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1995 ISSUE NO. 14
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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 14

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption)	NOTICE OF PROPOSED
of new rule I and proposed	)	ADOPTION OF RULES
amendments of Rules 2.5.202,	)	AND AMENDMENTS
2.5.502, 2.5.505, 2.5.601,	)	PERTAINING TO
2.5.602, 2.5.607, pertaining	)	STATE PURCHASING.
to state purchasing.)	
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons

1. On September 1, 1995 the Department of Administration proposes to adopt Rule I relating to nonresponsibility of vendors and to amend rules 2.5.202, 2.5.502, 2.5.505, 2.5.601, 2.5.602, and 2.5.607 relating to state purchasing.

2. The proposed new rule will read as follows:

RULE I STANDARDS OF RESPONSIBILITY (1) Among factors that may be considered in determining whether the standard of responsibility has been met are whether a prospective contractor:

(a) has available the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them, necessary to indicate capability to meet all contractual requirements;

(b) has a satisfactory record of integrity;

(c) is qualified legally to contract with the agency;

(d) has not failed to supply any necessary information in connection with the inquiry concerning the responsibility; and

(e) has a satisfactory record of past performance.

Nothing shall prevent the procurement officer from establishing additional responsibility standards for a particular procurement, provided that these additional standards are set forth in the solicitation.

(2) A prospective contractor must supply information requested by the procurement officer concerning the responsibility of the contractor. If the contractor fails to supply the requested information, the procurement officer shall base the determination of responsibility upon any available information or may find the prospective contractor nonresponsible.

(3) The prospective contractor may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:

(a) evidence that the contractor possesses the necessary items;

(b) acceptable plans to subcontract for the necessary items; or

(c) a documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.

(4) If a bidder or offeror who otherwise would have been awarded a contract is found nonresponsible, a written determination of nonresponsibility setting forth the basis of the finding must be prepared by the procurement officer. The determination must be made part of the procurement file and a copy of the determination mailed to the affected bidder or offeror.

(AUTH: Sec. 18-4-221 MCA; IMP, Sec. 18-4-308 MCA.)

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

2.5.202 DEPARTMENT OF ADMINISTRATION RESPONSIBILITIES

(1)-(4) Remain the same.

(5) The department is responsible for the review and approval of the following equipment or service procurements regardless of delegated authority:

(a) duplicating, printing, bindery, and graphic arts equipment for state agencies within a 10-mile radius of the capitol area -- approval by the publications and graphics bureau is required.

(b)-(d) Remain the same.

(6)-(7) Remain the same.

(AUTH: Sec. 18-4-221 MCA; IMP, Sec. 18-4-221 and 18-4-222 MCA.)

2.5.502 BID AND CONTRACT PERFORMANCE SECURITY (1) The state may, at its discretion, require bid and/or contract performance security ~~on~~ for the procurement of services and supplies.

~~(2) The state shall require bid and contract security for service contracts exceeding \$10,000, except that security is discretionary for sole source contracts defined in 18-4-306 MCA.~~

(3) Text remains the same, but is renumbered (2).

~~(4) Types of security.~~

~~(a) (3) The preferred types of security are bonds as described in 18-4-312(3) (a) and cash as described in 18-4-312(3) (c) and (d), MCA. The security must be payable to the state of Montana and the contract performance security must remain in effect for the entire contract period.~~

~~(b) (a) If a certificate of deposit, or money market certificate, cashier's check, certified check, irrevocable letter of credit, bank money order, or bank draft is determined to be acceptable, they shall be issued in the name of the state of Montana from it must be issued from a federally chartered or state-chartered bank or savings and loan association that is insured by or for which insurance is administered by the federal deposit insurance corporation or that is drawn and issued by a credit union insured by the national credit union share insurance fund, any bank or savings and loan association licensed to do business in Montana.~~

~~(c)(b) If irrevocable letters of credit are determined to be acceptable, they shall be issued from any bank or saving and loan association licensed to do business in Montana.~~ Irrevocable letters of credit in excess of \$100,000 may will not be accepted as security for contracts.

(c) Facsimile copies of bid or contract security are not acceptable.

~~(5 4) Bid security. If bid security is required, the amount of the security shall be no less than 10% of the total bid price.~~ Factors to consider in requiring bid security and in determining the amount of the security include:

(a) - (d) Remain the same.

(6) Text remains the same, but is renumbered (5).

~~(7 6) Contract performance security. If contract performance security is required, the amount of the security shall be no less than 25% of the total contract price.~~ Factors to consider in requiring contract performance security and in determining the amount of the security include:

(a) - (g) Remain the same.

(8) Text remains the same, but is renumbered (7). (AUTH: Sec. 18-4-221 MCA; IMP, 18-1-201 and 18-4-312 MCA.)

2.5.505 MISTAKES AND MINOR VARIATIONS IN BIDS AND OFFERS

(1) - (2) Remain the same.

(3) The division administrator of the Procurement and Printing Division or designee may waive minor variations in a bid or offer.

(AUTH: Sec. 18-4-221 MCA; IMP, Sec. 18-4-303 and 18-4-304 MCA.)

2.5.601 COMPETITIVE SEALED BIDS

(1) - (4) Remain the same.

(5) Upon receipt of a bid or facsimile transmission of a bid, an employee of the agency other than the procurement officer will cause it to be time-stamped and stored in a secure place until the time and date set for bid opening.

(6) - (7) Remain the same.

(8) Following determination of product acceptability, if any is required, bids will be evaluated to determine which bidder offers the lowest cost to the state in accordance with the evaluation criteria set forth in the invitation for bids and the preference provisions described in ARM 2.5.403. Examples of such criteria include, but are not limited to, transportation cost, and life cycle cost formulas. Evaluation factors need not be precise predictors of actual future costs, but to the extent possible such evaluation factors shall:

(a) be reasonable estimates based upon information the state has available concerning future use; and

(b) treat all bids equitably.

~~Multiple award contracts are allowable if determined to be in the best interest of the state.~~

(9) Remains the same.

(10) Multiple award contracts are allowable if determined to be in the best interest of the state.

(10) - (13) remain the same but are renumbered (11) - (14).

(AUTH: Sec. 18-4-221 MCA; IMP, Sec. 18-4-303 MCA.)

2.5.602 COMPETITIVE SEALED PROPOSALS

(1)-(2) Remain the same.

(3) The request for proposals must be prepared in accordance with subsections (1) through (5) of ARM 2.5.601, except facsimile transmission of a proposal is not acceptable, and must also include:

(a)-(b) Remain the same.

(4) Proposals shall not be opened publicly but shall be opened in the presence of a procurement official. Proposals and modifications shall be time-stamped upon receipt and held in a secure place by an employee of the agency until the established due date. Proposals and modifications shall be shown only to procurement officials having a legitimate interest in them.

(5) After the date established for receipt of proposals, a register of proposals shall be prepared which shall include for all proposals the name of each offerer, ~~the number of modifications received, if any,~~ and a description sufficient to identify the supply or service offered. The register of proposals shall be open to public inspection only after award of the contract. ~~Proposal documents, such as financial information and trade secrets, that are identified, justified by the proposer or offerer, and agreed to by the department as requiring confidentiality will remain confidential after award.~~

(5)-(7) The text remains the same, but are renumbered (6)-(8).

(9) Proposal documents, such as financial information and trade secrets, that are identified, justified by the proposer or offerer, and agreed to by the department as requiring confidentiality will remain confidential after award. All other proposal documents are available for public inspection after the contract is executed.

(10) Multiple award contracts are allowable if determined to be in the best interest of the state.

(AUTH: Sec. 18-4-221 MCA; IMP, Sec. 18-4-304 MCA.)

2.5.607 PROCUREMENT FROM SHELTERED WORKSHOPS OR WORK ACTIVITY CENTERS

(1) Remains the same.

(2) The division will maintain a list of certified sheltered workshops or work activity centers, as defined in 18-5-101, MCA, located in the state. The list will include the products and services provided by each. The list will be available to user agencies, ~~and will be updated annually in January.~~

~~(3) Sheltered workshops and work activity centers will submit to the division by June 30 and December 31 of each year an updated listing of products and services offered.~~ (AUTH: Sec. 18-5-102 MCA; IMP, Sec. 18-5-102 and 18-5-103 MCA.)

4. Rule I is proposed to implement Section 18-4-307, MCA, which states that a written determination of nonresponsibility of a bidder or offerer must be made "in accordance with rules adopted by the department." This proposed rule establishes standards the

procurement officer may use to make a determination of nonresponsibility.

It is necessary to amend the rules for the following reasons:

ARM 2.5.202 is amended in (5) to clarify that the department only requires prior approval of printing, duplicating, bindery, and graphics art equipment within the capitol area as stated in Section 2-17-301, MCA. To define "capitol area" we chose the 10-mile radius language found in Section 2-17-301, MCA, relating to mail equipment.

