MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 4
FEBRUARY 24, 1994
PAGES 331-472

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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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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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NOTICE SECTION

BEFORE THE BOARD OF COSMETOLOGISTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment, repeal and adoption of rules pertaining to the practice of cosmetology, manicuring and electrolysis	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT, REPEAL AND ADOPTION OF RULES PERTAINING TO THE PRACTICE OF COSMETOLOGY, MANICURING AND ELECTROLYSIS

TO: All Interested Persons:

1. On March 21, 1994, at 9:00 a.m., a public hearing will be held in the conference room of the Professional and Occupational Licensing Bureau, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana, to consider proposed amendments of rules pertaining to the practice of cosmetology and electrolysis.

2. The proposed amendment of ARM 8.14.401, 8.14.601 through 8.14.603, 8.14.605 through 8.14.608, 8.14.801 through 8.14.803, 8.14.805 through 8.14.807, 8.14.813 through 8.14.818, 8.14.902 through 8.14.906, and 8.14.1004, will read as follows: (new matter underlined, deleted matter interlined)

"8.14.401 GENERAL REQUIREMENTS (1) All persons engaged in the practice or teaching of cosmetology must display their cosmetology license in a conspicuous place~~, in the area where such a person is working~~ at their work station.

(2) All persons practicing cosmetology as defined, must provide a suitable place equipped to give adequate service to patrons, as specified in the rules in subchapter 14. subject to inspection by the inspector or persons authorized by the board or the department with board approval.

(3) will remain the same."

Auth: Sec. 37-31-203, MCA; IMP, Sec. 37-31-101, 37-31-301, 37-31-302, 37-31-303, 37-31-304, 37-31-311, 37-31-331, MCA

REASON: This amendment is proposed to give a clearer standard to licensees on where the license needs to be displayed.

"8.14.601 APPLICATION FOR SCHOOL LICENSE ~~(1) The applicant must request the necessary application forms from the department in writing. The applicant shall state the names and addresses of the proposed owners. If a corporation, the names and addresses of the officers and principal stockholders must be included.~~

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

~~(3) If the information submitted on the personal survey form is satisfactory to the board, the department shall mail the necessary blanks and a copy of the law and rules governing the licensing of a school of cosmetology or manicuring to the applicant.~~

(a) will remain the same but will be renumbered (2).
(4) will remain the same but will be renumbered (3).
(a) and (b) will remain the same.
(c) a list of ~~proposed~~ equipment, which shall include, at a minimum, the equipment listed at 8.14.602;
(d) and (e) will remain the same.
(f) a bond in the amount of $5,000~~, for a school of cosmetology and/or a school of manicuring, which shall be subject to the inspection of the board, and~~ covering the school.

~~(i)~~ This bond ~~will specifically state that in case this proposed new school goes out of business that any prepaid tuition will be refunded~~ shall provide for a refund of all prepaid tuition in the case that the school goes out of business or otherwise ceases to operate.

~~(g) a copy of the student registration contract and a copy of the school rules must be submitted to the board for approval.~~

~~(5) No school shall be licensed until the board has had ample opportunity to verify the sworn statements as to the ownership and all other claims and representations as set forth in personal survey form.~~"

Auth: Sec. 37-1-134, 37-31-203, MCA; IMP, Sec. 37-31-203, 37-31-204, MCA

REASON: This amendment is proposed to delete an unnecessary step in the licensing process, and to direct applicants to the rule on required equipment.

"8.14.602 INSPECTION (1) Proposed schools shall be inspected by a designated inspector ~~and/or one or more members of the board~~ before opening.
(2)(a) through (3) will remain the same.
(4) A separate lunch/break room must be provided for students.
~~(4)~~ (5) The floor plan of the school ~~will~~ shall indicate the number of students ~~this~~ the school ~~is permitted~~ plans to enroll. The equipment listed in subsections (a) through (p) below shall be required for a school with 1 to 15 students, unless otherwise specified below. For 16 to 30 students, the amount of equipment required below shall be doubled. For 46 to 60 students, the amount of equipment required below shall be tripled, and so on; ~~This number of students will dictate the quantity of equipment for each anticipated group of 10 students. Six additional students is to be considered a group of 10 new students. Practice workroom(s) for cosmetology students must include:~~
(a) 2 shampoo bowls;
(b) ~~3~~ 2 stationary hair dryers;
(c) ~~2~~ 1 manicure tables;
(d) 4 wet sterilizers consisting of 1 covered cleanser and 1 covered disinfectant;
(e) 4 dry cabinets for sterile instruments;
~~(f) equipment suitable for scalp treatment;~~
(g) will remain the same but will be renumbered (f).
~~(h) 3 complete sets of cold wave equipment;~~

(g) 200 assorted size permanent rods;
~~(i)~~ (h) ~~5~~ 1 mannequins per student;
~~(j)~~ (i) ~~2~~ 1 covered soiled linen containers;
~~(k)~~ (j) ~~4~~ 2 covered garbage containers;
(l) and (m) will remain the same but will be renumbered (k) and (l).
~~(n) work tables for dresserettes;~~
~~(o) sufficient equipment and supplies to accommodate and teach a minimum of 10 students; and~~
(p) will remain the same but will be renumbered (m).
~~(5)~~ (6) A practice workroom for manicuring students must be provided for each ~~anticipated~~ group of ~~5~~ 7 students. ~~Each additional 3 students is considered an anticipated group of 5. Each such practice room must be provided with the following~~ The equipment listed in subsections (a) and (b) below shall be required for a school with 1 to 7 students. For 8 to 14 students, the amount of equipment required below shall be doubled. For 15 to 21 students, the amount of equipment required below shall be tripled, and so on:
(a) through (c)(x) will remain the same.
(xi) 1 covered waste container for each station;
(xii) will remain the same.
(6) will remain the same but will be renumbered (7)."
Auth: Sec. 37-31-203, MCA; IMP, Sec. 37-31-311, 37-31-312, MCA

REASON: This amendment is necessary to clarify confusing language on required equipment.

"8.14.603 SCHOOL OPERATING STANDARDS (1) through (5) will remain the same.
(6) Daily attendance records shall be submitted to the department on or before the 15th of each month. These records shall be accurate, be made available on the request of the inspector, and reflect attendance.
(7) through (10) will remain the same.
(11) Each cosmetology student ~~must~~ shall complete 300 hours of basic training and each manicuring student ~~must~~ shall complete 80 hours of basic training before they shall be allowed to work on the public.
~~(a) Cosmetology students shall not be allowed more than 8 hours per day for the first 300 hours of basic training and manicuring students shall not be allowed more than 8 hours per day for the first 80 hours of basic training.~~
~~(b) Cosmetology students shall not be allowed more than 32 hours of overtime per month and manicuring students shall not be allowed more than 16 hours of overtime per month.~~
(12) and (13) will remain the same.
(14) Discipline of any student for any violation of school or board rules ~~should~~ shall be in writing. Students must be provided with a copy of disciplinary action file signed by both the student and the instructor. A copy of each disciplinary action file must be sent to the board office within 5 days of final decision.
(a) will remain the same.

~~(15) Any student who has not been in attendance for 1 week and has not notified the school will be considered as having withdrawn and the school must immediately submit a withdrawal notice to the department indicating the last day of attendance.~~

~~(a) A re-enrollment card must be completed and submitted to the office of the department upon return of the withdrawn student.~~

~~(16)~~ (15) If for any reason a student discontinues his or her enrollment, the school shall within 2 days, send notification to the office of the department to that effect together with a statement of the hours completed by ~~said~~ the student. Upon re-enrollment in any school, ~~the department shall be notified of the student's re-enrollment~~ the school shall, within 2 days, send notification to the office of the department to that effect.

~~(17)(a) The student's required training time stops on the last day of attendance.~~

~~(b) The student's required training time resumes on the date of re-enrollment. The board will take into consideration any prolonged medical withdrawal on a case by case basis.~~

~~(18)~~ (16) Schools ~~must not enroll~~ shall not allow any transfer students ~~s~~ from any school to practice on the public until a verified transcript of ~~their~~ the student's hours has been received and ~~can be~~ verified by the department as complying with the training time required ~~in the state of Montana~~ under subsection (11) above.

(19) and (20) will remain the same but will be renumbered (17) and (18)."

Auth: Sec. 37-1-131, 37-31-203, 37-31-311, MCA; IMP, Sec. 37-31-301, 37-31-304, 37-31-311, MCA

REASON: This amendment is proposed to comply with the recent changes in legislation which deleted a time requirement for completion of school, and to require submission of attendance records when the inspector is in the field.

"8.14.605 CURRICULUM - COSMETOLOGY/MANICURING STUDENTS

(1) will remain the same.

~~(2) It is expected that each school will supplement and enrich the minimum requirements specified by the board.~~

~~(3)~~ (2) When a student has completed 2,000 hours of training, the school ~~must~~ shall send his or her final hours record to the department within ~~2~~ 5 days.

(a) will remain the same.

(4) will remain the same but will be renumbered (3).

~~(5)~~ (4) All students shall have completed the specified minimum required hours and operations upon completion of the 350 hour course ~~in not less than 9 weeks or more than 12 weeks of training~~.

(6) will remain the same but will be renumbered (5).

(7) All curriculum requirements set by the board shall be strictly complied with until rescinded or revised.

(8) will remain the same but will be renumbered (6)."

Auth: Sec. 37-31-203, MCA; IMP, Sec. 37-31-311, MCA

REASON: This amendment is proposed to eliminate unnecessary and unenforceable language.

"8.14.606 STUDENT REGISTRATION (1) Upon enrollment of a student, ~~must submit to~~ the school shall submit student registration papers ~~the following items which the school must send~~ to the office of the department within 10 days~~:~~.

~~(a) cosmetology students must submit proof of an eighth grade graduation (diploma or certification);~~

~~(b) manicuring students must submit proof of high school graduation or equivalency.~~

~~(c) photostatic copy of birth certificate, or other evidence of birth date;~~

~~(d) transfer students must submit a transcript of hours.~~

(2) A registered school shall accept the verified statement ~~from~~ of the ~~"disenrolling"~~ school from which the student has withdrawn, indicating the number of hours the student has had in training when the student transfers to a different registered school. This verified statement must agree with the department records. If a student transfers from one registered school to a different registered school, the prior registered school must grant full credit for all hours and any minute thereof successfully completed by the transferring student.

~~(3) A student in good standing desiring to transfer to another school must present a verified statement indicating the number of hours which the student has had in training with all monies paid to the disenrolling school before credit can be given for past training.~~

~~(4)~~ (3) A student enrolling in a school ~~must~~ shall pay the registration fee for each enrollment.

~~(5) Students entering into the armed forces of the United States may retain credit for their training time.~~

~~(6)~~ (4) Students must comply with the rules of the school and the state board of cosmetology.

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

Auth: Sec. 37-1-131, 37-31-203, 37-31-311, MCA; IMP, Sec. 37-31-304, 37-31-311, 37-31-323, MCA

REASON: This amendment is proposed to eliminate unnecessary and unenforceable language, and to clarify confusing language.

"8.14.607 APPLICATIONS FOR AUTHORITY TO OFFER TEACHER-TRAINING COURSES ~~(1) Applicants for authority to offer teacher training programs must make written request for the necessary application forms from the department. The request shall set forth the names and addresses of the proposed owners of the school. If the applicant is a corporation, the names and addresses of the officers and principal stockholders must be included.~~

~~(a) Upon receipt of a written request, a teacher training course application form will be mailed to the applicant.~~

(2) and (3) will remain the same but will be renumbered (1) and (2).

~~(4)~~ (3) Cadet teachers shall not be registered or admitted, until the teacher-training unit has been inspected by ~~either~~ an ~~designated~~ inspector ~~or one or more members of~~ for the board and has received notice from the department approving the school as a teacher-training unit."

Auth: Sec. 37-31-203, MCA; IMP, Sec. 37-31-305, MCA

REASON: This amendment is proposed to delete an unnecessary step in the licensing process.

"8.14.608 INSTRUCTOR REQUIREMENTS - TEACHER-TRAINING PROGRAMS (1) Each school, approved by the board to offer a teacher-training program must have at least one full-time, licensed ~~active~~ instructor on the premises of the school at all times that the school is open ~~who holds a current 4-D or 4-C certificate issued by the Montana state department of public instruction~~.

~~(a) In the alternative at least one full time active instructor shall have on file with the department a program in adult education related to the curriculum of the teacher-training program or have satisfactorily completed such a program.~~

~~(i) Such plan must be approved in advance by the board and must provide for completion of at least one class in adult education each year until the plan is completed.~~

~~(ii) The instructor shall annually submit to the department proof of completion of such classes described in the plan.~~

~~(b) In the event any instructor completes one or more years of education in any one of the programs of the Montana university system or any other duly accredited institution of higher learning, the board shall accept this proof of education in lieu of the alternate plan.~~

(2) will remain the same.

(3) Cadet teachers must be under the direct on-site supervision of a full-time licensed instructor while practice teaching and shall not be allowed to work on the public during their practice teacher-training.

(4) will remain the same.

(5) All cadet teachers must register with the department and identify the schools in which they are enrolling within 10 days of the date of enrollment. ~~No credit for time will be allowed until the office of the department has received the enrollment notice.~~

(6) will remain the same.

~~(7) Upon completion of 650 hours of teacher training, cadet teachers must apply for and take the first available instructor examination.~~"

Auth: Sec. 37-31-203, MCA; IMP, Sec. 37-31-305, 37-31-311, MCA

REASON: This amendment is proposed to eliminate an unnecessary requirement for teacher training instructors, and to clarify that a licensed instructor must be on the premises at all times.

"8.14.801 APPLICATION FOR INSTRUCTOR'S LICENSE (1) will remain the same.

(2) Applications which are incomplete ~~will~~ shall be returned to the applicant.

(3) Applications received after the closing of the registration date ~~will~~ shall be held until the following examination.

(4) Applicants ~~will~~ shall not be given the instructor examination unless they have been notified to appear for examination.

(5) Examinations for instructor licenses ~~will~~ shall be held at least once ~~a~~ per year.

~~(a) The written instructor examination may be taken at a time and place convenient to the board.~~

(b) through (d) will remain the same but will be renumbered (a) through (c).

(6) through (10) will remain the same."

Auth: Sec. 37-31-203, MCA; IMP, Sec. 37-31-301, 37-31-302, 37-31-303, 37-31-305, 37-31-308, MCA

REASON: This amendment is proposed to eliminate unnecessary language.

"8.14.802 LICENSE EXAMINATIONS (1) through (6) will remain the same.

(7) In order to pass the examination given by the board to practice cosmetology or manicuring an applicant must obtain a grade of not less than 75% in the practical examination and not less than 75% on the written ~~theory~~ examination.

(a) The written examination consists of a national theory examination and an examination over Montana laws and rules relating to cosmetology.

(b) The written score is obtained by taking 80% of one national theory examination and 20% of the laws and rules examination and adding the two scores together.

(8) Applicants will be notified of their examination results in writing only. Upon request, unsuccessful applicants will be advised of those practical areas in which they were found deficient. Appointment must be made with the board office to review examinations.

~~(9) Examination papers are considered as board records.~~"

Auth: Sec. 37-1-131, 37-31-203, MCA; IMP, Sec. 37-31-303, 37-31-307, 37-31-308, 37-31-321, MCA

REASON: This amendment is necessary to clarify the scoring process on the grading of examinations.

"8.14.803 APPLICATIONS FOR EXAMINATION - TEMPORARY LICENSES (1) With respect to cosmetology students, no application for examination will be accepted unless accompanied by the proper fees, credentials, the hours record showing that the 2,000 hours have been completed, ~~and records showing that the student has been enrolled for at least 10 months and not more than 14 months~~ proof of high school graduation or equivalency and a photostatic copy of birth certificate or other verifiable evidence of birth date.

(2) With respect to manicuring students, no application for examination will be accepted unless accompanied by the proper fees, credentials, ~~the hours record showing that 350 hours have been completed and records showing that the student has been enrolled for at least 9 weeks and not more than 12 weeks~~ proof of high school graduation or equivalency, and a photostatic copy of birth certificate or other verifiable evidence of birth date.

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

~~(6) Temporary licenses must be returned to the board office immediately if the applicant is unable to take the examination.~~"

Auth: Sec. 37-1-131, 37-31-203, MCA; IMP, Sec. 37-31-304, 37-31-307, 37-31-311, MCA

REASON: This amendment is necessary to comply with the recent changes in legislation which deleted a time requirement for completion of school.

"8.14.805 APPLICATION - OUT-OF-STATE COSMETOLOGISTS/MANICURISTS (1) Cosmetologists:

(a) To qualify for a license by examination, an out-of-state cosmetologist ~~must~~ shall submit an application supplied by the department, birth certificate or other verifiable proof of birth date, proof of ~~completing two years of~~ high school graduation or equivalency, current out-of-state license and a board transcript. The applicant will be credited for the number of hours currently required in that state or the number of hours in the transcript.

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

(a) To qualify for a license by examination, out-of-state manicurists ~~must~~ shall submit an application supplied by the department, birth certificate or other verifiable proof of birth date, proof of high school ~~diploma, or equivalent~~ graduation or equivalency, current out-of-state license and a board transcript. The applicant will be credited for the number of hours ~~currently required in that state or the number of hours~~ in the transcript.

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

(3) Applicants shall take the practical and written examinations for cosmetology and/or manicuring, and also the law and rules examination, administered by the department.

(4) through (6) will remain the same."

Auth: Sec. 37-1-131, 37-31-203, MCA; IMP, Sec. 37-31-303, 37-31-304, 37-31-306, 37-31-307, 37-31-308, MCA

REASON: This amendment is necessary to allow more flexibility in the verification of qualifications.

"8.14.806 LICENSURE WITHOUT EXAMINATION (1) through (1)(a) will remain the same.

(b) Operators with less than 2,000 hours of training, plus the credentials listed above and a notarized statement from a former employer showing ~~credit of at least~~ 3 years of experience ~~out of the last 4 calendar years immediately preceding the application,~~ are eligible for a license when the

file is complete with the fees and credentials. If the applicant was self-employed, he or she must submit evidence of experience through documents such as, but not limited to, banking statements, or federal tax returns for the years in question.

(2) Any person who is licensed to practice manicuring in another state upon meeting the requirements under this section and passing an examination on Montana law and rules may be licensed to practice in the state of Montana without examination.

(a) An applicant who submits proof of 350 hours of training, plus a photostatic copy of his or her current license, board transcript from originating state and application properly completed and notarized, is eligible for a license upon payment of the proper fees.

(b) Operators with less than 350 hours of training, plus the credentials listed above and a notarized statement from a former employer showing credit of at least six months of experience are eligible for a license when the file is complete and the fees are paid. If the applicant was self-employed, he or she must submit evidence of experience through documents such as, but not limited to, banking statements, or federal tax returns for the years in question."

Auth: Sec. 37-1-131, 37-31-203, MCA; IMP, Sec. 37-31-304, 37-31-306, MCA

REASON: This amendment is proposed to incorporate a policy that the board has used to determine equivalent qualifications in the past.

"8.14.807 TRANSFER STUDENTS - OUT-OF-STATE - COSMETOLOGY/MANICURING (1) and (2) will remain the same.

(3) ~~The department may prorate the remaining amount of hours of training needed for an out of state student to comply with Montana law.~~ Only those applicants that have applied to take the Montana state boards are eligible for a temporary permit.

~~(4) Cosmetology transfer students from other states completing the necessary hours of training in Montana are eligible to apply for a temporary license, upon graduation.~~

~~(5) Cosmetology graduates or licensed operators from other states that are enrolled in cosmetology schools in order to receive the necessary amount of hours of training to take the state board examination are eligible to apply for a temporary license.~~"

Auth; Sec. 37-31-203, MCA; IMP, Sec. 37-31-307, 37-31-311, MCA

REASON: This amendment is necessary to eliminate redundant language.

"8.14.813 LAPSED LICENSE (1) through (5) will remain the same.

(6) ~~In the event that a license shall have lapsed for over 10 years, for any reason, it is required that such a person must take a course of 300 hours of training in a~~

~~properly licensed school of cosmetology, providing certification thereof, make application, pay the proper fees and take the written and practical examination.~~ Individuals obtaining training under subsections (3) through (5) of this section shall be registered as students in a licensed school of cosmetology, and with the board office and shall be permitted to practice on the public during such training."

Auth: Sec. 37-1-1313, 37-31-203, 37-31-322, MCA; IMP, Sec. 37-31-322, MCA

REASON: This amendment is being proposed to eliminate language that contradicts section 37-31-322, MCA.

"8.14.814 FEES - INITIAL, RENEWAL, PENALTY AND REFUND FEES (1) through (21) will remain the same.

(22) The reinstatement fee shall be the total of the license fees and the penalty fees for each year that the license has lapsed."

Auth: Sec. 37-1-134, 37-31-203, 37-31-323, MCA; IMP, Sec. 37-31-301, 37-31-302, 37-31-303, 37-31-304, 37-31-306, 37-31-307, 37-31-312, 37-31-321, 37-31-322, 37-31-323, 37-32-304, 37-32-305, 37-32-306, MCA

REASON: This amendment is necessary to specify the reinstatement fee, which had not been previously specified.

"8.14.815 CONTINUING EDUCATION - INSTRUCTORS (1) In order to obtain continuing education credits, instructors must ~~have prior~~ obtain approval from the board before ~~attending any advance instructor or teacher training seminar or take a course or workshop affiliated with any college or university~~ continuing education credit will be granted.

(2) ~~Any other alternative training must have prior approval form the board before credit will be accepted.~~ No more than 5 hours out of the 15 hours per year required for continuing education may be obtained at trade shows or courses in which a particular product is being promoted.

(3) Certified statements, certificate or affidavits showing dates and hours must be submitted to the board office as proof of attendance ~~only on renewal of the instructor license~~ prior to or upon license renewal.

(4) Training must ~~have been~~ be completed prior to making application for the renewal of an active instructor license."

Auth: Sec. 37-1-131, 37-31-203, MCA; IMP, Sec. 37-31-322, MCA

REASON: This amendment is being proposed to eliminate a prior approval requirement, and to specify how many hours of continuing education may be gained at a seminar promoting a specific product.

"8.14.816 SALONS - COSMETOLOGICAL/MANICURING (1) will remain the same.

(2) Salons and booths ~~must be equipped with facilities to give adequate service to patrons and they~~ shall be subject to inspection and acceptance by the state board.

(3) In order to guarantee adequate service to the public, there shall be in every cosmetology salon a minimum of 120 square feet per operator or booth renter and there shall be in every manicuring salon a minimum of 30 square feet ~~plus a supply area,~~ per manicurist or booth renter. The applicant must furnish the board with a blueprint or scale drawing of the floor plan, when filing salon or booth rental application.

(4) Minimum requirements for a licensed cosmetology salon or a licensed manicuring salon are as follows:

(a) hot and cold running water within the confines of the salon which drains into a permanent septic system;

(b) 1 wet sterilizer consisting of 1 covered cleanser and 1 covered disinfectant;

(c) 1 covered soiled linen container;

(d) 1 covered garbage container;

(e) 1 enclosed dust free cabinet for clean towels;

(f) handwashing facilities in addition to and separate from those provided in the restroom;

(g) mechanical ventilation to include either a manicure table with an activated charcoal filtering system, a general exhaust system that provides for the dilution of room air, or a local exhaust system that provides for the dilution of room air;

~~(4)~~ (5) ~~Residential salons. (a)~~ All ~~new~~ residential cosmetology or manicuring salons shall have ~~only~~ outside entrances ~~and no open entrances into the residences~~. Any entrances into the residence shall have a self-closing door. This door must be latched during business hours. Residential salons shall have their own separate restrooms that are not available for the personal use of the residence.

~~(5) Business area salons must be physically separate and apart from any other commercial enterprises housed in the same structure, and have their own private entrance, adequate utilities and easily accessible restrooms.~~

(6) A salon or booth rental ~~registration~~ license permits the operation of a ~~beauty~~ cosmetological or manicurist salon or booth rental only in the premises or location which ~~have~~ has been described on the salon or booth rental application required by the department.

(7) will remain the same.

(8) Salon licenses are not transferable. Any change in ownership and/or location must be accompanied by a new application for registration and with a new ~~registration~~ license and inspection fee.

(9) Every cosmetology salon must have at least 1 licensed cosmetologist in attendance at all times that it is open for the business of cosmetology.

~~(a)~~ (10) Every manicuring salon must have at least 1 licensed manicurist in attendance at all times that it is open for the business of manicuring.

(10) will remain the same but will be renumbered (11).

~~(11)~~ (12) Salon licenses must be placed in a location that can be viewed by the general public. Personal and booth rental licenses for personnel must be displayed ~~in a conspicuous place in the salon~~ at the person's work station."

Auth: Sec. 37-1-131, 37-31-203, MCA; IMP, Sec. 37-31-301, 37-31-302, 37-31-312, MCA

REASON: This amendment is necessary to clarify the minimum equipment necessary in a salon.

"8.14.817 BOOTH RENTAL LICENSES (1) Licenses must be obtained for each location licensee works. Booth rental licenses are not transferable from one salon to another salon."

Auth: Sec. 37-1-131, 37-31-203, MCA; IMP, Sec. 37-31-203, 37-31-302, MCA

REASON: This amendment is being proposed to eliminate the requirement for a new license when a booth is moved within a salon.

"8.14.818 BOOTH RENTAL LICENSE APPLICATION SUPPLEMENTS (1) Applicants for booth rental licenses must include with their applications correct copies of diagrams of the complete salon areas where the booth will be located ~~with the areas that are being proposed for booth rental shaded in and numbered~~."

Auth: Sec. 37-1-131, 37-31-203, MCA; IMP, Sec. 37-31-203, 37-31-302, MCA

REASON: This amendment is being proposed to eliminate unnecessary language.

"8.14.902 SCHOOL REQUIREMENTS (1) will remain the same.

(2) Daily attendance records and records of all subjects taught and practiced shall be submitted to the office of the department on or before the 15th of each month, on forms furnished by the department. Records must be signed by a qualified instructor or someone designated by the owner and the student. These records shall be accurate, be made available on the request of the board inspector, and shall reflect accurate attendance.

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

~~(7) Any student who has not been in attendance for 1 week and has not notified the school will be considered as having withdrawn and the school must submit to the department a withdrawal notice, immediately, indicating the last day of attendance and the actual hours or operations of instruction and training prior to completion of the prescribed course.~~

(8) will remain the same but will be renumbered (7).

~~(9)~~ (8) Schools ~~must not enroll~~ shall not allow any transfer student from any school to practice on the public until a verified transcript of ~~their~~ the student's hours has been received and ~~can be~~ verified by the department as complying with the training time required ~~in the state of Montana~~ under subsection (3) above.

(10) will remain the same but will be renumbered (9).

~~(11)~~ (10) ~~A schedule of all field trips must be submitted to the department for prior approval.~~ Credit for hours will be given for field trips only if students are

accompanied by a licensed instructor ~~and shall be limited to not more than 8 hours~~.

(12) will remain the same but will be renumbered (11)."

Auth: Sec. 37-1-131, 37-32-201, 37-32-304, 37-32-306, MCA; IMP, Sec. 37-32-302, 37-32-304, MCA

REASON: This amendment is necessary to comply with the recent changes in legislation which deleted a time requirement for completion of school, and to require submission of attendance records when the inspector is in the field.

"8.14.903 INSPECTION AND EQUIPMENT (1) The school premises shall be inspected by a qualified electrologist designated by the board ~~or by one or more members of the board~~ before opening.

(2) A separate classroom is required and must have sufficient charts, blackboards, chairs and up-to-date books, to include:

(a) Electrolysis, Thermolysis and the Blend, by A.R. Hinkle,

(b) Electrolysis, by Julius Shapiro,

(c) The Hirsute Woman, by Dr. Robert Greenblatt; and

(d) The Pill Book, by Harold Silverman and Gilbert Simon, medical dictionary, current electrology magazines and a copy of electrology laws and rules. This room may be used as a recitation, demonstration, study room and reference library.

(3) A practice workroom is required with the minimum amount of equipment necessary for students to perform all technical and practical requirements and shall include:

(a) 1 bead sterilizer,

(b) 1 sink, with hot and cold running water for handwashing.

(4) A minimum of two stations shall be required for the first 3 students enrolled, with 1 station added for each additional two students thereafter.

(a) 1 epilator,

(b) 1 table or chair for patron,

(c) 1 stool, adjustable in height,

(d) 1 illuminated magnifying lamp,

(e) 1 stand for placing instruments and sterilizers,

(f) 1 wet sterilizer,

(g) 1 dry container for sterile instruments,

(h) 1 covered soiled linen container,

(i) 2 pair tweezers,

(j) 1 pair regular forceps for ingrown hair,

(k) 1 covered garbage container.

