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## MONTANA

# ADMINISTRATIVE REGISTER

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ISSUE NO. 19  
OCTOBER 13, 1994  
PAGES 2686-2770



## MONTANA ADMINISTRATIVE REGISTER

### ISSUE NO. 19

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

In the matter of the proposed )	NOTICE OF PROPOSED ADOPTION
adoption of a rule pertaining )	
to approval of requests for )	
retirement and authorizing )	NO PUBLIC HEARING CONTEMPLATED
payment of retirement )	
benefits. )	

TO: All Interested Persons.

1. On December 1, 1994, the public employees' retirement board proposes to adopt the following rule pertaining to the approval of member requests for retirement and the approval and payment of benefits to retired members.

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

RULE I PAYMENT OF ESTIMATED BENEFITS (1) The division shall pay estimated retirement benefits to qualified members for up to three months. To qualify for estimated retirement benefits, a member must file an application for early or normal service retirement, terminate active service, and meet retirement age and membership service requirements.

(2) The division shall pay estimated disability retirement benefits for up to three months to members granted disability retirement status by the board.

(3) The division shall obtain from the employer all documentation necessary to determine the member's total service credit and final compensation and calculate the amount of the member's retirement benefit. The member's retirement application shall be submitted to the board for approval at the next meeting after the division finalizes the benefit amount.

(4) Estimated retirement benefits will be suspended after three months if the member's retirement application has not been finalized by the division and approved by the board. Monthly benefit payments to the member will not resume until after the board approves the retirement application. The first payment following board approval will include any previously suspended payments and retroactive amounts owed the member.

AUTH: 19-2-403, MCA

IMP: 19-2-403 and 19-2-502, MCA

3. Sections 19-2-403(4) and (5), MCA, require the board to determine conditions under which a person may receive a benefit and the amount of the benefit. Retirement benefits can not be exactly calculated until the employer submits documentation detailing the member's final compensation (including a lump sum payout of sick and annual leave), a process which may require up to 3 months following termination. To expedite benefit payments, retirement applications are currently submitted for board approval with estimated service credits and benefit amounts; however, the final determination of

service credits, compensation, and benefit amount are never submitted to the board and no official record of authorization for benefit amounts and payments exists in the board minutes. This rule is necessary to provide authority for the division to pay estimated retirement benefits for up to three months pending board approval of each member's eligibility for retirement and the exact amount of the retirement benefit. Formal approval will be based on documented and detailed information which will reduce the potential for errors in determining eligibility for and amounts of service or disability retirement benefits.


4. Interested persons may present their data, views, or arguments concerning the proposed adoption in writing no later than November 14, 1994 to:

Linda King, Administrator  
Public Employees' Retirement Division  
P.O. Box 200131  
Helena, Montana 59620-0131

5. If a person who is directly affected by the proposed adoption wishes to express data, views and arguments orally or in writing at a public hearing, the person must make written request for a hearing and submit this request along with any written comments to the above address. A written request for hearing must be received no later than November 14, 1994.

6. If the agency receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the administrative code committee of the legislature; from a governmental subdivision or agency; or from an association having not 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 4277 persons based on February 1994 payroll reports of active and retired members.

  
Terry Teichrow, President  
Public Employees' Retirement Board

  
Dal Smilie, Chief Legal Counsel and  
Rule Reviewer

Certified to the secretary of state on September 26, 1994.

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD  
OF THE STATE OF MONTANA

In the matter of the proposed )	NOTICE OF PROPOSED REPEAL
repeal of ARM 2.43.305, )	OF RULES
2.43.306, and 2.43.307 )	
pertaining to mailing )	
membership information for )	NO PUBLIC HEARING
non-profit organizations )	CONTEMPLATED

TO: All Interested Persons.

1. On December 1, 1994, the public employees retirement board proposes to repeal ARM 2.43.305, 2.43.306, and 2.43.307 pertaining to mailing membership information for non-profit organizations. These rules can be found on pages 2-3128 and 2-3129. The authority and implementing cites for these rules are 19-2-403, MCA and 2-6-109, MCA, respectively.

2. The Board proposes to repeal these rules because the rules are contrary to the intent of section 2-6-109, MCA.

3. Interested persons may present their data, views, or arguments in writing no later than November 14, 1994 to:

Linda King, Administrator  
Public Employees' Retirement Division  
1712 Ninth Avenue  
Helena, Montana 59620

4. If a person who is directly affected by the proposed repeal wishes to express data, views and arguments orally or in writing at a public hearing, the person must make written request for a hearing and submit this request along with any written comments to the above address. A written request for hearing must be received no later than November 14, 1994.

5. If the agency receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the administrative code committee of the legislature; from a governmental subdivision or agency; or from an association having not 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 4277 persons based on February 1994 payroll reports of active and retired members.

By:

  
Terry Teichrow, President  
Public Employees' Retirement Board

By:

  
Dal Smilie, Chief Legal Counsel and  
Rule Reviewer

Certified to the secretary of state on September 26, 1994.

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

In the matter of the adoption )	NOTICE OF PUBLIC HEARING ON
of new rule I pertaining to )	THE PROPOSED ADOPTION OF NEW
Optional Deductible Plans )	RULES I AND II, AND THE
and new rule II pertaining to )	AMENDMENT OF RULES 2.55.322;
Retrospective Rating Plans )	2.55.324; 2.55.325; AND
and the amendment of rules )	2.55.327
2.55.322; 2.55.324; 2.55.325; )	
and 2.55.327 pertaining to )	
premium rates. )	

TO: All Interested Persons:

1. On November 2, 1994, the State Compensation Insurance Fund will hold a public hearing at 2:00 p.m., in Room 302 of the State Compensation Insurance Fund Building, 5 South Last Chance Gulch, Helena, Montana, to consider the adoption of new rules I and II, and the amendment of rules 2.55.322; 2.55.324; 2.55.325; and 2.55.327.

2. The proposed new rules provide as follows:

RULE I. OPTIONAL DEDUCTIBLE PLANS (1) The state fund may offer to an employer an optional deductible plan for benefits payable under the workers' compensation act.

(2) The board shall establish deductible plans for each fiscal year. The board shall establish premium reduction percentages by hazard group for each level of deductible offered by the state fund. The hazard group is determined by the governing code of the employer. Each classification in use by the state fund shall be assigned a hazard group as published by the national council on compensation insurance or as determined by the board.

(3) Except as provided in (4), to qualify for a plan an employer must meet the following conditions:

(a) the employer shall have an annual estimated earned premium that equals or exceeds the deductible level chosen or such annual estimated earned premium as established by the board;

(b) file an endorsement form provided by the state fund; and

(c) the endorsement is approved by the state fund for the plan chosen by the employer.

(4) The employer may be disqualified or terminated at any time from participation in a plan because of a poor payment history with the state fund; as a result of a credit

investigation, or review of relevant financial information which demonstrates the employer is not sufficiently financially stable to be responsible for the payment of the reasonably anticipated deductible amounts. As a condition of approval or continuation in a plan, the state fund may require security including, but not limited to, surety bond, cash deposit or guarantee sufficient to meet the reasonably anticipated obligations of the employer for the fiscal year.

(5) The plan shall provide for penalty for early termination of the plan by an employer.

AUTH: Sec. 39-71-2315 and 39-71-2316, MCA; IMP: Sec. 39-71-2316 and 39-71-435, MCA.

RULE II. RETROSPECTIVE RATING PLANS (1) The state fund may offer an employer a retrospective rating plan for coverage under the workers' compensation act.

(2) The board shall establish retrospective rating plans for each fiscal year utilizing the methods and formulas published by the national council on compensation insurance retrospective rating manual, 1984 edition, as revised to October 13, 1994. The board shall determine the factors, multipliers, ratios or other formula components for the plan.

(3) To qualify for participation in a plan the employer shall:

- (a) execute an agreement with the state fund; and
- (b) have an annual estimated earned premium that equals or exceeds an amount determined by the board.

(4) The employer may be disqualified from participation in a plan because of a poor payment history with the state fund, as a result of a credit investigation or review of relevant financial information which demonstrates the employer is not sufficiently financially stable to be responsible for the payment of any retrospective rating adjustment. As a condition of approval the state fund may require security including, but not limited to, surety bond, cash deposit or guarantee sufficient to meet the reasonably anticipated obligations of the employer for the fiscal year.

(5) The plan shall provide for penalty for early termination of the plan by an employer.

AUTH: Sec. 39-71-2315 and 39-71-2316, MCA; IMP: Sec. 39-71-2316, MCA.

3. The rules proposed to be amended provide as follows:

2.55.322 CALCULATION OF CREDIBILITY WEIGHTED RATE (1) If the payroll, premium, and losses in a particular classification are not sufficient to provide a meaningful and credible statistical basis for estimating an equitable distribution of costs, the state fund staff in consultation with the actuary and with approval of the board shall determine a credibility

weighted rate for each classification. The credibility factors, approved by the board, may range from .01 through 1.00 and are based on graduated increments of expected liability. The expected liability is weighted selected payroll times the current manual rate times an expected loss rate recommended by the actuary and approved by the board. The experience rate times a credibility factor, plus the current manual rate times one minus the NCCI factor plus the existing NCCI rate times the NCCI factor all times one minus the credibility factor yields the credibility weighted rate for a class code. For example: ER means experience rate; CF means credibility factor; MR means current state fund manual rate; NF means NCCI factor; and NR means current NCCI rate adjusted for state fund expenses or other rating source rate. Credibility weighted rate equals  $[(MR \times (1 - NF)) + (NR \times NF)] \times [1 - CF] + [ER \times CF]$ . The board will approve the NCCI factor. The state fund staff with approval of the board may substitute for an existing NCCI rate if another source of rates in use in Montana is more appropriate.

AUTH: Sec. 39-71-2315 and 39-71-2316 MCA; IMP: Sec. 39-71-2311, 39-71-2316, and 39-71-2330, MCA.

2.55.324 PREMIUM RATESETTING (1) - (2)(b) remain the same.

(3) The state fund staff in consultation with the actuary and with approval of the board may set a classification's rate for all or a portion of the fiscal year at a percentage of the National Council on Compensation Insurance (NCCI) rate adjusted for state fund expenses based on a factor recommended by the state fund actuary of not more than 150% of the NCCI rate adjusted for state fund expenses or not less than 75% of the NCCI rate adjusted for state fund expenses or substitute rate or at the rate of an equivalent class code recommended by NCCI or the state fund actuary. These situations include, but are not limited to:

(3)(a) - (6) remain the same.

(7) The board may approve for each class code a premium rate which is a percentage of or more than the NCCI rate adjusted for state fund expenses or substitute rate. The board may use these percentages based upon the credibility factor of each code, with all codes which have the same credibility factor treated alike. However, no rate generated by this percentage and applied to a class code shall be less than the state fund's experience-based rate for that class code and shall also be subject to the limitations in (4).

AUTH: Sec. 39-71-2315 and 39-71-2316 MCA; IMP: Sec. 39-71-2211, 39-71-2311, 39-71-2316, and 39-71-2330, MCA.

2.55.325 VARIABLE PRICING WITHIN A CLASSIFICATION

(1) - (5)(h) remain the same.

(i) Timeliness of the insured's history of submitting a first report of injury to the state fund.

AUTH: Sec. 39-71-2315 and 39-71-2316 MCA; IMP: Sec. 39-71-2341, 39-71-2316 and 39-71-2330, MCA.

2.55.327 CONSTRUCTION INDUSTRY PREMIUM CREDIT PROGRAM

(1) - (4)(c) remain the same.

(d) The following credit percentages in lieu of the tables in (a), (b), and (c) will be used for the fiscal year beginning July 1, 1995.

<u>Average Hourly Wage</u>	<u>Credit Percentage</u>
<u>\$13.97 or less</u>	<u>0.00%</u>
<u>\$13.98-\$14.47</u>	<u>8.00%</u>
<u>\$14.48-\$14.97</u>	<u>10.00%</u>
<u>\$14.98-\$15.47</u>	<u>12.00%</u>
<u>\$15.48-\$15.97</u>	<u>14.00%</u>
<u>\$15.98-\$16.47</u>	<u>15.00%</u>
<u>\$16.48-\$16.97</u>	<u>16.00%</u>
<u>\$16.98-\$17.47</u>	<u>17.00%</u>
<u>\$17.48-\$17.97</u>	<u>18.00%</u>
<u>\$17.98-\$18.97</u>	<u>19.00%</u>
<u>\$18.98-\$19.97</u>	<u>20.00%</u>
<u>\$19.98-\$20.97</u>	<u>21.00%</u>
<u>\$20.98 and above</u>	<u>22.00%</u>

(5) - (6) remain the same.

AUTH: Sec. 39-71-2315 and 39-71-2316 MCA; IMP: Sec. 39-71-2211, 39-71-2311 and 39-71-2316 MCA.

4. The rulemaking is being proposed for the following reasons:

**Rule I** - This rule allows the Board of the State Fund to determine the criteria for deductible plans to apply to individual policies. The State Fund will be able to implement programs similar to programs available to employers through other workers' compensation carriers and will result in more product availability to State Fund insureds.

**Rule II** - This rule allows the Board of the State Fund to determine the criteria for retrospective rating plans to apply to individual policies. The State Fund will utilize industry recognized processes and formulas. Individual formula components will be established as appropriate for State Fund use. For example, the tax multiplier (a component of the retrospective rating formula) covers licenses, fees, assessments and taxes which an insurance carrier must pay on the premium it collects. It would not be appropriate for the State Fund to

adopt the tax multiplier used by others since the State Fund is not subject to taxes. This rule allows the Board to establish the components of the formula to acknowledge the uniqueness of the State Fund. The State Fund will be able to implement programs similar to programs available to employers through other workers' compensation carriers and will result in better products available to State Fund insureds.

**2.55.322 and 2.55.324** - Currently, the NCCI rate for an individual code is utilized in the State Fund ratemaking process. In a recent review of the State Fund ratemaking process, Ernst & Young recommended "that the NCCI rate used in the credibility formula be adjusted to the same expense provision as is inherent in the State Fund rate." NCCI rates include several components which are not applicable to the State Fund, such as production expenses, taxes, licenses, fees, profit and contingencies. These components comprise nearly 30 percent of NCCI rates. The NCCI rate will be adjusted to remove these components and will be replaced by appropriate components applicable to the State Fund.

