, Glasgow Qualifications (if required): public member	Governor	1/1/1997
Commission for Human Rights (Labor and Industry) Ms. S. Jane Lopp, Kalispell Qualifications (if required): public member	Governor	1/1/1997
Ms. Evelyn Stevenson, Pablo Qualifications (if required): attorney	Governor	1/1/1997
Ms. Gloria "Patt" Pattison Etchart, Glasgow Qualifications (if required): public member	Governor	1/1/1997



VACANCIES ON BOARDS AND COUNCILS -- December 1, 1996 through February 28, 1997

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Developmental Disabilities Planning and Advisory Council (Social and Rehabilitation Services)		
Mrs. Othelia Schulz, Butte	Governor	1/1/1997
Qualifications (if required): represents Region IV		
Ms. Joyce Curtis, Choteau	Governor	1/1/1997
Qualifications (if required): represents Region II		
Mr. Kenneth Kaline, Ashland	Governor	1/1/1997
Qualifications (if required): Native American with disabled family member		
Mr. Thomas Price, Eureka	Governor	1/1/1997
Qualifications (if required): represents Region V		
Mr. Kenneth J. Kronebusch, Conrad	Governor	1/1/1997
Qualifications (if required): none specified		
Rep. Roger Somerville, Lakeside	Governor	1/1/1997
Qualifications (if required): state representative		
Mr. Peyton Terry, Glasgow	Governor	1/1/1997
Qualifications (if required): represents Region I		
Mr. James W. Royan, Missoula	Governor	1/1/1997
Qualifications (if required): represents Region III and a consumer		
Mr. Bob Anderson, Helena	Governor	1/1/1997
Qualifications (if required): represents Region III and a consumer		
Ms. Mary Lynn Donnelly, Helena	Governor	1/1/1997
Qualifications (if required): represents Region III and a consumer		

VACANCIES ON BOARDS AND COUNCILS -- December 1, 1996 through February 28, 1997

Board/current position holder	Appointed by	Term end
Developmental Disabilities Planning and Advisory Council (Public Health and Human Services) Cont.		
Ms. Florence Massey, Billings	Governor	1/1/1997
Qualifications (if required): represents Region III and a consumer		
Mr. Randy Cochran, Billings	Governor	1/1/1997
Qualifications (if required): represents Region III and a consumer		
Mr. Cary Lund, Helena	Governor	1/1/1997
Qualifications (if required): represents Region III and a consumer		
Family Services Advisory Council (Family Services)		
Sen. James H. "Jim" Burnett, Luther	Governor	12/31/1996
Qualifications (if required): chairman of a legislative committee		
Rep. John Cobb, Augusta	Governor	12/31/1996
Qualifications (if required): chairman of a legislative committee		
Rep. Duane Grimes, Clancy	Governor	12/31/1996
Qualifications (if required): chairman of a legislative committee		
Rep. Betty Lou Kasten, Brockway	Governor	12/31/1996
Qualifications (if required): being a legislator		
Fish, Wildlife, and Parks Commission (Fish, Wildlife, and Parks)		
Mr. Stanley F. Meyer, Great Falls	Governor	1/1/1997
Qualifications (if required): represents District III		
Mr. Charles R. Decker, Libby	Governor	1/1/1997
Qualifications (if required): represents District I		
Mr. David Simpson, Hardin	Governor	1/1/1997
Qualifications (if required): represents District V		