(5) and (6) will remain the same.

(7) Restrooms with hot and cold running water shall be ~~convenient to students, employees and patrons~~ located within the confines of the school.

(8) through (11) will remain the same."

Auth: Sec. 37-1-131, 37-32-201, 37-32-304, 37-32-306, MCA; IMP, Sec. 37-32-302, 37-32-304, MCA

REASON: This amendment is being proposed to clarify requirements of the rule by setting them forth in subsections

rather than as part of one large subsection, and to clarify that hot and cold running water is required to be available in the school.

"8.14.904 INSTRUCTOR QUALIFICATIONS (1) and (2) will remain the same.

~~(3) No instructor license shall be issued until the board has had ample opportunity to verify the certified proof of practical working experience.~~"

Auth: Sec. 37-32-201, MCA; IMP, Sec. 37-32-301, MCA

REASON: This amendment is being proposed to delete unnecessary language.

"8.14.905 STUDENT REGISTRATION (1) Upon enrollment~~,~~ of a student, ~~must submit to~~ the school~~,~~ shall submit student registration papers ~~the following items which the school must send~~ to the office of the department within 10 days~~:~~.

~~(a) proof of high school graduation, or equivalent~~

~~(b) photostatic copy of birth certificate~~

~~(c) certificate of health issued by a licensed physician stating the individual has no communicable diseases.~~

(2) ~~Each student enrolling in a registered school of electrology shall pay a registration fee which will be made payable to the board of cosmetologists.~~ A registered school shall accept the verified statement of the school from which the student has withdrawn, indicating the number of hours the student has had in training when the student transfers to a different registered school. This verified statement must agree with the department records. If a student transfers from one registered school to a different registered school, the prior registered school must grant full credit for all hours and any minute thereof successfully completed by the transferring student.

~~(3) Transfer students must submit a transcript of their training and shall pay a registration fee.~~"

Auth: Sec. 37-1-131, 37-32-201, 37-32-302, MCA; IMP, Sec. 37-32-201, 37-32-302, MCA

REASON: This amendment is being proposed to eliminate unnecessary and unenforceable language, and to clean up confusing language. The change is also enacted to provide for an appropriate means of tracking transfer students.

"8.14.906 CURRICULUM - STUDENTS (1) The hours of training courses shall consist of ~~600~~ 200 hours of technical instruction and 400 hours of practical operations covering all practices of an electrologist ~~in not less than 15 weeks or a maximum of 20 weeks~~.

(2) For the purposes of this section, technical instruction ~~of not less than 200 hours,~~ means instruction by demonstration, lecture, classroom participation or examination. Practical operation ~~shall~~ means the actual performance by the student of a complete service on another person. ~~Such t~~Technical instruction and practical operations shall include~~:~~, at a minimum, the following topics and hours:

(a) Curriculum Subjects For Technical Instruction		Minimum Hours of Practical Operations
(i)	Causes of Hair Problems	
(ii)	Structure and Dynamics of Hair and Skin	
(iii)	A Practical Analysis of Hair and Skin	
(iv)	Neurology and Angiology	
(v)	Bacteriology and Disinfection	
(vi)	Dermatology	
(vii)	Principles of Electricity and Equipment	
(viii)	Electrolysis	30 hours
(ix)	Thermolysis	30 hours
(x)	The Blend	30 hours
(xi)	The Needle	
(xii)	General Treatment Procedure	
(xiii)	Treatment of Specific Areas	
(xiv)	State Board Law and Rules	
(xv)	Development of a Practice	

~~The 400 hours of practical operations would include a minimum of 30 hours each of electrolysis, thermolysis and the blend.~~

(3) The modality used, during the balance of 310 hours of practical operations, is subject to the choice of the student and/or the school.

(3) through (5) will remain the same but will be renumbered (4) through (6)."

Auth: Sec. 37-1-131, 37-32-201, 37-32-302, MCA; IMP, Sec. 37-32-301, 37-32-302, MCA

REASON: This amendment is necessary to correct grammatical errors, and to clarify requirements of the rule by setting them forth in subsections rather than as part of one large subsection.

"8.14.1004 SALON (1) through (3)(b) will remain the same.

(c) An electrology salon must have ~~separate~~ handwashing facilities within the confines of the salon.

~~(d)~~ (4) Minimum equipment required for an establishment is as follows~~, one of the following~~:

(a) either a high frequency generator, galvanic generator, or electrolysis machine (dispersive or inactive electrode with connections to the machine, such as wet pad, metal rod or water jar, necessary for electrology treatments, plus one multiple needle arm)

(b) needles of various sizes.....4 each

(c) lamp and bulb, at least 60 watt strength required.....1

(d) stool, adjustable in height.....1

(e) table or chair for patron.....1

(f) utility stand for set-ups.....1

(g) towel cabinet.....1

(h) covered containers for lotions, soaps,

sterilizing agents and cotton.....4
(i) container for immersing needles for sterilization purposes.....1
(j) fine pointed epilation forceps.....1
(k) covered trash container.....1
(l) draping sheets.....6."

Auth: Sec. 37-1-131, 37-32-201, 37-32-306, MCA; IMP, Sec. 37-32-304, 37-32-306, 37-32-331, MCA

REASON: This amendment is necessary to clarify requirements of the rule by setting them forth in subsections rather than as part of one large subsection.

3. ARM 8.14.808, 8.14.907, 8.14.908, 8.14.909, 8.14.1003 are being proposed for repeal. The authority sections are 37-1-131, 37-31-203, 37-32-201, 37-32-302, MCA, and the implementing sections are 37-31-203, 37-31-303, 37-31-321, 37-32-201, 37-32-302 and 37-32-303, MCA. Full text of the rules is located at pages 8-432, 8-446 & 8-447 and 8-455, Administrative Rules of Montana. The reason these rules are being repealed is because they unnecessarily repeat statutory language in some cases, and are unenforceable in other cases.

4. The proposed new rules will read as follows:

"I EXAMINERS - LICENSE EXAMINATIONS (1) Examinations for licenses to practice electrology shall be administered by the department with approval of the board, with dates and locations established by the board and by examiners appointed by the board.

(2) All examiners shall have had at least 2 years of licensed practical experience, in this state, consisting of at least 20 hours per week and shall not be connected with any school of electrology.

(3) To be eligible to take the examination, applicants must present evidence that they are 18 years of age and have graduated from high school or have the equivalent education as recognized by the superintendent of public instruction.

(4) Applicants must have completed a continuous course of theoretical study and actual practice of at least 600 hours, be in good standing and have received a diploma from a registered school of electrology.

(5) No application for examination will be accepted unless accompanied with the proper fees, credentials and the final hours record of the electrology school showing that the 600 hours have been completed. All applications must be received by the department 20 calendar days prior to the examination date.

(a) Applications received after the 20-day deadline for registration shall be held for the next examination.

(b) Applicants shall not appear for examination unless they have been notified to appear by the department.

(c) Applications are not considered complete until all information and fees have been received by the board office.

(6) Applications not completed within 90 days will be considered withdrawn.

(7) An applicant must appear for examination in clean clothing and/or a lab coat, plus all equipment necessary for performing the practical examination.

(8) In order to pass the examination given by the board to practice electrology, an applicant must obtain a grade of not less than 85% in the practical examination and not less than 85% on the written theory.

(9) Applicants failing any portion of the written or practical examination will be notified of their areas of deficiency. Upon appointment, applicants may review their examinations at the board offices.

(10) Applicants who have been notified of failing the examination, may re-apply within 1 year of the first examination and pay the examination fee and retake the complete examination.

(11) Applicants who have taken the examination and failed, must notify the office of the department of their desire to be re-examined 20 days before the next scheduled examination and pay the fee.

(12) Applicants registered for examination, who fail to appear, must notify the office of the department 48 hours prior to the examination or forfeit the examination fees.

(13) Examinations for a license to practice electrology will be held three times a year at times and places specified by the board.

(14) The examination for an electrologist license consists of a written test and a practical demonstration.

(15) Applicants registered for examination who fail to appear must notify the office of the department 48 hours prior to the examination or forfeit the examination fees."

Auth: Sec. 37-1-131, 37-32-201, 37-32-302, MCA; IMP, Sec. 37-32-201, 37-32-302, 37-32-303, MCA

REASON: This new rule is a revised version of ARM sections 8.14.909 and 8.14.1003, and is being proposed because it fits better under subchapter 10 rather than in subchapter 9.

"II. DISCIPLINARY ACTION (1) The license of a cosmetologist, manicurist, electrologist, salon, booth, or school, licensed under the board's jurisdiction, may be denied or disciplined for any of the following:

(a) failure of the licensee to comply with any statute or rule under the board of cosmetology's jurisdiction;

(b) fraud or deception in attempting to procure a license under the board of cosmetology's jurisdiction;

(c) failure of a licensee to comply with safety standards of a branch of any state, local, or federal governmental agency, including, but not limited to those standards specifically applicable to construction and maintenance of commercial structures, and standards applicable to sanitary conditions in commercial structures;

(d) conviction of a crime involving violence against a person, theft, deception, or violation of drug laws;

(e) a breach of contract with a client, provided that such breach is established as a final judgment in a court of law;

(f) failure to cooperate with an inspection or investigation conducted by an employee of the professional and occupational licensing bureau on behalf of the board of cosmetologists;

(g) knowingly submitting false records or documents to the board or an employee of the professional and occupational licensing bureau; or

(h) violation of any disciplinary or final order of the board of cosmetologists.

(2) The board of cosmetologists will take appropriate action against a licensee for any of the acts or failure to act, listed in section (1) above, based upon the seriousness of the infraction. Disciplinary action may entail any of the following:

(a) revocation of a license;

(b) suspension of the right to practice for a period not to exceed 1 year;

(c) probation on a license; or

(d) formal, reportable public reprimand or censure of a licensee.

(3) Upon disciplinary action against a license under any of the categories herein, the privilege of holding a license under any of the other categories herein shall be identically restricted."

Auth: Sec. 37-1-136, 37-1-137, MCA; IMP, Sec. 37-1-136, 37-1-137, MCA

REASON: This new rule is necessary pursuant to sections 37-1-136 and 37-1-137, MCA, and has been developed to set forth disciplinary standards for licensees.

5. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Cosmetologists, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., March 24, 1994.

4. Lance Melton, attorney, has been designated to preside over and conduct this hearing.

BOARD OF COSMETOLOGISTS
MARY BROWN, 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, February 14, 1994.

BEFORE THE BOARD OF SANITARIANS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of a rule pertaining to registration certificate	)))	NOTICE OF PROPOSED AMENDMENT OF 8.60.408 MINIMUM STANDARDS FOR REGISTRATION CERTIFICATE

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On March 26, 1994, the Board of Sanitarians proposes to amend the above-stated rule.

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

"8.60.408 MINIMUM STANDARDS FOR REGISTRATION CERTIFICATE

(1) and (1)(a) will remain the same.

(i) ~~other courses of study may be substituted in lieu of those stated above upon review and approval of the board.~~ Center for disease control correspondence course #3018-G, #3016-F or #3012-G will be accepted in lieu of a specific college microbiology course.

(2) will remain the same.

~~(3) The applicant must be available to participate for an oral interview after submitting the application for registration and after passing the written examination. The oral interview will be scheduled at a time and place set by the board. A passing score is 70%.~~

(3) The sanitarian license must be displayed in a conspicuous place."

Auth: Sec. 37-40-203, MCA; IMP, Sec. 37-40-302, MCA

REASON: The amendments are being proposed in order to provide licensees with specific guidance on substituted courses and to eliminate reference to an oral interview which was deleted in the 1993 general legislative session.

3. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Sanitarians, 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., March 24, 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 Sanitarians, 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., March 24, 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 16 based on the 163 licensees in Montana.

BOARD OF SANITARIANS
JOANNE CHANCE, CHAIRMAN

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, February 14, 1994.

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

In the matter of the proposed amendment of a rule pertaining to adoption of the ANSI standard	NOTICE OF PROPOSED AMENDMENT OF 8.63.501 ADOPTION OF THE ANSI STANDARD

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On March 26, 1994, the Board of Passenger Tramway Safety proposes to amend the above-stated rule.

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

"8.63.501 ADOPTION OF THE ANSI STANDARD (1) The board of passenger tramway safety hereby adopts and incorporates by reference the "American National Standard for Passenger Tramways - Aerial Tramways and Lifts, Surface Lifts, and Tows - Safety Requirements" (referred to herein as ANSI Standard) promulgated by the American national standards institute, incorporated~~, on July 16, 1982 (publication number ANSI B77.1-1982) amended December 2, 1985 (ANSI B77.1a-1986), amended March 14, 1988 (ANSI B77.1b-1988), amended March 26, 1990 (ANSI B77.1-1990),~~ in the year of 1992 (publication number ANSI B77.1-1992) to the extent that said standard does not conflict with Montana statutory laws or these regulations.

(2) The ANSI Standard establishes safety requirements for the passenger use of cables or ropes in passenger transportation systems, including reversible aerial tramways, detachable and fixed grip aerial lifts, surface lifts, and tows.

(3) Copies of the ANSI Standard text may be obtained from the Department of Commerce, Professional and Occupational Licensing Bureau, Board of Passenger Tramway Safety, Arcade Building, 111 North Jackson, Helena, Montana 59620-0407, upon request, at cost."

Auth: Sec. 23-2-721, MCA; IMP, Sec. 23-2-701, 23-2-721, MCA

REASON: The amendment is proposed in order to adopt the latest version of the ANSI safety code. The 1992 version replaces all previous versions of the code, so the references to prior codes are being deleted.

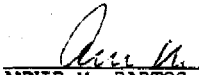
3. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Passenger Tramway Safety, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., March 24, 1994.

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 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., March 24, 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 1 based on the 13 ski areas who have licensed passenger 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, February 14, 1994.

BEFORE THE BANKING AND FINANCIAL INSTITUTIONS DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of a rule pertaining to semi-annual assessments upon banks, investment companies, and trust companies and the adoption of new rules establishing fees for the approval of automated teller machines, and point-of-sale terminals	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF 8.80.104 SEMI-ANNUAL ASSESSMENTS AND THE ADOPTION OF NEW RULES PERTAINING TO FEES FOR THE APPROVAL OF AUTOMATED TELLER MACHINES AND FOR THE APPROVAL OF POINTS-OF-SALE TERMINALS

TO: All Interested Persons:

1. On March 16, 1994, at 10:30 a.m., a public hearing will be held in the downstairs conference room of the Department of Commerce building, 1424 - 9th Avenue, Helena, Montana, to consider the proposed amendment and adoption of rules pertaining to semi-annual assessments upon banks and other companies, and fees for automated terminals.

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

"8.80.104 SEMI-ANNUAL ASSESSMENT

Total assets (Million)	Base	Plus rate/ Million	Over (Million)
0-1	0	.00085	0
1-10	850	.000105	1
10-50	1,795	.000085	10
50-100	5,195	.00005	50
over 100	7,695	.00003	100

Based upon this schedule, and upon calculation of the semi-annual value for the respective bank, the value shall be multiplied by the factor of 1.37 to determine the dollar fee assessment due the division of banking and financial institutions for the semi-annual period, rounded to the next highest dollar."

Auth: Sec. 32-1-213, MCA; IMP, Sec. 32-1-213, MCA

REASON: The amendment to this rule is proposed in order to set fees to recover all of the costs of administering the program for the supervision of banks, trust companies, and investment companies.

3. The proposed new rules will read as follows:

"I FEES FOR THE APPROVAL OF AUTOMATED TELLER MACHINES

(1) The owner of the automated teller machine shall file a certificate with the commissioner of banking and financial institutions that contains the information required in 32-6-304, MCA. A fee of $100 shall be paid to the division at the time the certification is submitted."

Auth: Sec. 32-6-401, MCA; IMP, Sec. 32-6-304, MCA

"II FEES FOR THE APPROVAL OF POINT-OF-SALE TERMINALS

(1) A fee of $100 shall be paid to the division at the time a merchant submits an application to the commissioner of banking and financial institutions demonstrating that the standards required by 32-6-305, MCA, are met."

Auth: Sec. 32-6-401, MCA; IMP, Sec. 32-6-305, MCA

REASON: The reason to establish these proposed rules is to cover the administrative and other costs related to these specific applications.

4. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Banking and Financial Institutions Division, Room 50, Lee Metcalf Building, 1520 East Sixth Avenue, Helena, Montana 56920, to be received no later than 5:00 p.m., March 24, 1994.

5. Annie M. Bartos, attorney, has been designated to preside over and conduct the hearing.

BANKING AND FINANCIAL
INSTITUTIONS DIVISION
DON HUTCHINSON, COMMISSIONER

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, February 14, 1994.

BEFORE THE BANKING AND FINANCIAL INSTITUTIONS DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed repeal and adoption of rules pertaining to retention of bank records and investment securities	NOTICE OF PUBLIC HEARING ON THE PROPOSED REPEAL AND ADOPTION OF RULES PERTAINING TO RETENTION OF BANK RECORDS AND INVESTMENT SECURITIES

TO: All Interested Persons:

1. On March 16, 1994, at 1:30 p.m., a public hearing will be held in the downstairs conference room of the Department of Commerce building, 1424 - 9th Avenue, Helena, Montana, to consider the proposed repeal and adoption of rules pertaining to retention of bank records and investment securities.

2. ARM 8.80.103 and 8.80.105 are being proposed for repeal. Full text of those rules can be located at pages 8-2346 through 8-2351, Administrative Rules of Montana. The authority and implementing section for ARM 8.80.103 is 32-1-491, MCA and the authority and implementing section for ARM 8.80.105 is 32-1-433, MCA. These rules are being repealed to implement House Bill No. 201, which is Chapter 395, Laws of 1993.

3. The proposed new rules will read as follows:

"I RETENTION OF BANK RECORDS (1) There exists a schedule known as Bank Records Publication Appendix "A" that establishes the minimum period for retention of bank records other than those specified in 32-1-491, MCA. Bank Records Publication Appendix "A" is maintained by the commissioner of banking and financial institutions, and is updated yearly by the commissioner. Bank Records Publication Appendix "A" is henceforth incorporated as part of this rule. A copy of the most recent edition of Bank Records Publication Appendix "A" can be obtained from the Banking and Financial Institutions Division, 1520 East 6th Avenue, Lee Metcalf Building, Room 50, P.O. Box 200512, Helena, Montana 59620-0512. When a bank microfilms or photographs records in the regular course of business as permitted by 32-1-492 through 32-1-494, MCA, the retention period of the microfilm or photographs must be the same as specified in the Bank Records Publication Appendix "A" below.

(2) Banks must comply with all federal laws and regulations requiring specific retention periods for the records enumerated in those laws or regulations. All other state laws governing retention of personnel records, corporation records, etc. must be complied with.

(3) If a bank does not maintain records set forth in Bank Records Publication Appendix "A", but maintains similar records with equivalent information, the bank's records must be retained for the time specified within Bank Records Publication Appendix "A" as to the equivalent records.

(4) Records not covered by this rule or 32-1-491, MCA, are to be retained for a period of time determined appropriate by the bank's board of directors. Such retention periods determined appropriate shall be noted as a permanent part of the board's minutes."

Auth: Sec. 32-1-491, MCA; IMP, Sec. 32-1-491, 32-1-492, MCA

REASON: To establish minimum periods of time for banks to preserve or keep their records.

"II INVESTMENT SECURITIES (1) The bank's board of directors shall adopt an investment policy adequate for its bank. The policy shall include, at a minimum, circumstances relevant to those securities and investments the bank customarily owns or trades.

(a) With an emphasis on quality, the policy should describe those securities preferred by the bank's board of directors, and how the securities will be managed to incur a minimum risk to the bank.

(b) The bank's board of directors should formally approve those securities dealers with whom the bank does business. The bank's management should be familiar with the dealer's financial condition, abilities, and reputation in relation to the bank's needs.

(c) The board of directors should conduct a periodic review of its bank's investment portfolio, to determine adherence to previously established investment goals and policies, and to value all of its bank's investments, including investments in mutual funds. The board of directors should closely observe its bank's activity in "repurchase agreements" and "reverse repurchase agreements" for any adverse effects upon the bank.

(d) Information should be available in the bank's own credit files, or otherwise be readily accessible to bank management and examiners in sufficient detail to support a judgment that each issue in the portfolio is suitable for investment purposes.

(2) Banks are permitted to underwrite issues of investment securities if the following conditions are met:

(a) No bank having unimpaired capital and surplus of less than $5,000,000 shall underwrite or otherwise participate as principal in the marketing of securities, except for the account of and upon specific instructions from its customer.

(b) Banks that qualify to underwrite or participate by having unimpaired capital and surplus of $5,000,000 or greater, may do so with any securities that such banks could purchase for their own account.

(c) Accounting and other records of trading in such securities must be separately maintained from accounting and other records relating to purchases of securities for the bank's own account.

(3) Without regard to any limitation related to unimpaired capital and surplus, banks may invest in:

(a) obligations of the United States of America, including those of its agencies and instrumentalities, that

are fully guaranteed as to principal and interest by the United States of America;

(b) general obligations of any State of the United States of America;

(c) obligations of public housing agencies issued pursuant to the United States Housing Act of 1937, as amended;

(d) and with the approval of the commissioner of banking and financial institutions, newly created investment products issued by the U.S. treasury, federal agencies, and the state of Montana, as well as certain other investment securities listed in Approved Securities Publication, Appendix "A". Approved Securities Publication, Appendix "A" lists all the investment securities that are approved for investment by banks chartered by the state of Montana. Approved Securities Publication, Appendix "A" includes specific requirements or limitations, if any, related to that scheduled and approved list of investment securities. Approved Securities Publication, Appendix "A" is maintained by the commissioner of banking and financial institutions, and is updated yearly by the commissioner. Approved Securities Publication, Appendix "A" is henceforth incorporated as part of this rule. A copy of the most recent edition of Approved Securities Publication, Appendix "A" can be obtained from the Banking and Financial Institutions Division, 1520 East 6th Avenue, Lee Metcalf Building, Room 50, P.O. Box 200512, Helena, Montana 59620-0512.

(4) Certain other types of securities are approved for bank investment. Although the respective issuers provide relatively intangible benefit to the people of Montana, they are deemed suitable from a public policy perspective. Securities issued by these organizations are also generally approved investments by one or more of the federal bank regulatory agencies. The issuers and the types of securities are also listed in Approved Securities Publication, Appendix "A"."

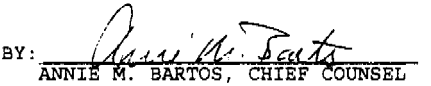
Auth: Sec. 32-1-424, 32-1-433, MCA; IMP, Sec. 32-1-424, 32-1-433, MCA

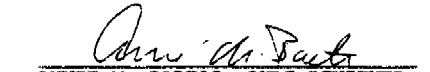
REASON: This rule is being proposed to implement House Bill No. 201, which is Chapter 395, Laws of 1993.

3. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Banking and Financial Institutions Division, Lee Metcalf Building, Room 50, P.O. Box 200512, Helena, Montana 59620-0512, to be received no later than 5:00 p.m., March 24, 1994.

4. Annie M. Bartos, attorney, has been designated to preside over and conduct the hearing.

BANKING AND FINANCIAL
INSTITUTIONS DIVISION
DON HUTCHINSON, COMMISSIONER

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


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, February 14, 1994.

BEFORE THE BANKING AND FINANCIAL INSTITUTIONS DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of a rule pertaining to dollar amounts to which consumer loan rates are to be applied	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF 8.80.307 DOLLAR AMOUNTS TO WHICH CONSUMER LOAN RATES ARE TO BE APPLIED

TO: All Interested Persons:

1. On March 16, 1994, at 10:00 a.m., a public hearing will be held in the downstairs conference room of the Department of Commerce building, 1424 · 9th Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

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

"8.80.307 DOLLAR AMOUNTS TO WHICH CONSUMER LOAN RATES ARE TO BE APPLIED (1) The dollar amounts in the following statutory sections are changed to the new designated amounts as follows:

Authority	Stated Amount	Changed Designated Amount
Section 32-5-201(4)	$1,000.00	~~$1,500.00~~ $1,600.00
~~Section 32-5-302(3)~~	~~$ 300.00~~	~~$ 450.00~~
	~~$1,000.00~~	~~$1,500.00~~
	~~$2,500.00~~	~~$3,750.00~~
Section 32-5-306(7)	$ 300.00	~~$ 450.00~~ $ 480.00"

Auth: Sec. 32-5-104, MCA; IMP, Sec. 32-5-104, 32-5-201, 32-5-301 32-5-302, 32-5-306, MCA

REASON: These amendments are needed because section 32-5-104, MCA, mandates that certain dollar amounts in Title 32, chapter 5 be changed from time to time in response to changes in one of the U.S. Consumer Price Indexes, and that the dollar amount changes are to be announced by rule. The reference Consumer Price Index has changed a sufficient amount to require amendments to ARM 8.80.307. In addition, this implements the deletion of section 3 of 32-5-302, MCA, as required by the 1993 amendment of Chapter 198.

3. Interested persons may submit their data, views or arguments concerning the proposed amendment either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Banking and Financial Institutions Division, 1520 East 6th, Room 50, Helena, Montana 59620, to be received no later than 5:00 p.m., March 24, 1994.

4. Annie M. Bartos, attorney, will preside over and conduct the hearing.

BANKING AND FINANCIAL
INSTITUTIONS DIVISION
DON HUTCHINSON, COMMISSIONER

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, February 14, 1994.

BEFORE THE BANKING AND FINANCIAL INSTITUTIONS DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to investigation responsibility, application procedures and requirements for a certificate of authorization for a state chartered bank, for assuming deposit liability of any closed bank, the merger of affiliated banks, and the establishment of new branch banks and the adoption of new rules concerning discovery and hearing procedures, and an application requirement	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF 8.87.202, 8.87.204, 8.87.301, 8.87.302, 8.87.303, 8.87.304, 8.87.305, 8.87.501, 8.87.601, 8.87.701; AND THE ADOPTION OF NEW RULES FOR DISCOVERY AND HEARING PROCEDURES AND A REQUIRED PRO FORMA STATEMENT IN NEW BANK APPLICATIONS

TO: All Interested Persons:

1. On March 16, 1994, at 3:00 p.m., a public hearing will be held in the downstairs conference room of the Department of Commerce building, 1424 - 9th Avenue, Helena, Montana, to consider the proposed amendment and adoption of rules pertaining to the activities of the State Banking Board.

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

"8.87.202 INVESTIGATION RESPONSIBILITY (1) The board hereby authorizes the ~~director, the commissioner of financial institutions~~ commissioner of banking and financial institutions and examining personnel of the financial ~~bureau~~ division to gather, at the board's direction, all available information relative to an application. Information so gathered must be reported to the board in such form and in such manner as the board directs. The ~~director~~ commissioner of banking and financial institutions is also authorized to make, or cause to be made, such investigations as he may determine are warranted under the circumstances existing and must make the information obtained available to the board."

Auth: Sec. 32-1-203, MCA; IMP, Sec. 32-1-203, MCA

REASON: This amendment is being proposed to implement House Bill No. 201, which is Chapter 395, Laws of 1993.

"8.87.204 APPLICATION PROCEDURE FOR A CERTIFICATE OF AUTHORIZATION FOR A STATE CHARTERED BANK (1) ~~Three~~ One or more individual incorporators desiring to organize a bank shall file with the ~~department of commerce~~ commissioner of banking and financial institutions an application to the state banking board for a certificate of authorization for a state

chartered bank. Said application shall be signed by each of the incorporators, sworn to before an officer authorized by the laws of this state to administer oaths and contain the following information in addition to any other information as may be required pursuant to part 2 and 3 of chapter 1, Title 32, MCA:

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

(3) The proposed articles of ~~agreement~~ incorporation shall be submitted with the application for a certificate of authorization.

(4) In the event that an application is incomplete in any respect or if additional information is required, the applicants will be so notified by the ~~department~~ division of banking and financial institutions and allowed up to sixty (60) days in which to perfect the application or provide additional information. An extension of this sixty (60) day period may be obtained from the department by showing good cause why it should be so extended.

(5) The form for applying for a certificate of authorization (FD-2) may be obtained from the Commissioner of Banking and Financial Institutions, ~~Department of Commerce, 1424 9th Avenue~~ 1520 East Sixth Avenue, Room 50, P.O. Box 200512, Helena, Montana 59620-0512."

Auth: Sec. 32-1-203, MCA; IMP, Sec. 32-1-203, MCA

REASON: This amendment is being proposed to implement House Bill No. 201, which is Chapter 395, Laws of 1993.