**2.55.325** - The Workers' Compensation Act in 39-71-2341 provides that other relevant factors may be considered in the placement of an employer within the variable pricing levels. The amendment to this rule would place an employer who fails to timely report notice of injury to the State Fund in a pricing category with a higher premium rate. Studies have shown that late reporting of claims to an insurer results in more expensive claims.

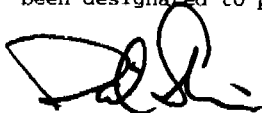
**2.55.327** - The state's average weekly wage changes at the beginning of each fiscal year. The table in (d) reflects the average hourly rate credit percentage which will be used for the fiscal year beginning July 1, 1995 to take into consideration the increase in the state's average weekly wage effective July 1, 1994.

5. The State Compensation Insurance Fund makes reasonable accommodations for persons with disabilities who wish to participate in this public hearing. Persons needing accommodations must contact the State Fund, Attn: Ms. Dwan Ford, P.O. Box 4759, Helena, MT 59604; telephone (406) 444-6480; TDD (406) 444-5971; fax (406) 444-6555, no later than 5:00 p.m., October 26, 1994, to advise as to the nature of the accommodation needed and to allow adequate time to make arrangements.

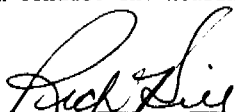
6. Interested persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to state fund

attorney Nancy Butler, Legal Department, State Compensation Insurance Fund, 5 South Last Chance Gulch, Helena, Montana 59604-4759, and must be received no later than November 10, 1994.

7. The State Fund Legal and Underwriting Departments have been designated to preside over and conduct the hearing.



Dal Smilie, Chief Legal Counsel  
Rule Reviewer



Rick Hill  
Chairman of the Board



Nancy Butler, General Counsel  
Rule Reviewer

Certified to the Secretary of State October 3, 1994.

BEFORE THE BOARD OF REAL ESTATE APPRAISERS  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PROPOSED AMENDMENT  
amendment of rules pertaining ) OF 8.57.402 APPRAISAL REPORT  
to appraisal reports and ) AND 8.57.404 APPLICATION  
application requirements ) REQUIREMENTS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On November 12, 1994, the Board of Real Estate Appraisers proposes to amend the above-stated rules.
2. The proposed amendments will read as follows: (new matter underlined, deleted matter interlined)

"8.57.402 APPRAISAL REPORT (1) Appraisal reports shall include the following as minimum requirements ~~without invoking the departure provision~~:

(a) through (i) will remain the same."

Auth: Sec. ~~37-54-105~~, MCA; IMP, Sec. ~~37-54-105~~, MCA

**REASON:** The proposed amendment will establish that the USPAP departure provision allowing for limited scope appraisal reports, which became effective in July of 1994, will not qualify for appraisal report experience on an application. The Board will not count these limited scope appraisals which invoke the USPAP departure provision toward the experience requirement, but instead will require full appraisal reports, with all information as contained in the existing language of the rule.

"8.57.404 APPLICATION REQUIREMENTS (1) Applications for licensure when properly filled out by the applicant must provide the board with that information necessary to ascertain whether or not the applicant meets the requirements of the law as to education and experience. Application forms must reflect satisfactorily the requirements of Montana law.

(a) Persons seeking licensure must apply on the board's official forms which may be obtained through the department.

(b) Completed applications shall be delivered to the department, accompanied by the application fee.

(c) Applicants will be notified in writing of the board decision on their application within ten days of the meeting date.

(2) A completed application file shall consist of the completed and notarized application form; completed education log; attached certificates of completion and/or transcripts if appropriate; completed experience log; attached affidavits if appropriate; three sample appraisal reports; and official verification of exam score. An application file must be complete at least 30 days in advance of the next board meeting



date. Applications not complete by the deadline will be held for consideration at the next following board meeting.

(1) through (6) will remain the same, but will be renumbered (3) through (8)."

Auth: Sec. 37-54-105, MCA; IMP, Sec. 37-54-105, MCA

**REASON:** The proposed amendment will set forth the application requirements to avoid confusion over proper procedures and attachments. The amendment will also set up a 30-day deadline for receipt of a completed application before board review, to avoid the current problem of voluminous submissions being received up to and on the day of the board meeting, when they cannot be properly filed and reviewed.

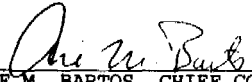
3. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Real Estate Appraisers, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., November 10, 1994.


4. If a person who is directly affected by the proposed amendments 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 Real Estate Appraisers, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., November 10, 1994.

5. If the Board receives requests for a public hearing on the proposed amendments from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a 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 27 based on the 272 licensees in the state of Montana.

BOARD OF REAL ESTATE APPRAISERS  
JANET DAVIS, CHAIRMAN

BY:

  
ANNIE M. BARTOS, CHIEF COUNSEL  
DEPARTMENT OF COMMERCE

  
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 3, 1994.

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

In the matter of the proposed amend- ) NOTICE OF PROPOSED AMENDMENT  
ment of a rule pertaining to fees ) OF 8.58.411 FEE SCHEDULE

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On November 21, 1994, the Board of Realty Regulation proposes to amend the above-stated rule.

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

"8.58.411 FEE SCHEDULE (1) and (2) will remain the same.

(3) Examination fees:  
(a) For initial examination.....~~\$40-00~~ \$ 47  
(b) For each subsequent examination by the  
same nominee..... ~~40-00~~ 47  
(4) For each rescheduling of examination... ~~40-00~~ 47  
(5) through (25) will remain the same."

Auth: Sec. 37-1-131, 37-1-134, ~~37-51-203~~, 37-51-204,  
MCA; IMP, Sec. 37-1-134, 37-51-202, 37-51-204, ~~37-51-207~~, ~~37-51-303~~, 37-51-310, 37-51-311, MCA

**REASON:** This amendment is necessary because the examination service that will administer the real estate licensing examination after November 19, 1994 has increased fees to be charged to the Board. The Board will not see any additional revenue from this amendment, as the proposed increase is the exact amount charged the Board by the examination service.

3. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Realty Regulation, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., November 10, 1994.

4. If a person who is directly affected by the proposed amendment wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Realty Regulation, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., November 10, 1994.

5. If the Board receives requests for a public hearing on the proposed amendment from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendment, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those

persons directly affected has been determined to be 100 based on the approximately 1,000 examination candidates per year in Montana.

BOARD OF REALTY REGULATION  
STEVE CUMMINGS, CHAIRMAN

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

Annie M. Bartos  
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 3, 1994

BEFORE THE BOARD OF RESPIRATORY CARE PRACTITIONERS  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PROPOSED AMENDMENT  
amendment and repeal of rules ) AND REPEAL OF RULES PERTAIN-  
pertaining to continuing ) ING TO CONTINUING EDUCATION  
education )

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On November 12, 1994, the Board of Respiratory Care Practitioners proposes to amend ARM 8.59.601 through 8.59.605 pertaining to continuing education.

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

"8.59.601 CONTINUING EDUCATION REQUIREMENTS (1) through (4) will remain the same.

(5) Courses acceptable for continuing education shall be those whose content is relevant to the scope of practice of respiratory care as defined in 37-28-102, MCA.

(6) Any identical course or program presented under Category I or Category II may be submitted for continuing education credit only once every two years.

(7) If documentation of the continuing education requirement is improper or inadequate, the respiratory care practitioner shall correct the deficiency. If the requirement is not completed within 90 days, the license shall be revoked and the renewal fee forfeited. Misrepresentation of compliance shall constitute grounds for disciplinary action."

Auth: Sec. 37-28-104, MCA; IMP, Sec. 37-28-104, 37-28-203, MCA

"8.59.602 TRADITIONAL EDUCATION BY SPONSORED ORGANIZATIONS -- CATEGORY I (1) Continuing education programs sponsored by the following organizations which are germane to the profession of respiratory care, are approved by the board:

(1)(a) through (2) will remain the same."

Auth: Sec. 37-28-104, MCA; IMP, Sec. 37-28-104, 37-28-203, MCA

"8.59.603 TRADITIONAL EDUCATION BY NON-SPONSORED ORGANIZATIONS -- CATEGORY II (1) Continuing education not sponsored by organizations designated in ARM 8.59.602 should be submitted to the Montana board of respiratory care practitioners for its consideration for approval so that the board members may review the proposal.

(2) Activities allowed in this category could include correspondence course materials which are germane to the profession and are usually accompanied by a study guide, syllabus, bibliography and/or examination; activities

sponsored by allied health professionals relevant to the needs of the individual professional which do not meet ARM 8.59.602 definition:

(3) ~~Credit units are based on report and relevance statement by the applicant and one credit unit will be assigned for each 50 minutes involved. The report must include a statement of the activity, its title, name of instructor, and his or her credentials.~~

(4) ~~All units in this section must be documented on the renewal form.~~

(1) Continuing education activities which do not meet the definition of ARM 8.59.602 may be submitted for review by the Montana board of respiratory care for approval.

(2) Approved activities in this category may include seminars, workshops, conferences, in-service programs, and correspondence courses accompanied by a study guide, syllabus, bibliography, and examination.

(3) All credit units derived from continuing education activities in this section must be attached to the renewal form. Documentation must include a statement of the activity, its title, name of instructor, the instructor's credentials, and length of course.

(4) The board, in its discretion, reserves the right to deny credit for continuing education units in this category that do not receive prior approval from the board."

Auth: Sec. 37-28-104, MCA; IMP, Sec. 37-28-104, 37-28-203, MCA

"8.59.604 TEACHING -- CATEGORY III (1) through (4) will remain the same.

(5) The board, in its discretion, reserves the right to deny credit for continuing education units in this category that did not receive prior approval of the board."

Auth: Sec. 37-28-104, MCA; IMP, Sec. 37-28-104, 37-28-203, MCA

"8.59.605 PAPERS, PUBLICATIONS, JOURNALS, EXHIBITS, VIDEOTAPES, INDEPENDENT STUDY AND COLLEGE COURSE WORK - CATEGORY IV (1) through (4)(b) will remain the same.

(5) The board, in its discretion, reserves the right to deny credit for continuing education in this category that did not receive prior approval of the board."

Auth: Sec. 37-28-104, MCA; IMP, Sec. 37-28-104, 37-28-203, MCA

"8.59.607 WAIVER OF CONTINUING EDUCATION REQUIREMENT

(1) In the event of hardship such as a disabling illness or other personal emergency which substantially interferes with a licensee's ability to meet the minimum requirement of 15 12 credit units prior to the deadline, the board may approve a waiver of the continuing education requirement. There must be a written request submitted to the board by the renewal date. Such request for approval for a waiver shall be in writing and shall set forth the reasons why the licensee was unable to earn the minimum number of credit units required prior to the deadline."

Auth: Sec. 37-28-104, MCA; IMP, Sec. 37-28-104, 37-28-203, MCA

3. ARM 8.59.606 is being proposed for repeal. The rule is located at page 8-1635.9, Administrative Rules of Montana. The authority and implementing sections are 37-28-104 and 37-28-202, MCA, respectively.

**REASON:** The Board proposes to amend and repeal these rules to clarify continuing education requirements, to make such requirements more uniform from one category to another, and to specify that acceptable continuing education must be germane or relevant to the clinical practice of respiratory care. The proposed amendments also permit the Board, upon request by a licensee, to waive continuing education if the individual can demonstrate an emergency.


4. Interested persons may submit their data, views or arguments concerning the proposed amendments and repeal in writing to the Board of Respiratory Care Practitioners, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., November 12, 1994.


5. If a person who is directly affected by the proposed amendments and repeal 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 Respiratory Care Practitioners, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., November 12, 1994.

6. If the Board receives requests for a public hearing on the proposed amendments and repeal from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendments and repeal, 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 39 based on the 390 licensees in Montana.

BOARD OF RESPIRATORY CARE  
PRACTITIONERS  
RICH LUNDY, CHAIRMAN

BY:

  
ANNIE M. BARTOS, CHIEF COUNSEL  
DEPARTMENT OF COMMERCE

  
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 3, 1994.

BEFORE THE BOARD OF PASSENGER TRAMWAY SAFETY  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PROPOSED ADOPTION  
adoption of new rules pertain- ) OF NEW RULE I BOARD ENGINEER  
ing to inspections and ) CONDUCTING ACCEPTANCE  
conference call meetings ) INSPECTION AND II NOTICE OF  
 ) CONFERENCE CALL MEETINGS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On November 12, 1994, the Board of Passenger Tramway Safety proposes to adopt the above-stated rules.
2. The proposed new rules will read as follows:

"I BOARD ENGINEER CONDUCTING ACCEPTANCE INSPECTION

(1) The board of passenger tramway safety's contracted inspection engineer shall not serve as the certified inspection engineer for the acceptance inspection of any new, relocated or major modified tramway.

(2) The board's contracted inspection engineer shall observe the acceptance testing procedure on all new, relocated or major modified tramway, as outlined by the certified design engineer retained by the ski area, and shall assure that the procedures meet the requirements of the Montana board of passenger tramway safety rules. The board's contracted inspection engineer shall provide the tramway owner with an inspection report of those items not complying with the Montana board of passenger tramway safety rules. On occasion of final acceptance testing of any tramway installation, the retained board inspection engineer shall be present at all acceptance testing. The contracted inspection engineer shall observe the procedures of the acceptance test and independently report to the board. The report will be taken into consideration for the final decision made by the board.

(3) Any acceptance testing procedure completed without the presence of the board's contracted inspection engineer will not be accepted, and must be repeated in the presence of the board's contracted inspection engineer before certification will be granted."

Auth: Sec. 23-2-721, 23-2-722, MCA; IMP, Sec. 23-2-722, MCA

"II NOTICE OF CONFERENCE CALL MEETINGS

(1) There shall be a three day waiting period from the time of request for conference call meetings involving non-emergency matters. The party requesting the conference call meeting shall provide all reports, forms, applications, and other materials to the Montana board of passenger tramway safety administrative assistant, no later than three days prior to the conference call meeting. In any emergency requiring immediate action of the board, the chairman may call an emergency conference call meeting with proper notification as required by law."