ARM 2.5.502 is amended to make the rule language consistent with the recent statutory changes made by Chapter 130 of the 1995 Session Laws. Bid and contract security is now discretionary and the rules are amended to reflect this change. In addition, the requirement that bid and contract security be issued only from a Montana bank was removed by the legislature and the rule is changed accordingly.

An additional amendment to ARM 2.5.502 states that fax copies of bid or contract security instruments will not be accepted.

ARM 2.5.601 is amended to clarify that the state will accept fax copies of bids. A second amendment to this rule is made concerning multiple awards to simply restate the existing language in its own subsection to avoid confusion by the reader.

ARM 2.5.602 is amended to state that fax copies of proposals are not accepted. In addition, the rule is amended to clarify that proposals (RFP's) are open to public inspection only after a contract is executed. Prior to execution, a "register" of proposals is prepared and released to the public, as required in Section 18-4-304 (4), MCA. The rule is also amended to take out extraneous information currently required in the register.

In addition, an amendment is added to ARM 2.5.602 to repeat the language found in ARM 2.5.601 concerning multiple awards with the purpose of clarifying that multiple awards are permissible for Requests for Proposals as well as competitive sealed bid awards.

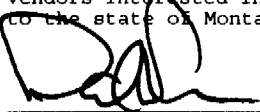
ARM 2.5.607 is amended to remove the requirement that the department update the list of the products and services provided by sheltered workshops each January. In addition, the rule requiring sheltered workshops to submit information twice a year to the department was deleted. Both requirements are unnecessary because the department updates its vendor lists as often as it receives information.

5. Interested persons may submit their data, views, or arguments concerning the proposed adoption or amendments to Marvin Eicholtz, Administrator, Procurement and Printing Division, PO Box 200135, Mitchell Building, Helena, Montana, 59620-0135 no later than August 24, 1995.

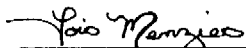
6. If a person who is directly affected by the proposed amendments or adoption of rule wishes to express his data, views, and arguments orally or in writing at a public hearing, he must make a written request for hearing and submit this request along with any written comments to Marvin Eicholtz, Administrator, Procurement and Printing Division, Department of

Administration, PO Box 200135, Mitchell Building, Helena, Montana, 59620-0135. A written request for hearing must be received no later than August 24, 1995.

7. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the administrative code committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 800 persons based on 8,000 vendors interested in submitting bids for supplies and services to the state of Montana.



Dal Smilie, Chief Legal Counsel
Rule Reviewer



Lois Menzies, Director
Department of Administration

Certified to the Secretary of State on July 14, 1995.

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

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of rules pertaining) OF 8.4.505 HIGH RISK
to high risk pregnancy and) PREGNANCY: CONDITIONS
conditions which require) REQUIRING PRIMARY CARE BY A
physician consultation) PHYSICIAN AND 8.4.506
) CONDITIONS WHICH REQUIRE
) PHYSICIAN CONSULTATION

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On August 26, 1995, the Board of Alternative Health Care proposes to amend the above-stated rules.

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

"8.4.505 HIGH RISK PREGNANCY: CONDITIONS REQUIRING PRIMARY CARE BY A PHYSICIAN (1) through (b)(vi) will remain the same.

(vii) contracts primary genital herpes in the first trimester;

(viii) Rh sensitization.

(c) through (c)(ii) will remain the same."

Auth: Sec. 37-27-105, MCA; IMP, Sec. 37-27-105, MCA

REASON: The proposed amendment will add Rh sensitization as a condition requiring primary care by a physician and not a direct-entry midwife, as this condition was identified as high risk by concerned medical groups through proposed legislation and direct contact with the Board.

"8.4.506 CONDITIONS WHICH REQUIRE PHYSICIAN CONSULTATION OR TRANSFER OF CARE (1) through (a)(vi) will remain the same.

(vii) post term greater than ~~42~~ 41 1/2 weeks by dates and physical exam;

(viii) through (xi) will remain the same.

(xii) blood pressure greater than 140/90 or increase of 30 mm Hg systolic or 15 mm Hg diastolic over baseline, that is unresolved within ~~30~~ 7 days;

(xiii) through (xvii) will remain the same.

(xviii) signs of fetal distress including prolonged fetal tachycardia (more than 170) or prolonged fetal bradycardia (less than 100), or fetal demise;

(xix) through (xxi) will remain the same.

(xxii) abnormal Pap smear (~~Class III or greater showing atypia or CIN~~);

(xxiii) and (xxiv) will remain the same.

(xxv) maternal age less than ~~14~~ 16 or greater than

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(xxvi) history of previous stillbirth;
(xxvii) history of incompetent cervix;
(xxviii) history of previous birth with Erb's Palsy or
fractured clavicle or humerus;
(xxix) history of neonatal anomaly; or
(xxx) history of previous Cesarean birth.
(b) will remain the same.
(i) significant fetal distress including prolonged
fetal tachycardia (more than 170) or prolonged fetal
bradycardia (less than 100);
(ii) through (c)(xiv) will remain the same.
(xv) abnormal body temperature-;
(xvi) abnormal neurological signs, including
jitteriness, decreased tones, seizures, or poor sucking reflex; or
(xvii) inability to nurse after 12 hours."
Auth: Sec. 37-27-105, MCA; IMP, Sec. 37-27-105, MCA

REASON: The proposed amendment will add several conditions to those requiring physician consultation or transfer of care, as these conditions were identified as potential risk areas by concerned medical groups through proposed legislation and direct contact with the Board.

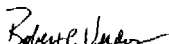
3. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Alternative Health Care, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., August 24, 1995.

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 Alternative Health Care, 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., August 24, 1995.


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 amendment, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly

affected has been determined to be 4 based on the 37 licensees in Montana.

BOARD OF ALTERNATIVE HEALTH CARE
MICHAEL BERGKAMP, ND, CHAIRMAN


ROBERT P. VERDON
RULE REVIEWER

BY:


ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, July 17, 1995.

BEFORE THE BOARD OF DENTISTRY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PROPOSED AMENDMENT,
amendment of rules pertaining	)	REPEAL AND ADOPTION OF RULES
to applications to convert	)	PERTAINING TO DENTISTS,
inactive status licenses to	)	DENTAL HYGIENISTS AND DENTAL
active status licenses, dental	)	AUXILIARIES
hygienists, and definitions;)	
repeal of a rule pertaining to)	
use of auxiliary personnel and)	
dental hygienists; and adoption)	
of a new rule pertaining to)	
dental auxiliaries)	

NO PUBLIC HEARING CONTEMPLATED

1. On August 26, 1995, the Board of Dentistry proposes to amend ARM 8.16.408, 8.16.602, 8.16.607, and 8.16.609; repeal 8.16.707; and adopt New Rule 1.

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

"8.16.408 APPLICATION TO CONVERT AN INACTIVE STATUS LICENSE TO AN ACTIVE STATUS LICENSE (1) through (1)(d) will remain the same.

(2) A dentist who is employed by a federal agency may maintain an active license upon verification to the board of the dentist's federal employment status as a dentist, and must meet all requirements for being licensed in an active status."

Auth: Sec. ~~37-4-205, 37-4-307~~, MCA; IMP, Sec. ~~37-4-307~~, MCA

REASON: The proposed amendment will allow an exception to the automatic out-of-state inactive license status for Federal employees who need to maintain an active license as a condition of employment, but do not necessarily practice in Montana as a Federal employee. The board has received numerous requests for this exception, and has a number of licensees in this Federal employment or active military category.

8.16.602 ALLOWABLE FUNCTIONS FOR DENTAL HYGIENISTS

(1) Allowable functions for the dental hygienist practicing under the supervision of a licensed dentist shall include all reversible dental procedures ~~in which the hygienist was instructed and qualified to perform in an accredited school of dental hygiene, except placing and carving restorations which are not temporary in nature as allowed by the Montana Dental Practice Act, and subject to (3) below, in which:~~

(a) the hygienist was instructed and qualified to perform in an accredited school of dental hygiene; or

(b) the hygienist was instructed and trained by a licensed dentist; or

(c) the hygienist was instructed and trained in a board acceptable continuing education course; or

(d) the hygienist is functioning in the capacity of a dental auxiliary as allowed by board rule.