VACANCIES ON BOARDS AND COUNCILS -- December 1, 1996 through February 28, 1997

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Hard Rock Mining Impact Board Mr. Roger W. Kornder, Lincoln Qualifications (if required): represents major financial institution in Montana	Governor	1/1/1997
Mr. Dick Heineman, Wibaux Qualifications (if required): county commissioner	Governor	1/1/1997
Ms. Carol Kienenberger, Malta Qualifications (if required): represents major financial institution in Montana	Governor	1/1/1997
Mr. James McCauley, Boulder Qualifications (if required): public member residing in an impact area	Governor	1/1/1997
Hazardous Materials Transportation Advisory Council Mr. David A. Galt, Helena Qualifications (if required): none specified	(Transportation) Governor	12/13/1996
Mr. Curt Laingen, Helena Qualifications (if required): none specified	Governor	12/13/1996
Mr. Ben Havdahl, Helena Qualifications (if required): none specified	Governor	12/13/1996
Mr. Thomas Ellerhoff, Helena Qualifications (if required): none specified	Governor	12/13/1996
Mr. Dale Link, Lewistown Qualifications (if required): none specified	Governor	12/13/1996
Mr. Jim Greene, Helena Qualifications (if required): none specified	Governor	12/13/1996

VACANCIES ON BOARDS AND COUNCILS -- December 1, 1996 through February 28, 1997

Board/current position holder	Appointed by	Term end
Hazardous Materials Transportation Advisory Council Mr. Pat Keim, Helena Qualifications (if required): none specified	(Transportation) Cont. Governor	12/13/1996
Mr. Bill Reed, Missoula Qualifications (if required): none specified	Governor	12/13/1996
Mr. Joel Marshik, Helena Qualifications (if required): none specified	Governor	12/13/1996
Ms. Pamela Langley, Helena Qualifications (if required): none specified	Governor	12/13/1996
Ms. Rona Alexander, Bozeman Qualifications (if required): none specified	Governor	12/13/1996
Colonel Craig Reap, Helena Qualifications (if required): none specified	Governor	12/13/1996
Judicial Nomination Commission (Justice) Mr. C. David Bliss, Conrad Qualifications (if required): lay member	Governor	1/1/1997
Mr. John B. Kuhr, Havre Qualifications (if required): none specified	Supreme Court	12/31/1996
Milk Control Board (Commerce) Mr. Jesse Russell Gleason, Fairfield Qualifications (if required): Republican from Congressional District 2	Governor	1/1/1997
Ms. Dixie S. Hertel, Moore Qualifications (if required): Republican from Congressional District 2	Governor	1/1/1997

VACANCIES ON BOARDS AND COUNCILS -- December 1, 1996 through February 28, 1997

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Milk Control Board (Commerce) Cont. Mr. Milton "Swede" Olson, Whitewater Qualifications (if required): Republican from Congressional District 2	Governor	1/1/1997
Montana Arts Council (Education) Ms. Beth Collier, Shelby Qualifications (if required): public member	Governor	2/1/1997
Ms. Carol Brenden, Scobey Qualifications (if required): public member	Governor	2/1/1997
Mr. John B. Dudis, Kalispell Qualifications (if required): public member	Governor	2/1/1997
Mr. James M. Haughey, Billings Qualifications (if required): public member	Governor	2/1/1997
Ms. Carol Novotne, Fort Harrison Qualifications (if required): none specified	Governor	2/1/1997
Montana Boating Advisory Council (Fish, Wildlife, and Parks) Ms. Diane Brandt, Glasgow Qualifications (if required): none specified	Director	1/1/1997
Mr. Tim Crawford, Helena Qualifications (if required): none specified	Director	1/1/1997
Mr. Dave Seyfert, Kalispell Qualifications (if required): none specified	Director	1/1/1997
Montana Health Facility Authority Board (Commerce) Ms. Gayle Carpenter, Helena Qualifications (if required): public member	Governor	1/1/1997