"8.87.301 PERSUASIVE SHOWING OF REASONABLE PUBLIC NECESSITY AND DEMAND (1) through (2)(f) will remain the same.

(g) the adequacy of the services being provided by existing banks compared to the needs of residents and the services to be offered by the proposed bank, including a detailed list of banking services that will be offered the community to be served by the new bank;

(h) through (m) will remain the same."

Auth: Sec. 32-1-203, MCA; IMP, Sec. 32-1-203, MCA

REASON: This amendment is proposed to provide additional information necessary to establish reasonable public necessity for a new bank.

"8.87.302 MANAGEMENT OF PROPOSED BANK (1) ~~Directors.~~ To establish reasonable assurance that the bank will be safely and soundly operated as required by ~~section~~ 32-1-203, MCA, and recognizing that the ultimate responsibility for management of a bank reposes in its board of directors, the banking board will not order the ~~director~~ commissioner of banking and financial institutions to issue a certificate of authority to a proposed bank if the board finds that any one or more of the proposed directors of the new bank has questionable moral character or lack of financial integrity and, therefore, does not command the confidence of the community in which the proposed bank is to be located.

(2) ~~Managing officer.~~ In the event that the application for a state bank charter does not include the name and

qualifications of the proposed managing officer, the board will direct that if a charter is to be issued for the proposed bank it shall be conditioned upon the submission of the name and qualifications of a proposed managing officer to the ~~department of commerce~~ division of banking and financial institutions at least sixty (60) days prior to the opening of the bank and that the ~~department of commerce~~ division of banking and financial institutions find said proposed managing officer unobjectionable."

Auth: Sec. 32-1-203, MCA; IMP, Sec. 32-1-203, MCA

REASON: This amendment is being proposed to implement House Bill No. 201, which is Chapter 395, Laws of 1993.

"8.87.303 CAPITAL ADEQUACY OF PROPOSED NEW BANKS The applicant must provide a reasonable assurance that the proposed new bank will have adequate initial paid-in capital sufficient to accomplish the following:

(1) and (2) will remain the same.

(3) Provide protection for depositors' funds to the same extent that the average of all insured commercial banks in the ~~United States~~ proposed bank's peer group provides capital protection, measured by the most current ~~national~~ peer group data available on total capital accounts and reserves as a percentage of total assets. The proposed bank's reasonably estimated total assets at the end of its first three years of operation shall be the basis upon which this standard shall be projected.

(4) will remain the same."

Auth: Sec. 32-1-203, MCA; IMP, Sec. 32-1-203, MCA

REASON: This amendment is necessary to more closely relate the capital requirements of a new bank to that developed and generally necessary for banks in its peer group, being those banks with similar size and operating characteristics located in or near Montana.

"8.87.304 BANKS - F.D.I.C. INSURANCE REQUIRED (1) To comply with ~~section~~ 32-1-203, MCA, it has been determined by the state banking board that it is in the public interest to require all commercial banks to be accepted by the federal deposit insurance corporation for the insurance of deposits. The board will not order the ~~director of the department of commerce~~ commissioner of banking and financial institutions to issue a certificate of authorization to a proposed new bank unless:

(a) the ~~department~~ division of banking and financial institutions has received official notice that the proposed bank has been accepted for insurance of deposits; or,

(b) the ~~department~~ division of banking and financial institutions has received satisfactory assurance from the F.D.I.C. or the federal reserve bank of Minneapolis that the proposed bank will be accepted for insurance when the proponents comply with certain stated minor requirements imposed by the F.D.I.C. Such "minor requirements" must be of a type and character which the board determines can be

promptly complied with by the proponents without serious difficulty."

Auth: Sec. 32-1-203, MCA; IMP, Sec. 32-1-203, MCA

REASON: This amendment is proposed to implement House Bill No. 201, which is Chapter 395, Laws of 1993.

"8.87.501 STATE BANK ORGANIZED FOR PURPOSE OF ASSUMING DEPOSIT LIABILITY OF ANY CLOSED BANK (1) through (3) will remain the same.

(4) Details of the proposed purchase along with a copy of the purchase and assumption agreement and an application fee of $1,500 will be submitted to the ~~department~~ division of banking and financial institutions prior to submitting a bid for the closed bank.

(5) will remain the same."

Auth: Sec. 32-1-204, MCA; IMP, Sec. 32-1-204, MCA

REASON: This amendment is being proposed to implement House Bill No. 201, which is Chapter 395, Laws of 1993.

"8.87.601 APPLICATION PROCEDURE FOR APPROVAL TO MERGE AFFILIATED BANKS (1) will remain the same.

(2) Applicant banks shall publish notices of intent to merge or consolidate. This notice shall be published in a newspaper of general circulation in the community or communities where the banking offices of all the merging banks are located, or if there is no such newspaper in the community, then in the newspaper of general circulation published nearest thereto. Publication shall be made at least once a week on the same day for five consecutive weeks, and, when published in a daily newspaper, one additional publication shall be made on the thirtieth day from the date of the first publication. The application shall be mailed or delivered to the ~~department of commerce~~ division of banking and financial institutions not more than thirty (30) days subsequent to the first publication of notice.

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

(4) An application fee of two thousand dollars ($2,000) plus two hundred ($200) for each bank involved in the merger shall be paid to the ~~state of Montana~~ division of banking and financial institutions at the time of application and thereafter shall not be refunded in whole or in part.

(5) If an application is incomplete in any respect, or if additional information is required, the applicants will be so notified by the department and allowed up to thirty (30) days in which to perfect the application or provide additional information. An extension of this thirty (30) day period may be obtained from the division of banking and financial institutions by showing good cause why it should be so extended. ~~For good cause, t~~The state banking board may delay processing, including extending the comment period, for good cause. Processing will be completed no earlier than the 15th day, nor generally not later than the 45th day, following the date of the last required publication ~~of notice~~.

(6) will remain the same.

(7) The applications shall be in letter form addressed to the State Banking Board, c/o Commissioner of Banking and Financial Institutions, ~~Department of Commerce~~, 1520 East Sixth Avenue, Lee Metcalf Building, Room 50, P.O. Box 200512, Helena, Montana 59620-~~0542~~ 0512.

(8) will remain the same."

Auth: Sec. 32-1-203, MCA; IMP, Sec. 32-1-371, MCA

REASON: This proposed amendment is necessary to implement House Bill No. 201, which is Chapter 395, Laws of 1993.

"8.87.701 APPLICATION PROCEDURE FOR A CERTIFICATE OF AUTHORIZATION TO ESTABLISH A NEW BRANCH (1) An existing state-chartered bank shall file with the ~~department of commerce~~ division of banking and financial institutions an application to the state banking board for certificate of authorization to establish and operate a new branch bank.

(2) The applicant shall publish notice of intent to establish a branch bank. This notice shall be published in a newspaper of general circulation in the community or communities where the main office of the bank and proposed branch bank are located, or, if there is no such newspaper in the community, then in the newspaper of general circulation published nearest thereto. Publication shall be made at least once a week on the same day for five consecutive weeks, and when published in a daily newspaper, one additional publication shall be made on the thirtieth day from the date of the first publication. The application shall be mailed or delivered to the ~~department of commerce~~ division of banking and financial institutions not more than thirty (30) days subsequent to the first publication of notice.

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

(5) In the event that an application is incomplete in any respect, or if additional information is required, the applicants will be so notified by the department and allowed up to thirty (30) days in which to perfect the application or provide additional information. An extension of this thirty (30) day period may be obtained from the ~~department~~ division of banking and financial institutions by showing good cause why it should be so extended. The state banking board may delay processing, including extending the comment period, for good cause. Processing will be completed no earlier than the 15th day, or generally not later than the 45th day, following the date of the last required publication.

(6) will remain the same.

(7) The form for applying for a certificate of authorization may be obtained from the Commissioner of Banking and Financial Institutions, ~~Department of Commerce,~~ 1520 East Sixth Avenue, Lee Metcalf Building, Room 50, P.O. Box 200512, Helena, Montana 59620-~~0542~~ 0512.

(8) will remain the same."

Auth: Sec. 32-1-202, 32-1-203, MCA; IMP, Sec. 32-1-203, 32-1-372, MCA

REASON: This amendment is being proposed to implement House Bill No. 201, which is Chapter 395, Laws of 1993.

3. The proposed new rules will read as follows:

"I PROCEDURAL RULES FOR DISCOVERY AND HEARING (1) The state banking board adopts and incorporates the attorney general's model rules by reference, as stated in ARM 1.3.101 through ARM 1.3.234, with the exceptions set forth in ARM 8.2.104, ARM 8.2.105 and ARM 8.2.106. Prehearing discovery procedures shall be allowed in the same manner as specified under the Montana Rules of Civil Procedure relative to district court actions. The time periods established in discovery may be shortened at the discretion of the board."

Auth: Sec. 32-1-205, MCA; IMP, Sec. 32-1-205, MCA

"II PRO FORMA STATEMENT (1) An operational projection shall be submitted as part of the application for new bank charters, in order to show that the new bank will remain solvent while meeting the requirements set forth in ARM 8.87.303. The pro forma statement will include, at a minimum:

(a) a projected three-year comparative balance sheet and income projection,

(b) information on start-up costs, including legal fees, and other costs that may be amortized, and

(c) costs associated with fixed assets and their maintenance.

(2) The statement will reasonably estimate the volumes of business the new bank anticipates in the first three year period, and will show its reasons for believing it will develop such business aggregates."

Auth: Sec. 32-1-203, MCA; IMP, Sec. 32-1-203, MCA

REASON: To provide reasonable assurance that the new bank will be solvent.

4. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Banking and Financial Institutions Division, Room 50, Lee Metcalf Building, 1520 East Sixth Avenue, Helena, Montana 59620, to be received no later than 5:00 p.m., March 24, 1994.

5. Annie M. Bartos, attorney, will preside over and conduct the hearing.

BANKING AND FINANCIAL
INSTITUTIONS DIVISION
DON HUTCHINSON, COMMISSIONER

ANNIE M. BARTOS
RULE REVIEWER

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

Certified to the Secretary of State, February 14, 1994.

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

In the matter of the proposed adoption of new rules and repeal of existing rules, concerning claims for unpaid and underpaid wages, and calculation of penalties	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION OF NEW RULES I THROUGH XIX AND REPEAL OF 24.16.7501 AND 24.16.7502

TO ALL INTERESTED PERSONS:

1. On March 18, 1994, at 10:00 a.m., a public hearing will be held in the first floor conference room at the Walt Sullivan Building (Dept. of Labor Building), 1327 Lockey Street, Helena, Montana, to consider the adoption of procedural and substantive rules concerning claims for unpaid and underpaid wages, and the repeal of certain existing rules on the same subject.

The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the Department by not later than 5:00 p.m., March 14, 1994, to advise us of the nature of the accommodation that you need. Please contact the Employment Relations Division, Attn: Ms. Debbie Long, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-5600; TDD (406) 444-5549; fax (406) 444-4140.

2. The Department of Labor and Industry proposes to adopt new rules as follows:

NEW RULE I PURPOSE These rules are designed to define terms used in the wage and hour claims process, to establish procedures for administering claims and calculating statutory penalties and to provide for relief in the event a party does not receive an item sent to them by mail.
AUTH: Sec. 39-3-202 and 39-3-403, MCA IMP: Sec. 39-3-202 and 39-3-403, MCA

NEW RULE II DEFINITIONS (1) "Adverse decision" means a decision by the department, a hearings officer or the Board that is not favorable to the party who wishes to have the decision reviewed.

(2) "Board" means the Board of Personnel Appeals, and has the same meaning as provided by 39-3-201, MCA.

(3) "Commissioner" means the Commissioner of Labor, and has the same meaning as provided by 39-3-201, MCA.

(4) "Day" means a calendar day.

(5) "Department" means the Department of Labor and Industry, and has the same meaning as provided by 39-3-201, MCA.

(6) "Determination" means a decision by the department as

to the merits of a claim, which states the amount of wages and penalty (if any) owed by the employer to the employee.

(7) "Employ" has the same meaning as provided by 39-3-201, MCA.

(8) "Employee" has the same meaning as provided by 39-3-201, MCA.

(9) "Employer" has the same meaning as provided by 39-3-201, MCA.

(10) "Formal hearing" means a contested case, held by a department hearing officer, pursuant to Title 2, chapter 4, part 6, MCA.

(11) "Penalty" means the statutory penalty provided by 39-3-206, MCA, which is assessed by the department against the employer and which is paid to the employee in addition to the wages owed.

(12) "Redetermination" means an informal review by the department, based upon new or additional information supplied by a party who has received an adverse determination.

(13) "Wages" has the same meaning as provided by 39-3-201, MCA.

AUTH: Sec. 39-3-202 and 39-3-403, MCA IMP: Sec. 39-3-202 and 39-3-403, MCA

NEW RULE III ACCRUAL OF CLAIMS UPON SEPARATION FROM EMPLOYMENT (1) Claims accrue in the manner specified by 39-3-205, MCA.

(2) For the purpose of construing 39-3-205, MCA, any reason that an employer gives when firing an employee constitutes firing the employee "for cause".

(3) For the purpose of construing 39-3-205, MCA, payment of wages is considered to be "immediate" if the wages are paid to the employee by the earlier of the close of business or four hours from the time the employee is notified that the employee has been fired.

AUTH: Sec. 39-3-202, MCA IMP: Sec. 39-3-205, MCA

NEW RULE IV COMPUTATION OF TIME PERIODS (1) In computing any period of time prescribed or allowed by these rules or any applicable statute, the day of the act, event, or default after which the designated time period begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not one of the aforementioned days. A half holiday is not a holiday, but is considered as a regular day.

(2) For the purpose of these rules, an item sent to the department is timely if it is either postmarked or received by the department by not later than the last day of the time period.

(3) An item which does not have a postmark is considered received as of the date it is date-stamped by the department.

AUTH: Sec. 39-3-202 and 39-3-403, MCA IMP: Sec. 39-3-202 and 39-3-403, MCA

NEW RULE V FACSIMILE FILINGS (1) Any document required or allowed to be filed with the department may be filed by means of a telephonic facsimile communication device (fax).

(2) Filings with the department by facsimile are subject to the following conditions:

(a) a filing must conform with all applicable rules, except that only one copy of a document need be filed by facsimile even when multiple copies otherwise would be required;

(b) if a document is received after 5:00 p.m. Mountain Time, the date of filing of that document, for purposes of these rules, will be the date of the next regular work day; and

(c) the original document and any copies must be received by the department within 5 days of the facsimile transmittal or the filing will not be recognized as timely.

(3) The failure, malfunction, or unavailability of facsimile equipment does not excuse a party from the requirements of timely filing.

AUTH: Sec. 39-3-202 and 39-3-403, MCA IMP: Sec. 39-3-202 and 39-3-403, MCA

NEW RULE VI FILING A CLAIM (1) Wage claims may be filed whenever an employee has not received wages that are due. These wages can be, but are not limited to, vacation pay, overtime pay, or regular wages.

(2) A claim may be filed by:

(a) the employee;

(b) the estate of an employee; or

(c) an authorized representative of the commissioner, on behalf of an employee or group of employees.

(3) A claim must be reduced to writing on the form furnished by the commissioner and signed by the person making the claim.

(4) Wage claim forms can be obtained from the Labor Standards Bureau, Employment Relations Division, Department of Labor and Industry, either in person, by telephone, or by mail. The street address of the labor standards bureau is 1805 Prospect Ave, Helena, Montana. The mailing address is P.O. Box 1728, Helena, Montana 59624-1728. The telephone number is 406-444-5600.

(5) Field investigations commenced by the commissioner need not be on the form referenced above.

AUTH: Sec. 39-3-202 and 39-3-403, MCA IMP: Sec. 39-3-211, MCA

NEW RULE VII EMPLOYEE'S FAILURE TO PROVIDE INFORMATION (1) If an employee fails to provide information requested by the department within time frames specified by the department, the department may dismiss the claim.

AUTH: Sec. 39-3-202 and 39-3-403, MCA IMP: Sec. 39-3-210, MCA

NEW RULE VIII EMPLOYER RESPONSE TO CLAIM (1) A claim is commenced when a letter is mailed to the employer by the commissioner notifying the employer of the claim.

(2) An employer must file a written response to a claim. The response must either be on the form provided by the

department or presented in a similar format.

(3) To be timely, the employer's written response must be mailed or delivered to the department by the date specified by the department. The department may, at its discretion, and for good cause shown, allow additional time for response.

(4) Failure of the employer to timely respond to a claim will result in the entry of a determination adverse to the employer.

AUTH: Sec. 39-3-202 and 39-3-403, MCA IMP: Sec. 39-3-210, MCA

NEW RULE IX DETERMINATION (1) Following the expiration of the time for an employer to respond to a claim, the department will make a written determination of the wages and penalty owed, if any.

(2) A copy of the written determination will be mailed to each party and attorneys of record at their last known address.

(3) A party who receives an adverse decision may request either a redetermination or a formal hearing. The request must be in writing and specify whether a redetermination or a hearing is requested.

AUTH: Sec. 39-3-202 and 39-3-403, MCA IMP: Sec. 39-3-209, MCA

NEW RULE X REQUEST FOR REDETERMINATION (1) A party who has received an adverse decision may request a redetermination.

(2) The request for a redetermination must be made within 15 days of the date the determination is mailed. The request for a redetermination must be in writing and include new or additional information relevant to the issue(s) in dispute. The request must include the new information which the department is to consider.

(3) After receiving a timely request for a redetermination which includes new or additional information, the department will issue a written redetermination and mail a copy to the parties.

(4) The department will only issue one redetermination for each party who has received an adverse decision.

AUTH: Sec. 39-3-202 and 39-3-403, MCA IMP: Sec. 39-3-209, MCA

NEW RULE XI REQUEST FOR FORMAL HEARING (1) A party who has received an adverse decision from a compliance specialist may request a formal hearing within 15 days of the date either the determination or the redetermination is mailed or served upon the party.

(2) A request for a formal hearing must be in writing, mailed as specified in the adverse decision, and include the following:

(a) the name and address of the requesting party;

(b) the name and address of the opposing party; and

(c) a statement that the party desires a hearing.

(3) Upon receiving a timely, written request for a formal hearing, the department will commence contested case proceedings. Any question as to whether the request is timely will be resolved by the Board of Personnel Appeals.

AUTH: Sec. 39-3-202 and 39-3-403, MCA IMP: Sec. 39-3-216, MCA

NEW RULE XII DEFAULT ORDERS AND DISMISSALS (1) A default order will be issued if the employer fails to timely file a written response to the determination.

(2) The default order will specify the amount owed by the employer to the employee as wages and penalty.

(3) A dismissal will be issued if the employee fails to timely file a written response to a determination or if no merit is found to the claim.

(4) Appeals of default orders and dismissals must be made in writing within 15 days of the date the default order or dismissal was mailed or served upon the requesting party. The Board is the body that hears appeals of default orders.

AUTH: Sec. 39-3-202 and 39-3-403, MCA IMP: Sec. 39-3-216, MCA

NEW RULE XIII REQUEST FOR RELIEF IF MAIL IS NOT RECEIVED (1) A party which alleges that it did not receive timely notice by mail of the claim, determination or hearing process provided by these rules has the burden of proof of showing that the party ought to be granted relief. The party seeking relief must present clear and convincing evidence to rebut the statutory presumption contained in 26-1-602, MCA, that a letter duly directed and mailed was received in the regular course of the mail.

(2) All questions regarding alleged non-receipt of mail, or whether a request for a redetermination, request for a formal hearing, or an appeal was timely made must be resolved by the Board.

(3) Once a judgment is issued by a District Court concerning a decision, any request for relief must be directed to the District Court by a party (not the department on behalf of a party) pursuant to the Rules of Civil Procedure and be in the form required by the District Court.

AUTH: Sec. 39-3-202 and 39-3-403, MCA IMP: Sec. 39-3-216, MCA

NEW RULE XIV APPEAL OF FORMAL HEARING (1) Appeal of a formal hearing order is made to the Board. A party who has received an adverse decision may request an appeal.

(2) The time period in which to make an appeal is within 15 days of the date the decision of the hearing officer is mailed. The appeal must identify where the appealing party alleges the hearing officer was in error. The appeal must be filed with the Board of Personnel Appeals, P.O. Box 1728, Helena, MT 59620.

AUTH: Sec. 39-3-202 and 39-3-403, MCA IMP: Sec. 39-3-217, MCA

NEW RULE XV PENALTY WHEN PAYMENTS ARE MADE PRIOR TO DETERMINATIONS AND SUBSEQUENT TO DETERMINATIONS (1) In cases where the wages claimed are paid by the employer either before or after receipt of the initial letter commencing the claim [NEW RULE VIII (1)] and prior to the issuance of a determination, no penalty will be imposed unless any of the special circumstances described in [NEW RULE XVI] apply.

(2) In cases where payment made either before or after receipt of the first letter does not resolve the claim and a

determination is made finding that additional wages are due, a penalty will be calculated only on the balance determined still due to the employee, unless any of the special circumstances described in [NEW RULE XVI] apply.

(3) Money paid pursuant to a determination or redetermination will not be disbursed prior to the running of appeal periods unless the department is notified in writing that payment resolves the claim.

(4) Money paid pursuant to a determination but paid under protest or in other than free and clear manner will be deposited in the department trust account pending disposition. Payments made in this manner may be subject to the full penalty allowed in 39-3-206 MCA.

AUTH: Sec. 39-3-202 and 39-3-403, MCA IMP: Sec. 39-3-206, MCA

NEW RULE XVI SPECIAL CIRCUMSTANCES JUSTIFYING MAXIMUM PENALTY (1) The following conduct by the employer constitutes special circumstances that justify the imposition of the maximum penalty allowed by law:

(a) the employer fails to provide information requested by the department and/or does not cooperate in the department's investigation of the wage claim;

(b) there is substantial credible evidence that the employer's payroll records are falsified or intentionally misleading;

(c) the employer has previously violated similar wage and hour statutes within three years prior to the date of filing of the wage claim; or

(d) the employer has issued an insufficient funds paycheck.

(2) Exceptions may be made in instances where the employee has failed to provide records or information necessary for the employer to make final payroll calculation and issue the final paycheck.

(3) The maximum penalty is mandatory under the above circumstances and may be reduced only upon the written mutual agreement of the parties and the department.

AUTH: Sec. 39-3-202 and 39-3-403, MCA IMP: Sec. 39-3-206, MCA

NEW RULE XVII PENALTY FOR MINIMUM WAGE AND OVERTIME CLAIMS (1) For determinations involving minimum wage and overtime that are filed on or after October 1, 1993, penalties are calculated as follows:

(a) a penalty equal to 110% of the wages determined to be due to the employee will be imposed in all determinations issued by the department; but

(b) if none of the special circumstances of [NEW RULE XVI] apply the department will reduce the penalty to 55% of the wages determined to be due provided the employer pays the wages found due in the time period specified in the determination as well as a penalty equal to 55% of that amount.

(2) The penalty calculated according to this rule may be reduced only upon the mutual agreement of the parties and the department.

(3) Claims for minimum wage and overtime filed against employers covered by provisions of the Fair Labor Standards Act will be subject to the penalty provisions of that act.
AUTH: Sec. 39-3-202 and 39-3-403, MCA IMP: Sec. 39-3-206, MCA

NEW RULE XIII PENALTY FOR CLAIMS INVOLVING OTHER KINDS OF COMPENSATION (1) For determinations involving claims filed on or after October 1, 1993, if none of the special circumstances of [NEW RULE XVI] apply, penalties are calculated as follows:

(a) a penalty equal to 55% of the wages determined to be due to the employee will be imposed in all determinations issued by the department; but

(b) the department will reduce the penalty to 15% of the wages determined to be due if the employer pays the wages found due in the time period specified in the determination as well as a penalty equal to 15% of that amount.

(2) If a claim involves any of the special circumstances of [NEW RULE XVI], the department will impose the maximum penalty allowed by law.

(3) The penalty calculated according to this rule may be reduced only upon the mutual agreement of the parties and the department.
AUTH: Sec. 39-3-202, MCA IMP: Sec. 39-3-206, MCA

NEW RULE XIX PENALTY FOR MIXED CLAIMS (1) Penalties for claims involving more than one type of wage claim are calculated by applying the appropriate administrative penalty rule to each component of the claim that is determined to be valid.
AUTH: Sec. 39-3-202, MCA IMP: Sec. 39-3-206, MCA

Rationale: Chap. 134, L. 1993, amended the wage payment statutes to permit service by mail and changed the amount of penalties for violations. These rules are reasonably necessary to implement those changes and to reflect the department's current internal process for handling claims. The rule on relief for a person who does not receive the mailed notification of a determination is reasonably necessary because it is required by the 1993 amendments to section 39-3-216, MCA. The penalty rules are reasonably necessary to provide a means by which staff can consistently calculate an equitable penalty for cases where a penalty is required. The rules also provide employers and employees with notice of how the penalty will be assessed. Prior to these rules, department staff did not have formal guidelines by which to base amount of the penalty. Employers and employees from time to time complained that the penalties imposed were arbitrarily set.

3. The Department of Labor and Industry proposes to repeal 24.16.7501, Procedure for Filing, and 24.16.7502, Processing the Claim, in their entirety. The rules to be repealed can be found at page 24-1185 of the Administrative Rules of Montana. The department's authority to repeal the rules is section 39-3-211, MCA. The reason for repealing the rules is that staff determined that the process describing how

wage claims are handled was obsolete and the proposed new rules, above, will replace them.

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:

John Andrew, Bureau Chief
Labor Standards Bureau
Employment Relations Division
Department of Labor and Industry
P.O. Box 1728
Helena, Montana 59624-1728

and must be received by no later than 5:00 p.m., March 25, 1994.

5. The Department proposes to make these amendments effective May 1, 1994.

6. The Hearing Unit of the Legal Services Division of the Department has been designated to preside over and conduct the hearing.

David A. Scott
Rule Reviewer

Laurie Ekanger, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: February 14, 1994.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of NEW RULES I through VIII relating to Regulation of Cigarette Marketing	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION of of NEW RULES I through VIII relating to Regulation of Cigarette Marketing

TO: All Interested Persons:

1. On March 21, 1994, at 1:30 p.m., a public hearing will be held in Room 13A and 13B which is located in the basement of the Mitchell Building, at Helena, Montana, to consider the adoption of New Rules I through VIII relating to cigarettes and cost showing for regulation of marketing by the Income and Miscellaneous Tax Division.

2. The proposed rules do not replace or modify any section currently found in the Administrative Rules of Montana.

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

RULE I DEFINITIONS (1) As used in this subchapter the following definitions apply in addition to those found in 16-1-103, MCA:

(a) "Affected Person" means a licensed Montana wholesaler or retailer of cigarettes or a trade association of wholesalers or retailers.

(b) "Cash discount" means a discount based on the terms of a sale or a purchase, sales or distribution incentive, including any discount or allowance granted for an electronic transfer of money, offered as an inducement to the purchaser to encourage prompt payment.

(c) "Department" means the Montana state department of revenue provided for in 2-15-1301, MCA.

(d) "Final order" means an order entered by the department or a court of review which either has not been appealed on a timely basis or to which no appeal is available.

(e) "Invoice cost of cigarettes to the retailer" means the cost of cigarettes to the retailer in the quantity as indicated on the wholesaler's invoice for the cigarettes to which the invoice applies or the wholesaler's invoice for the cigarettes last purchased, by the retailer, whichever is lower, as shown on the wholesaler's invoice. No deductions may be made for trade discounts, cash discounts or any other deduction that would reflect a cost lower than minimum.

(f) "Invoice cost of cigarettes to the wholesaler" means the cost of cigarettes to the wholesaler in the quantity as indicated on the manufacturer's invoice for the cigarettes to which the invoice applies or the manufacturer's invoice for the cigarettes last purchased, by the wholesaler, whichever is lower, as shown on the manufacturer's invoice before any

deductions for trade or cash discounts or any other manufacturer's discount offered.

(g) "Montana Cigarette Sales Act" means the laws codified in Title 16, Chapter 10, MCA.

(h) "Trade discounts" are those price reductions which are offered by a cigarette manufacturer and represent a reduction in the manufacturer's base price of the item being purchased.

AUTH: Sec. 16-10-104, MCA; IMP: Secs. 16-10-103 and 16-10-301, MCA.

RULE II PETITION REQUIREMENTS (1) Any wholesaler or retailer who desires to prove that its cost of doing business is less than the statutory presumptive cost of doing business as set forth in the Montana Cigarette Sales Act shall submit to the department of revenue, Form CT-210 and all supporting documentation which shall be the petition for approval of lower cost. CT-210 is hereby incorporated by reference and may be obtained by contacting the department of revenue, at P. O. Box 5835, Helena, Montana 59604-5835.