(2) The A dental hygienist will not be allowed to perform any nonreversible dental procedures except;

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

(3) A dental hygienist shall not be allowed to perform the following:

(a) diagnosis and treatment planning as per 37-4-401, MCA;

(b) cutting hard or soft tissue or extracting teeth;

(c) prescribing any drug as per 37-4-401, MCA;

(d) administering or dispensing any drugs, without the prior authorization of the supervising dentist;

(e) placing, carving, or condensing any permanent restorations;

(f) taking final impressions of the involved arch for crowns, bridges, implant protheses, partial or complete dentures;

(g) bonding or cementing orthodontic brackets, or orthodontic appliances that would provide activation upon cementation; or

(h) activating or adjusting any orthodontic appliance.

(4) dentists shall refrain from delegating to dental hygienists any duties or responsibilities regarding patient care that cannot be delegated to dental hygienists under 37-4-401, MCA, and board rules.

(5) The assignment of tasks and procedures to a dental hygienist shall not relieve the dentist from liability for all treatment rendered the patient.

(6) A dentist shall not employ, supervise, or otherwise use more dental hygienists than the dentist can reasonably supervise in keeping with the dentist's ethical and professional responsibilities.

(7) It shall be the sole responsibility of the employing dentist to verify that a dental hygienist's qualifications are in compliance with the statutes and rules of the board of dentistry.

(8) A practitioner licensed to use or direct the use of an x-ray producing device must assure that the radiation source under the practitioner's jurisdiction is used only by individuals competent to use it, as per ARM 16.40.603."

Auth: Sec. 37-1-131, 37-4-205, 37-4-400, MCA; IMP, Sec. 37-4-401, 37-4-405, 37-4-408, MCA

REASON: The proposed amendments will clarify allowable, non-allowable and prohibited functions of a dental hygienist in keeping with directives from the Administrative Code Committee on the structure and content of this rule; as well as incorporating input from affected groups and licensees. The proposed amendments will more clearly define the hygienist's tasks and provide better guidance for the hygienist, dentist, board and public.

"8.16.607 APPLICATION TO CONVERT AN INACTIVE STATUS LICENSE TO AN ACTIVE STATUS LICENSE (1) through (1)(d) will remain the same.

(2) A dental hygienist who is employed by a federal agency may maintain an active license upon verification to the board of the hygienist's federal employment status as a dental hygienist and must meet all requirements for being licensed in an active status."

Auth: Sec. 37-1-131, 37-4-205, 37-4-406, MCA; IMP, Sec. 37-4-406, MCA

REASON: The proposed amendment will allow an exception to the automatic out-of-state inactive license status for Federal employees who need to maintain an active license as a condition of employment, but do not necessarily practice in Montana. The board has received numerous requests for this exception, and has a number of licensees in this Federal employment or active military category.

"8.16.609 DEFINITIONS (1) "Coronal polishing" is defined as a dental procedure limited to the utilization of abrasive agents on the coronal surfaces of natural and restored teeth for the purpose of plaque and extrinsic stain removal. Coronal polishing by itself, without an appropriately licensed dentist or licensed dental hygienist inspecting for and removing any supragingival and subgingival calculus or other and gingival irritants deemed necessary for removal by an appropriately licensed dentist or licensed dental hygienist, shall not be constructed represented or recorded as an oral prophylaxis.

(2) "Prophylaxis" is defined as a preventive and therapeutic dental health treatment process by which gingival irritants, including any existing combination of calculus deposits, plaque, materia alba, accretions, and stains are removed supragingivally and/or subgingivally from the natural and restored surfaces of teeth by a method or methods, which may include scaling, and root planing, and subgingival curettage, that are most suitable for the patient, by an appropriately licensed dentist or licensed dental hygienist, as ordered by the supervising dentist."

Auth: Sec. 37-1-131, 37-4-205, 37-4-401, MCA; IMP, Sec. 37-4-401, MCA

REASON: The proposed amendments will clarify the definitions to be consistent with changes to the functions of dental hygienist and functions of dental auxiliary rules, as well as the statutes and the Administrative Code Committee directives.

3. The Board proposes to repeal ARM 8.16.707 in its entirety. The full text of this rule can be located at pages 8-516 and 8-517, Administrative Rules of Montana. The reason for the proposed repeal is the promulgation of a new rule (new rule I) pertaining solely to the functions of dental auxiliaries. The authority sections are 37-4-205, 37-4-321, MCA, and the implementing sections are 37-4-321, 37-4-405, 37-4-408, MCA.

4. The proposed new rule will read as follows:

"I. FUNCTIONS FOR DENTAL AUXILIARIES (1) Allowable functions for a dental auxiliary practicing under the supervision of a licensed dentist shall include all reversible dental procedures as allowed by the Montana Dental Practice Act and subject to (4) below, in which:

(a) the auxiliary was instructed and qualified to perform in an accredited dental assisting program; or

(b) the auxiliary was instructed and trained by a licensed dentist; or

(c) the auxiliary was instructed and trained in a board approved continuing education course.

(2) A dental auxiliary will not be allowed to perform any nonreversible dental procedure except:

(a) making radiographic exposures; and

(b) monitoring a patient who has been prescribed and administered nitrous oxide by a licensed dentist.

(3) The allowed procedures listed in (1) include, but are not limited to:

(a) taking impressions for study or working models,

(b) removing sutures and dressings,

(c) applying topical and anesthetic agents,

(d) providing oral health instructions,

(e) applying topical fluoride agents,

(f) removing excess cement from coronal surfaces,

(g) placing and removing rubber dams,

(h) placing and removing matrices,

(i) collecting patient data,

(j) polishing amalgam restorations,

(k) placing and removing temporary restoration with hand instruments only,

(l) placing pit and fissure sealants, and

(m) coronal polishing.

(4) Dental auxiliaries performing any intraoral procedure must be under the direct supervision of a licensed dentist. No dentist shall allow any dental auxiliary to perform the following:

(a) diagnosis and treatment planning as per 37-4-401, MCA;

(b) cutting hard or soft tissue or extracting teeth;

(c) prescribing any drugs as per 37-4-401, MCA;

(d) administering or dispensing any drug, without the prior authorization of the supervising dentist;

(e) administering intravenous and intramuscular injections, nitrous oxide, or local anesthetic;

(f) placing, carving or condensing any permanent restorations;

(g) taking final impressions of the involved arch for crowns, bridges, implant protheses, partial or complete dentures;

(h) bonding or cementing any fixed prothesis, including veneers, except for provisionals;

(i) bonding or cementing orthodontic brackets or orthodontic appliances that would provide activation upon cementation;

(j) placing sulcular medicinal or therapeutic materials;
(k) using intraoral sonic/ultrasonic devices and abrasive air polishing devices (i.e. prophyljet);

(l) periodontal probing; or

(m) prophylaxis as per ARM 8.16.609 (2).

(5) Dentists shall refrain from delegating to dental auxiliaries any duties or responsibilities regarding patient care that cannot be delegated to dental auxiliaries under 37-4-408, MCA, and board rules.

(6) The assignment of tasks and procedures to dental auxiliaries shall not relieve the dentist from liability for all treatment rendered the patient.

(7) A dentist shall not employ, supervise or otherwise use more dental auxiliaries than the dentist can reasonably supervise in keeping with the dentist's ethical and professional responsibilities.

(8) It shall be the sole responsibility of the employing dentist to verify that a dental auxiliary's qualifications are in compliance with the statutes and rules of the board of dentistry.

(9) A practitioner licensed to use or direct the use of an x-ray producing device must assure that the radiation source under the practitioner's jurisdiction is used only by individuals competent to use it, as per ARM 16.40.603. The allowable auxiliary expanded duty function of making radiographic exposures must be performed under the direct supervision of a licensed dentist. Only a licensed dentist is allowed to prescribe radiation dosage and exposure. The auxiliary shall have either graduated from an accredited program of dental assisting, dental hygiene, or dentistry, or have successfully completed a board approved course in radiology with a written and practical examination approved by the board, or have been certified in radiology in another state or be a CDA. A list of board approved courses and examinations is on file in the board office. No dentist shall allow a dental auxiliary in the dentist's employ to expose radiographs without having first completed the didactic and clinical portions of the board approved course."

Auth: Sec. 37-4-205, 37-4-408, MCA; IMP, Sec. 37-4-408, MCA

REASON: The proposed new rule will clarify allowable, non-allowable, and prohibited functions of a dental auxiliary in keeping with directives from the Administrative Code Committee on the structure and content of these rules; as well as incorporating input from affected groups and licensees. The proposed new rule will more clearly define the auxiliary's tasks and provide better guidance for the auxiliary, dentist, board and public.

5. Interested persons may submit their data, views or arguments concerning the proposed amendments, repeal and adoption in writing to the Board of Dentistry, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena,

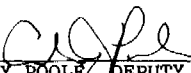
Montana 59620-0513, to be received no later than 5:00 p.m., August 24, 1995.

6. If a person who is directly affected by the proposed amendments, repeal and adoption 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 Dentistry, 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., August 24, 1995.