Auth: Sec. 23-2-721, MCA; IMP, Sec. 23-2-721, MCA

**REASON:** New rule I is being proposed so that the Board engineer can be present during the tramway inspections to ensure that the inspection procedure is carried out in compliance with passenger tramway safety rules.

New rule II is necessary to allow adequate notice of, and participation in, all board conference calls; and to ensure that the public and board members have all pertinent material in hand before such conference calls.

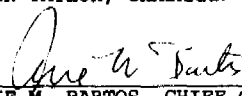
3. Interested persons may submit their data, views or arguments concerning the proposed adoptions in writing to the Board of Passenger Tramway Safety, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., November 10, 1994.

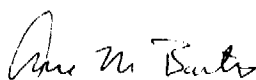
4. If a person who is directly affected by the proposed adoptions wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Passenger Tramway Safety, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., November 10, 1994.

5. If the Board receives requests for a public hearing on the proposed adoptions from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed 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 tramways directly affected has been determined to be 2 based on the 15 licensed tramways in Montana.

BOARD OF PASSENGER TRAMWAY  
SAFETY  
KEVIN TAYLOR, CHAIRMAN

BY:

  
ANNIE M. BARTOS, CHIEF COUNSEL  
DEPARTMENT OF COMMERCE

  
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 3, 1994.



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

In the matter of the repeal of	)	NOTICE OF PROPOSED
rule 16.28.713 regarding informed	)	REPEAL OF RULE
consent for administration of	)	
vaccine.	)	NO PUBLIC HEARING
	)	CONTEMPLATED

(School Immunization)

To: All Interested Persons

1. On November 14, 1994, the department proposes to repeal the above-captioned rule, which requires anyone administering vaccine supplied by the department, other than a private physician in his or her office, to have a signed acknowledgment of informed consent to the vaccine administration on a form provided by the department.

2. The rule, as proposed to be repealed, appears at page 16-1293 of the Administrative Rules of Montana.  
AUTH: 20-5-407, MCA; IMP: 20-5-407, MCA

3. Repeal of ARM 16.28.713 is necessary because the rulemaking authority of Sec. 20-5-407, MCA, covers rules "necessary to implement the provisions of [Title 20, Chapter 5, Part 4, MCA,]" and informed consent to vaccine administration, particularly on forms supplied by the department, appears no longer to be necessary to implement any provision of the part, rendering the department without authority for ARM 16.28.713. In addition, presumably ARM 16.28.713 was enacted in 1980 in response to the requirements of the federal Centers for Disease Control (CDC) -- which provided then and continues to provide large amounts of free vaccine for children -- for informed consent on forms that CDC prescribed and provided. As of October 1 of this year, CDC no longer will require signed informed consent, nor will it provide forms for the purpose. The department has no funding to provide its own forms to replace those CDC used to provide and for that reason, along with the apparent lack of authority for the rule, has decided to repeal the requirement.

4. Interested persons may submit their data, views, or arguments concerning the proposed repeal, in writing, to Eleanor Parker, Department of Health and Environmental Sciences, Legal Unit, P.O. Box 200901, Helena, MT 59620-0901. Any comments must be received no later than November 10, 1994.

5. If a party who is directly affected by the proposed repeal wishes to express his data, views, and arguments orally or

in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Eleanor Parker at the address in paragraph 4 above. A written request must be received no later than November 10, 1994.

6. If the department receives requests for a public hearing under Section 2-4-315, MCA, on the proposed repeal, from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed repeal; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not fewer than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be in excess of 25, based on the number of health professionals administering vaccines.

  
ROBERT J. ROBINSON, Director

Certified to the Secretary of State October 3, 1994.

Reviewed by:

  
Eleanor Parker DHES Attorney

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

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING  
rule 16.20.604 regarding water use ) FOR PROPOSED AMENDMENT  
classification ) OF RULE 16.20.604

(Water Quality)

To: All Interested Persons

1. On November 18, at 8:00 a.m., or as soon thereafter as it may be heard, the board will hold a public hearing in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of the above-captioned rule.

2. The rule, as proposed to be amended, appears as follows (new material is underlined):

16.20.604 WATER-USE CLASSIFICATIONS--CLARK FORK-COLUMBIA RIVER DRAINAGE EXCEPT THE FLATHEAD AND KOOTENAI RIVER DRAINAGES  
The water-use classifications adopted for the Clark Fork of the Columbia River drainage are as follows:

(1) Clark Fork River drainage except waters listed in (1)(a) through (1)(n) . . . . . B-1

(a) Warm Springs drainage to Myers Dam near Anaconda . . . . . A-1

(i) Hearst Lake and Fifer Gulch drainages to and including the Fifer Gulch reservoir.  
(Anaconda municipal water supply) . . . . . A-Closed

(b)-(n) Remains the same.

AUTH: 75-5-201, 75-5-301, MCA; IMP: 75-5-301, MCA

3. The board is proposing these amendments to the rule in response to a Petition to Amend Rules submitted by Anaconda-Deer Lodge County, pursuant to 2-4-315, MCA. The Petitioner asserts that the current B-1 classification of Hearst Lake and Fifer Gulch does not accurately reflect the quality of those waters and must be reclassified to A-Closed in order to protect those waters for future use as a municipal water supply source. For these reasons, Petitioner requests that ARM 16.20.604(1) be amended to reclassify those waters to A-Closed. These amendments are necessary for Petitioner to use Hearst Lake and Fifer Gulch drainage as an unfiltered water supply source according to the criteria in Department Circular PWS-3.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Yoli Fitzsimmons, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than November 18, 1994.

5. Will Hutchison has been designated to preside over and conduct the hearing.

RAYMOND W. GUSTAFSON, Chairman  
BOARD OF HEALTH AND  
ENVIRONMENTAL SCIENCES

  
ROBERT J. ROBINSON, Secretary

Certified to the Secretary of State October 3, 1994.

Reviewed by:

  
Eleanor Parker, DHES Attorney

BEFORE THE SECRETARY OF STATE  
OF THE STATE OF MONTANA

In the matter of the ) NOTICE OF PUBLIC HEARING  
amendment of ARM 1.2.419 ) ON PROPOSED AMENDMENT OF  
regarding scheduled dates for ) ARM 1.2.419 FILING,  
the Montana Administrative ) COMPILING, PRINTER PICKUP  
Register ) AND PUBLICATION OF THE  
 ) MONTANA ADMINISTRATIVE  
 ) REGISTER

TO: All Interested Persons.

1. On November 2, 1994 a public hearing will be held at 10:00 a.m. in the Secretary of State's Office Conference Room at room 225 of the Capitol Building at Helena, Montana, to consider the proposed amendment of ARM 1.2.419 regarding the scheduled dates for the Montana Administrative Register.

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

1.2.419 FILING, COMPILING, PRINTER PICKUP AND PUBLICATION  
SCHEDULE FOR THE MONTANA ADMINISTRATIVE REGISTER (1) The  
scheduled filing dates, time deadlines, compiling dates,  
printer pickup dates and publication dates for material to be  
published in the Montana Administrative Register are listed  
below:

1994~~95~~ Schedule

<u>Filing</u>	<u>Compiling</u>	<u>Printer Pickup</u>	<u>Publication</u>
January 3	January 4	January 5	January <del>13</del> 12
January <del>14</del> 13	January <del>10</del> 17	January <del>19</del> 18	January <del>27</del> 26
January <del>21</del> 30	<del>February 1</del>	February <del>21</del>	February <del>10</del> 29
	<u>January 31</u>		
February <del>14</del> 13	February <del>15</del> 14	February <del>16</del> 15	February <del>24</del> 23
March <del>7</del> 6	March <del>07</del>	March <del>08</del>	March <del>17</del> 16
March <del>21</del> 20	March <del>22</del> 21	March <del>23</del> 22	March <del>31</del> 30
April <del>4</del> 3	April <del>5</del> 4	April <del>6</del> 5	April <del>14</del> 13
April <del>10</del> 17	April <del>19</del> 18	April <del>20</del> 19	April <del>28</del> 27
May <del>21</del>	May <del>32</del>	May <del>43</del>	May <del>12</del> 11
May <del>16</del> 15	May <del>17</del> 16	May <del>18</del> 17	May <del>26</del> 25
<del>May 31</del> June 5	June <del>16</del>	June <del>27</del>	June <del>9</del> 15
June <del>13</del> 12	June <del>14</del> 20	June <del>15</del> 21	June <del>23</del> 29
June <del>27</del> July 3	June <del>28</del> July 5	June <del>29</del> July 6	July <del>7</del> 13
July <del>11</del> 17	July <del>12</del> 18	July <del>13</del> 19	July <del>21</del> 27
<del>August 1</del>			
July <del>31</del>	August <del>21</del>	August <del>32</del>	August <del>11</del> 10
August <del>15</del> 14	August <del>16</del> 15	August <del>17</del> 16	August <del>25</del> 24
<del>August 29</del>	August <del>30</del>	August <del>31</del>	
September <del>1</del>	September <del>5</del>	September <del>6</del>	September <del>8</del> 14

September <del>1218</del>	September <del>1319</del>	September <del>1420</del>	September <del>2228</del>
October <del>32</del>	October <del>43</del>	October <del>54</del>	October <del>1312</del>
October <del>1716</del>	October <del>1817</del>	October <del>1918</del>	October <del>2726</del>
October <del>3130</del>	<del>November 1</del>		
	<u>October 31</u>	November <del>21</del>	November <del>109</del>
November <del>1413</del>	November <del>1514</del>	November <del>1615</del>	November <del>2322</del>
November <del>2827</del>	November <del>2928</del>	November <del>3029</del>	December <del>87</del>
December <del>1211</del>	December <del>1312</del>	December <del>1413</del>	December <del>2321</del>

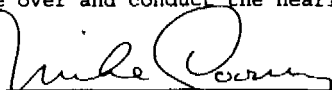
(3) remains the same.


AUTH: Sec. 2-4-312, MCA IMP, Sec. 2-4-312, MCA

3. The rule is proposed to be amended to set dates pertinent to the publication of the Montana Administrative Register during 1995.

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 Kathy Lubke, Administrative Rules Bureau, Secretary of State's office, State Capitol, Room 225, Helena, Montana 59620, and must be received no later than November 10, 1994.

5. Kathy Lubke, address given in paragraph 4 above, has been designated to preside over and conduct the hearing.

  
MIKE COONEY  
Secretary of State

  
GARTH JACOBSON  
Rule Reviewer

Dated this 3rd day of October 1994.

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD  
OF THE STATE OF MONTANA

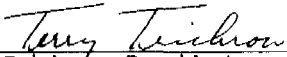
In the matter of amendment of ARM ) NOTICE OF AMENDMENT  
2.43.204 relating to administrative )  
procedures for contested cases )


TO: All Interested Persons.

1. On August 11, 1994, the public employees' retirement board published notice of a proposed amendment to ARM 2.43.204 relating to administrative procedures for contested cases at p. 2039 of the 1994 Montana Administrative Register, Issue No. 15.

2. No written or oral comments were received from any interested party.

3. On September 22, 1994, the public employees' retirement board amended ARM 2.43.204 relating to administrative procedures for contested cases as noticed.

  
Terry Teichrow, President  
Public Employees' Retirement Division

  
Dai Smilie, Chief Legal Counsel and  
Rule Reviewer

Certified to the secretary of state on September 26, 1994.

BEFORE THE DEPARTMENT OF AGRICULTURE  
OF THE STATE OF MONTANA

In the matter of the                    ) NOTICE OF AMENDMENT TO ARM  
amendment of ARM 4.4.312        ) 4.4.312 RELATING TO THE  
  ) PROCESS OF PAYMENT FOR  
  ) LOSSES

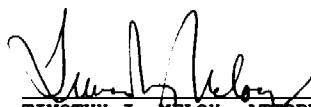
TO: All Interested Persons:

1. On August 25, 1994, the Department of Agriculture published a notice of a proposed amendment to the above-stated rule at page 2373 of the 1994 Montana Administrative Register, issue no. 16.

2. The department has amended the rule as proposed.

3. No comments were received.

  
\_\_\_\_\_  
LEO A. GIACOMETTO, DIRECTOR  
DEPARTMENT OF AGRICULTURE

  
\_\_\_\_\_  
TIMOTHY J. MELOY, ATTORNEY  
RULE REVIEWER  
DEPARTMENT OF AGRICULTURE

Certified to the Secretary of State September 26, 1994



BEFORE THE BOARD OF CHIROPRACTORS  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the amendment ) NOTICE OF AMENDMENT AND  
of rules pertaining to applica- ) ADOPTION OF RULES PERTAIN-  
tions, reciprocity, and rein- ) ING TO THE PRACTICE OF  
statement and the adoption of a ) OF CHIROPRACTIC  
new rule pertaining to interns )  
and preceptors )

TO: All Interested Persons:

1. On June 9, 1994, the Board of Chiropractors published a notice of proposed amendment and adoption of rules pertaining to the practice of chiropractic at page 1503, 1994 Montana Administrative Register, Issue No. 11.

2. The Board has amended ARM 8.12.601, 8.12.605, 8.12.609, 8.12.615 and adopted new rule I (8.12.616) exactly as proposed.

3. The Board has considered all comments and testimony received. Those comments and the Board's responses follow:

COMMENT: Dr. Spence Jahner expressed concerns that it is not fair to require out-of-state applicants to pass another national exam. He claims that the SPEC does not sufficiently examine the philosophy.

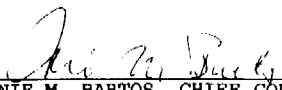
RESPONSE: The Board believes that the addition of the SPEC examination provides another element of competence. The SPEC examination will not serve as a hinderance to licensure of qualified chiropractors. It is designed to provide evaluation of those chiropractors who have been licensed in previous years but who may not have passed a national exam in the recent past. This will provide the Board with a more current and accurate analysis of those individuals abilities. Individuals not wishing to sit for the SPEC examination, may avoid such examination if they sit for the Montana examination.

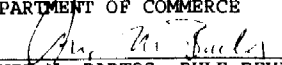
COMMENT: Dr. Jahner stated that the requirement of five years' experience to be a preceptor was too stringent.