(2) A wholesaler or retailer who is licensed for business in Montana, may submit a petition for approval of lower cost and actual cost data for a period ending no more than 90 days prior to the submission of the petition. The actual cost data must be in sufficient detail to determine the petitioner's true costs of doing business in Montana. Petitioner must timely provide complete copies and all supporting documentation to all interested parties upon request.

AUTH: Sec. 16-10-104, MCA; IMP: Secs. 16-10-103 and 16-10-301, MCA.

RULE III HEARINGS AND APPEALS (1) Within 30 days of receipt of the petition and supporting information for approval of a lower cost, the department shall notify affected persons of the filing of the proposed lower cost petition by publication in the Montana Administrative Register and direct mailing to those who have indicated to the department a desire to receive such information. The petition will be available for review in income and miscellaneous tax division of the department which is located in the Sam W. Mitchell building, Helena, Montana or a complete copy may be obtained by contacting petitioner.

(2) To request a hearing on the petition, affected persons will have 30 days from either the date of publication or the date of mailing of the notice, whichever is the later.

(a) Upon receipt of a timely request for hearing, the matter shall be referred to the department's hearing examiner who shall within 30 days schedule a hearing.

(b) The hearing shall be conducted as a contested case pursuant to the provisions of Title 2, Chapter 4, Part 6, MCA.

(c) Upon completion of the hearing, the hearing examiner shall within 30 days issue a proposed order either modifying the relief requested in the petition or granting or denying the petition based upon the substantial credible evidence presented

at the hearing.

(d) Any party adversely affected by the hearing examiner's proposed decision may file written objections and request oral argument before the director of revenue. The time for filing objections and requests for oral argument shall be provided in the notice of the hearing examiner's proposed decision.

(e) If oral argument is requested a time convenient to the Director's schedule shall be set. No party shall be permitted to introduce new evidence or new material of any kind at the time for oral argument before the director. Upon completion of oral argument the director shall have 60 days to issue the department's final decision.

(3) If a hearing request is not received within the 30-day period, the department will issue an order of approval of lower cost and notify all affected persons. The order will become effective 30 days from the date of issuance.

(4) The time limits set forth herein may be extended by the department or upon the request of petitioner and/or other affected persons and shall be extended for a reasonable time upon a showing of good cause by the parties.

(5) The petition filed pursuant to this regulation shall be considered public information.

AUTH: Sec. 16-10-104, MCA; IMP: Secs. 16-10-103 and 16-10-301, MCA.

RULE IV ORDER OF APPROVAL OF A LOWER COST (1) Any order of approval shall contain an effective date and the approved lower cost of doing business. The approved lower "cost of doing business" by the petitioner shall be the minimum cost [illegible] establishing its selling price for cigarettes sold in the state of Montana.

(2) The state of Montana is considered one market. Any wholesaler or retailer may adjust their prices to meet those of any of their competitors if a lower price is approved through this cost showing process. Absent a certified lower cost, the minimum price presumptions contained in current law are controlling.

(3) Appeal rights are contained in Title 2, Chapter 4 and Title 15, Chapter 1, Part 2 MCA.

AUTH: Sec. 16-10-104, MCA; IMP: Secs. 16-10-103 and 16-10-301, MCA.

RULE V COST DATA AND ANALYSIS (1) In establishing the actual cost of doing business, cost data analysis shall contain sufficient information to show one hundred percent (100%) allocation of all costs of the company's total operations. Indirect costs must be allocated to all products based either on the proportion of total dollar volume of cigarette inventory at the location for the period in question to total dollar volume of all inventory for said location and period, or upon generally accepted accounting principles regularly employed by the petitioner. The wholesaler or retailer shall annotate the

actual cost data shown on the latest filed federal income tax return (including federal schedules) submitted to the department to demonstrate how such costs have been allocated in calculating the petitioner's cost of doing business.

(2) The cost data to be submitted shall contain the petitioner's basic cost of cigarettes sold for the specific Montana location followed by a listing of all other direct costs paid or incurred and all allocated indirect overhead costs paid or incurred in the purchase and ultimate sale of cigarettes, as required in (1). The petitioner's cost of doing business shall be divided by basic cost to determine the actual percentage cost of doing business.

(3) When submitting the actual cost data, as required by subsection (2), the petitioner must provide supporting documentation including, but not limited to:

(a) If petitioner's cigarette cost of doing business is not proportionate to petitioner's total cost of doing business as provided in (1), a written explanation of the difference between the petitioner's overall cost of doing business from their cigarette cost of doing business for the specific Montana location(s);

(b) A representative sample of invoices issued for cigarettes purchased from each cigarette manufacturer or wholesaler for the period as provided in RULE III(2);

(c) Proof of total state cigarette tax stamp indicia purchased by petitioner during the period applicable under RULE III;

(d) Copies of the latest filed Montana state and federal income tax return(s) including all schedules and all attachments;

(e) Schedule K-1 (Form 1065);

(f) Form 4562;

(g) Latest available audited financial income statement;

(h) Latest available annual report(s); and

(i) Any other financial statements or information necessary to substantiate the actual cost data.

AUTH: Sec. 16-10-104, MCA; IMP: Sec. 16-10-103 and 16-10-301, MCA.

RULE VI BASIC COST DETERMINATION (1) The following formula may be used to determine the percentage cost of doing business:

WHOLESALER OR RETAILER COST OF DOING BUSINESS
FOR THE SPECIFIC MONTANA LOCATION
PERIOD OF ANALYSIS
BEGINNING _____,
AND ENDING _____

Total invoice cost of all cigarettes sold in the period of analysis	$
Plus: Montana cigarette tax on cigarettes sold	$
Total basic cost of cigarettes sold	$
COST OF DOING BUSINESS	
A. Direct costs associated with the purchase and sale of cigarettes in the analysis period	$
B. All indirect costs that are allocated, broken down by name or nature of cost in the analysis period	$
Total direct and indirect overhead costs	$
PERCENTAGE OF COST OF DOING BUSINESS (TOTAL DIRECT AND INDIRECT COSTS DIVIDED BY BASIC COST)	%

AUTH: Sec. 16-10-104, MCA; IMP: Secs. 16-10-103 and 16-10-301, MCA.

RULE VII GUIDELINES FOR WHOLESALERS (1) Cost to the wholesaler shall mean the basic cost of cigarettes to the wholesaler as defined in the Montana Cigarette Sales Act plus the cost of doing business by the wholesaler as evidenced by the accounting standards and methods regularly employed on a consistent basis by the wholesaler in their determination of costs for the purpose of federal income tax reporting or for the purpose of determining accounting income in accordance with generally accepted accounting principles and standards.

(2) Costs of doing business by the wholesaler shall include:

(a) all direct costs, including but limited to:

(i) inbound freight charges;

(ii) labor costs to affix tax indicia;

(iii) cost of equipment to affix hand stamps;

(iv) ink;

(v) glue;

(vi) rental and maintenance expenses for the cigarette tax indicia;

(vii) state and local cigarette licenses; and

(b) indirect overhead costs and expenses paid or incurred including but not limited to:

(i) pre-opening expenses;

(ii) management fees;

(iii) labor costs (including salaries of executives and officers);

(iv) rents;

(v) depreciation;

(vi) selling costs;

(vii) maintenance expenses;

(viii) interest expenses;

(ix) delivery costs;

(x) all types of licenses;

(xi) all types of taxes;

(xii) all types of insurance;

(xiii) advertising; and

(xiv) any and all district, central, regional and national administrative and operational costs and expenses.

(3) All indirect overhead costs including any pre-opening and central and regional administrative expenses shall be allocated to petitioned location based either on the proportion of total dollar volume of cigarette inventory at the location for the period in question to total dollar volume of all inventory for said location and period, or upon generally accepted accounting principles regularly employed by the petitioner. All revenues and expenses paid or incurred shall be properly matched for the analysis period.

AUTH: Sec. 16-10-104, MCA; IMP: Secs. 16-10-103 and 16-10-301, MCA.

RULE VIII GUIDELINES FOR RETAILERS (1) Cost to the retailer shall mean the basic cost of cigarettes to the retailer as defined in the Montana Cigarette Sales Act plus the cost of doing business by the retailer as evidenced by the accounting standards and methods regularly employed on a consistent basis by the retailer in his/her determination of cost for the purpose of federal income tax reporting or for the purpose of determining income in accordance with generally accepted accounting principles and standards.

(2) Costs of doing business by the retailer shall include:

(a) all direct costs, including but limited to:

(i) inbound freight charges; and
(ii) state and local cigarette licenses.
(b) indirect overhead costs and expenses paid or incurred including but not limited to:
(i) pre-opening expenses;
(ii) management fees;
(iii) labor costs (including salaries of executives and officers);
(iv) rents;
(v) depreciation;
(vi) selling costs;
(vii) maintenance expenses;
(viii) interest expenses;
(ix) delivery costs;
(x) all types of licenses;
(xi) all types of taxes;
(xii) all types of insurance;
(xiii) advertising; and
(xiv) any and all district, central, regional and national administrative and operational costs and expenses.
(3) All indirect overhead costs including any pre-opening and central and regional administrative expenses shall be allocated to the Montana location based either on the proportion of total dollar volume of cigarette inventory at the location for the period in question to total dollar volume of all inventory for said location and period, or upon generally accepted accounting principles regularly employed by the petitioner. All revenues and expenses paid or incurred shall be properly matched for the analysis period.
AUTH: Sec. 16-10-104, MCA; IMP: Secs. 16-10-103 and 16-10-301, MCA.

4. The Department is proposing the new rules to establish the procedure for establishing a cost of doing business below the presumed statutory cost of doing business at both the wholesale and retail level which is allowed by statute. These rules will impact the cigarette wholesalers and retailers greatly. The department is aware of the impact. Therefore, in August 1993 the department conducted an informal meeting with various interest groups to obtain their input in preparing these controversial rules.

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

Cleo Anderson
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620

no later than March 25, 1994.

6. Cleo Anderson, Department of Revenue, Office of Legal Affairs, has been designated to preside over and conduct the hearing.

CLEO ANDERSON
Rule Reviewer

MICK ROBINSON
Director of Revenue

Certified to Secretary of State February 14, 1994.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT) 2.5.202; 2.5.301;) 2.5.302; 2.5.601; 2.5.603;) and 2.5.604 relating to state) purchasing.)	NOTICE OF AMENDMENT OF ARM 2.5.202; 2.5.301; 2.5.302 2.5.601; 2.5.603; and 2.5.604 relating to state purchasing.

TO: All interested persons:

1. On January 13, 1994 the Department published notice of the proposed amendment of ARM 2.5.202, 2.5.301, 2.5.302, 2.5.601, 2.5.603 and 2.5.604 relating to state purchasing at pages 1-4 of the 1994 Montana Administrative Register, issue no. 1.

2. Oral comments were received from several state agencies and are summarized as follows along with the response of the Department:

COMMENT: The legislature had enacted several changes which affect the purchasing of certain equipment, as stated in ARM 2.5.202. The changes are as follows: (1) the Secretary of State's office now must approve all filing system purchases instead of the information services division of the department of administration; (2) data processing equipment for the university system and the office of public instruction does not have to be approved by the information services division, department of administration; (3) information services division now has the statutory authority to approve all data processing equipment, software and contracts (not just equipment) and; (4) all mail equipment within a 10-mile radius of the capitol area must be approved by general services division, department of administration.

RESPONSE: The rules have been amended to reflect these statutory changes.

COMMENT: The proposed language concerning dollar amounts was not consistent or accurate.

RESPONSE: The rules have been amended to convey a consistant interpretation of dollar limits.

COMMENT: Requiring the agencies to make sole source determinations up to a certain dollar limit in 2.5.604, conflicts with the discretion granted agencies in 2.5.301.

RESPONSE: The language in 2.5.604 was changed from "shall" to "may" and amendments added to allow for sole source determinations for higher dollar amounts to be completed by the

agency, if specified in a written delegation agreement.

3. As a result of the comments received the department has amended the rules as follows:

2.5.202 DEPARTMENT OF ADMINISTRATION RESPONSIBILITIES
(1)-(4) Remain the same.
(5) (a) Remains the same.
(b) data processing~~, word processing and filing~~ equipment, SOFTWARE AND CONTRACTS -- approval by the information services division is required, EXCEPT AS PROVIDED IN 2-17-501, MCA.
(c) Remains the same.
(d) MAIL EQUIPMENT WITHIN A 10-MILE RADIUS OF THE CAPITOL AREA -- APPROVAL BY THE GENERAL SERVICES DIVISION IS REQUIRED.
(6) Delegation of authority.
(a) Except for controlled items, authority is hereby delegated to all agencies for the procurement of supplies and services ~~under $2,000~~ OF $5,000 OR LESS.
(b) The department's procurement and printing division may delegate to agencies, authority to purchase supplies and services ~~equal to or~~ greater than ~~$2,000~~ $5,000. The division may also revoke this authority. Factors to be considered in making the decision to delegate include:
(i)-(iv) Remain the same.
(c) Delegation ~~equal to or~~ greater than ~~$2,000~~ $5,000 will be given through a written delegation agreement with the purchasing bureau. The written delegation shall specify:
(i)-(iv) Remain the same.
(d)-(e) Remain the same.
(7) The department's property and supply bureau will dispose of, or supervise the disposal of, all surplus supplies belonging to the state as provided in ARM 2.5.701 and 2.5.702.
(AUTH. 18-4-221 MCA; Imp. 18-4-221 and 18-4-222 MCA.)

2.5.301 DELEGATION OF PURCHASING AUTHORITY (1) Agencies ~~shall~~ may exercise authority to purchase non-controlled items ~~under~~ ~~$2,000~~ OF $5,000 OR LESS. Agencies ~~shall~~ may exercise delegated purchasing authority ~~equal to or~~ greater than ~~$2,000~~ $5,000 and for exigency purchases in accordance with written delegation agreements described in ARM 2.5.202, with the Montana Procurement Act and with these rules.
(2)-(4) Adopted as proposed.
(AUTH. 18-4-221 MCA; Imp. 18-4-221 and 18-4-222 MCA.)

2.5.302 REQUISITIONS FROM THE AGENCIES TO THE DIVISION
(1)-(5) Adopted as proposed.
(AUTH. 18-4-221 MCA; Imp. 18-4-221 MCA.)

2.5.601 COMPETITIVE SEALED BIDS (1) "Sealed bid" is the preferred method of competitive procurement for state supply

contracts and service contracts ~~over $2,000 equal to or greater~~ than $5,000. Sealed bids shall be solicited with an Invitation for Bid.

(2)-(13) Remain the same.

(AUTH. 18-4-221 MCA; Imp. 18-4-303 MCA)

2.5.603 SMALL PURCHASES OF SUPPLIES AND SERVICES

(1) The division or state agency may procure supplies or services costing ~~less than $2,000~~ $5,000 OR LESS under this rule. However, purchases between $2,000 and ~~$4,999~~ 5,000 must be documented to have been selected through a competitive process which involved a minimum of three telephone or written quotations from the division's suppliers' list.

(2) For purchases ~~under~~ LESS THAN $2,000, ~~the~~ The procurement officer may choose a purchase technique that best meets the agency's needs. The purchasing bureau suggests that agencies follow prudent ~~good~~ purchasing practices and receive competitive telephone or written quotations where practicable.

~~(2)~~(3) This rule does not apply to controlled items for the state purchased through term contracts, requisition time schedules, the central stores program or the publications and graphics bureau; however, if a state agency's ~~annual aggregate total procurement of an item on the division's~~ anticipated usage per requisition time schedule call is ~~anticipated to be less than~~ $500 OR LESS, the state agency may purchase the item according to the provisions of this rule.

~~(3)~~ (4) Procurements shall not be artificially divided or sequenced to avoid using the other source selection methods set forth in Title 18, chapter 4, MCA.

(AUTH. 18-4-221 MCA; Imp. 18-4-305 MCA.)

2.5.604 SOLE SOURCE PROCUREMENT

(1)-(2) Remain the same.

(3) For purchases OF $5,000 OR LESS, ~~less than $4,999~~ the determination as to whether a procurement shall be made as a sole source ~~shall~~ MAY be made by the agency. For purchases ~~of~~ GREATER THAN $5,000, ~~or greater~~ the determination shall be made by the division. UNLESS SPECIFICALLY AUTHORIZED IN A WRITTEN DELEGATION AGREEMENT. The determination and the basis therefore must be in writing. In cases of reasonable doubt, competition should be solicited. A request by a state agency to the division that a procurement be restricted to one vendor must be accompanied by a written justification.

(4)-(5) Remain the same.

(6) Adopted as proposed.

(AUTH. 18-4-221 MCA; Imp. 18-4-306 MCA)

4. Therefore, the department adopts the rules with the amendments listed above.

DAL SMILIE
Rule Reviewer

LOIS MENZIES
Director, Department of Administration

BEFORE THE BOARD OF ALTERNATIVE HEALTH CARE
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment or rules pertaining to certification for specialty practice, conditions which require physician consultation, and the adoption of new rules pertaining to continuing education	NOTICE OF AMENDMENT AND ADOPTION OF RULES PERTAINING TO MIDWIVES AND NATUROPATHIC PHYSICIANS

TO: All Interested Persons:

1. On November 24, 1993, the Board of Alternative Health Care published a notice of proposed amendment and adoption of rules pertaining to midwives and naturopathic physicians at page 2713, 1993 Montana Administrative Register, issue number 22.

2. The Board has amended ARM 8.4.404 and 8.4.506 and adopted new rule I (8.4.508) exactly as proposed, and adopted new rule II (8.4.405) as proposed but with the following changes:

"8.4.405 NATUROPATHIC PHYSICIAN CONTINUING EDUCATION REQUIREMENTS (1) through (2)(b) will remain the same as proposed.

(i) One continuing education credit shall be granted for each hour of participation in the continuing education activity excluding breaks and meals. Continuing education activities and courses taken after January 1, 1992, will be accepted by the board of alternative health care for the initial reporting period April 30, 1994. Thereafter, a licensed naturopath must earn at least 15 continuing education credits within the 12 months prior to renewal on April 30 of each year. (Five must be in NATUROPATHIC pharmacy, five additional in obstetrics if licensee has childbirth specialty certificate.)

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

Auth: Sec. 37-26-201, MCA; IMP, Sec. 37-26-201, MCA

3. The Board has thoroughly considered all comments and testimony received. The Board received written comments through December 22, 1993. Those comments and the Board's responses thereto are as follows:

COMMENT NO. 1: One comment was received stating it is unrealistic for the Board to require a certificate of completion which meets all the rule requirements in proposed rule II(2)(a)(iii) from all the various seminars and courses.

RESPONSE: The current language of new rule II(2)(a)(iii) already states that a program OR certificate of completion will be required with information on name and qualifications of presenters, title of presentation, etc. Either a program, or a certificate of completion, or both would therefore be acceptable, as long as all required information, needed for verification, was contained somewhere on the documents.

COMMENT NO. 2: Two comments were received stating proposed rule II(2)(b)(i) is not clear in specifying what types of pharmacy courses will be acceptable, and whether conventional drug study, or homeopathic or botanical materia medica would also be acceptable, as they should be.

RESPONSE: The Board concurs with the comments and will amend the rule as shown above to state "naturopathic pharmacy" credits will be required. This change will clarify that botanicals, homeopathic, etc., as well as conventional pharmacy courses will be acceptable.

BOARD OF ALTERNATIVE HEALTH CARE
MICHAEL BERGKAMP, 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, February 14, 1994.

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

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

TO: All Interested Persons:

1. On December 23, 1993, the Board of Landscape Architects published a notice of proposed amendment of the above-stated rule at page 2986, 1993 Montana Administrative Register, issue number 24.

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

3. No comments or testimony were received.

BOARD OF LANDSCAPE ARCHITECTS
TED WIRTH, CHAIRMAN

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, February 14, 1994.

BEFORE THE BOARD OF PSYCHOLOGISTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of rules pertaining to supervised experience and licensees from other states	))))	NOTICE OF AMENDMENT OF 8.52.606 REQUIRED SUPERVISED EXPERIENCE AND 8.52.609 LICENSEES FROM OTHER STATES

TO: All Interested Persons:

1. On November 10, 1993, the Board of Psychologists published a notice of proposed amendment of the above-stated rules at page 2590, 1993 Montana Administrative Register, issue number 21.

2. The Board has amended ARM 8.52.609 exactly as proposed and has amended ARM 8.52.606 as proposed, but with the following changes:

"8.52.606 REQUIRED SUPERVISED EXPERIENCE (1) through (4) will remain the same as proposed.

(5) Independent private practice shall not be considered as acceptable professional experience for purposes of the experience requirement. The internship agency shall have two or more psychologists on staff ~~as supervisors~~, both of whom hold current psychologist licenses in this state, or the state in which the training program exists, and the supervisee must be a salaried employee receiving both administrative and clinical supervision from a supervisor who receives compensation for providing these services.

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

Auth: Sec. 37-1-131, 37-17-202, MCA; IMP, Sec. 37-17-302, MCA

3. The Board has thoroughly considered all comments and testimony received. Written comments were received through December 8, 1993. Those comments and the Board's responses thereto are as follows:

COMMENT: One comment was received stating ARM 8.52.606(5) will now require two licensed psychologists to supervise the post doctoral internship, which would eliminate single supervisor settings, or private practice as an option. The rule should instead support single supervisor post-doctoral experience; support private practice post-doctoral experience in rural settings; and acknowledge licensees from other states.

RESPONSE: The Board will amend the language of ARM 8.52.606 as shown above, to clarify that only one Board approved supervisor is required, as stated earlier in subsection (2) of that rule, but the setting itself should have two licensed psychologists on staff. This rule amendment is for private practice settings only, and the amendment will clarify that both licensed psychologists do not have to function as supervisors, but the setting must have two licensed psychologists. The change is necessary to avoid

conflict settings with married couples supervising each other in private practice, etc. The rule will balance the quality of supervised experience desired with availability of supervisory settings. Rural area candidates have been and will be able to achieve the desired setting through travel.

BOARD OF PSYCHOLOGISTS
EVAN LEWIS, Ph.D., CHAIRMAN

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, February 14, 1994.

BEFORE THE MONTANA LOTTERY COMMISSION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT OF
of a rule pertaining to retailer) 8.127.407 RETAILER
commission) COMMISSION

TO: All Interested Persons:

1. On September 16, 1993, the Montana Lottery Commission published a notice of proposed amendment of the above-stated rule at page 2078, 1993 Montana Administrative Register, issue number 17.

2. The Lottery Commission has amended the rule exactly as proposed.

3. No comments or testimony were received.

MONTANA LOTTERY COMMISSION
BECKY ERICKSON, CHAIRMAN

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, February 14, 1994.

BEFORE THE DEPARTMENT OF FISH, WILDLIFE & PARKS
OF THE STATE OF MONTANA

In the matter of the amendments to 12.3.116 and 12.3.118 pertaining to application and drawing of moose, sheep, and goat licenses	NOTICE OF AMENDMENT TO RULES 12.3.116 AND 12.3.118 PERTAINING TO APPLICATION AND DRAWING OF MOOSE, SHEEP AND GOAT LICENSES

TO: All interested persons

1. On January 13, 1994, the Department of Fish, Wildlife and Parks published a notice of proposed amendment of rules 12.3.116 and 12.3.118 at page 6, 1994 Montana Administrative Register, issue number 1.

2. The department has amended the rules as proposed.

3. No comments or testimony were received.

Robert N. Lane
Rule Reviewer

Patrick J. Graham, Director
Montana Department of Fish,
Wildlife and Parks

Certified to the Secretary of State February 14, 1994.

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

In the matter of proposed new Rule I relating to water quality permit and degradation authorization fees	))))	NOTICE OF ADOPTION OF NEW RULE I

(Water Quality Bureau)

To: All Interested Persons

1. On October 28, 1993, the board published notice of the proposed adoption of the above-captioned rule at page 2489 of the 1993 Montana Administrative Register, issue number 20.

2. The board has adopted the rule as proposed with the following changes:

RULE I (16.20.1604) PERMIT APPLICATION, DEGRADATION AUTHORIZATION, AND ANNUAL PERMIT FEES (1)-(2) Same as proposed.

(3)(a)(i) The permit application fee is the sum of the fees for the applicable parts or sub-parts listed in this subsection. Payment of the permit application fee is due upon submittal of the application. The fee schedule for new or renewal applications for a Montana pollutant discharge elimination system permit under subchapter 13 of this chapter, a Montana ground water pollution control system permit under subchapter 10 of this chapter, or any other authorization under 75-5-201, 75-5-401, MCA, or rules promulgated under these authorities, is set forth below as schedule I:

Schedule I
Application Fee per Discharge Point,
Point Source, or Source at the Facility

Publicly Owned Treatment Works (POTW) or other Domestic Wastewater or Potable Water Treatment Plant	
Without Significant Industry *	$ 250
With Significant Industry *	$1000
Industrial	
Individual Storm Water/Ground Water/Pit Water	$1000 **
Noncontact Cooling Water	$ ~~500~~ 400
Wastewater:	
~~With Any Complex Organics, or~~ With Any ~~Other Toxic and Deleterious~~ Carcinogenic or Toxic or Radioactive Substance At a Level >50% Long-term (Chronic) Standard	$5000
Wastewater without ~~Complex Organics or any Other Toxic and Deleterious~~ Any Carcinogenic Substance at a Level >50% Long-term (Chronic) Standard	$2500

General Permits	
Feed Lots, Fish Farms, Suction Dredges, Construction Dewatering, 16.20.633(3)(a) Authorizations	$200
Produced Water, Cleanups, Gravel Washing, Industrial Stormwater, Construction Stormwater	$ ~~500~~ 400

* "Significant industry" means the POTW has a pretreatment program or receives discharge from a ~~pretreatment categorical industry~~ significant industrial user as defined in ARM 16.20.1402.

** Multiple stormwater water points are limited to a maximum of five points.

(ii) An application fee for multiple discharge points is not required if there are multiple discharge points from the same source that have similar effluent characteristics, unless the discharges are to different receiving waters or stream segments.

(iii) An applicant for a minor permit modification that does not require public notice and will decrease or not change the impact of the discharge to state waters is not required to pay a fee under this subsection (3)(a).

(b) The degradation authorization fee is the sum of the fees for the applicable parts or sub-parts listed in this subsection. Payment of the degradation authorization fee is due upon submittal of the applications. If an application for authorization to degrade state waters is denied, the department shall return any portion of the fee that it does not use to review the application. The fee schedule for new or renewal authorizations to degrade state waters under subchapter 7 of this chapter is set forth in Schedule II, as follows:

Schedule II
Review of Authorizations to Degrade

Domestic Sewage Treatment or Potable Water Treatment Plant	$2500
Industrial Activity Reviews	
With any carcinogenic or toxic ~~and deleterious~~ or radioactive substance at a level >50% (chronic) standard	$5000
Without any carcinogenic or toxic ~~and deleterious~~ or radioactive substance at a level >50% (chronic) standard	$2500

Subdivisions	
1-9 lots	$ 120/lot
10+ lots	$ 200/lot
(maximum fee)	$5000/subdivision

(c) For purposes of (a) and (b) above, if a resubmitted application or petition contains substantial changes potentially causing additional or different sources of pollution that require the application or petition to be reviewed again, the department may require an additional application fee to be paid before any further substantive review. The additional fee must be calculated in the same manner as the original fee, and based on those parts of the application that must be reviewed again because of the change. The department shall give written notice of the assessment within 30 days after receipt of the resubmittal and provide for appeal as specified under (e) below.

(d)(i) The annual permit fee is the sum of the fees for the applicable parts or sub-parts listed in this subsection. This subsection (i) must be used to determine the total annual fee, unless the minimum fee determined under (ii) below is a higher amount. The annual permit fee is determined by applying Schedule III to the facility under permit:

Schedule III
Average Discharge Flow Rate Fee
Per Million Gallons of Wastewater Discharged Per Day on an Average Annual Basis, per Point Source Discharge

POTW or other Domestic Sewage or Potable Water Treatment Plant	
Without Significant Industry	$2000
With Significant Industry	$2500
Industrials	
Individual Storm Water/Ground Water/Pit Water	$2000*
Noncontact Cooling Water	$ 500
Wastewater:	
~~With Any Complex Organics, or~~ With Any ~~Other~~ Carcinogenic or Toxic ~~and Deleterious~~ or Radioactive Substance At a Level >50% Long-term Chronic Standard	$2500
Wastewater without ~~Complex Organics or any Other Toxic and Deleterious~~ Any Carcinogenic or Toxic or Radioactive Substance at a Level >50% Long-term Chronic Standard	~~$2500~~ 2000
General Permits Feed Lots, Fish Farms, Suction Dredges, Construction Dewatering, Construction Stormwater*	$ 250
Produced Water, Cleanups, Gravel Washing, Industrial Stormwater	$2000

* Multiple stormwater points are limited to the 5 points yielding the highest fees.