7. If the Board receives requests for a public hearing on the proposed amendments, repeal and adoption from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendment, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 148 based on the 1481 licensees in Montana.

BOARD OF DENTISTRY
CAROL SCRANTON, DDS, CHAIRMAN

BY:


ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE


ROBERT P. VERDON, RULE REVIEWER

Certified to the Secretary of State, July 17, 1995.

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

In the matter of proposed)	NOTICE PROPOSED
amendment of ARM 12.6.801)	AMENDMENT OF RULE
relating to the boating closure)	12.6.801
on the upper end of Hauser)	
Reservoir from October 15)	No Public Hearing
through December 15 of each)	is Contemplated
year.)	

To: All Interested Persons.

1. On September 8, 1995, the Fish, Wildlife and Parks Commission (commission) proposes to amend ARM 12.6.801 relating to a boating closure on the upper end of Hauser Reservoir from October 15 through December 15 of each year.

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

12.6.801 BOATING CLOSURES (1) The following waters/areas will be either closed as posted or marked by barrel booms to the use of all boats or other water craft except in case of rescue craft or plant maintenance work:

(a) area immediately above and below Canyon Ferry Dam in Lewis & Clark County;

(b) area immediately above Kerr Dam in Lake County;

(c) a portion of Brown's Lake near Ovando, Powell County, during the time period beginning April 1 and ending July 15;

(d) the upper end of Hauser Reservoir from Canyon Ferry Dam to below Brown's Gulch beginning October 15 and ending December 15 of each year.

AUTH: 87-1-303, 23-1-106(1), MCA

IMP: 87-1-303, 23-1-106(1), MCA

3. The rationale for the rule is as follows: In order to protect a large concentration of migrating bald eagles, a species designated as threatened under the Federal Endangered Species Act (16 USC 1531), feeding on kokanee salmon carcasses in Hauser Reservoir, and to provide an opportunity for public viewing of these eagles, the commission has determined it to be prudent to impose a boating closure on the upper end of Hauser Reservoir from October 15 through December 15 of each year.

4. Interested persons may present their data, views or arguments concerning the proposed amendments in writing no later than August 30, 1995, to Steve Lewis, Region 3 Supervisor, 1400 South 19th, Bozeman, MT 59715.

5. If a person who is directly affected by the proposed amendment wishes to express his or her data, views and arguments orally or in writing at a public hearing, he or she must make written request for a hearing and submit this request along with any written comments he or she has to Steve Lewis, Region 3 Supervisor, 1400 South 19th, Bozeman, MT 59715. A written request for hearing must be received no later than August 30, 1995.

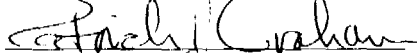
6. If the agency receives requests for a public hearing on the proposed amendment from 25 or more persons who are directly affected by the proposed action, from the Administrative Code Committee or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be in excess of 25 based on the potential number of boaters and visitors to the area.

RULE REVIEWER

FISH, WILDLIFE & PARKS COMMISSION



Robert N. Lane



Patrick Graham, Secretary

Certified to the Secretary of State on July 17, 1995.

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

In the matter of the proposed) NOTICE OF PUBLIC HEARING ON
amendment of ARM 24.11.606,) THE PROPOSED AMENDMENT,
24.11.608, 24.11.610, 24.11.613) ADOPTION, AND REPEAL OF RULES
24.11.701, 24.11.801, 24.11.803)
24.11.808, and 24.11.814; the)
proposed adoption of three)
new rules and the proposed)
repeal of ARM 24.11.1001)
through 24.11.1006, related to)
unemployment insurance taxes)

TO ALL INTERESTED PERSONS:

1. On August 21, 1995, at 1:30 p.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 amendment of certain existing rules, the adoption of new rules and the repeal of certain existing rules, all related to unemployment insurance taxes.

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., August 14, 1995, to advise us of the nature of the accommodation that you need. Please contact the Unemployment Insurance program, Attn: Ms. Mary Fried, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-3602; TDD (406) 444-0532; fax (406) 444-2699. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Ms. Fried.

2. The Department of Labor and Industry proposes to amend the rules as follows: (new matter underlined, deleted matter interlined)

24.11.606 EXPERIENCE-RATED EMPLOYERS (1) through (8)
Remain the same.

(9) Contributions for experience-rated employers are reduced by .1% beginning in the third quarter of 1983. An assessment equal to the amount of this reduction must be paid by all experience-rated employers and deposited in the employment security account provided for in 39-51-409, MCA. The .1% is not considered as "contributions" for the purposes of 39-51-401, MCA.

AUTH: Sec. 39-51-301 and 39-51-302 MCA

IMP: Sec. 39-51-404, 39-51-1103, 39-51-1121, 39-51-1123 and 39-51-1213 MCA

24.11.608 STATE AND LOCAL GOVERNMENTS (1) A governmental entity that does not elect to reimburse the trust fund is assigned an experience rate based on 39-51-1212, MCA. (See Chart on page 24-673.)

(2) Governmental entities are assessed for purposes of 39-51-404(4) at the rate of .05% of total quarterly wages.

[Chart on page 24-673 remains the same.]

AUTH: Sec. 39-51-302 MCA

IMP: Sec. 39-51-404 and 39-51-1212 MCA

24.11.610 EXPERIENCE-RATING RECORD TRANSFER (1) through (3) Remain the same.

(4) A transfer of the experience-rating record between a professional employer organization and its client is not allowed.

AUTH: Sec. 39-8-201 and 39-51-301, and 39-51-302 MCA

IMP: Sec. 39-8-207 and 39-51-1219 MCA

24.11.613 CHARGING BENEFIT PAYMENTS TO EXPERIENCE-RATED EMPLOYERS--CHARGEABLE EMPLOYERS (1)(a) through (c) Remain the same.

(d) A "severance of employment" occurs when an employing unit ceases paying wages, as defined in 39-51-201~~(18)~~, MCA, even though the work duties may not cease; provided the employing unit is not subject to 39-51-1219, MCA.

(2) through (4) Remain the same.

AUTH: Sec. 39-51-301 and 39-51-302 MCA

IMP: Sec. 39-51-1214 MCA

24.11.701 RECORDS TO BE KEPT BY EMPLOYER (1) Remains the same.

(2) The department is authorized to examine any and all records necessary for the administration of the Unemployment Insurance Law (Title 39, chapter 51, MCA). These records include, but are not limited to, payroll records, disbursement records, tax returns, personnel records, minutes of meetings, loan documentation, and any other records which might be necessary to determine claimant eligibility and employer liability.

(2) (3) These records and reports must be maintained by the employer for a period of five years and are open to periodic review by authorized representatives of the department to determine whether proper records are being maintained and all wages are being correctly reported.

AUTH: Sec. 39-51-603 39-51-301 and 39-51-302 MCA

IMP: Sec. 39-51-301 and 39-51-302 39-51-603 MCA

24.11.801 DUE DATE OF TAXES (1) through (3) Remain the same.

(4) Tax payments Payments are applied to the following obligations in the following order, unless bankruptcy proceedings or the department has determined otherwise:

(a) Taxes and interest contributions;

(b) 1985 surtax and interest;

- (c) administrative fund tax ~~and interest~~;
 (d) assessment for interest on the federal loan; ~~and interest, and~~
 (e) ~~penalties interest~~;
 (f) ~~penalty~~; and
 (g) ~~jeopardy penalty~~.
 (5) ~~Tax payments~~ Payments submitted with quarterly reports are applied to that quarter. If an employer pays more than the amount owed under the quarterly report, the overpayment is applied to the unpaid ~~taxes~~ amounts due from the oldest quarter. The employer may request that payments be applied to a more recent quarter.
 (6) Remains the same.
 AUTH: Sec. 39-51-301 ~~and~~ 39-51-302 MCA
 IMP: Sec. 39-51-1103 MCA

24.11.803. REPORTING OF WAGES IN EXCESS OF TAXABLE WAGE BASE
 (1) All wages paid to an employee by an employer are reportable as total wages. Wages paid to an employee in any single calendar year by an employer, up to and including the annual taxable wage base as defined in 39-51-1108, MCA, for that calendar year, are taxable wages. All further wages paid to the employee by that employer in that calendar year are "excess wages" and not taxable. Below is an illustration of total wages, taxable wages and excess wages:

Qtr.	Total Wages Paid in Qtr.	Total Wages Paid to Date	Taxable Wages	Excess Wages
First	5,000	5,000	5,000	none
Second	5,000	10,000	5,000	none
Third	5,000	15,000	2,800	2,200
Fourth	5,200	20,200	000	5,200
TOTAL	20,200		12,800	7,400
<u>First</u>	<u>6,000</u>	<u>6,000</u>	<u>6,000</u>	<u>none</u>
<u>Second</u>	<u>6,000</u>	<u>12,000</u>	<u>6,000</u>	<u>none</u>
<u>Third</u>	<u>6,000</u>	<u>18,000</u>	<u>3,500</u>	<u>2,500</u>
<u>Fourth</u>	<u>5,200</u>	<u>23,200</u>	<u>000</u>	<u>5,200</u>
TOTAL	23,200		15,500	7,700

In this example, the ~~\$12,800~~ \$15,500 taxable wage base for the ~~1989~~ 1995 calendar year was reached in the third quarter with ~~\$2,800~~ \$3,500 as taxable and ~~\$2,200~~ \$2,500 in excess of the ~~\$5,000~~ \$6,000 paid to that employee. There is no tax due on the \$5,200 paid in the fourth quarter because these wages are in excess of the taxable wage base. ~~All wages are reportable, however, as either total or excess wages.~~

(2) A successor employer, as described in 39-51-1219, MCA, may use the amount of wages paid by the predecessor to determine the successor employer's taxable wages. If a successor does not acquire a portion or all of the experience rating record of a predecessor, the successor cannot use the amount of wages paid by the predecessor to determine the successor employer's taxable wages.