RESPONSE: The Board feels that five years is an appropriate length of time in which to gain all the experience necessary to train an intern.

BOARD OF CHIROPRACTORS  
CHRIS BUZAN, D.C., CHAIRMAN

BY:

  
ANNIE M. BARTOS, CHIEF COUNSEL  
DEPARTMENT OF COMMERCE

  
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 3, 1994.

BEFORE THE BOARD OF HEARING AID DISPENSERS  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the amendment ) NOTICE OF AMENDMENT OF  
of rules pertaining to fees and ) 8.20.402 FEES AND 8.20.  
examinations and the adoption of) 403 EXAMINATION - PASS/FAIL  
a new rule pertaining to ) POINT AND THE ADOPTION OF  
licensees from other states ) NEW RULE I (8.20.420)  
 ) LICENSEES FROM OTHER STATES

TO: All Interested Persons:

1. On April 14, 1994, the Board of Hearing Aid Dispensers published a notice of proposed amendment and adoption of the above-stated rules at page 717, 1994 Montana Administrative Register, issue number 7.

2. The Board has amended ARM 8.20.402 and adopted new rule I (8.20.420) exactly as proposed. The Board has amended ARM 8.20.403 as proposed, but with the following changes:

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

(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 as proposed."

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

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

COMMENT NO. 1: One comment was received stating new rule I would allow a candidate failing the Montana exam to just go to another state, pass their exam, and transfer the license to Montana, thereby circumventing Montana law.

RESPONSE: The Board has proposed this new rule to prevent precisely this type of situation from occurring, as it has in the past. Under the new rule, the Board will be able to review whether the other state's exam meets Montana's standards, so the candidate will not be able to circumvent Montana law.

COMMENT NO. 2: One comment was received stating new rule I would allow use of other state's exams which may not be as thorough as the current Montana exam.

RESPONSE: Under the new rule, the Montana Board will now be able to determine whether the other exam is equivalent to the Montana exam. If it is not equivalent, it will not be accepted. Also see response to Comment 1 above.

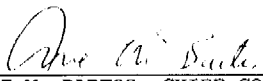
COMMENT NO. 3: One comment was received stating ARM 8.20.403 will require a jurisprudence exam, whereas the Section 37-16-406, MCA, states that licensees from other states are not required to undergo a qualifying exam or the

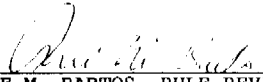
like. This change should therefore be made by the legislature, so the Board is not exceeding its authority.

**RESPONSE:** The Board noted that the statute contains the language "a qualifying exam or the like." A qualifying exam will not be required, as the statute prohibits this. The Board interprets the phrase "qualifying exam" to mean one which examines qualifications to practice, such as the current written and practical exam. The Board will seek to clarify that a jurisprudence exam may be required by amendments offered at the next legislative session.

BOARD OF HEARING AID DISPENSERS  
WALT HOPKINS, CHAIRMAN

BY:

  
ANNIE M. BARTOS, CHIEF COUNSEL  
DEPARTMENT OF COMMERCE

  
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 3, 1994.

BEFORE THE BOARD OF NURSING  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the amendment ) CORRECTED NOTICE OF 8.32.  
of a rule pertaining to pre- ) 1509 TERMINATION OF  
scriptive authority ) PRESCRIPTIVE AUTHORITY

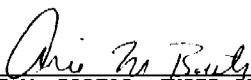
TO: All Interested Persons:

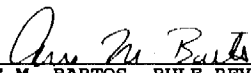
1. On March 31, 1994, the Board of Nursing published a notice of proposed amendment of the above-stated rule at page 615, 1994 Montana Administrative Register, issue number 6. On September 8, 1994, the Board published a notice of adoption at page 2518, 1994 Montana Administrative Register, issue number 17.

2. Subsections (1)(e) and (f) were inadvertently omitted from the original notice. The language "nurse specialist" should have been stricken and the language "advanced practice registered nurse" should have been underlined. Replacement pages reflecting these amendments have been submitted for the September 30, 1994 filing date.

BOARD OF NURSING  
NANCY HEYER, RN, CNA, CHAIRMAN

BY:

  
ANNIE M. BARTOS, CHIEF COUNSEL  
DEPARTMENT OF COMMERCE

  
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 3, 1994.

BEFORE THE LOCAL GOVERNMENT ASSISTANCE DIVISION  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the amendment ) CORRECTED NOTICE OF 8.94.  
of a rule pertaining to review ) 4110 REVIEW OF FINANCIAL  
of financial statements ) STATEMENTS

TO: All Interested Persons:

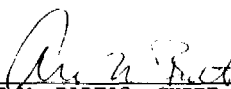
1. On April 28, 1994, the Local Government Assistance Division published a notice of proposed amendment of the above-stated rule at page 999, 1994 Montana Administrative Register, issue number 8. On August 25, 1994, the Division published a notice of adoption at page 2430, 1994 Montana Administrative Register, issue number 16.

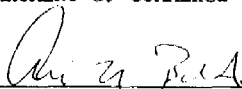
2. The colon in subsection (2) should have been stricken and the language "an engagement ... in subsection (4) below." which appears after subsections (a) and (b), which are stricken, should have been underlined in the original notice as constituting proposed new language.

3. No comments were received regarding the rule proposal. The language cited above was adopted as part of the rule amendment in the above-referenced issue. Replacement pages for this amendment were submitted to the Secretary of State's office on the September 30, 1994, filing date.

LOCAL GOVERNMENT ASSISTANCE  
DIVISION

BY:

  
ANNIE M. BARTOS, CHIEF COUNSEL  
DEPARTMENT OF COMMERCE

  
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 3, 1994.

BEFORE THE HARD-ROCK MINING IMPACT BOARD  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the amendment, ) NOTICE OF AMENDMENT OF ARM  
repeal and adoption of rules ) 8.104.101, 8.104.201,  
pertaining to the administration) 8.104.202, 8.104.203,  
of the Hard-Rock Mining Impact ) 8.104.204, 8.104.205,  
Act ) 8.104.206, 8.104.207,  
 ) 8.104.208, 8.104.208A,  
 ) 8.104.209, 8.104.210,  
 ) 8.104.211, 8.104.212,  
 ) 8.104.213, 8.104.214,  
 ) 8.104.217, 8.104.302, AND  
 ) 8.104.303; THE REPEAL OF  
 ) ARM 8.104.211A AND 8.104.  
 ) 216; AND THE ADOPTION OF  
 ) NEW RULES GOVERNING THE  
 ) HARD-ROCK MINING IMPACT  
 ) BOARD

TO: All Interested Persons:

1. On June 23, 1994, the Hard-Rock Mining Impact Board published a notice of public hearing on the proposed amendment, repeal and adoption of the above-stated rules at page 1627, 1994 Montana Administrative Register, issue number 12. The hearing was held on July 13, 1994, at 1:30 p.m., in the large downstairs conference room of the Department of Commerce building, 1424 Ninth Avenue, Helena, Montana.

2. The Board has amended ARM 8.104.202, 8.104.204, 8.104.205, 8.104.206, 8.104.207, 8.104.208, 8.104.208A, 8.104.209, 8.104.210, 8.104.212, 8.104.214, 8.104.302 and 8.104.303; repealed ARM 8.104.211A and 8.104.216; and adopted new rule I (8.104.211B), II (8.104.215) and III (8.104.218) exactly as proposed. The Board has amended ARM 8.104.101, 8.104.201, 8.104.203, 8.104.211, 8.104.213 and 8.102.217 as proposed, but with the following changes:

"8.104.101 ORGANIZATION OF BOARD (1) and (2) will remain the same as proposed.

(3) Personnel roster:

Mike Manuel, Chairman, RR 1, Box 547 57, Fairfield, Montana 59436 - School district trustee.

James McCauley, Vice CHAIRMAN, P.O. Box 376, 621 N. Monroe, Boulder, Montana 59632 - public member.

Carol Kienenberger, P.O. Box 187, Dodson, Montana 59524 - county commissioner.

Roger W. Kornder, Box 512, Lincoln, Montana 59639 - representative of financial institution.

Frank Gardner, 600 Shields, Butte, Montana 59701 - representative of industry.

(4) will remain the same as proposed."

Auth: Sec. 2-4-201, MCA; IMP, Sec. 2-4-201, MCA

"8.104.201 PUBLIC PARTICIPATION (1) will remain the same as proposed."

Auth: Sec. ~~2-3-203~~, 2-3-103, MCA; IMP, Sec. 2-3-103, MCA

"8.104.203 FORMAT AND CONTENT OF PLAN (1) and (2) will remain the same as proposed.

(3) The plan ~~shall~~ MUST be bound in a manner that will allow for ready removal and insertion of pages.

(4) The impact plan must contain, information specifically required by statute, information necessary to the implementation of statute, and information necessary to the review and implementation of the plan, including but not limited to:

(a) As required by 90-6-307(1), MCA, the plan ~~shall~~ MUST contain the following information:

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

(d) If the plan identifies a jurisdictional revenue disparity as provided for by 90-6-403(1), MCA, the plan ~~shall~~ MUST project the place of residence of employees and the district of enrollment of students as required for 90-6-405(2), MCA.

(e) through (h) will remain the same as proposed."

Auth: Sec. 90-6-305, MCA; IMP, Sec. 90-6-307, MCA

"8.104.211 IMPLEMENTATION OF APPROVED IMPACT PLAN (1) through (2)(b) will remain the same as proposed.

(c) The affected local governing body may request that the developer make ~~such~~ THE payments ~~as are~~ provided for in the budget or budget amendment of the local government unit. The governing body shall send to the board a copy of each ~~such~~ payment request. Each request must identify the name of the local government unit making the request; the date of the request; the name of the mineral developer responsible for making the payment; the amount of the requested payment; whether the request is for a tax prepayment, grant, or other funds, the purpose of the payment as specified in the approved impact plan; and the sub-account within the impact fund for which the payment is intended. The request must refer to THE ITEM ON THE PAYMENT SCHEDULE OR TO the page or pages in the approved impact plan ~~or its payment schedule~~ on which THE FINANCIAL COMMITMENT AND the purpose of the expenditure ~~and the financial commitment~~ are specified. The request must bear the signatures of the governing body of the affected local government unit.

(d) The board will transmit payments made through the board upon written request from the governing body of the affected local government unit and upon receipt of that documentation specified in (c) above and in ARM 8.104.211B.

(e) and (f) will remain the same as proposed.

(3) AS REQUIRED BY 90-6-307(1) AND (15), MCA, THE BOARD WILL NOTIFY THE DEPARTMENT OF STATE LANDS IF THE MINERAL DEVELOPER FAILS TO COMPLY, OR RESUMES COMPLIANCE, WITH THE TERMS OF THE APPROVED IMPACT PLAN OR WITH THE REQUIREMENTS OF TITLE 90, CHAPTER 6, PARTS 3 AND 4 OF THE MONTANA CODE ANNOTATED"

Auth: Sec. 90-6-305, MCA; IMP, Sec. 90-6-307, 90-6-310, MCA

"8.104.213 MODIFICATION OF PLAN (1) through (1)(d) will remain the same as proposed.

(e) All modifications must be incorporated into the plan before the board will approve it. The modified plan must comply with the form and content requirements for an impact plan specified by parts 3 and 4 to Title 90, chapter 6 of the Montana Code Annotated and by the administrative rules adopted by the board. In the modified plan the table of contents, summary, schedule of payments, and, if a part of the plan, developer's written ~~guaranty~~, ~~guarantee~~ must accurately contain and reflect the modifications. Obsolete material must be deleted from the plan through the use of replacement pages that contain and reflect the modifications or, if the use of replacement pages is not feasible, obsolete material must be deleted by specific reference.

(f) will remain the same as proposed."

Auth: Sec. 90-6-305, MCA; IME, Sec. 90-6-307, MCA

"8.104.217 CONTENTS OF PETITION FOR PLAN AMENDMENT

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

(i) THAT the plan itself provides for amendment under certain conditions and that those conditions have been met with the conditions specified and the pages on which they are established cited; ~~the~~ The petitioner must establish that the conditions have been met;

(ii) through (iv) will remain the same as proposed."

Auth: Sec. 90-6-305, MCA; IME, Sec. 90-6-311, MCA

3. No members of the public attended the hearing, and the Board received no public comments during the public comment period provided for by the Administrative Procedure Act. The Board did, however, receive two comments of a technical nature from the staff of the Legislative Administrative Code Committee provided for in Title 5, chapter 14, MCA. A summary of those two comments and the Board's responses thereto follow:

COMMENT: The Board has cited section 2-3-203, MCA, as its authority to amend ARM 8.104.201 concerning public participation. With certain narrow exceptions, section 2-3-203 requires that meetings of public bodies be opened to the public but does not contain a grant of rule-making authority. Section 2-3-103(2), MCA, on the other hand, requires state boards to adopt guidelines for encouraging public participation in its decisions that are of significant interest to the public. The Board should cite this provision as its authority for adopting its rule relating to public participation.

RESPONSE: The Board concurs and has incorporated this change in its amended rule.

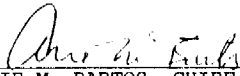
COMMENT: In its notice of public hearing, the Board explained that several of the amendments it is proposing are technical or stylistic, but did not explain, as is required by section 2-4-305(6)(b), MCA, why it decided to adopt these amendments.

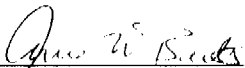


RESPONSE: The Board was required to modify certain of its administrative rules to reflect amendments to the Hard-Rock Mining Impact Act. Because the Board had not conducted a comprehensive review of its rules for organization and clarity of expression since their original adoption in 1982, it decided to do so at this time.

HARD-ROCK MINING IMPACT BOARD  
MIKE MANUEL, CHAIRMAN

BY:

  
ANNIE M. BARTOS, CHIEF COUNSEL  
DEPARTMENT OF COMMERCE

  
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 3, 1994.

BEFORE THE  
BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the        )       NOTICE OF AMENDMENT  
adoption of amendments    )  
of rules pertaining to     )  
certification                )

TO: All interested Persons

1. On April 14, 1994 the Board of Public Education published notice of the proposed rule amendments to Certification noticed on page 735 of the Montana Administrative Register, issue #7.