(ii) The minimum annual permit fee to be charged per discharge point or point source at a facility regardless of the wastewater flow is set forth in Schedule IV, as follows:

Schedule IV
Minimum Annual Fee per Discharge
Point or Point Source

POTW or other Domestic Sewage	
or Potable Water Treatment Plant	
Without Significant Industry	$ 250
With Significant Industry	$1000
Industrials	
Individual Storm Water/Ground Water/Pit Water	$1000
Noncontact Cooling Water	$ 250
Wastewater:	
~~With Any Complex Organics, or~~	
With Any ~~Other~~ Carcinogenic or Toxic ~~and Deleterious~~ or Radioactive Substance At a Level >50% Long-term Chronic Standard	$2500
Wastewater without ~~Complex Organics or any Other Toxic and Deleterious~~ Any Carcinogenic or Toxic or Radioactive Substance at a Level >50% Long-term Chronic Standard or With "No Discharge" Permit Requirements	~~$2500~~ 1000
General Permits	
Feed Lots, Fish Farms, Suction Dredges, Construction Dewatering, Construction Stormwater	$ 250
Produced Water, Cleanups, Gravel Washing, Industrial Stormwater	$ 500

(iii) A facility that consistently discharges effluent at less than or equal to one-half of its ~~permit limit concentration~~ effluent limitations and is in compliance with other permit requirements, using the previous year's discharge data, is entitled to a 25% reduction in its annual permit fee. Proportionate reductions in annual fee of up to 25% may be given to facilities that consistently discharge effluent at levels between 50% and 100% of their permit ~~limit concentrations~~ effluent limitations. The annual average of the percentage of use of each parameter limit will be used to determine an overall percentage. A new permittee is not eligible for fee reduction in its first year of operation. A permittee with a violation of any ~~permit~~ effluent limit during the previous year is not eligible for fee reduction.

(iv) Same as proposed.

(4)-(6) Same as proposed.

3. The following comments were received and department response follows:

RULE I, General Comments

1. **Comment:** Montana Rural Water Systems recommended that the November 25, 1993, comment deadline be extended to allow for federal reauthorization of the Clean Water Act and state legislative review of the federal reauthorization.

Response: It is not feasible to wait for reauthorization of the Clean Water Act before implementing the fee rules. The fee schedule is needed as soon as possible to ensure funding of the Department of Health and Environmental Sciences' (DHES') water quality permit programs. At this time, the Water Quality Bureau is operating on a loan from the state's Safe Drinking Water Program, which must be repaid. To wait would be disastrous to the program as funds would not be available to operate it. Further, EPA would not have the personnel to assume the program during the interim.

2. **Comment:** Bill Hand stated that financing regulatory programs with funds derived from the regulated rather than from the general fund is unfair.

Response: The concept of user fees was adopted by the Legislature. The Board of Health and Environmental Sciences (BHES) is implementing this legislative decision with this rulemaking.

3. **Comment:** The Town of Saco stated that the fees on small municipalities would raise the cost of services to the point where customers could not afford the sewer rates.

Response: The state water quality permit programs are mandated by the state Water Quality Act. Effort and resources must be expended by either the state or the EPA if the state does not administer a water quality permit program in order to implement these water quality protection programs. The costs of these fees for a typical small municipality will not exceed one or two dollars per person per year.

4. **Comment:** Ole Redland and the Treasure County Board of County Commissioners stated that they already pay taxes, including on the feedlots, and don't see the need for these additional fees.

Response: Refer to the Response to Comment No. 3. Also, the water quality permit programs do not benefit from a general fund appropriation. Some feedlots, by eliminating potential for waste water discharge, may be able to avoid the MPDES permit requirement.

5. **Comment:** City of Great Falls personnel stated their past experience with "user fee" supported programs has been negative, resulting mostly in increases in bureaucracy and regulation. What force will regulate bureaucratic growth?

Response: Refer to Response to Comment #19. These programs are mandated by law enacted by the Legislature. The programs need adequate resources to perform the necessary work. The program budgets will be subject to continuing legislative review and approval.

6. **Comment:** City of Great Falls personnel stated DHES services are not connected to discharge volume and, therefore, the fee schedule is unfair. The flow rate fee should be lowered and the minimum fee raised to fairly reflect the DHES efforts.

Response: Section 75-5-516, MCA, of the Water Quality Act calls for application fees to cover the costs of department review of permit applications; and annual fees based on volume and concentration of waste discharged into state waters. Annual fees must be sufficient to pay the costs of various water quality programs including enforcement of permit conditions, compliance inspections, monitoring, and preparing rules and guidance documents. Larger dischargers generally require expenditure of more agency resources and, directly and indirectly, more department effort. Far more attention and time are spent in administering the larger or "major" permittees than the "minor" ones.

The higher fees for higher volume and more toxic wastes is a fair approach. In fact, on a per user basis, the present minimum fee schedule results in a higher per user cost for the smaller municipalities. Therefore, the minimum fee and flow rate fees should not be altered.

7. **Comment:** Marvin Dye, Director of the Montana Department of Transportation, stated the fees for a typical highway construction project would be $2650. At 70 projects per year, this would result in annual revenues of $185,500. Mr. Dye felt this amount would exceed the costs for DHES administration of highway permits. He urged exemptions for public agencies or return of the program to the EPA.

Response: For most highway construction projects, if a construction storm water and a construction dewatering permit were required, the fee would be slightly less than $1,100 under the proposed schedules. The DHES's costs in administering permits for highway projects are difficult to assess, in part because the revenues finance such activities as the enforcement program, administration, ambient and effluent monitoring, rule and guidance preparation as well as permit writers and compliance inspectors.

The DHES works actively with the Department of Transportation and their contractors on highway projects. The DHES reviews erosion control plans, provides education on erosion control measures, and conducts project inspections, all of which are intensive and time-consuming. A single mismanaged project could cause far more dollars worth of damage to a receiving stream or wetland than the fees cited in this comment. There are numerous examples of stream damage caused by these projects in the past. The EPA does not have the resources or personnel available to properly implement the storm water program in Montana.

8. **Comment:** Bill Hand (1) requested the BHES to consider delaying implementation of these rules as long as possible so that a social and economics study could be made; (2) questioned

the need for the program, given the red tape, hassles and surveillance; and (3) suggested the state would save money if it turns controls back to EPA.

Response: Delaying implementation of fees would severely jeopardize the DHES' water quality program (See Response #1). If the state returned the programs to EPA, the State Water Quality Act would have to be revised, the regulated public would have much less access to the regulators, and coordination and timely processing of permit applications would probably suffer. In addition the Federal Clean Water Act reauthorization bill and the EPA are presently contemplating fees for NPDES permits.

The state, due to shortage of resources, although not as short on resources as EPA, has not done compliance monitoring on minor permits. Therefore, the comment on continuing high levels of surveillance is in error. The state programs have been criticized by the public for their lack of effectiveness in enforcement and compliance.

9. **Comment:** Rory Schmidt, Montana Rural Water Systems, suggested that domestic waste water systems, including lagoon systems, that do not discharge should not be required to pay this or any wastewater fee.

Response: A permit or fee is not required for facilities that do not have potential to discharge to state waters. A discharging facility is a facility that allows its waste water effluent to come in contact with state water. This includes lagoons that do not have a visual surface water discharge, but leak effluent to ground water or surface water by traveling through a permeable geological conduit.

10. **Comment:** Rory Schmidt, Montana Rural Water Systems, expressed concern that potable water treatment plants would be charged another fee for their discharge. The fee for all potable water treatment plants should be removed because these plants are already taxed by the water user fee placed on them by the legislature and Water Quality Bureau (WQB).

Response: Water treatment plants are not being charged another fee for their discharge. The fee referred to is assessed by the DHES' drinking water section to cover its costs in administering regulations regarding public water systems. This fee is for an MPDES permit to discharge treated waste water to state water. By law, all discharges to state waters are required to have a MPDES permit and all permittees must pay a fee to cover program costs.

11. **Comment:** Montana Rural Water Systems asked about lagoons that are set up for spray/flood irrigation, or lagoons that discharge seasonally (once or twice a year). If these systems must pay a permit fee, the fee should be considerably less than a lagoon system that is discharging constantly.

Response: Lagoons that use spray/flood irrigation do not require a permit if they do not discharge to state ground water. Ground water permit administration is just as compli-

cated and resource consuming as administration of surface water permits. Application fees should not be any different. Discharge fees are designed to increase as discharge increases.

12. **Comment:** David K. Young, ASARCO-Troy, suggested that the rules should be simplified with elimination of some of the class breakdowns. He suggested an application fee for a POTW Permit, Industrial Permit and General Permit, and a flat, degradation authorization fee to be paid when the authorization is approved. The yearly fees should match the application fee classes.

Mr. Young also suggested the rules are arbitrary and incomplete, and do not integrate with other existing and proposed regulatory programs in Montana. He requested that the fee rules be delayed until they are subjected to meaningful public process and revision.

Response: While eliminating the fee class breakdowns would simplify administration, unfairness would result by lumping widely differing discharges, with vastly different administration requirements and water quality impacts, together to pay the same fee. The application fees and annual fees presently cover the same classes. This structure is fair and is integrated with existing and proposed rules.

13. **Comment:** David K. Young, ASARCO, stated that the time period for comment on these rules is exceptionally short (less than 2 weeks) and that preparation of meaningful, constructive comments cannot be done in this time frame.

Response: These rules were published in the Montana Administrative Register as MAR Notice No. 16-2-437, on October 25, 1993. The public comment period closed at 5:00 PM on November 26, 1993. This meets Montana's notice and public comment requirements for rulemaking.

14. **Comment:** Bobby B. Broadway, manager of Sun Prairie Village Water & Sewer District, stated the DHES' Permitting Section must be more responsive to renewal of MPDES permits. The District has been operating on permit extension since March of 1993. This delay cannot all be attributed to lack of personnel.

Response: This concern illustrates why these fees are necessary. Resources and lack of personnel have been a problem for years. The DHES has not been able to perform necessary compliance and reconnaissance inspections, particularly at our minor facilities. The DHES' water permit program has several functions which, with the increasing complexity and public interest in permits and other aspects of the program, have slowed permit processing. In addition, the DHES has been working on difficult issues, such as nondegradation, to determine equitable and workable ways to apply its regulations. Permit processing has focused on new permit applications so that these projects are not held up by waiting for a permit. Renewals are prioritized lower because the conditions in the permits can be administratively extended to allow the permittee

to keep operating.

In addition to the fee legislation, the Legislature authorized the hiring of additional employees for the water quality permit programs. These employees will help the permit program be more responsive to the permittees and the public.

15. **Comment:** Lorin Lowry, City of Cut Bank, indicated confusion with the storm water footnote in Schedule III.

Response: For clarification, fees will be charged for multiple discharge points only if they actually exist at a facility. A facility will not be charged for more than 5 storm water points, even if there actually are more. Also, the City of Cut Bank is a municipality that has discharge permits for a POTW and a potable water treatment plant, and probably would not need a storm water discharge permit.

16. **Comment:** Gary Langley, Montana Mining Association, stated that the new proposed fee appears to be arbitrary and not the amount that would actually be spent monitoring water quality. The affected parties should be able to review the actual costs of the monitoring program and negotiate fees accordingly.

Response: Section 75-5-516, MCA, prescribes criteria from which fees are to be assessed on permittees sufficient to cover costs of various DHES water quality permit programs. The legislation requires correlation of the fees with the volume and concentration of waste discharged. The department's estimated costs of conducting these programs is the budgeted amount authorized by the legislature. It would be very difficult to single out any one permittee and estimate actual costs to the water quality permit programs related specifically to that permittee. Therefore, the department has chosen a series of fee categories and schedules that are intended to reflect the relative costs of given categories of permittees, and are also based on discharge flow. See also Response to Comments #12 and 21.

17. **Comment:** Sandra Stash, ARCO Superfund manager, stated that certain discharges to state waters do not require MPDES permits. Accordingly, such discharges and facilities are not subject to payment of permit application and annual fees or degradation authorization fees. The proposed Rule should explicitly reflect this. Ms. Stash also proposed specific language.

Response: The DHES' water quality permit programs aren't limited to permits under subchapter 13. The programs are reflected in the entirety of chapter 20, including the Montana Ground Water Pollution Control System as subchapter 10. Therefore, Rule I(2) is explicit enough in stating which activities must pay the fees.

RULE I Fee Schedules

18. **Comment:** Various commenters (#s 1, 5, 7, 8, 13, 16, 17, 18 as identified in the hearing record) stated that the fees were an expense that small, independent businesses cannot

afford.

Response: The fees are kept as low as possible while still raising enough revenue to continue to implement the water quality permit-related programs in Montana. The permit program and fees to fund the program are mandated by state law. The EPA is also planning to implement permit fees. Rather than return the program to EPA, the Legislature enacted the fee system because of advantages to both the general public and regulated public if the programs are implemented by the State. The advantages include better access to and coordination with the regulators. The general permit application fee for produced water, cleanups, gravel washing, industrial stormwater, and construction stormwater; the industrial noncontact cooling water application fee; and the fees for the industrial low impact category in Schedules III and IV were therefore reduced to estimated minimums essential to support the programs.

19. **Comment:** Various commentors (#s 2, 3, 4, 12, 14, 21, 25) stated that the WQB has not justified the proposed schedule amounts in relation to program costs, program needs, legislative spending authorization, or projected revenues. In their view, the proposed fees seem arbitrary.

Response: Under Section 75-5-516(3), MCA, the DHES' estimated costs are the legislature-approved budgets for its programs. For the 1993-94 biennium, the approved program costs total $769,892. DHES tasks include permit drafting, ambient and compliance monitoring, data reviewing, enforcement, and other overhead. If actual department costs in the future create excessive surpluses or deficits in the special revenue account, proposed fee adjustments could be brought before the BHES to correct the problem.

20. **Comment:** Joe Steiner, City of Billings, opposed imposition of the cost of state government onto local governments. He also felt the proposed fees are not equitable for a large municipality.

Response: Both the DHES and BHES have devoted considerable time in developing an equitable fee structure. Discharge fees assure that users of the assimilation capacity of state waters share in the cost of protecting State waters. Higher fees will be charged to dischargers with potentially more toxic discharges and those that discharge a higher volume of wastes. A discharger may reduce its fee by minimizing its discharge of wastes and by complying with its discharge permit.

21. **Comment:** B. G. Havdahl, Montana Motor Carriers Association, stated that the industrial storm water general permit application fees and minimum annual fees of $500 are too high and will be a burden on small businesses, particularly small trucking companies.

Response: The DHES has reviewed these fees based upon its knowledge of the costs to implement the program. Applications must be reviewed and authorizations issued. Often a pre-permit

inspection is necessary. The storm water pollution prevention plan required by the permit must be reviewed and finalized, then kept up to date. Discharge Monitoring Report forms must be developed and reviewed upon return by the permittee. Compliance inspections must be conducted periodically, and a variety of compliance and informational correspondence typically occurs. Other activities include coordination with state and federal agencies, dissemination of information to the regulated and general public, and budget preparation and planning.

Based on its review of the fees, the DHES has recommended reducing the fee for this category to $400. An annual fee of $400, discounted 25% for compliance, and an application fee of $400 once every 5 years will yield an average revenue of $380 per year per permit. This amount is at or below our estimated program costs. There may be opportunity for some small trucking companies to eliminate the possibility for storm water runoff and thereby eliminate the permit requirement.

22. **Comment:** Susan Callaghan, Montana Power Company, stated that both an application fee and an annual fee should not be charged in the same year, and cites Section 75-2-220(10), MCA, as a basis.

Response: The fee legislation is contained in the Water Quality Act at Section 75-5-516, MCA. The referenced section is in the Air Quality Act, and does not apply to these fees. It is appropriate to charge both fees because the annual fee is directed primarily toward overall program maintenance, whereas the application fee is oriented more toward actual permit application review and processing costs.

RULE I Section (2)(a)

23. **Comment:** David W. Simpson, Westmoreland Resources, and David K. Young asked how a modification to delete a discharge point, reduce a discharge volume, or decrease a contaminant load would be handled in assessing an application fee.

Response: These "minor modifications", which decrease the impact of a discharge permit, are not subject to public notice by the department and would not be assessed an application fee. Language was added noting that fact [(3)(a)(iii)].

RULE I Schedule I

24. **Comment:** Joe Steiner, City of Billings, questioned why a higher fee is charged for a POTW receiving waste from a significant industry even though Montana has not received delegation of the pretreatment program from EPA.

Response: Because of insufficient funding, the DHES has decided not to accept primacy over the pretreatment program at present. However, the BHES has promulgated rules for pretreatment and consults with cities on pretreatment requirements. The DHES intends to assume the pretreatment program when funding is available. In addition, wastewater from cities with significant industry likely has a higher potential for inclusion of exotic pollutants than from cities having little or no

industry.

25. **Comment:** Joe Steiner, City of Billings, stated the definition of significant industry is too broad. One categorical industry discharging to a POTW should not require a higher level of review.

Response: "Significant industry" was amended to mean "the POTW has a pretreatment program or receives discharge from a "significant industrial user" as defined in ARM 16.20.1402(11)." These types of industrial discharges are significant because any one user can significantly impact the operation of the wastewater treatment plant, the disposal of sludge, and the receiving stream. The complexity of this permit review increases because of the type of pollutant that may pass through the treatment plant and discharge into the receiving stream.

26. **Comment:** Joe Steiner, City of Billings, questioned the difference between the industrial storm water category fees for individual and general permits.

Response: The $1000.00 industrial storm water fee is for individual storm water permits. The $500.00 fee is for an industrial storm water discharge that can be authorized under the General Storm Water Discharge Permit. Situations where an individual permit is needed require more time and research because of the presence of additional pollutants that must be addressed in the permit conditions. All individual permits require a 30-day public notice and, upon request, public hearing.

27. **Comment:** Rory T. Schmidt, Montana Rural Water Systems, and Bobby Broadway asked if the POTW $250 fee is an annual 5-year, or one-time new discharge fee, and are there fees for non-discharging lagoons?

Response: The fee for domestic waste water systems with no significant industry is $250 x million gallons per day (MGD) flow (or $250 minimum) annually plus a permit renewal fee of $250 every five years. The fees are only for systems that discharge to surface or ground water.

28. **Comment:** Rory Schmidt, Montana Rural Water Systems, asked how "produced water" is defined.

Response: Produced water refers to water (usually water high in salts) recovered from onsite oil drilling operations. This water is usually separated from the crude oil in the field. Discharges of produced water into navigable waters must have a beneficial use for agriculture or wildlife propagation.

29. **Comment:** Rory Schmidt, Montana Rural Water Systems asked if the fees apply to potable water treatment plants that discharge their backwash water to a lagoon facility or a receiving stream.

Response: This fee would include water treatment plants that discharge backwash water to lagoons that leak to ground

water, assuming these systems require a MGWPCS permit.

30. **Comment:** Rory Schmidt, Montana Rural Water Systems, asked if a system that has a pretreatment program, but does not receive a discharge from a categorical industry, will still pay the higher fee.

Response: Yes. At this time six cities in Montana are required to have a pretreatment program. These cities will be required to pay the additional fee. It is very doubtful that a pretreatment program will be required for a city or town unless it has categorical or significant industries that may cause interference to the waste water treatment plant. If so, the additional fee would be required.

31. **Comment:** David K. Young, ASARCO, observed that the terms discharge point, point source, or source at the facility are undefined and unclear. Do the fee rules apply to discharges to ground water?

Response: The fees apply to discharges or sources to ground water. Each discharge point or source is described in the MPDES or ground water (MGWPCS) permit. Point source is defined in the MPDES regulations, at ARM 16.20.1304(41), and the Water Quality Act at Section 75-5-103(18), MCA. Source is defined in the MGWPCS regulations, at ARM 16.20.1001(14).

32. **Comment:** David K. Young, ASARCO, stated that the terms individual storm water permit, ground water, and pit water are unclear. Many operations have numerous discharge points that are permitted, but seldom, if ever, have discharges. There should be some upper limit on the fees regardless of the number of discharge points. The review effort and cost certainly are not proportional to the number of discharge points.

Response: 'Individual' refers to a facility-specific permit versus a general permit. The terms storm water, ground water, and pit water refer to the origin of the waste water discharge. The intent is to limit application fees in a manner similar to the Schedule III footnote for annual fees; thus, an amendment was made that added a footnote to that effect to clarify Schedule I. The review effort is often proportional to the number of discharge points when different processes or waste streams are involved, or if different drainages are involved.

33. **Comment:** David K. Young, ASARCO, stated that the terms toxic and deleterious are undefined and do not tie in with proposed nondegradation rule language. Also, the level of ">50% long-term chronic standard" is not defined or explained. Does this mean the stream aquatic life criteria? What are the criteria and does this consider mixing zones? Are the concentrations based on the wastewater or the treated wastewater? Are these average or daily maximum concentrations? Would any credit be given for these substances in the inlet water? Is there an accurate definition for "complex organics"? Are there naturally occurring "complex organics"?

Response: The board agreed to amend the contested terms to substitute instead the terminology utilized in the Montana Numeric Water Quality Standards (Circular WQB-7), also proposed for adoption in separate rulemaking. The chronic aquatic standard is listed in WQB-7. This level is to be measured in the raw wastewater, on an average basis. No mixing zone is intended. If the intake water is the same as the receiving water, the facility would not be penalized in increased fees for "natural" levels of these substances. Some of these substances may occur in nature.

34. **Comment:** David K. Young, ASARCO asked if the wastewater category under "Noncontact Cooling Water" is a mistake in format? Why are the fees so high for this type of discharge ($5000)? The fact that some potentially toxic substance is in the water should not automatically trigger a huge fee.

Response: This is a mistake in format; the indent should have come below "wastewater:" The $5000 fee does consider the fact that the application is for the discharge of a more complex and toxic waste, and therefore, there is additional difficulty and time required for the department to process permits for these discharges.

35. **Comment:** David K. Young, ASARCO, stated that the terms 'produced water', 'cleanups', and 'construction stormwater' are not defined. Are these under General Permits?

Response: Yes. The terms are short names for some of the general permits currently in effect.

36. **Comment:** David K. Young, ASARCO, asked why POTWs, which are likely to have toxic and deleterious substances at levels >50% of the long-term chronic standards, have fees set at $1,000. The fee for the same substances for industrial discharges is $5000. This appears arbitrary and biased against industry.

Response: Municipal wastewater is generally not expected to contain toxic wastes at greater than 50% of the chronic standard. Industries in the $5000 category are likely to have wastewater that is much more toxic than municipal wastewater.

37. **Comment:** David K. Young, ASARCO, asked what happens if one applies for a general stormwater permit and the agency decides an individual permit is needed?

Response: The individual permit fees would apply to the person.

38. **Comment:** David K. Young, ASARCO, stated the permit application fee should be due when the application is declared complete. Before that time, the agency has not officially accepted the application.

Response: This is incorrect. The application is officially filed at its first submission. However, the DHES often invests considerable time in reviewing an application to determine if it is complete.

39. **Comment:** Sandra Stash, ARCO, stated that the application fee, as proposed, is assessed per discharge point, point source, or source at the facility. However, if a discharge to State waters from a single source may occur through alternate discharge points, a multiple application fee is not warranted. On the other hand, if multiple sources are present at a single facility and have different effluent characteristics, a fee calculated in part upon the number of such sources is appropriate. The commentor offers an amendment to accommodate this distinction.

Response: The suggested amendment was made, with the exception that a single source with alternate discharges to different receiving waters or stream segments would be treated as multiple discharge points.

40. **Comment:** The Department of Health and Environmental Sciences noted that potable water treatment plants were not covered by Schedule I, but should be.

Response: The board agreed and added the appropriate language.

RULE I Schedule II

41. **Comment:** David K. Young, ASARCO, asked if a "domestic sewage treatment plant" is a POTW? This commentor also asserted that the potential for "toxic and deleterious substances" is just as possible from a POTW as from an "industrial activity". Why are the fees 100% higher for industrial activity?

Response: A domestic sewage treatment plant may be public or privately owned, but treats domestic rather than industrial waste. As stated in Response to Comment 36, the potential for toxics is generally higher from $5000 category industrial wastes.
Degradation authorization reviews for this category are likely to be twice as difficult and time consuming as for domestic sewage plants.

42. **Comment:** David K. Young, ASARCO, stated that to implement these regulations the WQB needs be more explicit and consistent in writing and interpreting regulations. Section (3)(b) talks about a degradation authorization fee, yet the definition of what is degradation is not clear. What if someone submits an application to degrade and is told he will have to treat to non-degradation limits to get a permit? Will he be refunded the fee which he paid because the regulations are not clear enough to understand what is required?

Response: An applicant will receive a determination of degradation significance when he submits a permit application for review. If the determination is that the activity will result in significant degradation, the applicant must either complete an application to degrade state waters and pay the review fee, or revise the project proposal in order to meet nonsignificance (in which case, a degradation authorization fee would not be assessed). A sentence was added to subsection

(3)(b) to address the situation where an applicant is refused authorization to degrade after petitioning for the authorization.

43. Comment: Joe Steiner, City of Billings, stated the rule should specifically state there would be no fee charged for determinations of significance.

Response: Only reviews of authorizations to degrade are included in Schedule II.

44. Comment: Joe Steiner, City of Billings, asked why there is no fee listed for storm water.

Response: In most situations storm water will not degrade state waters (Permittees under general permits are required to meet Best Management Practices). Individual storm water permits requiring review for authorization to degrade are covered under industrial activity reviews.

45. Comment: Montana Rural Water Systems, asked if the "Domestic Sewage Treatment Plant" fee category includes discharging lagoons? How about lagoons set up for spray or flood irrigation?

Response: The term "Domestic Sewage Treatment Plant" is intended to include both publicly and privately owned treatment works that treat domestic waste. Domestic means human sewage discharged to collection systems.

The category includes discharging lagoons and lagoons that spray or flood irrigate if they degrade state waters. The $250 fee in Schedule II is for review of authorizations to degrade, which will not be necessary unless the system is expanding and degradation is found to be significant. These reviews will be fairly infrequent.

46. Comment: Montana Rural Water Systems asked if this fee applies to all systems that discharge or just to systems which discharge more than 1 MGD?

Response: This fee applies to all systems that discharge, if a review of an application for authorization to degrade is required.

RULE I Schedule III

47. Comment: Joe Steiner, City of Billings, stated the fees are based on flow without any consideration of concentration and complexity of discharged wastes.

Response: The fees consider concentration and complexity of a discharged waste. A lower fee is provided for noncontact cooling water, municipalities without significant industry, and industries with less potential for toxins. A fee reduction of up to 25% is also provided when average discharge concentrations are less than 50% of effluent limits.

48. Comment: Joe Steiner, City of Billings, stated that monitoring of flow for storm water discharges is unworkable. Storm water discharges should be charged a fixed fee if at all.

Response: Section 75-5-516(2)(b), MCA, requires that fees must be based on volume and concentration of waste discharged into state waters. However, the intermittent nature of storm water flows will generally result in storm water dischargers paying fees based upon the minimums listed in Schedule IV.

Most, if not all, storm water dischargers that are under a general permit will pay the minimum fee. For industrial storm water discharges under an individual permit, flow information, if available, will be evaluated in calculating the 5 points yielding the highest fees.

RULE I(3)(c)

49. Comment: Joe Steiner, City of Billings, and David K. Young, ASARCO, stated a definition of "substantial change" is necessary.

Response: An amendment was made changing the phrasing to "substantial changes potentially causing additional or different sources of pollution".

RULE I Schedule III

50. Comment: Montana Rural Water Systems asked if this fee applies to all systems that discharge or just to systems which discharge more than 1 MGD?

Response: This fee applies to all systems that discharge, unless the Schedule IV amount is larger.

51. Comment: Montana Rural Water Systems also asked about small systems that discharge considerably less than a million gallons per day. Do these systems have to pay $2000 per point source if they discharge?

Response: This fee applies to all systems that discharge. However, if the average discharge flow times the rate is less than the minimum in schedule IV, only the minimum annual fee is assessed.

52. Comment: David K. Young, ASARCO, asked about average flow rates, noting that many possible discharge points will have no flow except in very wet years. Is the average year or wet year used? Basing this determination on previous years could create significant problems. Also, if the flow is less than 1,000 gallons per day (many discharges will be less than 1,000 gallons per day) does the full fee apply? And, if there are multiple discharge points, the commentor urged a fee limit, asserting the regulatory review is not proportional to the number of discharge points.