(3) Remains the same.

AUTH: Sec. 39-51-301 and 39-51-302 MCA

IMP: Sec. 39-51-1108 MCA

24.11.808 WAGES (1) Remains the same.

(a) through (c) Remain the same.

(d)(i) The cash value of board and room is considered to be wages. The department determines the cash value of board and room, unless the department employment contract sets the value at an amount equal to or greater than the amounts established in this rule.

(ii) Remains the same.

(e)(i) Sick leave and accident disability payments are wages. Such payments are wages even if not paid directly by the employer, but rather by a third party such as an insurance agent. For example, if the employer pays premiums to the third party to cover sick leave or accident disability costs, the payments paid by the third party to the employee are wages. If the employee pays the premiums for such coverage, the sick leave or accident disability payments are not wages.

(ii) The employer is responsible for tax payments attributable to sick leave or accident disability payments made to or on behalf of an employee for six months after the last calendar month in which the employee worked for such employer. The third party assumes responsibility for the payments if the third party fails to give the following information to the employer within 15 days of the end of the calendar quarter in which the payments were made:

(A) the name and social security number of the employee who received the sick leave payments;

(B) the total amount of the payments.

(f) through (h) Remain the same.

AUTH: Sec. 39-51-301 and 39-51-302 MCA

IMP: Sec. 39-51-1103 MCA

24.11.814 PAYMENTS THAT ARE NOT WAGES--EMPLOYEE EXPENSES

(1) Remains the same.

(a) through (d) Remain the same.

(e) Remains the same.

(i) through (iv) Remain the same.

(v) for mileage, at a rate no greater than that allowed by the United States internal revenue service for the preceding that year, provided that the individual actually furnishes the vehicle.

AUTH: Sec. 39-51-301 and 39-51-302 MCA

IMP: Sec. 39-51-201 and 39-51-1103 MCA

REASON: The proposed amendments are reasonably necessary in order to improve customer service by clarifying various matters that have arisen in the last year: updating examples, replacing and correcting citations of authority in the rules and reorganizing certain text. The matters have been brought to the attention of the Department over the past year by participating employers and by staff.

3. The Department proposes to adopt new rules as follows:

RULE I. DEFINITION OF DIRECT SELLER (1) As provided by law, the term "direct seller" has the same meaning as provided by 26 U.S.C. 3508.

(2) Generally, a direct seller is a person:

(a) who sells, or offers for sale, a consumer product (meaning tangible items, such as vacuum cleaners, cleaning products or cosmetics, as opposed to services) at the home of the consumer;

(b) whose pay is determined by the quantity of product sold; and

(c) who works under a written contract that states the person will not be treated as an employee.

(3) For the purposes of this chapter, the term "direct seller" must be interpreted in accordance with federal tax cases construing the meaning of the term "direct seller". In the event that there is no Montana case on point, and there is a conflict among case decisions, decisions arising out of the federal circuit of which Montana is a member will be followed.

AUTH: Sec. 39-51-302 MCA

IMP: Sec. 39-51-204 MCA

REASON: The proposed rule is reasonably necessary to implement the provisions of House Bill 98 (Chapter 48, Laws of 1995) by providing for a body of law to be followed in interpreting who is included in the term "direct seller".

RULE II. DETERMINING WHETHER A WORKER IS THE EMPLOYEE OF A TEMPORARY SERVICE CONTRACTOR OR A PROFESSIONAL EMPLOYER ORGANIZATION (1) If there is a dispute as to whether a worker is an employee of a temporary service contractor or a professional employer organization, the matter will be resolved by reference to the provisions of Title 39, chapter 8, MCA and Title 39, chapter 71, MCA. If such a worker is not the employee of a temporary service contractor or professional employer organization, the worker is deemed to be an employee of the temporary service contractor or professional employer organization's client.

(2) It is the intent of the department that any determination of a worker's status as an employee for unemployment insurance purposes be consistent with the determination of the same person's status under the Workers' Compensation Act and the professional employer organization laws.

AUTH: Sec. 39-51-302 MCA

IMP: Sec. 39-51-202, 39-51-203, 39-51-204 and 39-51-603 MCA

REASON: The proposed rule is reasonably necessary in response to the provisions of Senate Bill 264 (Chapter 344, Laws of 1995), in order to provide a method for determining who is the employer of a given employee (for unemployment insurance purposes), under certain circumstances.

RULE III RATES FOR NEW EMPLOYERS (1) Rates for new employers are based on Standard Industrial Classification (SIC) codes for 9 major industrial classifications, plus a non-classifiable division for employer accounts whose industrial class cannot be determined. SIC codes are assigned using the Standard Industrial Classification Manual. The SIC code assigned determines the major industrial classification and rate for the new employer account. On accounts comprised of two or more businesses or industries, the business or industry that produces the most revenue determines the proper SIC code.

(2) A professional employer organization (PEO) licensed under Title 39, chapter 8, MCA, for the first calendar year of subjectivity, is assigned the non-classifiable rate for new employers. Thereafter, unless the PEO is experience-rated, the PEO is assigned a rate as a new employer in the industry in which the majority of workers are placed for the PEO's clients.

(a) The PEO must provide to the department with the quarterly report filing a list of workers showing which workers were assigned to which client. If the list is not provided, the PEO will be assigned the non-classifiable rate for new employers for the following year.

(3) The SIC codes are assigned as follows:

- (a) Division A - agriculture, forestry, and fishing;
- (b) Division B - mining;
- (c) Division C - construction;
- (d) Division D - manufacturing;
- (e) Division E - transportation, communications, and public utilities;
- (f) Division F - wholesale trade;
- (g) Division G - retail trade;
- (h) Division H - finance, insurance, and real estate;
- (i) Division I - services; and
- (j) Division K - non-classifiable establishments.

(4) Employers that do not provide sufficient information to be properly classified are assigned to the non-classifiable establishments division which carries the maximum rate for new employers. Employers have 30 days from the postmarked date of the rate notice and/or rate letter to submit sufficient information for a proper SIC classification and rate assignment.

(5) The average rate for each major industrial classification is computed once a year to set rates for the calendar year. Rates for new employers are determined using the average contribution rates in effect for the prior and current calendar year plus any adjustment for changes in the rate schedule.

AUTH: Sec. 39-8-201 and 39-51-302 MCA
IMP: Sec. 39-8-207 and 39-51-1101 MCA

REASON: The proposed rule is reasonably necessary in response to the provisions of Senate Bill 264 (Chapter 344, Laws of 1995), in order to provide a method for determining the unemployment insurance tax rate for a professional employer organization. The rule is also necessary in order to improve customer service by clarifying the process of establishing an initial tax rate for new establishments and providing a time period in which new employers must provide information related to the type of industry in which they are to be classified, so that new businesses can timely budget the proper tax rate as a part of operating expenses.

4. The Department of Labor and Industry proposes to repeal ARM 24.11.1001 through 24.11.1006 in their entirety. ARM 24.11.1001 through 24.11.1006 are found at page 24-699 of the Administrative Rules of Montana. AUTH: 39-51-301, MCA; IMP: 39-51-404(4), MCA. There is reasonable necessity for the proposed repeals because the Department has determined that the statutes adequately address the subject matter of the rules, or that certain matters are better included in the text of other existing rules.

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:


Sandra Bay, Bureau Chief
UI Contributions Bureau
Employment Relations Division
Department of Labor and Industry
P.O. Box 1728
Helena, Montana 59624-1728

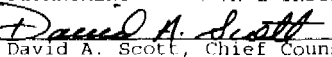
and must be received by no later than 5:00 p.m., August 25, 1995.