2. The board has amended the rules as proposed with the following changes:

10.58.206        FACULTY   (1) and (2) will remain the same.  
(3) The institution shall provide evidence of faculty experience and participation in professional activities such as curriculum improvement, research, writing, and travel and regular contact with K-12 schools and classrooms for educational purposes.       (4) and (5) will remain the same.

AUTH: Sec. 20-2-114, MCA; IMP: Sec. 20-2-121, MCA

10.58.209        SCHOOL-INSTITUTION RELATIONS   (1) will remain the same.  
(2) The institution shall establish such relationships with secondary and elementary schools as necessary to provide opportunities for institution students and faculty to have ongoing contact with K-12 schools, students, classrooms, faculty and administration.  
(23) will remain the same but be renumbered.  
(34) will remain the same but be renumbered.  
(45) will remain the same but be renumbered.

10.58.301        CURRICULUM PLANNING AND DEVELOPMENT   (1) through (2) will remain the same.  
(a) the public schools;  
(b) through (5) will remain the same.

AUTH: Sec. 20-2-114, MCA; IMP: Sec. 20-2-121, MCA

10.58.303        PROFESSIONAL EDUCATION   (1) through (1)(b)(i) will remain the same.  
(ii) knowledge of the process of human growth, development, and learning, and the ability to apply this knowledge to the teaching of all students, ~~including atypical children, all students;~~

(iii) through (xii) will remain the same.

(xiii) ~~practical~~ knowledge of the legal, practical and philosophical basis of education equity and opportunity in Montana schools;

(xiv) will remain the same.

(c)(i) through (v) will remain the same.

(d) The professional education component shall include a comprehensive program of carefully designed laboratory, clinical, and practicum experiences with school-age youth that begin early in the program including K-12 schools and classrooms.

(e) through (f)(viii) will remain the same.

(g) demonstrate a commitment to professionalism, including:

(i) continued professional growth in teaching;

(ii) pride in teaching;

(iii) dedication to life-long practice of the subject matter;

(iv) recognition of the value of professional collaboration;

(v) willingness to make informed, reflective decisions on current issues of professional concern;

(vi) sensitivity to the impact that events and developments in the world outside the school may have on teachers, their colleagues, their students and the curriculum; and

(vii) dedication to interaction with colleagues, both in teaching and administration, which reflects an understanding of and compliance with important ethical standards.

AUTH: Sec. 20-2-114, MCA; IMP: Sec. 20-2-121, MCA

10.58.401. FIELDS OF SPECIALIZATION (1) All programs that prepare teachers in fields of specialization shall be designed to meet general standards identified by the institution's faculty and ~~shall~~ may include subject matter preparation substantially beyond that which a teacher may be expected to teach.

AUTH: Sec. 20-114, MCA; IMP: Sec. 20-2-121, MCA

10.58.501. GENERAL REQUIREMENTS (1) will remain the same.

(2) Each teaching area will provide the opportunity for prospective teachers to have contact with appropriate K-12 teachers and classrooms on an ongoing basis throughout their teacher preparation.

(3) Prospective teachers shall be provided opportunities to engage in instructional planning and delivery including practice in selecting, designing, organizing and employing objectives, strategies, evaluation techniques, and materials suitable for K-12 students.

(4) Prospective teachers shall:

(a) recognize that all students are worthy of a teacher's attention;

(b) use the curriculum to help students become familiar with and tolerant of diverse peoples and cultures;

(c) have the willingness to adapt objectives, methods and materials for instruction to match student's needs;

AUTH: Sec. 20-2-114, MCA; IMP: Sec. 20-2-121, MCA

10.58.502 AGRICULTURAL EDUCATION For the prospective teacher the program shall provide the competencies, skills, knowledge and abilities to:

(1) The program shall provide opportunities for the prospective teacher to understand and practice the competencies, skills, knowledge, and abilities to teach the following:

(a) biological, physical and applied sciences as they relate to practical solutions and problem solving in agriculture;

(b) environmental, and natural resource management planning and development;

(c) basic knowledge and technical experience in plant science, animal science, horticulture, forestry, agricultural business management, agricultural business analysis, agricultural equipment and supplies, agricultural sales and service, agricultural production, marketing, agricultural mechanics and technology and computer application in agriculture;

(d) information about agricultural professional organizations;

(e) careers available in the agriculture industry.

(2) The program shall assure that students have knowledge and experience in:

(a) working with students and adults in supervised agricultural experience programs;

(b) using agricultural student organizations to teach leadership, citizenship, personal development, goal setting, parliamentary procedure and cooperative group efforts.

(3) It is required that students have one year (2000 hours) of practical farm or other agricultural-related experience within five years prior to completion of the program. provide study of the biological, physical and applied science as they relate to practical solutions and problem solving in agriculture;

(2) provide environmental, natural, and resource management planning and development;

(3) assure that practical farm or other agriculturally related experience is a part of the program by documenting one year of work experience (2000 hours) within five years;

(4) provide basic knowledge and technical experience in plant science, animal science, horticulture, forestry, agricultural business management, agricultural

~~business analysis, agricultural equipment and supplies, agricultural sales and service, agricultural production, marketing, agricultural mechanics and technology and computer application in agriculture;~~

~~(5) use agricultural student organizations to teach leadership, citizenship, personal development, goal setting, parliamentary procedure and cooperative group efforts;~~

~~(6) teach about careers available in the agriculture industry;~~

~~(7) provide knowledge and experiences in working with students and adults in supervised agricultural experience programs; and~~

~~(8) teach about agricultural professional organizations.~~

AUTH: Sec. 20-2-114, MCA; IMP: Sec. 20-2-121, MCA

10.58.503 ART K-12 (1) through (1)(d) will remain the same.

(2) develop in the studio setting the ability to produce original and expressive art forms in a variety of media, ~~to~~ which may include but not be limited to drawing, painting, printmaking, graphics communication, sculpture, photography, multimedia, and creative craft areas of woodworking, fibers, metalwork, jewelry, and ceramics;

(3) through (8) will remain the same.

AUTH: Sec. 20-2-114, MCA; IMP: Sec. 20-2-121, MCA

10.58.507 DRAMA For the prospective teacher the program shall:

(1) through (3)(d) will remain the same.

(4) Develop the ability to interact with the community, in order to:

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

(c) ~~promote an appreciation of positive attitudes for theater instruction and performances; and,~~

(d) will remain the same.

AUTH: Sec. 20-2-114, MCA; IMP: Sec. 20-2-121, MCA

10.58.508 ELEMENTARY For the prospective teacher the program shall:

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

(b) study student development through direct, guided observation; focused inquiry through data collection; and systematic analysis, self-study of interaction with children,

etc.; and

(c) study the full range of variations in physical, environmental and cognitive development and acquire a knowledge for meeting students' individual needs;

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

(b) ~~opportunities to~~ select and use various models for teaching about controversial, problematic and value-oriented issues; and

(c) through (7)(c) will remain the same.

(8) provide knowledge of ethnic, linguistic and cultural backgrounds and gender biases and their effects on children, families and society;

(9) through (10)(e)(i) will remain the same.

(A) become confident in their ability to construct mathematical ideas, exercise mathematical reasoning; inductive and deductive;

(B) through (10)(h)(viii) will remain the same.

AUTH: Sec. 20-2-114, MCA; IMP: Sec. 20-2-121, MCA

10.58.509 ENGLISH/LANGUAGE ARTS For the prospective English/language arts teacher the program shall:

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

(d) modeling by both English and education instructors of effective pedagogy and attitudes and use of classroom methods which reflect and apply knowledge of current research regarding the theory and practice of teaching English/language arts.

(2) Provide understandings of English/language arts content, including:

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

(i) ways student writers select a topic, generate and organize ideas and choose language appropriate to the writing purpose;

(ii) direct instruction (about organizational patterns, mechanics, language structures, usage, etc.), modeling (teachers as writers and processes of professional writers), and conferencing (careful questioning of individual students about writing to help them focus and write well);

(iii) various formats (such as narration, exposition, letter, poem, journal, etc.) for a variety of purposes and audiences;

(iv) will remain the same.

(v) ~~ways writers revise, edit and publish their own and others' writing; revision strategies which improve the development of ideas and content, organization, and voice in their own and others' writing;~~

(vi) editing techniques, which improve word choice, sentence fluency, conventions (e.g., grammar, capitalization, punctuation, usage, spelling, paragraphing) and enhance readability in their own and others' writing;

(vii) evaluation which allows students and teachers to identify, assess, and interpret student progress in writing for

a variety of contexts and purposes; and

(viii) publish and/or share their own writing through student publications, computer networks, symposiums, and other displays.

(2)(e) through (g)(ii) will remain the same.

(iii) methods of helping students evaluate facts, images, inferences, implications, and judgments;

(iii)(iv) the decision making and reasoning processes; and

(iv)(v) writing as a generative process.

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

(iv) designing contexts in which students have a purpose for creating, improving, and evaluating their own and others' communication;

(iv) formulating questions and learning to help students formulate questions at varying levels of abstraction to elicit personal responses as well as facts and inferences;

(vi) organizing students for effective whole class, small group and individual work; and

(vii) using a variety of instructional strategies, materials, and technology appropriate to students' cultures, gender and learning styles; and

(viii) developing strategies and processes for encouraging and implementing writing across the curriculum;

(b) through (b)(ii) will remain the same.

(iii) communicating assessment results to students, parents, lay audiences and other educators; and

(iv) learning how to help students develop self-assessment methods; and

(v) responding specifically and constructively to a student's oral and written discourse.

(4) through (4)(b)(vii) will remain the same.

(5) Provide field-based experiences in which students:

(a) observe and participate in language arts classrooms at elementary, middle, and high school levels with qualified teachers prior to student teaching;

(b) are able to achieve the program objectives through teaching experience in an English/language arts classroom supervised by a qualified teacher and a university/college supervisor during student teaching; and

(c) are meaningfully exposed to the rigors of teaching, yet allowed reasonable time for reflection, self-evaluation, and interaction with colleagues.

AUTH: Sec. 20-2-114, MCA; IMP: Sec. 20-2-121, MCA

10.58.510 STUDENTS WITH DISABILITIES K-12 The following standard pertains to programs for preparing teachers of students with disabilities--early intervention through grade 12. This standard, applicable to all areas of special education, is designed to prepare an individual to provide a range of educational services for students with disabilities. This standard refers to students who have cognitive delay, hearing impairment, deafness, speech/language impairment, visual impairment, emotional disturbance, orthopedic impairment, other health impairments, learning disability, deaf-blindness, pre-school with disability, autism, and/or traumatic brain injury. The standard represents a common set of expectations across all areas for the preparation of teachers serving students with disabilities. The program shall require demonstrated:

(~~11~~) competence in working with groups of students and individuals within groups and in field experiences and student teaching practicum with students with special needs;

(1) through (11) will remain the same but will be renumbered (2) through (12).

(~~12~~) competence in identifying, selecting, and using school and community resources; and

(14) will remain the same.

AUTH: Sec. 20-2-114, MCA; IMP: Sec. 20-2-121, MCA



10.58.511 SECOND LANGUAGES For the prospective teacher seeking endorsement to teach any second language, preparation shall be in a specific language program leading to teacher preparation and shall provide:

(1) through (6) will remain the same.

~~(a7) for the acquisition of such skills the program must provide the opportunity for the prospective teacher to contact native cultures either on the campus or in an organized period of~~

study in the native culture of the second (target), language;

~~(78)~~ an awareness of language as an essential element of culture, an understanding of the princip~~le~~al ways in which the target language culture differs from the first language culture, first-hand knowledge of literary masterpieces, and acquaintance with the geography, history, art, and social customs of major lands in which the language is dominant;

~~(82)~~ an understanding of the differences between the sound systems, forms, and structures of the second language and English and the ability to apply this understanding to modern second language teaching;

~~(910)~~ a knowledge of the present-day objectives of second language teaching as communication, and an understanding of

the methods and techniques for attaining these objectives;

~~(1011)~~ a knowledge of the use of special techniques, such as educational media, the relation of second language study to other curricular areas, and the ability to evaluate the professional literature of second language teaching;

~~(1112)~~ preparation of teachers of classical languages through adherence to the preceding standards, with additional special emphasis on appreciation of the language and gaining control of its sounds, structure, and vocabulary rather than on conversational objectives; and

~~(1213) for ESL certification to teach (English as a second language) candidates, the program shall a required two-years program, or the equivalent experience, learning a second language to include knowledge of the linguistic structure of the language and features of a culture which uses the language.~~

AUTH: Sec. 20-2-114, MCA; IMP: Sec. 20-2-121, MCA

10.58.512 GUIDANCE AND COUNSELING K-12 For the prospective counselor the program shall provide:

(1) through (9) will remain the same.

(10) opportunities to gain knowledge of state, and federal

laws, and school accreditation standards, including those laws and regulations that affect student placement, follow-up and program planning;

(11) through (13)(e) will remain the same.

AUTH: Sec. 20-2-114, MCA; IMP: Sec. 20-2-121, MCA

10.58.513 HEALTH For the prospective teacher the program shall provide a broad understanding of ~~the~~ health enhancement program and shall further provide:

(1) will remain the same.

(a) school health curriculum, including goals and objectives, planned learner activities and integration with related disciplines, to include:

(i) through (3)(h) will remain the same.

AUTH: Sec. 20-2-114, MCA; IMP: Sec. 20-2-121, MCA

10.57.517 LIBRARY MEDIA K-12 The program designed to produce an information specialist, teacher and instructional consultant shall provide:

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

(e) development of local and state networking for the purpose of resource sharing to include interlibrary loans, cooperative collections and catalog development, plus electronic resources and networks;

(5) through (6)(b)(ii) will remain the same.

AUTH: Sec. 20-2-114, MCA; IMP: Sec. 20-2-121, MCA

10.58.518 MATHEMATICS For the prospective teacher the program shall:

(1) include experiences in which they:

(a) become confident in their ability to construct mathematical ideas, exercise mathematical reasoning; inductive and deductive;

(b) through (h) will remain the same.