Response: The annual fee is based on the number of MGD discharged on an annual average times the fee per MGD from Schedule III. Fractional MGD can be used in the calculation but the fee for each discharge point (up to 5 points for storm water) shall not be less than the minimum shown in Schedule IV.

The flow rate is the actual average flow over the past year, which will be available from the monitoring records. Most storm water flows, since they are intermittent, will average less than 1 MGD, resulting in the minimum fee assess-

ment.

53. **Comment:** Bruce Imsdahl, Montana-Dakota Utilities, stated that the fees proposed in Schedule III for non-contact cooling water are unreasonable given the large volume of discharge water involved and the minimal impacts of the discharged water. The fees should reflect the true costs to administer the required permits and a reasonable assessment of the environmental impacts of the permitted discharges. Once-through cooling water should be assessed only a minimum charge not to exceed $2500 per year.

Response: See Responses to Comments #56 and #16. Montana Dakota Utilities is allocated an amount of heat in its discharge that utilizes the entire amount of the temperature water quality standard for temperature in the Yellowstone River (at the 7-day, 10-year low flow) at Sidney, Montana. This is a relatively major impact, justifying the relatively high fee.

54. **Comment:** Sandra Stash, ARCO, stated that Schedule III, as proposed, unfairly penalizes large volume discharges. Workload does not increase incrementally with the volume of a discharge. ARCO proposes a scaled fee, in which all categories of discharges that exceed 1 MGD pay $250 per MGD. If necessary to raise revenues to cover the DHES' costs, the annual fee for discharges of less than 1 MGD could be raised to spread the costs across all of the discharges in the regulated community.

Response: See Response to Comment #16. Workload does not always increase incrementally with volume of discharge, although the DHES as a rule generally spends far more time per permit administering major permits than in administering minor permits. Section 75-5-516, MCA, states that annual fees shall be assessed according to volume and concentration of wastes discharged. Further, a fee schedule which discourages large volume discharges may encourage environmental protection and waste minimization. Finally, as a matter of policy, large volume dischargers should pay substantially more since they are using a greater portion of the environment's assimilation capacity.

RULE I Schedule III and IV

55. **Comment:** David W. Simpson, Westmoreland Resources, and Joe Steiner, City of Billings, asked how the footnote regarding multiple storm water points would be applied.

Response: Most industrial storm water discharge points will average less than 0.5 MGD and thereby pay the $1000 annual minimum per point (up to 5 points maximum). If discharge measurements indicate 0.5 MGD average annual flow is exceeded for a point or points, these points would be included in determining the 5 points yielding the highest fees. Each permit will be charged only for a maximum of 5 points.

RULE I Schedules III and IV

56. **Comment:** Susan Callaghan, MPC, questioned why the DHES selected the highest fee from the range provided in the

statement of intent of HB 388 in almost every case, particularly for non-contact cooling water.

Response: During the 1993 legislature the DHES illustrated the values proposed for the fees in a table format, showing 3 columns: (1) Application Fee; (2) Annual Minimum Fee per discharge point regardless of flow; and (3) Average discharge flow rate fee per MGD discharged. In the statement of intent the (2) and (3) columns were combined under the Annual Fee, showing a range of proposed fees. Thus, the cooling water value from column (2) of $200 and the proposed flow rate fee from column (3) of $500/MGD showed up as a range of $200-$500. The other categories were similar, with the ranges shown as the lowest annual minimum fee up to the flow rate value proposed in column (3). The table values are not substantially changed from the values shown to the Legislature. The changes that are proposed, in general, represent decreases.

The initial fees were developed upon review of S. 1081, the federal Clean Water Act reauthorization bill. S. 1081's proposed annual fees were $2500 per MGD discharged, a $2500 minimum for minor industrial sources, and a range between $25,000 and $125,000 for major industrial sources. Using these numbers as an initial start, the DHES reduced the fees down to levels where it could still raise $769,000 per year in necessary program revenue.

57. **Comment:** Susan Callaghan, MPC, stated that noncontact cooling water is relatively benign.

Response: Noncontact cooling water discharge is relatively benign from a chemical standpoint. However, the once-through-and-discharge nature places a tremendous load of heat (which is a pollutant) into a receiving water. Because of these large once-through discharges in the Billings area, the Yellowstone River is close to exceeding State Water Quality Standards for temperature. Use of a cooling pond would help lessen the heat load on the river and, for dischargers who presently do not use one, likely reduce the discharge fees.

RULE I Schedule IV

58. **Comment:** Montana Rural Water Systems asked if Schedule IV fees apply to all systems which discharge less than 1 MGD.

Response: This schedule is the annual minimum fee for all dischargers regardless of flow. However, if the Schedule III rate is higher, that schedule applies.

59. **Comment:** Montana Rural Water Systems stated that subsection (iii) of Schedule IV is biased toward large waste water facilities (mechanical plants) because these waste water facilities often have effluent equal to or less than one-half of its permit limits.

The commentor stated that the 25% reduction available under subsection (iii) will not help the vast majority of small systems in Montana even though they are consistently meeting their discharge permit limits. Because the biological process in a lagoon encourages growth of algae, it would be extremely

difficult to keep wastewater discharge levels equal to or less than one-half of permit levels during the spring and summer months, when lagoons experience high TSS levels due to the presence of algae. This also increases the BOD levels.

Response: Lagoons clearly have limitations. However, the rule is intended to encourage the best possible effluent quality. If a small city chooses a facultative lagoon or a treatment facility that cannot meet the conditions necessary for a fee reduction, it can update its systems and/or operations. The maximum reduction for most small systems would be from $250 to $187.50 annually. Please note that a proportional decrease in the 25% maximum reduction will be given to permittees that discharge effluent at levels between 50% and 100% of their effluent limitation.

60. **Comment:** Montana Rural Water Systems stated that systems under schedule IV should only pay a fee that directly represents their system's actual discharge. This fee would be based upon the total $2000 figure but it would be multiplied by their discharge amount only.

Response: Section 75-5-516(2), MCA, requires an annual fee that "shall not be less than $250." This law also requires a separate fee on all applications for permits or degradation authorizations that "may not be less than $250 or more than $5,000 per discharge point." These minimum costs are set by the legislation, and are reasonable. For example, the $250 fee would easily be consumed by making one compliance sampling inspection, not counting other costs such as support, DMR reviews, etc.

61. **Comment:** Kathi McCombs and Mac Mader stated that the annual minimum fee was too high for small businesses that have a "no discharge" permit or a permit that allows discharge of little or no pollutants.

Response: The administration and monitoring costs for these types of facilities can be as much or more than facilities that are allowed to discharge, especially in instances where facilities may potentially discharge toxic substances to ground water and are required to have no discharge. However, these facilities, when in full compliance, have essentially no impact on state waters, and a $2000 or $2500 annual fee for small facilities may be a burden. Therefore, the lower toxic industrial category in Schedule IV was changed from $2500 to $1000. Also the category name was amended to cover waste water without any carcinogenic, toxic or radioactive substances, or with no discharge permit requirements.

62. **Comment:** David K. Young, ASARCO, stated that under Section 3(d)(iii), permits for inactive mine discharges should be granted a fee waiver if the permittees are required to clean up historical problems. Projects undertaken to improve state water quality should be rewarded. Also, under Section (4)(b), if a permit is obtained for an inactive mine discharge where the flow cannot be stopped and the holder cannot pay the fee,

is the permit then suspended?

Response: Some of the most time-consuming permits are those where recent and historical problems are in the process of clean up. These permits need to be issued and properly administered in order to ensure that an even bigger problem is not caused. If the permit fees are not paid, the permits will be suspended or terminated under the law and rules, and discharge without a permit (in violation of Section 75-5-605, MCA) will result.

RULE I(3)(d)(ii)

63. Comment: Joe Steiner, City of Billings, stated the fee should be assessed beginning in FY 1994-1995. Municipalities are in the middle of the present fiscal year, and have not budgeted for this fee.

Response: The fee legislation was passed by the 1993 Legislature and is effective as of October 1, 1993. The fee schedule is needed for this fiscal year to ensure funding of the water quality programs. Federal dollars are not available after the first of the year. The permits program is currently operating on a loan from the state drinking water program, which must be repaid.

RULE I(3)(d)(iii)

64. Comment: Joe Steiner, City of Billings, asked for clarification of what is a permit limit violation. He stated that a relatively "insignificant" violation caused by equipment failure could result in a significant economic loss to a permittee if the 25% fee reduction is not granted.

Response: Section 3(d)(iii) is intended to provide a method to reward permittees for maintaining strict compliance with their permit. In order to remain in compliance the permittee must meet all conditions in the permit. This includes permit limits, monitoring and reporting requirements, record keeping, etc., as required by the discharge permit.

65. Comment: Robert Prather, Norris, MT, stated that the fees were burdensome for small mining operators, and that the fees would cost small mining operators just as much as large mining operations.

Response: See responses numbered 18 and 60. It is possible that small mining operations might be charged as much as large ones if no discharge occurred. However, a larger operation is generally more likely to have a larger discharge or more different sources of pollution which would mean higher fees for the larger operations.

66. Comment: Sandra Oitzinger, Helena, representing the Montana Association of Counties (MACO), urged that neither routine nor emergency road maintenance should be considered construction for the purposes of stormwater permitting and permit fees.

Response: These types of projects are not required to obtain construction stormwater permits under the current

program.

67. **Comment:** Phillip J. Lauman, General Manager of the Somers Water and Sewer District, stated he supported the fees and that the fees should apply to any system that has the potential to discharge, or that discharges to groundwater.

Response: These fees apply to all facilities that require coverage under the MPDES (surface) or MGWPCS (groundwater) permit system, and to facilities requiring authorizations to degrade.

68. **Comment:** Phillip Lauman stated he felt the subdivision fees for authorizations to degrade should be higher per lot.

Response: The subdivision authorization to degrade review fees are set at the fee caps listed in the statement of intent for HB 388.

69. **Comment:** The Department of Health and Environmental Sciences recommended that, for clarity, references in (3)(d)(iii) to "permit limit concentrations" or "permit limits" should be changed to "effluent limitation", especially since limits of some sort were always in a permit, but not necessarily concentration limits. It also suggested that the fee reduction for a facility discharging half or less of its "permit limit concentration" should be available only to a facility that also was in compliance with all other requirements of its permit.

Response: The board agreed and made the requested changes.

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

by _____
ROBERT J. ROBINSON, Director

Certified to the Secretary of State February 14, 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 rules 16.30.801-16.30.805 pertaining to reporting of exposure to infectious diseases	NOTICE OF EMERGENCY AMENDMENT OF RULES (Emergency Medical Services)

To: All Interested Persons

1. Statement of reasons for emergency amendment of rules: On October 1, 1993, amendments made by the 1993 Legislature to statutory sections 50-16-701 through 50-16-711, MCA, became effective. Those sections deal, in part, with reports of exposure of emergency service providers to specified types of infectious diseases, including to AIDS and/or HIV infection, that are made to health care facilities receiving patients treated by the emergency service providers. If such a report is filed with a receiving health care facility, the new statutory provisions, unlike the law effective prior to October 1, ensure that the provider will in every case get a report back from the facility indicating, at a minimum, whether the patient has been diagnosed as having one of the specified infectious diseases. In the event that the particular exposure involved is a type recognized as allowing HIV infection, the report also acts as a request for the patient to be tested to see if s/he is in fact HIV-infected. The old form specified in the existing rules no longer contains all of the information necessary to reflect the changes in the law that became effective October 1, 1993, and includes items, such as the exposed provider's signature, that no longer are appropriate. Attempts to use the old form instead of the new one may cause confusion concerning whether it effectively acts as a request for an HIV test to be performed, and whether, if the old form is used, a health care facility is required to make the required report back to the emergency service organization, thereby potentially jeopardizing the health of exposed emergency service providers all over the state. Due to the department's increased workload and limited staff, making the changes has been delayed, but requests from emergency providers and organizations to adopt the necessary rule and form changes have become increasingly urgent. Therefore, the department is, by emergency rule-making, adopting the amendments below in order to fully implement the changes made by the 1993 Legislature.

2. The emergency amendment of the above rules is adopted and effective on February 8, 1994.

3. The text of the proposed amendments is as follows (new material is underlined; material to be deleted is interlined):

16.30.801 TRANSMITTABLE INFECTIOUS DISEASES (1) The following infectious diseases are designated as having the potential of being transmitted to emergency services providers through an ~~unprotected~~ exposure described in ARM 16.30.802:

(a) human immunodeficiency virus infection (AIDS or HIV infection);

(b) hepatitis B;

(c) hepatitis~~, non-A non-B~~ C;

(d) hepatitis D;

~~(d)~~(e) communicable pulmonary tuberculosis;

~~(e)~~(f) meningococcal meningitis.

(2) For purposes of the reporting requirements of 50-16-702(2), MCA, communicable pulmonary tuberculosis and meningococcal meningitis are considered airborne infectious diseases.

AUTH: 50-16-705, MCA; IMP: 50-16-701, 50-16-705, MCA

16.30.802 REPORTABLE ~~UNPROTECTED~~ EXPOSURE (1) The types of exposures ~~to the infectious diseases specified in ARM 16.30.801~~ that ~~may be reported~~ a designated officer shall report to a health care facility ~~by~~ upon the request of an emergency services provider are:

(a)-(d) Remain the same.

AUTH: 50-16-705, MCA; IMP: 50-16-701, 50-16-705, MCA

16.30.803 ~~UNPROTECTED~~ EXPOSURE FORM (1) A report of ~~unprotected~~ exposure must be filed with the health care facility by the designated officer on a form developed and approved by the department, entitled "Report of ~~Unprotected~~ Exposure"~~, and containing~~.

(2) The report form will require the following, at a minimum:

(a) name, address, and phone number(s) of the emergency services provider who sustained an ~~unprotected~~ exposure;

(b) date and time of the ~~unprotected~~ exposure;

(c) a narrative description of ~~the events surrounding~~ the ~~unprotected~~ type of exposure that occurred, ~~and~~ a detailed description of how the exposure took place, and a description of any precautions taken;~~.~~

(d) the name and, if available, the date of birth of the patient;

(e) the name of the ~~hospital~~ health care facility receiving the patient and the health care facility's infectious disease control officer;

(f) the name of the emergency services organization with which the ~~individual filing the report is affiliated~~ health care provider was officially responding;

(g) the names and phone numbers of the designated officer and the alternate;

(h) the address of the health care facility to which the written notification required by 50-16-702, MCA, is to be sent; and

~~(g)~~(i) the signature of the ~~emergency services provider~~ designated officer filing the report.

~~(2)~~(3) A copy of the required form is available from the

department's Emergency Medical Services bureau, Cogswell Building, Capitol Station, Helena, Montana 59620 [phone: (406)444-3895].

AUTH: 50-16-705, MCA; IMP: 50-16-702, 50-16-705, MCA

16.10.804 RECOMMENDED MEDICAL PRECAUTIONS AND TREATMENT (1) At a minimum, a health care facility that notifies a ~~person who has filed a report of unprotected exposure that he/she in fact has been exposed to~~ the designated officer of the emergency services provider who attended a patient prior to or during transport or who transported a patient who has been diagnosed as having one of the infectious diseases listed in ARM 16.30.801 ~~should~~ must recommend ~~to that person~~ that the exposed emergency services provider take the medical precautions and treatment:

(a) specified in Control of Communicable Diseases in Man, An Official Report of the American Public Health Association, ~~14th~~ 15th Edition, 198590; and

(b) other additional medical precautions and treatment ~~provided to~~ recommended by the health care facility ~~by the department, if any~~.

(2) ~~Whenever changes in the standards cited in (1) above become nationally acceptable and recommended, the department will provide health care facilities with those changes, and these facilities should in turn recommend the updated precautions and treatment to persons filing reports of unprotected~~ exposure The designated officer must then forward these recommendations to the emergency medical services provider(s) who was/were exposed.

(3) The department hereby adopts and incorporates by reference "Control of Communicable Diseases in Man, An Official Report of the American Public Health Association", ~~14th~~ 15th Edition, 198590, which lists and specifies control measures for communicable diseases. A copy of "Control of Communicable Diseases in Man" may be obtained from the American Public Health Association, 1015 15th Street NW, Washington, D.C. 20005.

AUTH: 50-16-705, MCA; IMP: 50-16-703, 50-16-705, MCA

16.10.805 OTHER REQUIREMENTS (1) ~~If an emergency services provider~~ The designated officer has filed a report of unprotected exposure with a health care facility, and if the patient has been transferred to another health care facility, the initial health care facility must forward the report of unprotected exposure to the final receiving health care facility.

(2) ~~An emergency~~ Emergency services providers ~~should, but~~ are not required to, notify their designated officer ~~wishing to file a report of unprotected exposure with a health care facility should, but is not required to, do so~~ within 72 hours of the unprotected exposure if they wish a report of exposure to be filed.

(3) The ~~unprotected~~ report of exposure form ~~shall be~~ is valid only for the admission and health care facility stay

corresponding to the incident which generated the ~~unprotected~~ exposure.

~~(4) Upon receipt by a health care facility of an unprotected exposure report form, the health care facility employee initially receiving the form must sign it and provide a copy to the emergency services provider submitting the form.~~

~~(5)~~(4) Each health care facility must maintain a permanent record of all ~~unprotected~~ exposure report forms it receives, and must retain each form for the same period of time that it keeps medical records. The record must contain at least the following information:

(a) name of the patient;

(b) name of the emergency services ~~provider~~ organization and its designated officer;

(c) date and time the form was received;

(d) whether the patient had one of the infectious diseases specified in ARM 16.30.801;

(e) if an infectious disease designated in ARM 16.30.801 was diagnosed, the date the diagnosis was made by a physician, as well as the dates the ~~emergency services provider~~ designated officer was notified by telephone and in writing; and

(f) other hospitals, if any, to which the form was transferred.

AUTH: 50-16-705, MCA; IMP: 50-16-702, 50-16-711, MCA

4. The rationale for the above amendments is as set forth in paragraph 1.

5. A standard rulemaking procedure will be undertaken prior to the expiration of these emergency amendments.

6. Interested persons are encouraged to submit their comments during the upcoming standard rulemaking process. If interested persons wish to be personally notified of that rulemaking process, they should submit their names and addresses to the Emergency Medical Services Bureau, Department of Health and Environmental Sciences, Capitol Station, Helena, Montana 59620.

ROBERT J. ROBINSON, Director

Certified to the Secretary of State February 8, 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 adoption of a new rule dealing with administrative penalties for violations of hazardous waste laws and rules.	NOTICE OF ADOPTION OF NEW RULE I (Hazardous Waste)

To: All Interested Persons

1. On December 23, 1993, the department published notice at page 2992 of the Montana Administrative Register, Issue No. 24, to consider the adoption of the above new rule.

2. The department adopted the rule as proposed with no changes.

RULE I (16.44.130) ADMINISTRATIVE PENALTY Same as proposed.

3. No comments were received on the proposed rule.

ROBERT J. ROBINSON, Director

Certified to the Secretary of State February 14, 1994.

Reviewed by:

Eleanor Parker, DHES Attorney

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

In the matter of the adoption of rules related to certification of managed care organizations for workers' compensation	) NOTICE OF ADOPTION OF) NEW RULES I THROUGH XX

1. On December 9, 1993, the Department published notice at pages 2890 to 2906 of the Montana Administrative Register, Issue No. 23, to consider the amendment of the above-captioned rules and the adoption of new rule(s) I through XX.

2. On January 6, 1994, a public hearing was held in Helena concerning the proposed rules at which oral and written comments were received. Additional written comments were received prior to the closing date of January 14, 1994.

3. After consideration of the comments received on the proposed rules, the Department has adopted the rules as proposed with the following changes: (deleted text interlined, added text underlined)

RULE I [24.29.2301] PURPOSE (1) Same as proposed.

(2) A MCO may be formed by a single health care provider, ~~such as~~ a hospital, a consortium of medical service providers, or other groups or entities that provide the services required by these rules. In order to expand the areas served by a MCO, the use of satellite office locations providing medical services to injured workers is encouraged.

(3) and (4) Same as proposed.

AUTH: Sec. 39-71-203, 39-71-1103 and 39-71-1105, MCA
IMP: Sec. 39-71-1103 and 39-71-1105, MCA

RULE II [24.29.2303] DEFINITIONS The following definitions apply to this subchapter: (1) and (2) Same as proposed.

(3) "Community" means the area within a 30-mile radius of the injured worker's residence, if there is a MCO (which has contracted with the injured worker's insurer) within that area.

(3) through (5) Same as proposed, but are renumbered as (4) through (6).

(~~6~~7) "Member" means a an individual health care provider, ~~e.g.~~ including, but not limited to a physician, osteopath, chiropractor, dentist, physician assistant, podiatrist, optometrist, physical therapist or occupational therapist) other than a personal doctor, who regularly provides services for or on behalf of a MCO, whether as an employee of the MCO or pursuant to contract. Ancillary personnel providing service, but who do not have direct responsibility for management of an injured worker's care are not included in this definition.

(7) Same as proposed, but renumbered as (8).

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

In the matter of the adoption of a new rule dealing with administrative penalties for violations of hazardous waste laws and rules.	NOTICE OF ADOPTION OF NEW RULE I (Hazardous Waste)

To: All Interested Persons

1. On December 23, 1993, the department published notice at page 2992 of the Montana Administrative Register, Issue No. 24, to consider the adoption of the above new rule.

2. The department adopted the rule as proposed with no changes.

RULE I (16.44.130) ADMINISTRATIVE PENALTY Same as proposed.

3. No comments were received on the proposed rule.

ROBERT J. ROBINSON, Director

Certified to the Secretary of State February 14, 1994.

Reviewed by:

Eleanor Parker, DHES Attorney

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

In the matter of the adoption of rules related to certification of managed care organizations for workers' compensation	) NOTICE OF ADOPTION OF) NEW RULES I THROUGH XX)))

1. On December 9, 1993, the Department published notice at pages 2890 to 2906 of the Montana Administrative Register, Issue No. 23, to consider the amendment of the above-captioned rules and the adoption of new rule(s) I through XX.

2. On January 6, 1994, a public hearing was held in Helena concerning the proposed rules at which oral and written comments were received. Additional written comments were received prior to the closing date of January 14, 1994.

3. After consideration of the comments received on the proposed rules, the Department has adopted the rules as proposed with the following changes: (deleted text interlined, added text underlined)

RULE I [24.29.2301] PURPOSE (1) Same as proposed.

(2) A MCO may be formed by a single health care provider, ~~such as~~ a hospital, a consortium of medical service providers, or other groups or entities that provide the services required by these rules. In order to expand the areas served by a MCO, the use of satellite office locations providing medical services to injured workers is encouraged.

(3) and (4) Same as proposed.

AUTH: Sec. 39-71-203, 39-71-1103 and 39-71-1105, MCA
IMP: Sec. 39-71-1103 and 39-71-1105, MCA

RULE II [24.29.2303] DEFINITIONS The following definitions apply to this subchapter: (1) and (2) Same as proposed.

(3) "Community" means the area within a 30-mile radius of the injured worker's residence, if there is a MCO (which has contracted with the injured worker's insurer) within that area.

(3) through (5) Same as proposed, but are renumbered as (4) through (6).

(~~6~~7) "Member" means ~~a~~ an individual health care provider, ~~e.g.~~ including, but not limited to a physician, osteopath, chiropractor, dentist, physician assistant, podiatrist, optometrist, physical therapist or occupational therapist) other than a personal doctor, who regularly provides services for or on behalf of a MCO, whether as an employee of the MCO or pursuant to contract. Ancillary personnel providing service, but who do not have direct responsibility for management of an injured worker's care are not included in this definition.

(7) Same as proposed, but renumbered as (8).

(~~8~~9) "MCO" means a managed care organization that is certified ~~or is currently in the process of applying for certification~~ under these rules.

(~~9~~10) Same as proposed, but renumbered.

~~(10) "Place of employment" means the job site where the injured worker usually works. For the purpose of this definition, the "usually works" location is determined by the place the worker spends more than 50% of the on the job time. If there is no single site where the injured worker usually works, the place of employment is the local office location from which the worker is based, supervised, or dispatched.~~

(11) through (15) Same as proposed.

AUTH: Sec. 39-71-203, 39-71-1103 and 39-71-1105, MCA
IMP: Sec. 39-71-1103 and 39-71-1105, MCA

RULE III [24.29.2311] SELECTION OF MANAGED CARE ORGANIZATION AND TREATING PHYSICIAN WITHIN A MANAGED CARE ORGANIZATION (1) An injured worker has the right to choose a MCO if the insurer has contracted with more than one MCO in the worker's community, from a list of certified MCOs provided by the insurer. The injured worker has 7 days to select a MCO from the date the insurer gives the worker written notice that the worker must choose a MCO. If the injured worker does not select a MCO within that time, the insurer may select a MCO for the injured worker.

(2) The MCO will designate a treating physician for the injured worker in accordance with the plan, taking into consideration the nature of the injury and the injured worker's preference of treating physician. Within 7 days ~~of~~ after the injured worker's initial visit to a medical provider within a MCO as directed by the insurer, the worker may select a personal doctor as the worker's treating physician, provided the personal doctor agrees to comply with all the rules, terms, and conditions regarding services performed by the MCO. The injured worker will ~~not~~ be responsible for co-payments ~~in this circumstance~~ if the injured worker is treated by a personal doctor pursuant to this rule.

(3) If the injured worker indicates the desire to be treated by a personal doctor, the insurer has the responsibility of contacting the personal doctor to see if the doctor will comply with the MCO rules, terms, and conditions. The insurer has the responsibility to monitor the personal doctor's compliance with the rules, terms and conditions of the MCO. The insurer may contract with the MCO to perform some or all of these functions.

(~~3~~4) Once an injured worker has ~~selected~~ entered a MCO and a treating physician has ~~either~~ been designated or ~~chosen~~ a personal doctor has been selected pursuant to this rule as the treating physician, the injured worker may not change either the MCO or treating physician without approval from the insurer.

AUTH: Sec. 39-71-203, 39-71-1103 and 39-71-1105, MCA
IMP: Sec. 39-71-1103 and 39-71-1105, MCA

RULE IV [24.29.2321] PRELIMINARY APPLICATION (1) through (3) Same as proposed.

(4) A preliminary application must be accompanied by a non-refundable application fee of $1,500.00. No fee will be required for final applications ~~or renewal of approved applications~~.

(5) Same as proposed.

(6) Any portion of the preliminary application that the applicant believes in good faith to be a trade secret, protected by the uniform trade secrets act [Title 30, chapter 14, part 4, MCA], must be clearly identified as such by the applicant. Any portion of the preliminary application which is not specifically identified as a trade secret is subject to public inspection and disclosure. In the event that a person seeks disclosure of information that is identified as a trade secret, the department will determine whether the individual right to privacy is outweighed by the public right to know, and whether an appropriate protective order can be fashioned to permit disclosure in a way that does not injure the property rights of the applicant.

AUTH: Sec. 39-71-203, 39-71-1103 and 39-71-1105, MCA
IMP: Sec. 39-71-224, 39-71-1103 and 39-71-1105, MCA

RULE V [24.29.2323] TIME, PLACE AND MANNER OF PROVIDING SERVICES Same as proposed.

RULE VI [24.29.2326] AREAS SERVED BY THE MANAGED CARE ORGANIZATION (1) Same as proposed.

(2) A claimant may be served by any MCO that offers primary medical services by an appropriate treating physician within 30 miles of ~~either~~ the claimant's residence ~~or place of employment~~. If no MCO exists within 30 miles of ~~either~~ the claimant's residence ~~or place of employment~~, then the claimant may be directed to any MCO that is within 100 miles of the place of ~~employment or~~ residence. If no MCO exists within 100 miles of the place of ~~employment or~~ residence of the claimant, then the claimant may be directed to the nearest MCO. ~~If travel of more than 100 miles is required, the insurer may not require the injured worker to travel any further than the distance normally required for the specific medical services required.~~ If the claimant requires specialty medical services that are not available within the stated mileage restrictions, the managed care plan may refer the claimant to a provider outside of the stated mileage restrictions.

(3) The MCO must file with the department a map, of a scale not smaller than that used by the official Montana highway map, showing circles of a 30-mile radius and a 100-mile radius from each ~~community~~ town where the primary medical services are offered by the managed care plan.

AUTH: Sec. 39-71-203, 39-71-1103 and 39-71-1105, MCA
IMP: Sec. 39-71-1103 and 39-71-1105, MCA

RULE VII [24.29.2329] STRUCTURE OF ORGANIZATION Same as proposed.

RULE VIII [24.29.2331] CONTENTS OF THE MANAGED CARE PLAN The managed care plan must include the following elements. A MCO is free to add additional elements, features or services beyond those described in this rule.