6. The Department proposes to make these amendments, new rules, and repeals effective October 1, 1995, except for the amendment to 24.11.814, which is proposed to be effective January 1, 1996. The Department reserves the right to adopt only portions of these proposals, or to adopt some or all of the proposals at a later date.

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

Laurie Ekanger, Commissioner
DEPARTMENT OF LABOR & INDUSTRY


David A. Scott
Rule Reviewer

By: 
David A. Scott, Chief Counsel
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: July 17, 1995.

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

In the matter of the proposed) NOTICE OF PUBLIC HEARING ON
amendment of ARM 24.29.704,) PROPOSED AMENDMENT AND
24.29.705 and 24.29.720,) PROPOSED REPEAL
related to workers')
compensation coverage matters,)
and the proposed repeal of)
ARM 24.29.3501, 24.29.3502,)
24.29.3503, 24.29.3504 and)
24.29.3505, pertaining to the)
state compensation insurance)
fund)

TO ALL INTERESTED PERSONS:

1. On August 21, 1995, at 2:00 p.m., or as soon thereafter as is possible, 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 amendment of rules related to workers' compensation coverage matters and the repeal of rules related to the State Compensation Insurance Fund.

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., August 14, 1995, to advise us of the nature of the accommodation that you need. Please contact the Employment Relations Division, Attn: Ms. Linda Wilson, P.O. Box 8011, Helena, MT 59604-8011; telephone (406) 444-6531; TDD (406) 444-5549; fax (406) 444-4140. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Ms. Wilson.

2. The Department of Labor and Industry proposes to amend the rules as follows: (new matter underlined, deleted matter interlined)

24.29.704 WHO MUST BE BOUND (1) Each employer as defined in 39-71-117, MCA, who has an employee in service as defined in 39-71-118, MCA, for any length of time must be bound by the provisions of plans no. 1, 2, or 3, unless an employment is exempt under 39-71-401, MCA. The employer, with the concurrence of ~~his~~ the employer's workers' compensation insurer, may elect to bind the employments that are exempt under 39-71-401(2), MCA.
AUTH: Sec. 39-71-203 ~~and 39-71-401~~ MCA
IMP: Sec. 39-71-401 MCA

24.29.705 ELECTION NOT TO BE BOUND --- CORPORATE OFFICER EXEMPTION (1) ~~An officer of a private business corporation may~~

~~elect not to be bound as an employee of that corporation for workers' compensation coverage under the workers' compensation and occupational disease acts; if the officer submits, on forms provided by the division, an appropriate notice as required by section 39-71-410, MCA, and the officer meets any one of the following four conditions:-~~

~~(a) the officer is not engaged in performing the ordinary duties of a worker for the corporation and the officer does not receive any pay from the corporation for performing the ordinary duties of a worker for the corporation;~~

~~(b) the officer is engaged primarily in household employment for the corporation;~~

~~(c) the officer owns twenty percent (20%) or more of the number of shares of stock in the corporation;~~

~~(d) the officer is a member of the family of an individual who meets the conditions of section (1)(e) of this rule. For the purposes of this rule, the term family includes only a husband, wife, child, adopted child, step child, mother, father, son-in-law, daughter-in-law, nephew, niece, brother and sister.~~

~~(2) Any officer of a private corporation who has elected not to be bound as an employee under section 39-71-410, MCA, and whose election was approved by the division under rules adopted and effective prior to November 3, 1975, continues not to be bound as an employee under the workers' compensation act.~~

~~(3) Any corporate officer of a nonprofit corporation may elect not to be bound as an employee of that corporation for workers' compensation coverage, if the officer submits, on forms provided by the division an appropriate notice as required by section 39-71-410, MCA.~~

~~(4) An election under sections (1) or (3) of this rule is not valid until approved by the division for corporations insured under plan no. 1 and plan no. 2, or until approved by the state insurance fund bureau for corporations insured under plan No. 3.~~

~~(5) If a person seeking election not to be bound under this rule does not agree with the division's decision, he may request an administrative review in accordance with ARM 24-29-206. If the person does not agree with the division's decision after completion of administrative review procedures, he may request contested case procedures in accordance with ARM 24-29-207. For the purposes of the exemption of certain corporate officers provided by 39-71-401(2), MCA, the term "quasi-public or private corporation" includes nonprofit corporations.~~

AUTH: Sec. 39-71-203 and 39-71-410 MCA

IMP: Sec. 39-71-410 39-71-401 MCA

24-29-720 PAYMENTS THAT ARE NOT WAGES--EMPLOYEE EXPENSES

(1) Remains the same.

(2) Remains the same.

(a) and (b) Remain the same.

(c) for mileage, at a rate no greater than that allowed by the United States internal revenue service for the preceding that year, provided that the individual actually furnishes the

vehicle;

(d) through (g) Remain the same.

AUTH: Sec. 39-71-203 MCA

IMP: Sec. 39-71-123 MCA

REASON: There is reasonable necessity to amend 24.29.704 in order to make the language gender neutral, conform the style with that required by the Secretary of State, and to correct an error in the citation of authority for the rule. There is reasonable necessity to amend 24.29.705 based on the changes contained in section 6 of Chapter 516, Laws of 1995 (HB 200), and to correct errors on the citation of authority for the rule. The rule is needed to clarify that officers of nonprofit corporations are exempt from coverage requirements if they otherwise meet the statutory criteria. There is reasonable necessity to amend 24.29.720 in order to conform the rule to a parallel provision in the Unemployment Insurance rules (ARM 24.11.804) which has been proposed for amendment. (See MAR Notice No. 24-11-73.) The proposed amendment will allow employers to use the reimbursement rate of employee vehicle expense permitted by the IRS for federal tax, unemployment and workers' compensation purposes.

3. The Department of Labor and Industry proposes to repeal ARM 24.29.3501, 24.29.3502, 24.29.3503, 24.29.3504, 24.29.3505 in their entirety. The rules proposed for repeal are found at pages 24-2321 through 24-2323 of the Administrative Rules of Montana. AUTH: 39-71-203, MCA; IMP: 39-71-2303, MCA. There is reasonable necessity for the proposed repeals because the State Compensation Insurance Fund ("State Fund") has recently requested that the Department repeal rules that no longer apply to the State Fund. The State Fund is no longer a part of the Department of Labor and Industry. The State Fund is attached to the Department of Administration for administrative purposes only, pursuant to 2-15-1019, MCA, and has its own rule-making authority, pursuant to 39-71-2316, MCA.

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:

Dennis Zeiler, Bureau Chief
Workers' Compensation Regulations Bureau
Employment Relations Division
Department of Labor and Industry
P.O. Box 8011
Helena, Montana 59604-8011

and must be received by no later than 5:00 p.m., August 25, 1995.

5. The Department proposes to make the amendments and repeals effective October 1, 1995, except for the amendment to 24.29.720, which is proposed to become effective January 1, 1996. The Department reserves the right to adopt only portions


of these proposed amendments, or to adopt some or all of the amendments at a later date.

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

Laurie Ekanger, Commissioner
DEPARTMENT OF LABOR & INDUSTRY



David A. Scott
Rule Reviewer

By: 

David A. Scott, Chief Counsel
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: July 17, 1995.

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

In the matter of the proposed) NOTICE OF PUBLIC HEARING ON
amendment of ARM 24.29.706,) PROPOSED AMENDMENT AND
and the proposed adoption of) PROPOSED ADOPTION
2 new rules related to the)
exemption of independent)
contractors for workers')
compensation)

TO ALL INTERESTED PERSONS:

1. On August 18, 1995, at 10:00 a.m., a public hearing will be held in the auditorium of the Scott Hart Building, 303 North Roberts, Helena, Montana, to consider the amendment and adoption of rules related to exemptions for independent contractors for workers' compensation and other purposes.

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., August 14, 1995, to advise us of the nature of the accommodation that you need. Please contact the Employment Relations Division, Attn: Ms. Linda Wilson, P.O. Box 8011, Helena, MT 59604-8011; telephone (406) 444-6531; TDD (406) 444-5549; fax (406) 444-4140. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Ms. Wilson.

2. The Department of Labor and Industry proposes to amend the rule as follows: (new matter underlined, deleted matter interlined)

24.29.706 ELECTION NOT TO BE BOUND--INDEPENDENT CONTRACTOR

(1) Remains the same.

(a) and (b) Remain the same.

(c) the applicant provides proof of a large, substantial investment in the tools, equipment or knowledge essential to the performance of the applicant's services. The department may require evidence of:

(i) a large, substantial investment in tools or equipment, shown by evidence such as, but not limited to, certificate of title or ownership, purchase agreement, or lease contract; or

(ii) certification of the applicant's specialty knowledge;

and

(d) the applicant has paid the application fee set by 39-71-401, MCA, and as implemented by [RULE II].