(i) experience and ~~can~~ apply the integrated and hands-on applications of appropriate technology specific to each of the standards areas; ~~and~~

(j) explore definitions, conjectures and theorems which are applications based and example generated;

(2) through (6)(c) will remain the same.

(d) become familiar with the use of calculators with graphics capabilities and computer algebra systems. ~~both in the study and the applications of calculus;~~

(7) through (8)(c) will remain the same.

AUTH: Sec. 20-2-114, MCA; IMP: Sec. 20-2-121, MCA

10.58.519      MUSIC K-12      For the prospective teacher the program shall develop:

- (1) through (3) will remain the same.
- (4) the ability to use the materials of music in aural and visual analysis;
- (5) comprehensive knowledge and skills in conducting, score reading and rehearsal techniques for choral and instrumental ensembles;
- (6) through (27) will remain the same.

AUTH: Sec. 20-2-114, MCA; IMP: Sec. 20-2-121, MCA

10.58.520 PHYSICAL EDUCATION AND HEALTH K-12      For the prospective teacher the program shall provide a broad understanding of the health enhancement program and further shall:

- (1) through (a)(iii) will remain the same.
- (iv) chronic and communicable diseases including STDs, body defenses, and immunization programs and disease prevention;
- (v) through (ix) will remain the same.
- (x) cultural and gender issues including discrimination, and harassment;
- (b) through (iv) will remain the same.
- (v) medical problems that may be of special significance to a specific gender or culture;
- (2) through (7)(b) will remain the same.

AUTH: Sec. 20-2-114, MCA; IMP: Sec. 20-2-121, MCA

10.58.523      SOCIAL STUDIES      The social studies program may follow the subject-major/minor pattern or the comprehensive major pattern. Subject-major/minor endorsement programs include economics, geography, government, history, psychology and sociology. The comprehensive major program leads toward a "broadfield" social studies endorsement and may include courses in any of the above endorsement programs plus anthropology.

- (1) through (a) will remain the same.
- (i) prepares teacher candidates to select, integrate and translate knowledge and methodology from social studies disciplines appropriate to the school level;
- (ii) includes experiences in curriculum design for different settings; and
- (iii) addresses the multicultural aspects of social studies teaching;
- (b) through (2)(a)(v) will remain the same.
- (b) Specific major or minor: Curricula leading to a teaching endorsement in a discrete social studies discipline (economics, geography, government, history, psychology and sociology) must meet ~~section~~ (1) and the appropriate sub-

standards (3) through (8) ~~of this standard.~~

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

(c) the analysis of basic economic goals for society; (such as freedom of choice, ethics, efficiency, equity, full employment, price stability, growth and security);

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

(b) ~~plus~~ the following themes:

(4)(b)(i) through (6)(a) will remain the same.

(i) chronological study that provides comprehensive coverage of a particular area;

(ii) regional study that examines the history of a single country; and

(iii) topical courses that focus on a specialized themes, e.g., American Indians and major world religions; and

(b) through (8)(c) will remain the same.

AUTH: Sec. 20-2-114, MCA; IMP: Sec. 20-2-121, MCA

10.58.524 COMMUNICATION For the prospective educator in the field of interpersonal (or speech) communication, the program shall:

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

(c) the effort to integrate on-campus content and methods and field experiences in an appropriate K-12 classroom throughout the program; and

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

AUTH: Sec. 20-2-114, MCA; IMP: Sec. 20-2-121, MCA

10.58.527 AREAS OF PERMISSIVE SPECIAL COMPETENCY  
~~TEACHING AREAS; ADDITIONAL FIELDS IS HEREBY REPEALED.~~ (1) Programs designed for teachers who hold a regular Montana teaching certificate and desire skills in a non-endorsement field to appear on the teaching certificate shall:

(a) meet the standards for the Area of Permissive Special Competency as approved by the board of public education and outlined below; and

(b) when specified, have laboratory experiences under the jurisdiction of the preparing institution.

(2) Programs must include a minimum of 20 semester (30 quarter) credits of preparation.

(3) Permissive Special Competency standard(s):

(a) Early Childhood

(i) The early childhood program is offered as an "add-on" to the elementary program. It may be offered as a minor to elementary education or as an approved program for the addition of early childhood to a program.

(ii) For prospective teachers of school children, ages eight and under, the program shall:

(A) provide coursework and/or experience which prepare the student to meet the needs of family, educators and the general public through the ability to:

(I) explain to parents and other concerned individuals the fundamentals of child growth, development, and learning; articulate the rationale for developmentally appropriate education programs for young children and the need for community support for such programs;

(II) identify services that provide information and support for families and children and the role of related disciplines in supporting young children and their families;

(III) explain roles of parents as primary caregivers and informal teachers of young children, understand the importance of parents' expectations for their children, and acknowledge the collaborative role of parents and teachers in early childhood programs;

(IV) communicate how children affect and are affected by parents, siblings, extended family and community;

(V) work cooperatively and supportively with families, especially those that have special educational needs, including those in which English is not the dominant language;

(VI) include families in assessing a child's development, report assessment results in a clear and supportive manner to family members and other appropriate professionals, and identify strengths and needs when setting goals.

(B) provide knowledge and/or experiences necessary for the student to assist all children, including those with disabilities, and their parents through the ability to:

(I) participate in and assist other professionals in family centered assessments and in developing and implementing individualized service and educational plans for young children;

(II) adapt curriculum content to meet the needs of all young children, including those who may have a disability, be at risk for developmental delay or may be gifted;

(III) articulate the rationale for early intervention services;

(IV) identify available special education community services for the young child, including prevention, early intervention, integration into mainstream environment, and referral to specialized programs.

(C) provide the basis for assisting with health and safety related areas including:

(I) basic health, nutrition, and safety management procedures for infants, toddlers, and young children as well as basic health and safety management procedures regarding childhood illness and communicable disease;

(II) appropriate health appraisal and referral procedures to appropriate community health and social services when necessary;

(III) identification of hazards, assessment of risks and appropriate corrective steps in early childhood settings;

(IV) assistance to young children in developing decision making and interpersonal skills to promote good health and personal safety.

(D) provide field experiences and professional internships

in which:

(I) theory and practice are integrated through field work in conjunction with coursework and professional consultation, (at least part of the experience must be with children under five):

(II) the student assumes the full range of teaching duties in exemplary early childhood settings.

(E) provide the ability to respond professionally to:

(I) the interpretation of historical, philosophical, and social foundations of early childhood education and their effect on current practices and future trends;

(II) current issues which affect children, families, and programs for young children and the early childhood profession;

(III) value issues and the need for incorporating codes of ethics in professional practice;

(IV) working cooperatively with professionals (including volunteers) to maintain a safe and developmentally appropriate environment;

(V) career-long growth and development;

(VI) signs of emotional distress, child abuse and neglect and reporting to appropriate authorities.

(F) provide the ability to analyze and evaluate developmental theories and implications to:

(I) integrate various developmental domains, learning styles and learning modalities;

(II) include theories of development, learning and assessment in planning appropriate programs, environments and interactions;

(III) develop and implement an integrated curriculum using play, themes and projects focusing on children's developmental needs and interests;

(IV) integrate multicultural/anti-bias themes, literature and experiences in all curriculum areas;

(V) observe and record young children's behavior and conduct an accurate and meaningful assessment;

(VI) apply knowledge of utility and limitations of all forms of assessment administered to young children;

(VII) create and manage a learning environment that emphasizes direct experience, active manipulation of concrete materials, child choice and decision making, exploration of the environment and interaction with others;

(VIII) use developmentally appropriate methods that include play, open-ended questioning, group discussion, problem solving, cooperative learning and inquiry experiences to help young children in solving problems, making decisions, and becoming independent learners and developing intellectual curiosity;

(IX) use group and individual guidance and problem solving techniques to nurture prosocial interactions among children, to encourage interpersonal problem solving and to develop self control and positive self esteem.

AUTH: Sec. 20-2-114, MCA; IMP: Sec. 20-2-121, MCA

10.58.528 COMPUTER SCIENCE Computer science teachers must be prepared to teach computer science, programming, and literacy courses and be prepared to adapt to the rapid changes in the field of computing, therefore, for the prospective teacher the program shall:

(1) include computer science prerequisites ~~to~~, consistent with, and substantially beyond that which ~~the~~ teacher may be expected to teach;

(2) through (6)(g) will remain the same.

AUTH: Sec. 20-2-114, MCA; IMP: Sec. 20-2-121, MCA

10.58.601 PROGRAM PLANNING AND DEVELOPMENT (1) through (3) will remain the same.

(4) The board of public education is responsible for stimulating the development of program objectives and for evolving and carrying out appropriate procedures for teacher certification.

(5)(4) All advanced programs shall include the following:

(a) through (f) will remain the same.

(6)(5) The institutions's operating controls shall guarantee the integrity of each program and shall include:

(a) through (f) will remain the same.

AUTH: Sec. 20-2-114, MCA; IMP: Sec. 20-2-121, MCA

10.58.704 SCHOOL PRINCIPALS AND SUPERINTENDENTS For the prospective administrator the program shall assure knowledge and skills of:

(1) through (8)(e) will remain the same.

(f) 504 of the ~~P~~hysical ~~D~~isabilities Act.

AUTH: Sec. 20-2-114, MCA; IMP: Sec. 20-2-121, MCA

10.58.707 SCHOOL PSYCHOLOGISTS For the prospective school psychologist the advanced program shall:

(1) will remain the same.

(a) provide full-time faculty who have an advanced degree in psychology, education, or a related discipline or have training and experience deemed equivalent. At least one faculty member shall possess experience as a school psychologist;

(b) provide specific criteria for evaluation of candidates to ensure that they possess the personal and ethical characteristics and academic competencies appropriate to the requirements of their future roles as practicing school psychologists;

(c) consist of a minimum of three years of full-time academic study or the equivalent beyond the baccalaureate

degree, including at least 60 graduate semester hours or the equivalent, and shall culminate in institutional documentation;  
~~(b)~~ (d) limit the number of credit hours acquired through

courses, seminars and other learning experiences not open exclusively to graduate students to no more than one-third of the student's program;

~~(e)~~ (e) exclude credit for undergraduate study, study which is remedial, or study which is designed to remove deficiencies in meeting requirements for program admission;

~~(d)~~ (f) include at least one academic year of supervised internship experience consisting of a minimum of 1200 clock hours, at least 600 hours of which must be in a school setting;

~~(e)~~ (g) have no more than 12 graduate semester hours awarded as credit for the supervised internship experience counted toward the required minimum of 60 graduate semester hours;

~~(f)~~ (h) includes full-time continuous residency or an alternate planned experience required for all candidates (programs allowing alternate planned experiences as a substitute for full-time residency must demonstrate how those experiences are equivalent to those commonly associated with residency requirements for the degree);

(2) through (2)(a) will remain the same.

(i) There shall be a direct and obvious relationship between those objectives and the components of the curriculum (foundation areas in which all school psychology trainees must be prepared are presented in ~~sub-standard~~ (2)(d));

(2)(a)(ii) through (5) will remain the same.

(a) ensure that faculty members who teach laboratory and clinical practicums and supervise school psychologist interns have ongoing involvement with elementary and secondary schools;

~~(a)~~ (b) shall be at or near the end of the formal training period;

~~(b)~~ (c) shall occur on a full-time basis over a period of one academic year, or on a half-time basis over a period of two consecutive years;

~~(e)~~ (d) shall be consistent with a written plan and shall meet the specific training objectives of the program;

~~(d)~~ (e) shall occur in a setting appropriate to the specific training objectives of the program;

~~(e)~~ (f) shall include at least 600 clock hours in a school

setting and shall provide a balanced exposure to regular and special educational programs;

~~(f)~~ (g) shall be provided appropriate recognition through the awarding of academic credit;

~~(g)~~ (h) shall occur under conditions of appropriate



supervision, i.e., field-based internship supervisors shall hold a valid credential as a school psychologist for the portion of the internship that is in a school setting and that portion of the internship which appropriately may be in a non-school setting shall require supervision by an appropriately credentialed psychologist;

~~(b)~~(l) involve internship supervisors having responsibility for no more than two interns at any given time and university supervisors having no more than twelve interns at any given time;

~~(i)~~(j) involve internship supervisors who provide at least two hours per week of direct supervision for each intern, and university internship supervisors who maintain an ongoing relationship with field-based internship supervisors according to planned communications occurring regularly through the internship year;

~~(j)~~(k) are provided appropriate placement agency support for the internship experience including:

(i) through (vii) will remain the same.

~~(k)~~(l) shall be systematically evaluated in a manner consistent with the specific training objectives of the program;

~~(l)~~(m) shall be conducted in a manner consistent with the current legal-ethical standards of the profession;

(6) through (7) will remain the same.

AUTH: Sec. 20-2-114, MCA; IMP: Sec. 20-2-121, MCA

3. At the public hearing which was held on May 27, 1994, eight persons testified as proponents and six persons testified as opponents. The legislative code committee comments were as follows: "Since the Board cited 20-4-114, MCA as its rulemaking authority, the ACC staff assumes that the Board does not consider "teacher certification" to be part of the Board's "general supervision" that is subject to rulemaking authority ruled by Judge Sherlock as granted to the Board by the Constitution and not subject to MAPA. If the Board believes that teacher certification is part of its "general supervision" duties, the Board should cite constitutional provisions as its rulemaking authority.


"In Future notices, the ACC staff suggests that, in citing rulemaking authority, the Board inform staff whether rules are being adopted, amended, or repealed pursuant to statutory or constitutional authority. The ACC staff is required to review all rules adopted, amended, or repealed pursuant to the statutory requirements of MAPA. Likewise, if rules are proposed pursuant to MAPA, the Board follow all MAPA procedures, including the requirement to address in its adoption notices any

comments made by the ACC staff". There were nine letters of written comments received by the board.

The comments of the opponents at the hearing and the letters written in opposition were concerned with their authors' perception that the proposed amendments contained excessive reference to "subjective goals" such as "multiculturalism, ecological awareness, caring citizens and adaptability." The Board determined that though there were such statements in some of the rules, those references were necessary to provide an understanding or orientation that teachers should have and, further, that these references enhanced rather than detracted from the rules. With regard to the comments by the Administrative Code Committee staff, the Board agrees to cite the appropriate authority under which it is adopting its rules. In this case, the Board believes that it has cited the appropriate statutes for the forgoing rule changes and thus contends that it has complied with the Montana Administrative Procedure Act.