(1) A description of the number and specialties of persons who are eligible to be treating physicians. The following list is a minimum of the number and specialties which must be part of the plan:

(a) a minimum of five medical doctors or osteopaths, providing at least ~~four~~ three of the following areas of practice:

(i) through (vi) Same as proposed.

(b) and (c) Same as proposed.

(2) Same as proposed.

(3) A description of the number and specialties of other health care providers (~~e.g.~~ including, but not limited to podiatrists, physician assistants, nurse practitioners, occupational therapists, and optometrists) who will be furnishing services to injured workers.

(4) Same as proposed.

(5) A description of how the MCO will designate the treating physician. The description must include an explanation of how the MCO will decide which physician will be designated as the treating physician, and how the injured worker's preference of treating physician will be taken into account. ~~The plan must identify the medical qualifications of the person or persons who will be making the designations.~~

(6) through (8) Same as proposed.

(9) An explanation of how services will be provided in a timely manner~~, including establishment of criteria for timeliness that at least meet the following standards:~~

~~(a) upon referral to the MCO, the injured worker must receive initial treatment or evaluation by a treating physician in the MCO within 5 working days, subsequent to treatment by a physician outside the MCO~~.

(10) A description of how the MCO will monitor, evaluate, and coordinate the delivery by its members of quality, cost-effective medical treatment and other health services needed in the care of injured workers. The ~~MCO~~ plan must adhere to any treatment standards ~~that have been~~ developed by the medical advisory committees and adopted ~~and prescribed~~ by rule by the department.

(11) and (12) Same as proposed.

(13) A description of the MCO's program of peer review for services provided by its members. The peer review program must include a review of medical necessity and appropriateness of services being rendered by the health care provider in order to improve the quality of patient care and the cost-effectiveness of treatment.

(14) A description of the MCO's program for utilization review for services provided by its members. The program must include the collection, review, and analysis of group data to improve overall quality of care and efficient use of resources. The plan must ~~adopt~~ adhere to any utilization standards

developed by the medical advisory committees and adopted by rule by the department.

(15) and (16) Same as proposed.

(17) A description of the procedure for resolving disputes, including a process to resolve disputes raised by injured workers, members, and insurers. At a minimum, the dispute resolution process must:

(~~i~~a) be fair and unbiased;

(~~ii~~b) provide injured workers with a reasonably convenient method of presenting disputes to the MCO; and

(~~iii~~c) provide a written response from the MCO addressing the dispute within 15 working days of when the dispute became known.

(18) Same as proposed.

AUTH: Sec. 39-71-203, 39-71-1103 and 39-71-1105, MCA
IMP: Sec. 39-71-1103 and 39-71-1105, MCA

RULE IX [24.29.2336] FINANCIAL ABILITY OF ORGANIZATION Same as proposed.

RULE X [24.29.2339] APPROVAL OF PRELIMINARY APPLICATION Same as proposed.

RULE XI [24.29.2341] FINAL APPLICATION (1) and (2) Same as proposed.

(3) Any portion of the final application (other than portions previously identified in the preliminary application) that the applicant believes in good faith to be a trade secret, protected by the uniform trade secrets act (Title 30, chapter 14, part 4, MCA), must be clearly identified as such by the applicant. Any portion of the final application which is not specifically identified as a trade secret is subject to public inspection and disclosure. In the event that a person seeks disclosure of information that is identified as a trade secret, the department will determine whether the individual right to privacy is outweighed by the public right to know, and whether an appropriate protective order can be fashioned to permit disclosure in a way that does not injure the property rights of the applicant.

AUTH: Sec. 39-71-203, 39-71-1103 and 39-71-1105, MCA
IMP: Sec. 39-71-224, 39-71-1103 and 39-71-1105, MCA

RULE XII [24.29.2346] ORIGINAL CERTIFICATION Same as proposed.

RULE XIII [24.29.2351] REPORTING REQUIREMENTS (1) The department finds that one of the purposes of MCOs is to control medical costs in workers' compensation cases. The department further finds that the contracts between an insurer and a MCO may contain trade secrets or proprietary information which the MCO would not voluntarily disclose to the public or competitors. The department also finds that the threat of public disclosure of trade secrets or proprietary information may tend to limit the number of MCOs that will become certified under these rules.

However, in order for the department to carry out its regulatory duties, which include ensuring that a MCO is not formed, owned, or operated by an insurer, the department must obtain and review the contracts between insurers and MCOs. Because of the foregoing, ~~and to the extent that the contract relates to business entities that are not publicly owned~~, the department finds that the insurer-MCO contracts required to be filed with the department pursuant to ~~by~~ this rule ~~are exempt from public disclosure by the department and are not a "public record" within the meaning of 39-71-221 through 39-71-224, MCA~~ carry with them a justifiable expectation of privacy, and thus the department will not make public any such contracts which contain trade secrets or proprietary information unless there is clear and convincing evidence to show that public disclosure would not constitute an unreasonable invasion of privacy. Insurers and MCOs are strongly encouraged to clearly identify which portions of their contracts contain trade secrets or proprietary information and which portions do not contain that material. The fact of the existence of a contract between an insurer and a MCO is a matter of public record. ~~Contracts between the state fund and MCOs are public records, pursuant to 2-6-102, MCA, but may be subject to the provisions of ARM 2.5.502. Persons interested in state fund contracts should contact the state fund.~~

(2) and (3) Same as proposed.

(4)(a) and (b) Same as proposed.

(c) changes in the administrative staff of the MCO including, but not limited to, the liaison with the department and the day-to-day administrator of the MCO; ~~and~~

(d) changes in service locations; and

(~~d~~e) the expiration, termination or cancellation of any service contract.

(5)(a) Same as proposed.

(b) a summary of peer review ~~and utilization review~~ activities describing the number of cases reviewed and the number of cases ~~found~~ where ~~utilization or treatment was not appropriate~~ alternative treatment strategies were recommended;

(c) a summary of utilization review activities describing the number of cases reviewed and the number of cases where different utilization strategies were recommended; and

(~~c~~d) Same as proposed, except renumbered as (d).

(6) and (7) Same as proposed.

AUTH: Sec. 39-71-203, 39-71-1103 and 39-71-1105, MCA
IMP: Sec. 39-71-224, 39-71-1103 and 39-71-1105, MCA

RULE XIV [24.29.2356] DEPARTMENT MAY INSPECT OR AUDIT

(1) Same as proposed.

(2) The department may monitor and conduct periodic audits and special examinations of the ~~managed care plan~~ MCO as necessary to ensure compliance with the ~~managed care~~ plan certification and performance requirements.

(3) All records of the MCO relevant to determining compliance with the ~~managed care~~ plan shall be disclosed within a reasonable time, not to exceed 10 days, after request by the

department. Records must be legible and cannot be kept in a coded or semi-coded manner unless a legend is provided for the codes.
AUTH: Sec. 39-71-203, 39-71-1103 and 39-71-1105, MCA
IMP: Sec. 39-71-1103 and 39-71-1105, MCA

RULE XV [24.29.2361] APPLICATION TO RENEW CERTIFICATION, NOTICE OF INTENT NOT TO RENEW CERTIFICATION Same as proposed.

RULE XVI [24.29.2366] RENEWAL CERTIFICATION
(1) through (3) Same as proposed.
(4) The department may briefly extend a MCO's certification while the renewal process is pending.
AUTH: Sec. 39-71-203, 39-71-1103 and 39-71-1105, MCA
IMP: Sec. 39-71-1103 and 39-71-1105, MCA

RULE XVII [24.29.2371] APPLICATION TO MODIFY PLAN Same as proposed.

RULE XVIII [24.29.2373] ADDITION AND TERMINATION OF MEMBERS Same as proposed.

RULE XIX [24.29.2376] REVOCATION OR SUSPENSION OF CERTIFICATION (1) Same as proposed.
(2)(a) through (d) Same as proposed.
(e) the MCO knowingly utilizes the services of a health care provider whose license has been revoked or suspended by the licensing board;
(f) and (g) Same as proposed.
(3) The department will give 20 days written notice to the MCO, and insurers with which the MCO has contracted, of the department's intent to suspend or revoke the certification of the MCO. The notice will specify the grounds for revocation or suspension. If the MCO does not either come into compliance or request a contested case hearing, within 20 days of the notice being sent, the department will suspend or revoke the MCO's certification.
(4) Same as proposed.
(5) If the certification of a MCO is revoked and the MCO wishes to again become certified, it must go through the entire application process (including payment of the application fee) before it can be certified.
AUTH: Sec. 39-71-203, 39-71-1103 and 39-71-1105, MCA
IMP: Sec. 39-71-1103 and 39-71-1105, MCA

RULE XX [24.29.2379] DISPUTE RESOLUTION Same as proposed.

4. The Department has thoroughly considered the comments and testimony received on the proposed rules. The following is a summary of the comments received, along with the Department's response to those comments:

General comments:

Comment: One commenter felt that the rules effectively precluded individuals or small groups of physicians from organizing a MCO.

Response: A MCO may be formed by an individual, partnership, corporation, or any other form of entity. The Department believes that the commenter is correct that an individual cannot form a MCO without obtaining the services of other practitioners. The Department believes the statutes clearly require that there be more than one treating physician in each MCO.

Comment: Another commenter felt that the entire set of proposed rules should be withdrawn and rewritten.

Response: The Department has researched the statutes and administrative rules of all the other states that have MCOs, and has developed these rules in consultation with representatives of the health care and the workers' compensation insurance industries. The Department believes that these rules, while perhaps not perfect, reasonably meet the assignment given to the Department by the Legislature. A delay in the adoption of these rules is likely to frustrate the purpose of the legislation and interfere with the legislative plan for workers' compensation reform.

Comment: Another commenter voiced his objections to the use of a physician gatekeeper model in the context of the workers' compensation system.

Response: The Department is bound to follow the requirements of the statutes. The commenter should address his comments to the Legislature.

Comment: A commenter expressed concerns about the potential impact of MCOs on rural health care providers and that there is a lack of data on that impact.

Response: The Department is aware that many providers are very concerned about how MCOs will affect their practices. The Department, however, must carry out the legislative directive to establish a MCO certification process. The comments are more appropriately directed to the Legislature, which has the authority to change the law to minimize any adverse impacts.

Comment: A commenter expressed concern that if the Department makes substantive amendments in the final adoption of rules the public would not have an opportunity to comment on those changes.

Response: The Department does not believe that it has made such substantive changes to the rules as to require that additional public comment be allowed. The Department is sensitive to both the letter and the spirit of the public participation requirements of Montana law, and it is of the opinion that it has complied with the law in this rulemaking process.

Comment: The Montana Podiatric Medical Association (MPMA) made numerous objections to the fact that podiatrists are not recognized within the rules as being eligible to be "treating physicians" or "personal doctors". The MPMA stated that the proposed rules are unconstitutional as applied to Doctors of Podiatric Medicine, and urged the Department to recognize that

because Title 37, chapter 6, MCA defines podiatrists as "physicians", they should be recognized as such for purposes of the Workers' Compensation Act.

Response: The Department recognizes that podiatrists are "physicians" pursuant to Title 37, chapter 6, MCA. However, in the Workers' Compensation Act, at section 39-71-116 (30), MCA, the term "treating physician" is specifically defined in such a way that podiatrists are not included in the definition. The Department believes that the Legislature has the authority to make the distinction between a "physician" and a "treating physician" within the Workers' Compensation Act.

Likewise, there is a specific limitation on what classes of providers can treat injured workers despite a referral to a MCO [referred to in the rules as a "personal doctor"]. Section 39-71-1105 (4)(f), MCA, restricts the class of personal doctor to those who are eligible to be a "treating physician", and then places additional restrictions on that sub-class of providers. Again, the Department believes that the Legislature has the authority to make the classification within the Workers' Compensation Act.

The Department is bound to follow the statutory constraints of the Workers' Compensation Act when making rules that implement that Act. The commenter should address its concerns to the Legislature and seek a legislative correction of any perceived inconsistencies in the law.

Comment: The MPMA commented that the proposed rules (and underlying statutes) unreasonably limit worker's access to podiatric medical care, and stated that podiatric care is cost effective.

Response: The Department is constrained by the terms of the Workers' Compensation Act in adopting these rules. The comments should be directed to the Legislature.

RULE I PURPOSE

Comment: A commenter observed that satellite offices might permit a MCO to capture business in an outlying area even if the satellite office does not offer a full range of services.

Response: The commenter is correct. However, the MCO must provide appropriate services. The Department sees no problem with providing appropriate services at a location that is more convenient to the injured worker.

Comment: A commenter asked if a hospital could be a member of a MCO.

Response: The Department intends that "members" be individuals, not organizations such as hospitals. The Department has clarified the definition of member in Rule II, and has also amended Rule I to avoid any confusion.

RULE II DEFINITIONS

Subsection (56) comments: One commenter objected to the part (b) portion of the definition of "injured worker" on the grounds that it abandons the fee schedule.

Response: Services provided by the MCO are not bound by fee schedule amounts, pursuant to 39-71-704 (5), MCA.

Comment: The same commenter objected to the part (b) portion of the definition of "injured worker" on the grounds that it places a contractual term in the rules.
Response: The definition does not place a contractual term in the rules because it merely defines what class of claimants are injured workers. It does not place any contractual rules between the MCO and the insurer.
Comment: The same commenter objected to the part (b) portion of the definition of "injured worker" on the grounds that it requires the insurer to pay for all of the services provided by the MCO to the injured person whether or not it is reasonable and necessary treatment for the industrial injury.
Response: The definition provides that when an insurer has not accepted liability the only claimants who are "injured workers" for the purposes of these MCO rules are those where the insurer agrees to pay for all the services provided by the MCO. The Department believes that insurers will have contractual terms that will tend to limit services to "reasonable and necessary". If an insurer does not wish to send a person whose claim has not been accepted to a MCO, the insurer should not direct that person to a MCO.
Subsection (67) comments: Several commenters requested that the Department add particular specialties to the definition of member.
Response: The Department did not intend to make the list all inclusive and has amended the definition to provide further examples.
Comment: A commenter asked if a hospital could be be a member of a MCO.
Response: The Department intends that "members" be individuals, not organizations such as hospitals. The Department has amended the definition of member accordingly, and has also amended Rule I to avoid any confusion.
Subsection (89) comment: A commenter stated that the definition of a MCO is inappropriate because it includes applicants as well as certified entities.
Response: The Department agrees and has amended the definition to remove the reference to applicants.
Subsection (910) comment: A commenter suggested adding orthopedic surgeons to the list of providers who meet the definition of "personal doctor".
Response: The Department is constrained by the provisions of 39-71-1105 (4)(f), MCA, in setting the qualifications of a "personal doctor". Although the statute uses the phrase "primary care physician", the Department believes that the use of the term "personal doctor" is less confusing.
Comment: The MPMA objected to the proposed definition, as noted above in the General Comments.
Response: The Department response is the same as stated earlier.
Subsection (10) comment: Several commenters suggested that the proposed definition of "place of employment" was inappropriate.
Response: The Department agrees and has deleted the definition.
Subsection (15) comment: The MPMA objected to the proposed definition, as noted above in the General Comments.

Response: The Department response is the same as stated earlier.

RULE III SELECTION OF MANAGED CARE ORGANIZATION AND TREATING PHYSICIAN WITHIN A MANAGED CARE ORGANIZATION

General comments: Several commenters voiced their objections to the inclusion of the personal doctor provisions of this rule and stated that the inclusion of personal doctors was incompatible with MCO operations.

Response: The Department is obligated, pursuant to section 39-71-1105 (4)(f), MCA, to include the right of the injured worker to select a personal doctor.

Subsection (1) comment: Several commenters requested that the Department explain the term "worker's community".

Response: The Department has defined the word community and has added that definition to Rule II.

Comment: A commenter suggested adding language to require that MCO contracts specify which employers are governed by the contract.

Response: Montana law, unlike the Oregon statutes from which several of the MCO concepts were taken, does not provide for the employer to choose whether the employer's workers will be subject to referral to a MCO. It is the insurer, not the employer, that has the right to decide whether an injured worker will be referred to a MCO. The injured worker also has the right to select which MCO to attend from all the MCOs in the worker's community.

Comment: A commenter suggested that there should be a time limit for the injured worker to choose a MCO if more than one exists.

Response: The Department concurs and has amended the rule to provide for a seven day period in which the claimant must select a MCO.

Subsection (2) comments: Two commenters asked why an injured worker must be referred to a MCO before the injured worker can select a personal doctor.

Response: The rule is written so that the MCO is selected first, because there may be more than one MCO in the worker's community. The parties must know what rules, terms and conditions will apply, because they may be different from MCO to MCO. The rule also allows the initial evaluation to be conducted while the injured worker decides whether to select a personal doctor, and thus minimize any time delays inherent in the referral process to the managed care system. By seeing the MCO first, the injured worker will be better able to make an informed decision as whether to "opt out" of the MCO.

Comment: Several people requested clarification as to who was responsible for monitoring a non-MCO physician's activities once they have agreed to abide by the MCO agreement.

Response: The Department has determined that it is the insurer who should be responsible for monitoring the activities of the personal doctor. The insurer has case management responsibilities for the claim. The Department has amended the rule to clarify this and also to provide that the insurer may contract with the MCO for these services.

Comment: A commenter asked who had the responsibility of contacting the personal doctor to see if the doctor would agree to the rules, terms and conditions of the MCO.
Response: The Department has determined that the insurer should contact the personal doctor. The insurer may contract with the MCO for that service. The rule has been amended accordingly.
Comment: Several commenters suggested that the injured worker be responsible for the co-payment if they decide to remain with their personal doctor, even if the physician agrees to abide by the MCO agreement.
Response: The Department agrees and has amended the rule accordingly.
Comment: A commenter suggested that there be additional language in the rule to clarify that a personal doctor must "qualify within the MCO guidelines" within 7 days.
Response: The Department believes that the current language which requires that a personal doctor agree to all "rules, terms, and conditions" adequately addresses the issue raised by the comment.
Comment: One commenter questioned at what rate would a non-MCO personal doctor be paid and who would be responsible for the outcome.
Response: Non-MCO personal doctors must agree to abide by all of the rules, terms, and conditions of the MCO, which includes reimbursement rates, method of payment, and responsibility for outcomes.
Subsection (3) comment: An insurer requested that the words "selected a MCO" be changed to "entered a MCO".
Response: The Department agrees and has amended the rule accordingly.

RULE IV PRELIMINARY APPLICATION
Comment: A person commented that only having an initial application fee and no renewal fee would be inviting future financial problems. The commenter also stated that it is inappropriate to place the amount of the application fee in the rules.
Response: The Department believes it is appropriate to state the amount of the application fee in the rule. The Department has amended the rule to delete references to possible future fees.
Comment: A commenter suggested that the rules needed to contain appropriate provisions to prevent the public disclosure of trade secrets that might be contained in the application for certification.
Response: The Department agrees and has amended this rule and Rule XI, Final Application, accordingly.

RULE V TIME, PLACE AND MANNER OF PROVIDING SERVICES
Comment: A commenter asked if a MCO could decide that "no further treatment" was an appropriate treatment option.
Response: Pursuant to section 39-71-704 (1)(a), MCA, insurers are liable for primary medical services. Once the treating physician determines that an injured worker has reached medical stability, the Department believes that "no further treatment"

may be appropriate. Any additional services would have to be authorized by the insurer as "secondary medical services".

RULE VI AREAS SERVED BY MANAGED CARE ORGANIZATION

General comments: Several commenters objected to the Department regulating what they thought ought to be a contractual item between the insurer and the MCO.

Response: The Department does not view this rule as regulating how or where a MCO provides services. A MCO must file a map that shows the areas within certain radii of service locations. A MCO will not be denied certification as a result of this rule; it merely identifies graphically the travel distances from the service locations listed in response to Rule V.

Comment: A commenter noted that these rules are silent as to who pays for the travel expenses of an injured worker who is directed to a MCO.

Response: The commenter is correct. ARM 24.29.1409 explains the circumstances when travel is payable by an insurer.

Comment: A commenter wanted to know which MCOs are referred to by this rule.

Response: Subsection (1) provides that for the purpose of this rule, it means only those certified MCOs which have a contract with the insurer of the injured worker in question.

Subsection (2) comments: Two commenters suggested that the state should be divided into regions of service rather than service areas. One suggested that the state be regionalized by zip code. The Department also received comments opposing the region proposal and supporting the rule as proposed by the Department.

Response: The Department believes the rule as proposed offers a reasonable balance between the insurer's desires to obtain state-wide coverage by MCOs and the need to establish reasonable limitations on travel for injured workers. However, it is the Department's intent to review this rule after a reasonable amount of time to determine if experience with the application of this rule may dictate the need to revise service areas. The Department will at that time study whether there is an appropriate way of identifying service areas by zip code.

Comment: One commenter suggested deleting "place of employment" from the rule. Another commenter suggested additional wording as part of the place of employment phraseology.

Response: The Department has deleted the "place of employment" language.

Comment: Several commenters stated it is inappropriate for injured workers to be directed to MCOs outside the worker's community when care is available within the community.

Response: The MCO statutes permit insurers to make referrals when certain conditions exist. Unless otherwise authorized by the insurer, those injured workers must receive medical services from a MCO.

Comment: A commenter stated that the Department should delete the requirement limiting travel to the normal travel required to obtain medical services, when a MCO is not within 100 miles of the injured workers' residence.

Response: While the Department believes that insurers should carefully balance the potential benefits of MCO referral with the possible detriments of long travel, the Department will delete the requirement. Based upon additional research, the Department concludes that it does not have the authority to enforce the limitation as proposed.

Subsection (3) comment: One commenter suggested adding language about the MCO making every reasonable effort to obtain the services of a needed specialist, even if it requires travel of more than 100 miles.

Response: Subsection (2) of the rule allows the MCO to direct an injured worker to a specialist that is more than 100 miles away if there is no specialist nearer.

RULE VIII CONTENTS OF THE MANAGED CARE PLAN

General comments: A commenter noted that the Department did not identify any objective criteria that it would use to evaluate the staff of a MCO, and suggested that the Department incorporate "substantial incentives" and a weighted point system to ensure that each MCO has a diversity of providers.

Response: The Department certification process does not establish any sort of ranking or scoring system that assigns more or less points to applicants that have certain types of providers included in the plan. The certification process is designed to provide minimum standards which every MCO applicant must meet in order to be certified. The plan (and the other components of the application) acts as a "disclosure statement" that will allow insurers to understand what services the MCO intends to offer. Insurers will decide whether a MCO offers a desirable mix of services and providers that appeal to the insurer's needs. The Department believes that the market, not the Department, should identify what services and providers are desirable.

Comment: The same commenter stated that Department has failed to properly regulate publicly supported medical services because it does not prohibit MCOs from denying membership to any willing health care provider.

Response: The Department is not charged with "regulation of publicly supported medical services". The Department is required to establish a certification process for MCOs. Certified MCOs can contract with workers' compensation insurers to provide certain services. The MCOs will be paid by those insurers, not by general fund tax dollars. Based on the inquiries to date, the Department believes that all MCO applicants will be from the private sector. If a medical provider believes that a MCO has illegally discriminated against that provider, the provider has recourse through the civil court system.

Subsection (1) comments: An insurer commented that only three of the six practice areas should be required rather than four of the six practice areas.

Response: The Department agrees and has amended the rule accordingly.

Comment: One insurer suggested that the surgery practice area

requirement should specify either a general surgeon or vascular surgeon in (1)(a).

Response: The Department believes that given the scarcity of particular specialties, especially in rural areas, that the surgery practice area requirement should not be made more specific. Insurers are free to require particular sub-specialties within a MCO when they negotiate contracts.

Comment: A commenter suggested that an applicant be excused from the requirement if there were an inadequate number of willing providers for a particular specialty.

Response: The Department has lowered the required number of specialties, as discussed above. The Department believes that the rule, as amended, provides a means that addresses the concern raised by the comment.

Subsection (2) comment: Several commenters questioned why there were special provisions concerning physical therapists in the rule and not other specialty areas.

Response: Section 39-71-1105 (1), MCA, specifically provides that MCOs are encouraged to utilize services of independent physical therapists. No other practice area has similar statutory status.

Comment: A commenter expressed concern about the vagueness of the statutory language related to physical therapists.

Response: The Department is bound by the provisions of the statute. The comment can only be addressed legislatively.

Subsection (3) comment: Several requests were made to add particular specialties to the list identified in this rule.

Response: The Department did not intend to make the list all inclusive and has amended the rule to provide further examples.

Subsection (5) comment: Commenters questioned why the plan needed to specify medical qualifications by the person(s) who designate treating physician within the MCO. One commenter stated that the initial visit would likely be scheduled by an administrative assistant rather than a medical specialist.

Response: The Department anticipates that a MCO may schedule evaluations of an injured worker before designating who would be the treating physician. Unlike non-MCO care, the first provider seen within the MCO would not necessarily become the "treating physician". The Department recognizes that a MCO may call upon the expertise of a variety of its members to decide who would be the appropriate treating physician in a given case. To avoid confusion, however, the Department has amended the rule to delete the identification of the qualifications of the person(s) making the treating physician designation.

Subsection (6) comment: An insurer suggested that the text be reworded to require that the specific provider subspecialty for referral be listed, rather than just the circumstances of referrals.

Response: The Department believes that it is more appropriate to allow a statement of circumstances rather than requesting a list of particulars. As an example, the applicant might identify the circumstance as being "whenever the injured worker needs services from a specialty that no member offers". That would be much broader than a listing of subspecialties. If a MCO

accidently omitted an esoteric specialty, that might deny an injured worker needed care and treatment.

Subsection (9) comment: Several commenters objected to the proposed phraseology. Generally the comments questioned the wisdom of the particular criteria proposed by the Department that required specific timeliness standards and specific initial treatment standards.

Response: The Department agrees and has amended the rule accordingly by deleting the specific timeliness of initial treatment standard.

Subsection (10) comment: A commenter pointed out the difficulties of the MCO providing monitoring, utilization review and peer review for services provided by personal doctors.

Response: The Department agrees and has amended the rule accordingly in subsections (10), (13) and (14).

Subsection (15) comment: A commenter requested clarification as to what is meant by "appropriate financial incentives".

Response: Section 39-71-1105 (4)(b), MCA, requires that a plan must provide "appropriate financial incentives". The Department found in researching this area with other jurisdictions that incentives used include performance based contracting, utilization profiling, fee caps, and discounted fee schedules. This is by no means an exhaustive list of possibilities. MCOs are encouraged to explore other or additional incentives. The Department notes that providing either a "volume discount" or a "volume bonus", where the MCO provides incentives for an insurer to direct more claimants to the MCO, or for the insurer to give the MCO a greater dollar volume of services, would be another example of an appropriate financial incentive. Another incentive might be that for every claimant who has x dollars of services within a given period, the MCO will provide certain additional services at no additional expense.

Subsection (16) comment: A commenter suggested that the requirement of a customer satisfaction program be deleted because of the adversarial nature of workers' compensation.

Response: The Department believes that patient satisfaction should be measured as one gauge of the quality of the services provided to injured workers. The Department will bear in mind the possibility of biased survey results that may occur because injured workers have hostility towards their injuries or their insurer, which are not related to the services provided by the MCO.

Subsection (17) comment: A commenter suggested that the language using the term "fair" was ambiguous and could open the door for disputes regarding the word "fair".

Response: The Department strongly believes that the dispute resolution process needs to have the element of fairness. However, the Department has added an additional term in the hopes of clarifying the intent of the rule.

RULE X APPROVAL OF PRELIMINARY APPLICATION

Comment: One commenter expressed a concern about the open-endedness of the preliminary application review process.

Response: The Department recognizes that the rule does not

provide for a strict timeline. It is the Department's intent to promptly process applications. The Department will consider adding a timeline to complete this review after it has gained adequate experience in the length of time required to review applications.

RULE XI FINAL APPLICATION

Comment: One commenter requested that the requirement that providers be licensed or certified by the state of Montana be deleted.

Response: Section 39-71-1105 (3)(a), MCA, requires that the individuals who will be providing services under the plan be licensed to practice in the state of Montana.

Comment: The same commenter suggested that the medical director or day-to-day administrator should only be required to certify that reasonable steps have been taken to verify that each care provider is properly licensed.

Response: Section 39-71-1105 (3)(a), MCA, requires that there be "appropriate evidence" that the individuals who will be providing services under the plan are licensed to practice in the state of Montana. The Department believes that the certification required by this rule constitutes "appropriate evidence". The Department believes that the certification by the medical director or day-to-day administrator is less burdensome a requirement than requiring that copies of each individual's license be furnished to the Department.

RULE XII ORIGINAL CERTIFICATION

Comment: One commenter suggested that as soon as the preliminary application is approved, the applicant could begin its operations.