~~(2) An election under this rule is valid indefinitely upon approval by the department; however, if any future investigation concludes the applicant is not an independent contractor, the exemption will be voided. The independent contractor exemption~~

is valid for 1 year following the date the exemption is approved. The exemption may be renewed as provided by [RULE II].

(3) If the applicant seeking this exemption disagrees with the department's decision to reject the application and deny the exemption, the applicant may appeal for a contested case hearing in accordance with ARM 24.29.207 petition for review of the decision. The decision is reviewed by an appeals referee, and further appeals are made in the same way that unemployment insurance appeals are heard. Unemployment insurance appeals are governed by 39-51-1109, 39-51-2403 and 39-51-2404, MCA.

AUTH: Sec. 39-71-203 and 39-71-401 MCA

IMP: Sec. 39-71-120 and 39-71-401 MCA

REASON: There is reasonable necessity to amend ARM 24.29.706 in order to implement the changes contained in section 30 of Chapter 500, Laws of 1995 (SB 354) and section 6 of Chapter 516, Laws of 1995 (HB 516).

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

RULE I RENEWAL OF INDEPENDENT CONTRACTOR EXEMPTION

(1) A person holding a current independent contractor exemption issued by the department pursuant to ARM 24.29.706 may renew the exemption by submitting to the department all of the following:

(a) a completed independent contractor renewal application form;

(b) a copy of the person's federal or state income tax statement for the most recent tax reporting period that shows income and expenses for the person's business; and

(c) the fee provided by [RULE II].

(2) In order for a renewal application to be approved, it must be submitted at least 30 days before the anniversary date of the exemption but not more than 60 days before the anniversary date. Failure to timely submit a renewal application may result in the renewal being denied and the loss of the exemption.

(3) A person whose renewal application is denied as untimely may make an application under ARM 24.29.706 for a new exemption upon paying the fee provided by [RULE II].

AUTH: Sec. 39-71-203 and 39-71-401 MCA

IMP: Sec. 39-71-120 and 39-71-401 MCA

RULE II APPLICATION FEE FOR INDEPENDENT CONTRACTOR EXEMPTION (1) For the purposes of this rule, the following definitions apply:

(a) "Initial application" means a person's first-time application for exemption as an independent contractor in a particular trade, occupation, profession or business. For example, if a person holds an exemption for general carpentry, and that person wishes to become exempt as a mechanic, the application for exemption as a mechanic will be considered an initial application.

(b) "Renewal application" means an application for renewal of an existing independent contractor exemption held by that person.

(c) "Subsequent application" means an application submitted for reconsideration following a rejection of an initial application or renewal application. The submission of additional information not originally required on an application, when made in response to a request by the department, is not considered a subsequent application.

(2) There is no application fee for an initial application.

(3) There is a \$25.00 fee for each renewal application.

(a) For persons holding valid independent contractor exemptions as of June 30, 1995, the \$25 fee is waived for the first renewal application during fiscal year 1996.

(4) There is a \$25.00 fee for each subsequent application.

(5) If a person is concurrently registering with the department as a contractor pursuant to Title 39, chapter 8, MCA, and rules adopted to implement that chapter, the initial application or renewal application fee for an independent contractor exemption is waived.

AUTH: Sec. 39-9-103, 39-71-203 and 39-71-401 MCA

IMP: Sec. 39-9-206, 39-71-120 and 39-71-401 MCA

REASON: There is reasonable necessity to adopt the proposed rules in order to implement the changes contained in section 30 of Chapter 500, Laws of 1995 (SB 354) and section 6 of Chapter 516, Laws of 1995 (HB 516).

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:

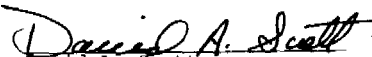
Dennis Zeiler, Bureau Chief
Workers' Compensation Regulations Bureau
Employment Relations Division
Department of Labor and Industry
P.O. Box 8011
Helena, Montana 59604-8011

and must be received by no later than 5:00 p.m., August 25, 1995.

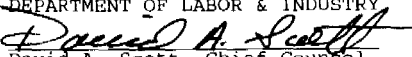
5. The Department proposes to make the amendments and new rules effective October 1, 1995. The Department reserves the right to adopt only portions of these proposed amendments and rules, or to adopt some or all of the amendments or rules at a later date.

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

Laurie Ekanger, Commissioner
DEPARTMENT OF LABOR & INDUSTRY


David A. Scott
Rule Reviewer

By:


David A. Scott, Chief Counsel
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: July 17, 1995.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF PUBLIC HEARING
rules 16.44.102, 110, 126,)	FOR PROPOSED AMENDMENT
16.44.202, 16.44.303, 305, 306,)	OF RULES
334, 335, 16.44.402, 16.44.612,)	AND REPEAL OF
16.44.702, and 16.44.1101,)	ARM 16.14.589
concerning incorporations by)	
reference of federal regulations,)	
definitions, and regulatory)	
requirements governing hazardous)	
waste and used oil; and the repeal)	
of 16.14.589, prohibiting used oil)	
as dust suppressant.)	

(Hazardous Waste)

To: All Interested Persons

1. On August 21, 1995 at 10:00 a.m., the department will hold a public hearing in Room C209 (side 2) of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of the above-captioned rules and the repeal of ARM 16.14.589.

2. ARM 16.14.589, the rule proposed to be repealed, can be found at page 16-758 of the Administrative Rules of Montana. AUTH: 75-10-204, MCA; IMP: 75-10-204, MCA

3. The rules, as proposed to be amended, appear as follows (new material is underlined; material to be deleted is interlined):

16.44.102 INCORPORATIONS BY REFERENCE (1)-(4) Remain the same.

(5) As of ~~December 10, 1993~~ [the effective date of these amendments], all of the incorporations by reference of federal agency rules listed below within the specific state agency rules listed below shall refer to federal agency rules as they have been codified in the July 1, ~~1992~~ 1994 edition of Title 40 of the Code of Federal Regulations (CFR). References in the state rules to federal rules contained in Titles 49 and 33 are updated to the extent that they have been updated by the federal rules which also incorporate these rules by reference. For the proper edition of these rules in Titles 49 and 33, see the reference in Title 40 of the CFR (~~1992~~ 1994 edition), provided in parentheses. A short description of the amendments to incorporated federal rules which have occurred since the last incorporation by reference is contained in the column to the right. This rule supersedes any specific references to editions of the CFR contained in other rules in this chapter.

<u>State Rule</u>	<u>Federal Rule Incorporated</u>	<u>Notation of Most Recent Changes to Federal Rules</u>
<u>16.44, . . .</u>	<u>40 CFR . . .</u>	
(a)-(b) Remain the same.		
(c) 110	Parts 264 <u>(except subpart H)</u> and 266 <u>(except subpart H)</u>	<u>NE Hazardous waste burned in boilers and industrial furnaces.</u>
(d) 116	264.98, 264.99, 264.100, 264.112, 264.113, 264.117(a), 264.118, 264.147	<u>NE Closure plans; financial requirements.</u>
(e) 120	270.14 - 270.26	<u>Liners and leak detection systems. Permit application requirements.</u>
(f)-(g) Remain the same.		
(h) 126	Parts 264 <u>(except subpart H)</u> and 266 <u>(except subpart H)</u>	<u>NE Hazardous waste burned in boilers and industrial furnaces.</u>
(i) 129	Part 268, (except sections 268.5, 268.6, 268.42(b), and 264.44) as well as Appendices I through IX	<u>Land disposal restrictions; variances.</u>
(j) 202	Parts 264 and 266, Appendix to Part 262	<u>NE Hazardous waste burned in boilers and industrial furnaces.</u>
(k) 306	Part 264, Subpart O; Part 265, Subpart O; Part 266, Subparts C-G; 265.71, 265.72; <u>Part 279</u>	<u>NE Used oil management standards.</u>
(l)-(o) Remain the same.		
(p) 333	261.33(e) and (f)	<u>NE Correction of listing for "beryllium".</u>
(q)-(r) Remain the same.		
(s) 352	Part 261, Appendices VII	<u>NE Correction of</u>