At the recommendation of OPI, this rule was codified under this rule number which was previously slated for repeal.

4. The Board adopts these rules pursuant to its own procedural rule to review the teacher training requirements every five years. The Board feels that the five year review is necessary in order that the rules remain current with advances in teacher training.

  
Wayne Buchanan,  
Executive Secretary  
Board of Public Education

Certified to the Secretary of State on 9/30/94.

BEFORE THE DEPARTMENT OF  
FAMILY SERVICES OF THE  
STATE OF MONTANA

In the matter of the amendment )	NOTICE	OF	AMENDMENT
of Rules 11.12.413 and )	OF RULES	11.12.413 AND	
11.12.416, the repeal of Rule )	11.12.416, THE REPEAL OF		
11.12.417 and the adoption of )	RULE 11.14.417, AND THE		
Rules I, II, III, IV, and V, )	ADOPTION OF RULES I, II,		
VI, VII, and VIII pertaining )	III, IV, V, VI, VII AND VIII		
to medical necessity )	PERTAINING TO MEDICAL		
requirements of therapeutic )	NECESSITY REQUIREMENTS OF		
youth group homes. )	THERAPEUTIC YOUTH GROUP		
)	HOMES		

TO: All Interested Persons

1. On August 25, 1994, the Department of Family Services published notice of the proposed amendment of Rules 11.12.413 and 11.12.416, the repeal of Rule 11.12.417 and the adoption of Rules I, II, III, IV, and V, VI, VII, and VIII pertaining to medical necessity requirements of therapeutic youth group homes at page 2380 of the 1994 Montana Administrative Register, issue number 16.

2. The department has amended, repealed, and adopted the rules as proposed. Rules will be numbered 11.13.102, 104, 106, 108, 110, 112, 114 and 116 respectively.

3. No comments were received.

DEPARTMENT OF FAMILY SERVICES

  
Hank Hudson, Director

  
John Melcher, Rule Reviewer

Certified to the Secretary of State, October 3, 1994.

BEFORE THE DEPARTMENT OF  
FAMILY SERVICES OF THE  
STATE OF MONTANA

In the matter of the adoption )	NOTICE OF ADOPTION OF RULE I
of Rule I pertaining to )	PERTAINING TO COUNTING
counting children considered )	CHILDREN CONSIDERED TO BE IN
to be in day care, and Rule II )	DAY CARE, AND RULE II
pertaining to infant needs of )	PERTAINING TO INFANT NEEDS
non-infants, and the amendment )	OF NON-INFANTS, AND THE
of Rule 11.14.102 pertaining )	PROPOSED AMENDMENT OF RULE
to defining day care center, )	11.14.102 PERTAINING TO
family day care home, and )	DEFINING DAY CARE CENTER,
group day care home. )	FAMILY DAY CARE HOME, AND
)	GROUP DAY CARE HOME

TO: All Interested Persons.

1. On August 25, 1994, the Department of Family Services published notice of public hearing on adoption of Rule I [ARM 11.14.106] pertaining to counting children considered to be in day care, and Rule II [ARM 11.14.107] pertaining to infant needs of non-infants, and the amendment of Rule 11.14.102 pertaining to defining day care center, family day care home, and group day care home at page 2389 of the 1994 Montana Administrative Register, issue number 16.

2. On September 20, 1994, a public hearing was held in the second floor conference room of the Department of Family Services, 48 North Last Chance Gulch, Helena, Montana, to consider the adoption and amendment of the rules. No verbal or written comment was received at the hearing.

3. The department has adopted Rule II [ARM 11.14.107] as proposed and amended ARM 11.14.102 as proposed. The department has adopted Rule I [ARM 11.14.106], as proposed, with the following changes:

Rule I. [11.14.106] COUNTING CHILDREN IN CARE (1) Children of the provider's household or children who are present in the home or facility only when their own parent is also present shall not be counted in determining whether supplemental parental care is provided to three or more children.

(2) A provider of supplemental parental care to three or more children shall be licensed or registered as a day care facility.

(3) Once it is determined that registration or licensure is required under this rule, all children (except the provider's own children ~~over the age of six~~ and over) who are present during hours when supplemental parental care is provided shall be counted for determining:

(a) whether, among the three types of day care facilities, the provider must be registered as a family day care home, group

day care home, or licensed as a day care center;

(b) whether the facility is in compliance with applicable child:staff ratios;

(c) whether sufficient space is provided; and

(d) whether any other safety, health, or program requirement or registration/licensure restriction requiring counting of children is affected or violated.

AUTH: Sec. 52-2-704, MCA. IMP: Sec. 52-2-704; 52-2-731, MCA.

4. The department has thoroughly considered all comments:

COMMENT: (3) should be clarified as to the age of children of the provider included in the counting-exception contained in this provision. Are children who have had their sixth birthday considered to be over the age of six?

Response: The department intended that "over the age of six" be interpreted to mean that a child is at least six years old. The rule is changed herein to clarify this intent.

DEPARTMENT OF FAMILY SERVICES



Hank Hudson, Director



John Melcher, Rule Reviewer

Certified to the Secretary of State, October 3, 1994.

BEFORE THE DEPARTMENT OF  
FAMILY SERVICES OF THE  
STATE OF MONTANA

In the matter of the amendment ) NOTICE OF AMENDMENT OF RULE  
of Rule 11.14.103 pertaining ) 11.14.103 PERTAINING TO  
to registration and licensing ) REGISTRATION AND LICENSING  
of day care facilities. ) OF DAY CARE FACILITIES


TO: All Interested Persons

1. On August 25, 1994, the Department of Family Services published notice of the proposed amendment of Rule 11.14.103, pertaining to registration and licensing of day care facilities at page 2393 of the 1994 Montana Administrative Register, issue number 16.

2. The department has amended the rule as proposed.
3. No comments were received.

DEPARTMENT OF FAMILY SERVICES

  
Hank Hudson, Director

  
John Melcher, Rule Reviewer

Certified to the Secretary of State, October 3, 1994.

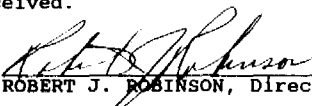
BEFORE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
rule 16.10.101 incorporating ) OF RULE  
federal food standards )

(Food, Drugs & Cosmetics)

To: All Interested Persons

1. On August 25, 1994, the department published notice of the proposed amendment of the above captioned rule at page 2395 of the Montana Administrative Register, Issue No. 16.
2. The department has amended the rule as proposed.
3. No comments were received.

By   
ROBERT J. ROBINSON, Director

Certified to the Secretary of State October 3, 1994.

Reviewed by:

  
Eleanor Parker, DHES Attorney

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

In the matter of the amendment of )	NOTICE OF AMENDMENT
rules 16.45.1201-16.45.1227 and )	OF RULES AND REPEAL
16.45.1229-16.45.1240 dealing with )	OF 16.45.1228
underground storage tank installer )	
and inspector licensing, tank )	
permits, and tank inspections, and )	
the repeal of rule 16.45.1228 )	
concerning inspector licensing fees)	

(Underground Storage Tanks)

To: All Interested Persons

1. On May 12, 1994, the department published notice of the proposed amendments to rules 16.45.1201 through 16.45.1227 and 16.45.1229 through 16.45.1240 pertaining to underground storage tank installer and inspector licensing, tank permits, and inspections and the repeal of rule 16.45.1228 concerning inspector licensing fees at page 1221 of the 1994 Montana Administrative Register, issue number 9.

2. The department has amended the rules as proposed, with the following changes (new material is underlined; material to be deleted is interlined):

16.45.1204. ELIGIBILITY FOR INSTALLER LICENSE

(1) ~~except as provided in (2) of this rule, no~~ No person may be granted an installer license by the department unless that person:

(a) Same as proposed.

(b) ~~except as provided in (2) of this rule,~~ has submitted a completed license application to the department in accordance with ARM 16.45.1205;

(c) Same as proposed.

(d) ~~except as provided in (2) of this rule,~~ has successfully completed the licensing examination required by ARM 16.45.1206.

(2) An applicant for an installer license need not comply with ~~the examination requirements of ARM 16.45.1206, the reference requirements of ARM 16.45.1205, or~~ the continuing education requirements of ARM 16.45.1208 if the applicant:

(a)-(b) Same as proposed.

(c) ~~except for the examination requirement, meets the requirements for an installer license of this subchapter and 75-11-210, MCA passes, in lieu of the examination required of other applicants, a department-approved test designed for licensed monitoring well constructors concerning underground storage tank law and regulations, safety, and leak detection monitoring well installation; and, prior to each license renewal at the end of every third year since the applicant was initially licensed, demonstrates to the department a continuing competency in the installation of leak detection monitoring~~



wells through evidence of at least three successful installations performed within the 3 years prior to renewal.

16.45.1206 INSTALLER LICENSE EXAMINATION AND RE-EXAMINATION (1) Except as provided in (3) of this rule and ARM 16.45.1204(2)(d) and (3) of this rule, applicants for an installer's license shall successfully complete a written examination, which must be offered a minimum of two times per year by the department at such time(s) and place(s) as the department determines. The department shall give public notice of the time and place of the examination by submitting a news release to all newspapers of general circulation within Montana.

(2)-(8) Same as proposed.

16.45.1208 INSTALLER LICENSE RENEWAL (1)-(3) Same as proposed.

(4) With every third application for renewal of a license, at or before the time the licensee applies for the renewal of a license, he or she must also provide, on forms furnished by the department, documentation of his or her completion of at least two department-approved or sponsored continuing education courses for a total of 16 credit hours of continuing education within each 3-year period for which the 3 years prior to the date the current license is issued expires. Except for applicants who request that their licenses be restricted to conducting the installation of cathodic protection systems, the installation of external leak detection devices, or lining, 8 credit hours of the continuing education must be earned by successfully passing a department-approved refresher training course. Renewal applicants who are currently licensed water well constructors and who request that their licenses continue to be restricted to external leak detection devices need not take formal continuing education courses to demonstrate continuing competency in petroleum leak detection monitoring well installation if they submit to the department a copy of their current water well constructor license and evidence of at least 3 successful installations performed within the 3 years prior to the date the current installer license expires.

(5)-(6) Same as proposed.

16.45.1231 INSTALLATION AND CLOSURE INSPECTION REQUIREMENTS--REPORTS (1)-(4) Same as proposed.

(5) Payment of the inspection fee for the closure of small non-commercial farm and residential tank systems will cover up to a total of 4 hours of inspector's time, including the time required for the inspector to travel to and from the closure site. If the inspection cannot be completed within the allotted four hours, or if the inspector has to return to the closure site because one or more of the pre-inspection requirements in (2) (3) of this rule have not been completed when the inspector arrives at the closure location or because there is a delay in the removal procedure, the owner or operator must

arrange for a follow-up inspection and pay an additional inspection fee.

(6)-(12) Same as proposed.

3. The department has repealed ARM 16.45.1228, found on page 16-4743 of the Administrative Rules of Montana.

AUTH: 75-11-204, MCA; IMP: 75-11-204, MCA

4. Five comments were received. The department has thoroughly considered all comments received. The comments and the department's responses are as follows:

COMMENT: Three people commented on behalf of Montana Monitor and Water Well Contractors. They questioned the need for licensed water well contractors to obtain 4 hours of continuing education to maintain an underground storage tank installer license.

RESPONSE: The department agreed that, because of the licensing requirements of the Board of Water Well Contractors, licensed water well constructors need not participate in yearly continuing education for the department so long as they are complying with the continuing education requirements of the Board of Water Well Constructors. However, the department felt that some initial education directed at underground storage tank leak detection was appropriate. Therefore, the department decided that an initial test for knowledge about underground storage tank leak detection would provide the necessary basis of particularized information. The department further decided that a licensee could establish continuing competency by a showing of successful installations within the recent past. Therefore the department has amended the proposed rule to require that licensed water well constructors could take and pass a specially designed test, and thereby show their continued competency to the department through the combination of the test and evidence of successful installations.

COMMENT: One person expressed a concern that the proposed ARM 16.45.1231(2)(b)(i)-(vi) required an inspector to be present for most phases of installations and closures.

RESPONSE: The department has required an inspector to be present only in situations where the installation or closure work is not being performed by a licensed installer. Only the work performed by owners on their own property is affected by this provision.

The inspection required may be done by either a licensed local government inspector or a department inspector. The inspection services must be paid for on an hourly basis, and must be scheduled in advance with the local inspector for a date and time which is mutually agreeable to both the applicant and the inspector. Further, the department's proposed amendment of ARM 16.45.1215(3) provides that a department or local licensed inspector need not be present when concrete or pave-

ment is being removed from over an underground tank system in preparation for a closure or repair so long as the tank and its associated piping are not disturbed by the activity.

COMMENT: One person pointed out a typographical error in ARM 16.45.1231(5).

RESPONSE: The department agrees that the proper reference to pre-inspection requirements is to subsection (3) and has changed the reference accordingly.

COMMENT: The Montana Farm Bureau commented on behalf of its member families and expressed concern about the cost to the owner/operators of permitting and inspection services for minor repairs. The commenter expressed a concern that the cost of an inspector and permit would cause owners and operators to work on underground storage tanks outside the law.

RESPONSE: In creating the Underground Storage Tank Program, the Montana legislature expressed the intent that the program should be as self-supporting as possible by requiring those using the services to pay toward the cost of providing them. Since the inception of the program, local government inspectors have had to accept a rate of reimbursement that did not equal the cost of providing the services. Therefore the local governments have requested an increase. A balancing approach was taken in setting the fees, which were calculated to be reasonable for the public, yet sufficient to meet the needs and obligations of local governments providing the services.

The fees charged for inspections of small farm and residential tank systems are flat fees covering four hours. Four hours is usually sufficient time to accomplish the normal amount of work required to accomplish the work of ensuring that underground storage tank systems are kept in proper repair.