VACANCIES ON BOARDS AND COUNCILS -- December 1, 1996 through February 28, 1997

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Montana Health Facility Authority Board (Commerce) Cont.</b>		
Mr. Michael P. Varone, Helena Qualifications (if required): expert in banking	Governor	1/1/1997
Dr. Amos R. Little, Jr., Helena Qualifications (if required): public member	Governor	1/1/1997
Ms. Joyce Asay, Forsyth Qualifications (if required): expert in hospital administration	Governor	1/1/1997
<b>Montana Highway Commission (Transportation)</b>		
Mr. Thom R. Forseth, Billings Qualifications (if required): Independent from District V	Governor	1/1/1997
Ms. Patricia Abelin, Bozeman Qualifications (if required): Republican from District 2	Governor	1/1/1997
Mr. Wally R. Bell, Helena Qualifications (if required): Republican from District 3	Governor	1/1/1997
<b>Montana Medicaid Advisory Council (Social and Rehabilitation Services)</b>		
Mr. Larry Robinson, Ronan Qualifications (if required): none specified	Director	1/31/1997
Mr. Dale Taliaferro, Helena Qualifications (if required): none specified	Director	1/31/1997
Mr. Hank Hudson, Helena Qualifications (if required): none specified	Director	1/31/1997
Ms. Nancy Ellery, Helena Qualifications (if required): none specified	Director	1/31/1997

VACANCIES ON BOARDS AND COUNCILS -- December 1, 1996 through February 28, 1997

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Medicaid Advisory Council (Social and Rehabilitation Services) Cont. Mr. Erich Merdinger, Helena Qualifications (if required): none specified	Director	1/31/1997
Ms. Dorinda Orrell, Belgrade Qualifications (if required): none specified	Director	1/31/1997
Mr. Paul Peterson, Missoula Qualifications (if required): none specified	Director	1/31/1997
Dr. Bill Peters, Bozeman Qualifications (if required): none specified	Director	1/31/1997
Ms. Dot Thiel, Great Falls Qualifications (if required): none specified	Director	1/31/1997
Mr. Fred Patten, Helena Qualifications (if required): none specified	Director	1/31/1997
Ms. Stephanie Nelson, Bozeman Qualifications (if required): none specified	Director	1/31/1997
Montana Research and Development Task Force (Commerce) Sen. Don Hargrove, Belgrade Qualifications (if required): public member	Governor	12/31/1996
Mr. Don Peoples, Butte Qualifications (if required): public member	Governor	12/31/1996
Rep. Hal Harper, Helena Qualifications (if required): public member	Governor	12/31/1996

VACANCIES ON BOARDS AND COUNCILS -- December 1, 1996 through February 28, 1997

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Research and Development Task Force (Commerce) Cont. Mr. Leland J. Walker, Great Falls Qualifications (if required): public member	Governor	12/31/1996
Montana State Lottery Commission (Commerce) Ms. Becky Erickson, Glasgow Qualifications (if required): public member	Governor	1/1/1997
Sheriff Cliff Brophy, Columbus Qualifications (if required): law enforcement officer	Governor	1/1/1997
Science and Technology Development Board (Commerce) Mr. Will Brooke, Bozeman Qualifications (if required): from private sector and an attorney	Governor	1/1/1997
Social and Rehabilitation Appeals Board (Social and Rehabilitation Services) Ms. Gloria Paladichuk, Sidney Qualifications (if required): public member	Governor	1/1/1997
Tax Policy Task Force (Revenue) Ms. Candace Torgerson, Helena Qualifications (if required): public member	Governor	1/1/1997
Mr. Dennis Burr, Helena Qualifications (if required): public member	Governor	1/1/1997
Rep. Jerry L. Driscoll, Billings Qualifications (if required): public member	Governor	1/1/1997
Ms. Susan Good, Great Falls Qualifications (if required): public member	Governor	1/1/1997

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VACANCIES ON BOARDS AND COUNCILS -- December 1, 1996 through February 28, 1997

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Tax Policy Task Force (Revenue) Cont.		
Ms. Delores Storm, Forsyth	Governor	1/1/1997
Qualifications (if required): public member		
Mr. Jerry Pederson, Butte	Governor	1/1/1997
Qualifications (if required): public member		
Mr. John Shepherd, Portland, OR	Governor	1/1/1997
Qualifications (if required): ex-officio member		
Ms. Sue Olson, Roundup	Governor	1/1/1997
Qualifications (if required): public member		
Mr. Bill Chapman, Cut Bank	Governor	1/1/1997
Qualifications (if required): public member		