Response: Section 39-71-1103 (3), MCA, provides that only certified MCOs may contract with insurers to provide medical services for injured workers. An insurer may not contract with an applicant until it is certified as a MCO.

RULE XIII REPORTING REQUIREMENTS

General comments: A commenter suggested adding an additional paragraph to the rule that provides for a certification renewal process.

Response: Rule XV provides for a process for renewal of certification. See also comments to Rule XV.

Comment: A commenter questioned why information required by this rule had to be repeated in the renewal application required by Rule XV. The commenter suggested that the information only be required by Rule XV.

Response: The Department believes that it needs the information about member, insurer, and service location changes on a current basis so that it can accurately answer questions from injured workers. This rule provides the Department with "running changes", while Rule XV provides an updated master list of that information every two years.

Subsection (1) comments: An insurer commented that the proposed rule probably should not make a blanket finding that contracts

were exempt from public disclosure in all cases. The commenter also suggested that the last two sentences be deleted.
Response: The Department agrees and has amended the rule accordingly.
Comment: One commenter questioned why, in light of the Department's statements in subsection (1) about ownership of the MCO, the Department wanted to have all of the non-ownership related information reported.
Response: The Department's regulatory duties go beyond merely ensuring that a MCO is not formed, owned, or operated by an insurer. The Department believes that it needs to have the information required by the rule in order to carry out its duties.
Comment: The same commenter questioned the Department's qualifications to analyze the utilization and peer review information requested.
Response: The Department believes that it has qualified staff to review the information contained in the reports. If staff needs assistance in interpreting the data, it will obtain appropriate expert services from a consultant.
Comment: One commenter suggested that a disclosure of inappropriate treatment would have a chilling effect on any peer review being performed.
Response: The Department agrees and has amended the rule accordingly.
Subsection (4) comment: One commenter recommended that reporting requirements be changed to quarterly to reduce paperwork.
Response: The rule as proposed only requires that any changes be reported and that no reporting is required if there are no changes. While quarterly reports might reduce paperwork, the Department believes that it needs to be aware of these changes more frequently so that it can provide the public with timely and accurate information concerning the MCO.
Agency comment: The Department realized that it failed to include a reporting requirement for changes in service locations in the reporting requirements. The Department has amended the rule accordingly.

RULE XV APPLICATION TO RENEW CERTIFICATION, NOTICE OF INTENT NOT TO RENEW CERTIFICATION
Comment: One commenter requested that the renewal period be during the 180 to 90 days prior to the expiration of certification. The commenter suggested that any valid certification should carry with it the right of successive renewal upon expiration of certification, provided the MCO is in compliance with the law.
Response: A MCO that applies for renewal will have it granted if the MCO is in compliance with the law and administrative rules. The Department cannot arbitrarily refuse to renew the certification of the MCO that meets the requirements. The rule provides that the MCO that is aggrieved by a decision of the Department has rights to administrative hearing. While the Department believes that the proposed time period for renewal

applications is appropriate, the Department has amended Rule XVI to allow for brief extensions of certification while a MCO is in the renewal process.

Comment: Another commenter suggested that instead of having a renewal process, the Department grant certifications that do not have a fixed expiration date, but that were subject to termination, suspension or revocation. The commenter suggested that the Department could conduct periodic audits to ensure compliance.

Response: The Department considered the suggested concept during the initial drafting phase. The Department rejected the concept at that time because it believed that it would be more difficult to ensure that, in the event that these rules were amended, MCOs would comply with the changed requirements. While the Department has the right to audit MCOs, the Department does not believe that routine audits are the most efficient means of learning about a MCO's operations. The Department has considered the concept again, but does not elect to change the rule at this time.

RULE XVII APPLICATION TO MODIFY PLAN

Comment: One commenter questioned how a MCO could obtain prior authorization in the event a member suddenly left the MCO.

Response: The rule requires prior authorization only for voluntary actions that will reduce the level of services provided or change the plan significantly. If circumstances arise that are not within the control of the MCO, the MCO must advise the Department of the situation and provide information about the effect of the change on the delivery of services pursuant to the plan.

Comment: One commenter suggested it is inappropriate for the state to require prior approval for a change in the way that the MCO administers its program.

Response: The Department does not require approval for changes in the way the MCO administers its program, only reductions in the level of services or significant changes to one or more of the plan elements.

RULE XIX REVOCATION OR SUSPENSION OF CERTIFICATION

Comment: One commenter suggested that a MCO be penalized only if the MCO knowingly utilized the services of an unlicensed provider.

Response: The Department agrees and has amended the rule accordingly.

Comment: An insurer requested that insurers that have contracted with the MCO be notified if the Department is taking disciplinary action against the MCO under this rule.

Response: The Department agrees and has amended the rule accordingly.

Agency comment: The Department did not clearly express the fact that a MCO whose certification has been revoked must reapply for certification. The rule has been amended for clarification.

RULE XX DISPUTE RESOLUTION

Comment: One commenter questioned whether the Department could require participants to use the informal dispute resolution process provided within the plan before accessing the Department's procedure.

Response: Section 39-71-105 (3), MCA, expresses that it is the public policy of the state that the workers' compensation system should be primarily self-administering and that the system must be designed to minimize reliance upon lawyers and the courts. The Department believes that it is appropriate in light of the public policy statement to require that the parties seek an informal resolution of disputes before resorting to formal procedures.

5. These rules are effective March 1, 1994.

David A. Scott
Rule Reviewer

Laurie Ekanger, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: February 14, 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):

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through December 31, 1993. This table includes those rules adopted during the period January 1, 1994 through March 31, 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 December 31, 1993, 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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BOARD APPOINTEES AND VACANCIES

House Bill 424, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of HB 424 was that the Secretary of State publish monthly in the *Montana Administrative Register* a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments made in January, 1994, are published. Vacancies scheduled to appear from March 1, 1994, through May 31, 1994, are also listed, as are current recent vacancies due to resignations or other reasons.

Individuals interested in serving on a new board should refer to the bill that created the board for details about the number of members to be appointed and qualifications necessary.

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

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of February 4, 1994.

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

BOARD AND COUNCIL APPOINTEES FROM JANUARY 1, 1994

Appointee	Appointed by	Succeeds	Appointment/End Date
Appellate Defender Commission (Administration)			
Judge Dorothy B. McCarter	Governor	reappointed	1/4/1994
Helena			1/1/1997
Qualifications (if required): district judge			
Mr. Mark Parker	Governor	reappointed	1/4/1994
Billings			1/1/1997
Qualifications (if required): attorney			
Board of Occupational Therapy Practice (Commerce)			
Ms. Alice O'Donnell	Governor	Mathews	1/1/1994
Anaconda			12/31/1997
Qualifications (if required): public member			
Board of Passenger Tramway Safety (Commerce)			
Mr. Lyle Meeks	Governor	Huestis	1/14/1994
Great Falls			1/1/1998
Qualifications (if required): licensed engineer			
Mr. Mikel Moore	Governor	McKracken	1/14/1994
Kalispell			1/1/1998
Qualifications (if required): attorney			
Board of Pharmacy (Commerce)			
Mr. H. Dean Mikes, Jr.	Governor	Kelley	1/4/1994
Missoula			7/1/1994
Qualifications (if required): hospital pharmacist			
Board of Physical Therapy Examiners (Commerce)			
Mr. John Delano	Governor	reappointed	1/19/1994
Helena			1/1/1997
Qualifications (if required): public member			

BOARD AND COUNCIL APPOINTEES FROM JANUARY 1, 1994

Appointee	Appointed by	Succeeds	Appointment/End Date
Board of Physical Therapy Examiners (Commerce) cont.			
Dr. Allen Weinert, Jr.	Governor	Halseth	1/19/1994
Helena			1/1/1997
Qualifications (if required): medical doctor			
Board of Regents (University System)			
Ms. Colleen Conroy	Governor	reappointed	1/4/1994
Hardin			2/1/2001
Qualifications (if required): Republican from the eastern district			
Developmental Disabilities Planning and Advisory Council (Social and Rehabilitation Services)			
Sen. Connye Hager	Governor	Gage	1/1/1994
Billings			1/1/1995
Qualifications (if required): state senator			
Rep. Betty Lou Kasten	Governor	reappointed	1/1/1994
Brockway			1/1/1995
Qualifications (if required): representative			
Human Rights Advisory Council			
Ms. Jean Bearcrane	Governor	not listed	1/12/1994
Browning			1/12/1996
Qualifications (if required): represents ethnic and business groups			
Reverend Phillip Caldwell	Governor	not listed	1/12/1994
Great Falls			1/12/1996
Qualifications (if required): represents ethnic and religious groups			
Mr. Gary Conti	Governor	not listed	1/12/1994
Bozeman			1/12/1996
Qualifications (if required): represents education groups			

BOARD AND COUNCIL APPOINTEES FROM JANUARY 1, 1994

Appointee	Appointed by	Succeeds	Appointment/End Date
Human Rights Advisory Council	cont.		
Ms. Angelina Ballejo Cormier	Governor	not listed	1/12/1994
Billings			1/12/1996
Qualifications (if required): represents ethnic and business groups			
Ms. Bonnie Craig	Governor	not listed	1/12/1994
Missoula			1/12/1996
Qualifications (if required): represents ethnic groups and education groups			
Ms. Kathleen M. Fleury	Governor	not listed	1/12/1994
Helena			1/12/1996
Qualifications (if required): represents elected officials			
Mr. Bob Fourstar	Governor	not listed	1/12/1994
Poplar			1/12/1996
Qualifications (if required): represents ethnic groups			
Reverend Bob Freeman	Governor	not listed	1/12/1994
Billings			1/12/1996
Qualifications (if required): represents ethnic and religious groups			
Dr. Frederick Gilliard	Governor	not listed	1/12/1994
Great Falls			1/12/1996
Qualifications (if required): represents education groups			
Mr. William Jones	Governor	not listed	1/12/1994
Great Falls			1/12/1996
Qualifications (if required): represents human rights groups			
Ms. Kay Maloney	Governor	not listed	1/12/1994
Great Falls			1/12/1996
Qualifications (if required): represents human rights groups			

BOARD AND COUNCIL APPOINTEES FROM JANUARY 1, 1994

Appointee	Appointed by	Succeeds	Appointment/End Date
Human Rights Advisory Council cont.			
Ms. Christina Medina	Governor	not listed	1/12/1994
Helena			1/12/1996
Qualifications (if required): represents ethnic and human rights groups			
Mr. Harold Monteau	Governor	not listed	1/12/1994
Great Falls			1/12/1996
Qualifications (if required): represents ethnic and human rights groups			
Ms. Gretchen Naomi Rohr	Governor	not listed	1/12/1994
Billings			1/12/1996
Qualifications (if required): represents ethnic and youth groups			
Ms. Donna Ruff	Governor	not listed	1/12/1994
Fairview			1/12/1996
Qualifications (if required): represents labor and ethnic groups			
Rep. Angela Russell	Governor	not listed	1/12/1994
Lodge Grass			1/12/1996
Qualifications (if required): represents ethnic groups and elected officials			
Mr. Brian Schnitzer	Governor	not listed	1/12/1994
Billings			1/12/1996
Qualifications (if required): represents religious and business groups			
Ms. Michelle Wilkerson	Governor	not listed	1/12/1994
Great Falls			1/12/1996
Qualifications (if required): represents religious and business groups			

BOARD AND COUNCIL APPOINTEES FROM JANUARY 1, 1994

Appointee	Appointed by	Succeeds	Appointment/End Date
Judicial Nomination Commission			
Mr. Carl M. Davis	Supreme Court	Leaphart	1/1/1994
Dillon			12/31/1995
Qualifications (if required): none specified			
Mr. John B. Kuhr	Supreme Court	James	1/1/1994
Havre			12/31/1996
Qualifications (if required): none specified			
Mr. M. James Sorte	Chief Justice	reappointed	1/12/1994
Wolf Point			12/31/1997
Qualifications (if required): none specified			
Old West Trail Association (Commerce)			
Mr. John Rabenberg	Governor	McCleary	1/4/1994
Fort Peck			1/1/1998
Qualifications (if required): public member			
Peace Officers Standards Training and Advisory Council (Justice)			
Mr. Donald R. Houghton	Governor	reappointed	1/1/1994
Bozeman			12/31/1995
Qualifications (if required): represents Montana Deputy Sheriffs			
Sheriff Lee Edmisten	Governor	reappointed	1/1/1994
Virginia City			12/31/1995
Qualifications (if required): represents Montana Sheriffs			
Mr. Robert A. Harvie	Governor	reappointed	1/1/1994
Bozeman			12/31/1995
Qualifications (if required): represents Montana Criminal Justice Educators			

BOARD AND COUNCIL APPOINTEES FROM JANUARY 1, 1994

Appointee	Appointed by	Succeeds	Appointment/End Date
Peace Officers Standards Training and Advisory Council (Justice)			
Ms. Donna Heggem Winifred Qualifications (if required): represents Montana Board of Crime Control	Governor	Heinecke	1/1/1994 12/31/1995
Chief Robert Jones Great Falls Qualifications (if required): represents Montana Association of Chiefs of Police	Governor	reappointed	1/1/1994 12/31/1995
Mr. Erwin Kent Helena Qualifications (if required): represents Fish, Wildlife and Parks	Governor	reappointed	1/1/1994 12/31/1995
Mr. R.F. "Dick" Labbe Deer Lodge Qualifications (if required): represents Montana League of Cities and Towns	Governor	reappointed	1/1/1994 12/31/1995
Mr. Dennis McCave Billings Qualifications (if required): represents Montana Detention Officers	Governor	reappointed	1/1/1994 12/31/1995
Mr. Troy W. McGee, Sr. Helena Qualifications (if required): represents Montana Police Protective Association	Governor	reappointed	1/1/1994 12/31/1995
Mr. Christopher Miller Deer Lodge Qualifications (if required): represents Montana County Attorneys Association	Governor	reappointed	1/1/1994 12/31/1995
Mr. Greg Noose Bozeman Qualifications (if required): represents Montana Law Enforcement Academy	Governor	reappointed	1/1/1994 12/31/1995

BOARD AND COUNCIL APPOINTEES FROM JANUARY 1, 1994

Appointee	Appointed by	Succeeds	Appointment/End Date
Peace Officers Standards and Training Advisory Council (Justice) cont.			
Ms. Donna "Midge" Warrington	Governor	reappointed	1/1/1994
Great Falls			12/31/1995
Qualifications (if required): represents Montana Communications Officers			
Ms. Marilyn Zimmerman	Governor	not listed	1/1/1994
Poplar			12/31/1995
Qualifications (if required): public member			
Colonel Robert Griffith	Governor	reappointed	1/1/1994
Helena			12/31/1995
Qualifications (if required): represents Montana Highway Patrol			
State Lottery Commission (Commerce)			
Mr. David Kasten	Governor	reappointed	1/1/1994
Brockway			1/1/1998
Qualifications (if required): public member			
Mr. Loren J. O'Toole II	Governor	reappointed	1/1/1994
Plentywood			1/1/1998
Qualifications (if required): attorney			
Water Pollution Control Advisory Council (Health and Environmental Sciences)			
Mr. Leo Giacometto	Governor	Snortland	1/4/1994
Helena			11/7/1995
Qualifications (if required): represents Department of Agriculture			
Mr. Tom Lee	Governor	not listed	1/4/1994
Kalispell			1/7/1995
Qualifications (if required): water recreation representative			

BOARD AND COUNCIL APPOINTEES FROM JANUARY 1, 1994

Appointee	Appointed by	Succeeds	Appointment/End Date
Water Pollution Control Advisory Council (Health and Environmental Sciences) cont.			
Mr. Douglas Parker	Governor	not listed	1/4/1994
Missoula			11/7/1995
Qualifications (if required): representative of inorganic industry			

VACANCIES ON BOARDS AND COUNCILS -- March 1, 1994 through May 31, 1994

Board/current position holder	Appointed by	Term end
Board of Architects (Commerce)		
Mr. Eric W. Hefty, Missoula	Governor	3/27/1994
Qualifications (if required): registered architect		
Board of Dentistry (Commerce)		
Dr. Wayne Hansen, Billings	Governor	3/29/1994
Qualifications (if required): licensed dentist		
Board of Nursing Home Administrators (Commerce)		
Ms. Molly L. Munro, Great Falls	Governor	5/28/1994
Qualifications (if required): public member over 55 years old		
Board of Outfitters (Commerce)		
Mr. Irving "Max" Chase, Emigrant	Governor	4/9/1994
Qualifications (if required): licensed outfitter from District 2		
Mr. Dan J. Ekstrom, Clinton	Governor	4/9/1994
Qualifications (if required): licensed outfitter from District 1		
Board of Plumbers (Commerce)		
Mr. Richard Grover, Missoula	Governor	5/4/1994
Qualifications (if required): master plumber		
Mr. Michael Waldenberg, Great Falls	Governor	5/4/1994
Qualifications (if required): journeyman plumber		
Board of Professional Engineers and Land Surveyors (Commerce)		
Mr. Paul M. Dana, Billings	Governor	3/31/1994
Qualifications (if required): public member		

VACANCIES ON BOARDS AND COUNCILS -- March 1, 1994 through May 31, 1994

Board/current position holder	Appointed by	Term end
Board of Real Estate Appraisers (Commerce)		
Ms. Linda Cunningham, Fairfield Qualifications (if required): public member	Governor	5/1/1994
Mr. A. Farrell Rose, Helena Qualifications (if required): licensed appraiser	Governor	5/1/1994
Board of Realty Regulation (Commerce)		
Mr. Jack K. Moore, Great Falls Qualifications (if required): public member	Governor	5/9/1994
Board of Veterans Affairs (Military Affairs)		
Mr. Neil Shepherd, Chester Qualifications (if required): none specified	Governor	5/18/1994
Building Codes Advisory Council (Commerce)		
Mr. John Allen, Helena Qualifications (if required): none specified	Director	3/31/1994
Mr. Don Cape, Belgrade Qualifications (if required): none specified	Director	3/31/1994
Ms. Linda Cockhill, Helena Qualifications (if required): none specified	Director	3/31/1994
Mr. Lee Ebeling, Great Falls Qualifications (if required): none specified	Director	3/31/1994
Mr. Craig Kerzman, Kalispell Qualifications (if required): none specified	Director	3/31/1994
Mr. John Palmquist, Helena Qualifications (if required): none specified	Director	3/31/1994

VACANCIES ON BOARDS AND COUNCILS -- March 1, 1994 through May 31, 1994

Board/current position holder	Appointed by	Term end
Building Codes Advisory Council (Commerce) cont.		
Mr. Robert Ross, Kalispell	Director	3/31/1994
Qualifications (if required): none specified		
Ms. Mitzi Schwab, Helena	Director	3/31/1994
Qualifications (if required): none specified		
Mr. Bruce Suenram, Helena	Director	3/31/1994
Qualifications (if required): none specified		
Mr. Stan Todd, Big Timber	Director	3/31/1994
Qualifications (if required): none specified		
Capital Finance Advisory Council (Administration)		
Rep. Francis Bardanouve, Harlem	Governor	4/6/1994
Qualifications (if required): represents Montana Legislature		
Mr. Marvin Dye, Helena	Director	4/5/1994
Qualifications (if required): none specified		
Sen. Delwyn Gage, Cut Bank	Governor	4/6/1994
Qualifications (if required): represents Montana Legislature		
Mr. Leo Giacometto, Helena	Director	4/5/1994
Qualifications (if required): none specified		
Mr. James M. Kaze, Havre	Director	4/5/1994
Qualifications (if required): none specified		
Mr. David Lewis, Helena	Director	4/5/1994
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- March 1, 1994 through May 31, 1994

Board/current position holder	Appointed by	Term end
Capital Finance Advisory Council (Administration) cont.		
Dr. Amos R. Little, Jr., Helena	Governor	4/6/1994
Qualifications (if required): represents Health Facilities Authority		
Mr. William Mathers, Miles City	Governor	4/6/1994
Qualifications (if required): none specified		
Ms. Lois A. Menzies, Helena	Director	4/5/1994
Qualifications (if required): none specified		
Mr. Jon D. Noel, Helena	Director	4/5/1994
Qualifications (if required): none specified		
Mr. Robert J. Robinson, Helena	Director	4/5/1994
Qualifications (if required): none specified		
Mr. Mark Simonich, Woodbridge	Director	4/5/1994
Qualifications (if required): none specified		
Mr. Bob Thomas, Stevensville	Director	4/5/1994
Qualifications (if required): none specified		
Mr. Warren Vaughan, Billings	Governor	4/6/1994
Qualifications (if required): represents Board of Investments		
Council on Physical Fitness and Sports (Governor)		
Ms. Mary Kay Bennett, Helena	Governor	4/17/1994
Qualifications (if required): none specified		
Mr. Don Byers, Great Falls	Governor	4/17/1994
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- March 1, 1994 through May 31, 1994

Board/current position holder	Appointed by	Term end
Council on Physical Fitness and Sports (Governor) cont.		
Mr. Pat Dodson, Missoula Qualifications (if required): none specified	Governor	4/17/1994
Ms. Jeri Lou Domme, Helena Qualifications (if required): none specified	Governor	4/17/1994
Dr. Jack Halseth, Great Falls Qualifications (if required): none specified	Governor	4/17/1994
Mr. Dick Harte, Bozeman Qualifications (if required): none specified	Governor	4/17/1994
Mr. John Kinna, Bozeman Qualifications (if required): none specified	Governor	4/17/1994
Mr. Joe Kusek, Billings Qualifications (if required): none specified	Governor	4/17/1994
Ms. Heather Lewis, Helena Qualifications (if required): none specified	Governor	4/17/1994
Mr. Tim Love, Townsend Qualifications (if required): none specified	Governor	4/17/1994
Ms. Judy Martz, Butte Qualifications (if required): none specified	Governor	4/17/1994
Dr. Alex McNeill, Bozeman Qualifications (if required): none specified	Governor	4/17/1994
Ms. Marilyn Miller, Helena Qualifications (if required): none specified	Governor	4/17/1994

VACANCIES ON BOARDS AND COUNCILS -- March 1, 1994 through May 31, 1994

Board/current position holder	Appointed by	Term end
Council on Physical Fitness and Sports (Governor) cont.		
Mr. Bob Moon, Helena Qualifications (if required): none specified	Governor	4/17/1994
Mr. Arnie Olsen, Butte Qualifications (if required): none specified	Governor	4/17/1994
Dr. Arnold Olsen, Helena Qualifications (if required): none specified	Governor	4/17/1994
Mr. Tom Osborne, Billings Qualifications (if required): none specified	Governor	4/17/1994
Mr. Hal Rawson, Helena Qualifications (if required): none specified	Governor	4/17/1994
Mr. Spencer Sartorius, Helena Qualifications (if required): none specified	Governor	4/17/1994
Ms. Kari Swenson, Winter Park Qualifications (if required): none specified	Governor	4/17/1994
Mr. Jim Turner, Helena Qualifications (if required): none specified	Governor	4/17/1994
Mr. Manuel White, Helena Qualifications (if required): none specified	Governor	4/17/1994
Mr. Joe Wren, Butte Qualifications (if required): none specified	Governor	4/17/1994

VACANCIES ON BOARDS AND COUNCILS -- March 1, 1994 through May 31, 1994

Board/current position holder	Appointed by	Term end
Executive Bd of MT College of Mineral Science & Technology (University System)		
Mr. Creighton Barry, Butte	Governor	4/18/1994
Qualifications (if required): none specified		
Executive Board of Eastern Montana College (University System)		
Ms. Carol J. Willis, Billings	Governor	4/18/1994
Qualifications (if required): none specified		
Executive Board of Montana State University (University System)		
Mr. Richard J. Morgan, Belgrade	Governor	4/18/1994
Qualifications (if required): none specified		
Executive Board of Northern Montana College (University System)		
Ms. Debbie Leeds, Havre	Governor	4/18/1994
Qualifications (if required): none specified		
Executive Board of University of Montana (University System)		
Mr. Leonard Landa, Missoula	Governor	4/18/1994
Qualifications (if required): none specified		
Executive Board of Western Montana College (University System)		
Mr. Joe Womack, Dillon	Governor	4/18/1994
Qualifications (if required): none specified		
Family Services Advisory Council (Family Services)		
Ms. Judy Garrity, Helena	Governor	4/15/1994
Qualifications (if required): none specified		
Sen. Thomas F. Keating, Billings	Governor	4/15/1994
Qualifications (if required): legislator on Human Services & Aging Joint Subcommittee		
Ms. Jani McCall, Billings	Governor	4/15/1994
Qualifications (if required): represents interests of youth & family treatment providers		

VACANCIES ON BOARDS AND COUNCILS -- March 1, 1994 through May 31, 1994

Board/current position holder	Appointed by	Term end
Family Services Advisory Council (Family Services) cont.		
Ms. Melisa Parker Stilger, Havre Qualifications (if required): Native American	Governor	4/15/1994
Ms. Barbara Sample, Billings Qualifications (if required): none specified	Governor	4/15/1994
Low-Income Energy Programs Advisory Council (Social and Rehabilitation Services)		
Ms. Olga F. Erickson, Fort Benton Qualifications (if required): none specified	Director	3/1/1994
Ms. Kathleen M. Fleury, Helena Qualifications (if required): none specified	Director	3/1/1994
Mr. Van C. Jamison, Helena Qualifications (if required): none specified	Director	3/1/1994
Mr. Dale Mahugh, Butte Qualifications (if required): none specified	Director	3/1/1994
Mr. Jim Morton, Missoula Qualifications (if required): none specified	Director	3/1/1994
Mr. James Nolan, Helena Qualifications (if required): none specified	Director	3/1/1994
Ms. Myrna Omholt-Mason, Helena Qualifications (if required): none specified	Director	3/1/1994
Ms. Kate Whitney, Helena Qualifications (if required): none specified	Director	3/1/1994

VACANCIES ON BOARDS AND COUNCILS -- March 1, 1994 through May 31, 1994

Board/current position holder	Appointed by	Term end
Public Employees' Retirement Board (Administration)		
Ms. Eleanor D. Pratt, Glasgow	Governor	4/1/1994
Qualifications (if required): member Public Employees' Retirement System		
Mr. Terry Teichrow, Helena	Governor	4/1/1994
Qualifications (if required): active public employee		
State Compensation Mutual Insurance Fund (Administration)		
Mr. James A. Brouelette, Stevensville	Governor	4/28/1994
Qualifications (if required): private for profit representative		
Ms. Sandra D. Reiter, Billings	Governor	4/28/1994
Qualifications (if required): private for profit representative		
State Library Commission (Education)		
Ms. Peggy Guthrie, Choteau	Governor	5/22/1994
Qualifications (if required): public member		
Ms. Vada Taylor, Glendive	Governor	5/22/1994
Qualifications (if required): public member		
Youth Justice Council (Justice)		
Ms. Gail Cleveland, Great Falls	Governor	4/15/1994
Qualifications (if required): none specified		
Mr. Al Davis, Helena	Governor	4/15/1994
Qualifications (if required): none specified		
Mr. Gordon Eldridge, Billings	Governor	4/15/1994
Qualifications (if required): none specified		
Mr. Kelly Ferriter, Helena	Governor	4/15/1994
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- March 1, 1994 through May 31, 1994

Board/current position holder	Appointed by	Term end
Youth Justice Council (Justice) cont.		
Ms. Susan Good, Great Falls Qualifications (if required): none specified	Governor	4/15/1994
Mr. Tony Harbaugh, Miles City Qualifications (if required): none specified	Governor	4/15/1994
Ms. Randi Hood, Helena Qualifications (if required): none specified	Governor	4/15/1994
Ms. Nicole K. Johnson, Helena Qualifications (if required): none specified	Governor	4/15/1994
Rep. Royal Johnson, Billings Qualifications (if required): none specified	Governor	4/15/1994
Mr. Ted O. Lympus, Kalispell Qualifications (if required): none specified	Governor	4/15/1994
Ms. Joan-Nell Macfadden, Great Falls Qualifications (if required): none specified	Governor	4/15/1994
Ms. Chris Negus, Helena Qualifications (if required): none specified	Governor	4/15/1994
Mr. Steve P. Nelsen, Bozeman Qualifications (if required): none specified	Governor	4/15/1994
Mr. Garry Rafter, Hobson Qualifications (if required): none specified	Governor	4/15/1994
Ms. Sally Stansberry, Missoula Qualifications (if required): none specified	Governor	4/15/1994

Board/current position holder	Appointed by	Term end
Youth Justice Council (Justice) cont.		
Ms. Margaret Stuart, Helena Qualifications (if required): none specified	Governor	4/15/1994
Mr. Don Wetzel, Harlem Qualifications (if required): none specified	Governor	4/15/1994