The fee is only charged when the installation, repair, closure, etc. is conducted without a licensed installer/remover. It is felt that the fees charged for inspectors are less expensive than the fees licensed installer/removers would charge for 4 hours work. A permit would have to be obtained in any event, regardless of who does the work.

With regard to the commenter's concern that farmers and ranchers would be more likely to violate the law because of the permit and inspection fees, the department has confidence in the willingness of the citizens of Montana to abide by the law. Also, in the event of a release, compliance with all laws and regulations is a prerequisite to participation in the Petroleum Release Compensation Fund.

COMMENT AND RESPONSE: The department, on its own initiative, edited 16.45.1204 and 1208 to clarify that documentation of the special continuing education requirements and proof of compe-

tency in actual installations for monitoring well constructors who are also installers need be supplied only every three years. It also amended 16.45.1206 to correct an error in citation.

  
ROBERT J. ROBINSON, Director

Certified to the Secretary of State October 3, 1994 .

Reviewed by:

  
Eleanor Parker DHES Attorney

BEFORE THE COMMISSIONER  
OF POLITICAL PRACTICES  
OF THE  
STATE OF MONTANA

In the matter of the amendment)	NOTICE OF AMENDMENT OF
of Rule 44.12.107 pertaining )	RULE 44.12.107 PERTAINING
to waiver of registration fees)	TO WAIVER OF REGISTRATION FEES
of state government employees )	OF STATE GOVERNMENT EMPLOYEES
who register as lobbyists )	WHO REGISTER AS LOBBYISTS

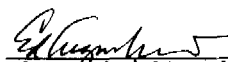
TO: All Interested Persons

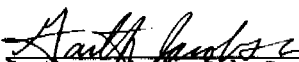
1. On August 25, 1994, the Commissioner of Political Practices published a notice of proposed amendment of ARM 44.12.107 pertaining to waiver of registration fees of state government employees who register as lobbyists at page 2425 of the 1994 Montana Administrative Register, Issue No. 16.

2. The Commissioner has amended the rule exactly as proposed.

3. No comments or testimony were received.

Commissioner of Political Practices

  
Ed Argenbright, Ed.D.

  
Garth Jacobson, Rule Reviewer

Certified to the Secretary of State, October 3, 1994.

BEFORE THE BOARD OF OPTOMETRY  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the petition ) PETITION FOR DECLARATORY  
for declaratory ruling on the ) RULING  
applicability of section )  
37-10-311, MCA, regarding )  
employment by a trust contain- )  
ing a partnership interest )

TO: All Interested Persons:

1. Petitioner's name and business address is A. Thomas Rasmussen, Montana Eye Care, 550 North Montana Avenue, Helena, Montana 59601.

2. Petitioner is the holder of a current and valid license issued by the board to practice optometry in Montana and is a partner in the optometric practice known as Montana Eye Care where he is engaged in the general practice of optometry. That partnership interest is currently held and owned by Petitioner in his individual name and capacity, which he asserts is allowed by statute and rule. Petitioner desires to create an irrevocable business trust as follows:

Petitioner would transfer ownership of various assets into the trust, and by the trust instrument appoint trustees. These trustees would hire and retain Petitioner as manager of all trust assets. The trust assets would be held, operated, used and maintained to generate revenues for the beneficiaries of the trust, one of whom would be Petitioner. One of the assets of Petitioner which he desires to transfer into the ownership of the trust is his partnership interest in the optometric practice known as Montana Eye Care. In transferring said interest to the trust, Petitioner as the manager of the trust assets, and as an optometrist licensed by this board, would continue to practice optometry with Montana Eye Care. As the designated manager of the trust assets, he also would manage and make all decisions for and on behalf of the trust in relation to all matters that would arise as a result of the trust's partnership interest in Montana Eye Care.

3. The statute to which Petitioner requests a Declaratory Ruling is 37-10-311(1) which provides:

**37-10-311 Revocation or suspension -- unprofessional conduct.** (1) The board may revoke or suspend a certificate of registration or may reprimand, prescribe probation for, or censure the holder of a certificate of registration for:

\* \* \* \* \*

(d) unprofessional conduct.

(2) Unprofessional conduct includes:

\* \* \* \* \*

(c) directly or indirectly accepting employment to practice optometry from a person not having a valid

certificate of registration as an optometrist or accepting employment to practice optometry for or from a company or corporation;

\* \* \* \* \*

4. The question presented to the board for declaratory ruling is whether this statute subjects Petitioner to the possibility of revocation or suspension of his license for unprofessional conduct if he accepts employment by the trust that he proposes to create and into which trust he would place his partnership interest in Montana Eye Care. He notes that he would be manager of all trust assets, including the partnership interest, and would continue to practice as an optometrist at Montana Eye Care.

5. Petitioner contends that the proposed trust to be created by him which would become and own a partnership interest in Montana Eye Care would not violate the provisions of the statute in question in that he, in his individual capacity as a licensed optometrist, would continue the practice of optometry with the partnership as he currently does and he, as the designated manager of the trust/partner, would make all of the decisions relative to the partnership interest for and on behalf of the trust/partner.

6. Petitioner requests a declaratory rule that employment by the trust created by him, and of which he is a beneficiary, and of which he is appointed manager, and in which capacity he would continue as a licensed optometrist to practice optometry with Montana Eye Care, of which the proposed trust is a partner, does not constitute unprofessional conduct and subject him to revocation or suspension of his optometric license pursuant to the provisions of 37-10-311(1)(d) and (2)(c), MCA.


7. Petitioner knows of no other party similarly affected.

WHEREFORE, Petitioner requests the board to render the Declaratory Ruling requested herein.

BOARD OF OPTOMETRISTS  
PAUL KATHREIN, CHAIRMAN

BY: 

ANNIE M. BARTOS, CHIEF COUNSEL  
DEPARTMENT OF COMMERCE

  
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 3, 1994.

BEFORE THE BOARD OF NURSING  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the petition ) NOTICE OF PETITION FOR  
for declaratory ruling on the ) DECLARATORY RULING  
administration of intravenous )  
conscious sedation medications )  
by non-anesthetist registered )  
nurses )

1. On November 17, 1994, at 9:30 a.m., in the conference room of the Professional and Occupational Licensing Bureau, 111 North Jackson, Arcade Building, Lower Level, Helena, Montana, the Board of Nursing will consider a petition for declaratory ruling on the authority of non-anesthetist registered nurses to administer intravenous conscious sedation medications upon the order of a physician.

2. This petition is filed on behalf of the registered nurses of Kalispell Regional Hospital, 310 Sunnyview Lane, Kalispell, Montana 59901, by Camille Scott, RN, MN; Eddie Nye, RN; and Pat Wilson, RN, BSN.

3. The Petitioners allege that frequently, non-anesthetist registered nurses are asked to administer conscious sedation medication under a physician's order. They allege that it is unclear from the Nurse Practice Act of Montana whether conscious sedation is within the scope of practice of registered nurses. The Petitioners define the procedure as a short-term therapeutic, surgical, or diagnostic procedure and further allege that allowing non-anesthetist registered nurses to perform this procedure provides cost-effective, quality health care. The Petitioners allege that they have the support of both the hospital's Nursing Practice Committee and the hospital administration to allow them to perform this procedure.

4. The statute upon which the Petitioners request a declaratory ruling is incorrectly cited in their Petition as section 37-8-102(3)(a), MCA. The scope of practice of a registered nurse, to which Petitioners make reference, is now found at section 37-8-102(5)(b), MCA. That statute provides:

(b) "Practice of professional nursing" means the performance for compensation of services requiring substantial specialized knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing theory as a basis for the nursing process. The nursing process is the assessment, nursing analysis, planning, nursing intervention, and evaluation in the promotion and maintenance of health; the prevention, casefinding, and management of illness, injury, or infirmity; and the restoration of optimum function. The term also includes administration, teaching, counseling, supervision, delegation, and evaluation of nursing practice and the administration of medications and treatments prescribed by physicians, advanced practice registered nurses, dentists,



osteopaths, or podiatrists authorized by state law to prescribe medications and treatments. Each registered nurse is directly accountable and responsible to the consumer for the quality of nursing care rendered. As used in this subsection (5)(b):

(i) "nursing analysis" is the identification of those client problems for which nursing care is indicated and may include referral to medical or community resources;

(ii) "nursing intervention" is the implementation of a plan of nursing care necessary to accomplish defined goals.

5. The Petitioners further state that their petition relates to ARM 8.32.303, which provides:

(1) Nurse anesthetist practice is the performance of or the assistance in any act involving the determination, preparation, administration or monitoring of any drug used in the administration of anesthesia or related services for surgical and other therapeutic procedures which require the presence of persons educated in the administration of anesthetics. A nurse anesthetist is authorized to perform procedures delineated in the American Association of Nurse Anesthetists Guidelines for Nurse Anesthesia Practice. Copies of the guidelines may be obtained from the American Association of Nurse Anesthetists, 216 Higgins Road, Park Ridge, Illinois 60068k (708)692-7050.

6. The Petitioners request that the Board of Nursing declare administration of intravenous conscious sedation medications by non-anesthetist nurses under a physician's order to be within the scope of permissible functions of a registered nurse.

7. The Petitioners note the following interested parties:

Marty Boehm, RN  
ER Manager  
Kalispell Regional Hospital  
310 Sunnyview Lane  
Kalispell, Montana 59901

Dave Siebert, RN  
Critical Care Administrative Manager  
Kalispell Regional Hospital  
310 Sunnyview Lane  
Kalispell, Montana 59901

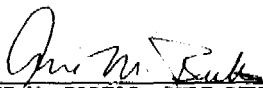
7. Interested persons may submit their data, views or arguments, either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Nursing, 111 North Jackson, P.O. Box 200513, Helena,

Montana 59620-0513, to be received no later than 5:00 p.m.,  
November 10, 1994.

BOARD OF NURSING  
NANCY HEYER, RN, CNA

By: 

ANNIE M. BARTOS, CHIEF COUNSEL  
DEPARTMENT OF COMMERCE

  
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 3, 1994.

BEFORE THE BOARD OF NURSING  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the petition ) NOTICE OF PETITION FOR  
for declaratory ruling on the ) DECLARATORY RULING  
determination of pronouncement )  
of death by a registered nurse )

1. On November 17, 1994, at 9:00 a.m., in the conference room of the Professional and Occupational Licensing Bureau, 111 North Jackson, Arcade Building, Lower Level, Helena, Montana, the Board of Nursing will consider a petition for declaratory ruling on the authority of registered nurses to determine or pronounce death.

2. This petition is filed on behalf of the registered nurses employed by the Missouri River Medical Center, 1501 St. Charles, Ft. Benton, Montana 59442, by Pamela Capps, RN, Director of Nursing, Missouri River Medical Center.

3. An informal opinion of the Board of Nursing dated May 8, 1987, indicated that such activities are beyond the scope of practice of a registered nurse.

4. The Petitioners allege that on April 13, 1994, they received notice from local medical providers that they would no longer physically verify patients' death on nursing home and hospitalized patients. On April 25, 1994, Petitioners received a procedure notice from the Missouri River Medical Center Administrator stating that registered nurses should notify the appropriate medical staff member of the absence of vital signs and then receive orders for disposal of the body. Petitioners allege that past practice has been to certify death with two registered nurses if the physician is unavailable. A 1988 survey by the Department of Health and Environmental Sciences indicated that the staff was in violation of the Nurse Practice Act for this past practice.

5. The statute upon which the Petitioner's request a declaratory ruling is incorrectly cited in their Petition as section 37-8-102(3)(a), MCA. The scope of practice of a registered nurse, to which Petitioners make reference, is now found at section 37-8-102(5)(b), MCA. That statute provides as follows:

(b) "Practice of professional nursing" means the performance for compensation of services requiring substantial specialized knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing theory as a basis for the nursing process. The nursing process is the assessment, nursing analysis, planning, nursing intervention, and evaluation in the promotion and maintenance of health; the prevention, casefinding, and management of illness, injury, or infirmity; and the restoration of optimum function. The term also includes administration, teaching, counseling, supervision, delegation, and

evaluation of nursing practice and the administration of medications and treatments prescribed by physicians, advanced practice registered nurses, dentists, osteopaths, or podiatrists authorized by state law to prescribe medications and treatments. Each registered nurse is directly accountable and responsible to the consumer for the quality of nursing care rendered. As used in this subsection (5)(b):

(i) "nursing analysis" is the identification of those client problems for which nursing care is indicated and may include referral to medical or community resources;

(ii) "nursing intervention" is the implementation of a plan of nursing care necessary to accomplish defined goals.

6. The Petitioners further cites section 50-22-101, MCA as relevant to their petition. That statute provides:

50-22-101. Determination of death. An individual who has sustained either irreversible cessation of circulatory and respiratory functions or irreversible cessation of all functions of the entire brain, including the brainstem, is dead. A determination of death must be made in accordance with accepted medical standards.

7. The Petitioners allege that registered nurses are capable of pronouncing death and that the nursing administration of the Missouri River Medical Center supports a policy of having two registered nurses pronouncing death in the absence of a physician. They contend that allowing nurses to pronounce death would provide relief medical providers.

8. The Petitioners request that the Board of Nursing declare that it is within the scope of permissible functions of a registered nurse to determine or pronounce death of patients or residents in hospitals or nursing homes.

9. The Petitioner noted the following interested parties:

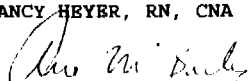
Janice Brown, RN  
Mardelle Embleton, RN  
Karin Klepzig, RN  
Judy Aznoe, RN  
Pamala Atchison, RN  
Fort Benton, Montana 59442

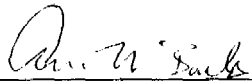
10. Interested persons may submit their data, views or arguments, either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Nursing, 111 North Jackson, P.O. Box 200513, Helena,

Montana 59620-0513, to be received no later than 5:00 p.m.,  
November 10, 1994.

BOARD OF NURSING  
NANCY HEYER, RN, CNA

By:

  
ANNIE M. BARTOS, CHIEF COUNSEL  
DEPARTMENT OF COMMERCE

  
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 3, 1994.

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):

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

# ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 1994. This table includes those rules adopted during the period July 1, 1994 through September 30, 1994 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, 1994, 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 1994 Montana Administrative Register.

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