- and VIII listing for "beryllium".
- (t) Remains the same.
- 49 CFR . . .
- (u) 410 Parts 173, 178, and 179 NE Shipping and packaging of hazardous materials.
(40 CFR 262.30)
- (v) 411 Part 172, Subpart E NE Labeling requirements for hazardous materials transportation.
(40 CFR 262.31)
- (w) 412 Part 172, Subpart D NE Marking requirements for hazardous materials transportation.
(40 CFR 262.32)
- (x) 413 Part 172, Subpart F NE Placarding requirements for hazardous materials transportation.
(40 CFR 262.33)
- 40 CFR . . .
- (y) 415 Part 265, Subparts C and D, NE Tank systems.
265.111, 265.114, Part 265,
Subpart I, Part 265, Sub-
part J, (except 265.197(c)
and 265.200)
- (z)-(ab) Remains the same.
- (ac) 609 Part 265, Subparts B - Q, Groundwater monitoring; liners and leak detection systems; Facility standards; record-keeping; closure requirements; surface impoundments; landfills.
excluding Subpart H and
265.75
- (ad) 702 Part 264, Subparts B - BB, Liners and leak detection systems; Work analysis; corrective action; landfills; surface
excluding Subpart H and
264.75; Part 264, Appen-
dices I, IV, V, VI, and IX

- impoundments; drip
pads.
- (ae) 802 264.197, 264.228, 264.258,
265.197, 265.228, and
265.258 NE Closure re-
quirements for
surface impound-
ments.
- (af) 803 264.112, 264.117 - 264.120,
265.112, 265.117 - 265.120 NE Closure plans.
- (ag) 804 264.111 - 264.115,
264.143(f)(3), 264.178,
264.197, 264.228, 264.258,
264.280, 264.310, 264.351,
264.143(f)(3), 264.601 -
264.603, 265.111 - 265.115,
265.197, 265.228, 265.258,
265.280, 265.310, 265.351,
265.381, and 265.404 NE Closure plans;
closure require-
ments.
- (ah) 805 264.117 - 264.120, 264.228,
264.145(f)(5), 264.280, 264.310,
264.145(f)(5), 264.603, 265.117 - 265.120, 265.228,
265.258, 265.280, 265.310 NE Closure re-
quirements.
- (ai) Remains the same.
- (aj) 817 264.147(f), 264.147(g) NE Financial re-
quirements.
- (ak) 823 264.151(a)-(j) NE Financial re-
quirements.
- (al) Remains the same.
NC - Refers to no change in the material which is being
incorporated by reference from the time of the last
formally noticed incorporation by reference.

(6) All material which is incorporated by reference may be obtained from the Solid and Hazardous Waste Bureau Waste Management Division, Department of Health and Environmental Sciences, Quality, Cogswell Building, Capitol Station PO Box 200901, Helena, MT 59620-0901. Interested persons seeking a copy of the CFR may address their requests directly to: Superintendent of Documents, US Government Printing Office, Washington, DC 20402.
Auth: 75-10-405, MCA; IMP: 75-10-405, MCA

16.44.110 ESTABLISHING PERMIT CONDITIONS (1)-(5) Remain the same.

(6) The department hereby adopts and incorporates by reference 40 CFR Parts 264 (except subpart H) and 266 (except subpart H). The correct CFR edition is listed in ARM

16.44.102. 40 CFR Parts 264 and 266 are federal agency rules setting forth requirements, for owners and operators of HWM facilities, concerning respectively, standards for operation and maintenance of facilities and standards for specific hazardous wastes such as recyclable wastes and specific types of facilities.

(7) Copies of 40 CFR Parts 264 and 266 or any portion thereof may be obtained from the ~~Solid and Hazardous Waste Bureau Waste Management Division~~, Department of Health and Environmental Sciences Quality, Cogswell Building, PO Box 200901, Helena, MT 59620-0901.

AUTH: 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA

16.44.126 RESEARCH, DEVELOPMENT, AND DEMONSTRATION PERMITS (1)-(4) Remain the same.

(5) The department hereby adopts and incorporates herein by reference 40 CFR Parts 264 (~~except subpart H~~) and 266 (~~except subpart H~~), which pertain to standards for owners and operators of hazardous waste management facilities and to standards for the management of specific hazardous wastes such as recyclable materials. The correct CFR edition is listed in ARM 16.44.102. Copies of 40 CFR Parts 264 and 266 may be obtained from the ~~Solid and Hazardous Waste Bureau Waste Management Division~~, Department of Health and Environmental Sciences Quality, Cogswell Building, PO Box 200901, Helena, MT 59620-0901.

AUTH: 75-10-405, MCA; IMP: 75-10-405 MCA

16.44.202 DEFINITIONS In this chapter, the following terms shall have the meanings or interpretations shown below:

(1)-(129) Remain the same.

(130) "Used oil" means any oil that has been refined from crude oil or any synthetic oil, either of which has been used and as a result of that use is contaminated by physical or chemical impurities.

(130)-(137) Remain the same but are renumbered (131)-(138).

Auth: 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA

16.44.303 DEFINITION OF HAZARDOUS WASTE (1) Remains the same.

(2) Used oil containing more than 1000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in ARM 16.44.330 through 16.44.333. A person may rebut this presumption by demonstrating that the used oil does not contain hazardous waste (for example, by using an analytical method from the US environmental protection agency's publication SW-846, third edition, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in 40 CFR Part 261, Appendix VIII).

(a) The rebuttable presumption does not apply to metal-working oils/fluids containing chlorinated paraffins if they are processed, through a tolling agreement, to reclaim metal-working oils/fluids. The presumption does apply to metal-work-

ing oils/fluids if such oils/fluids are recycled in any other manner, or disposed of.

(b) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

(2) Remains the same but is renumbered (3).

~~(3)(4)~~(a) Remains the same.

(b) The following wastes are not hazardous even though they are generated from the treatment, storage, or disposal of a hazardous waste, unless they exhibit one or more of the characteristics of hazardous waste:

(i) Remains the same.

(ii) wastes from burning any of the materials exempted from regulation under ARM 16.44.306(1)(c)~~(v)-(viii)~~ (iv)-(vii); and

(iii) Remains the same.

(4) Remains the same but is renumbered (5).

AUTH: 75-10-405, MCA; IMP: 75-10-403, 75-10-405, MCA

16.44.305 SPECIAL REQUIREMENTS FOR COUNTING HAZARDOUS WASTES (1) In accounting for the quantity of hazardous waste generated for the purpose of determining ~~his~~ a generator's proper category, a generator:

(a) need not include hazardous waste that is excluded from regulation under this chapter (e.g., wastes excluded under ARM 16.44.103, 16.44.304, 16.44.612, or 16.44.701; recyclable materials which are excluded under ARM 16.44.306(1)(c)~~(i)-(ii)~~, and ~~(iv)-(viii)~~, or which are directly reclaimed on-site without prior storage; and used oil which has not been mixed with any hazardous waste and which is excluded under ARM 16.44.306(1)~~(b)(iii) or (1)(e)(iii)~~ (d));

(b)-(e) Remain the same.

AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA

16.44.306 REQUIREMENTS FOR RECYCLABLE MATERIALS: REQUIREMENTS FOR THE MANAGEMENT OF USED OIL (1)(a) Remains the same.

(b) The following recyclable materials are regulated (as indicated below) under subparts C-G of 40 CFR Part 266, and all applicable provisions in subchapters 1, 8, 9 and 11 of this chapter:

(i)-(ii) Remain the same.

~~(iii) used oil that exhibits one or more of the characteristics of hazardous waste and is burned for energy recovery in boilers and industrial furnaces that are not regulated under subpart O of 40 CFR Part 264 or subpart O of 40 CFR Part 265 (subpart E, 40 CFR Part 266);~~

~~(iv)(iii)~~ recyclable materials from which precious metals are reclaimed (subpart F, 40 CFR Part 266);

~~(v)(iv)~~ spent lead-acid batteries that are being reclaimed (subpart G, 40 CFR Part 266);

(c) The following recyclable materials are not subject to

regulation under this chapter:

(i)-(ii) Remain the same.
~~(iii) used oil that exhibits one or more of the characteristics of hazardous waste but is recycled in some other manner than being burned for energy recovery;~~

(iv)-(vi) Remain the same but are renumbered (iii)-(v).
~~(vii)(vi)~~ (A) hazardous waste fuel produced from oil-bearing hazardous wastes from petroleum refining, production, or transportation practices, or produced from oil reclaimed from such hazardous wastes, where such hazardous wastes are reintroduced into a process that does not use distillation or does not produce products from crude oil so long as the resulting fuel meets the used oil specification under 40 CFR 266.40(e) 279.11 and so long as no other hazardous wastes are used to produce the hazardous waste fuel;

(B) hazardous waste fuel produced from oil-bearing hazardous waste from petroleum refining, production, and transportation practices, where such hazardous wastes are reintroduced into a refining process after a point at which contaminants are removed, so long as the fuel meets the used oil fuel specification under 40 CFR 266.40(e) 279.11;

(C) oil reclaimed from oil-bearing hazardous wastes from petroleum refining, production, and transportation practices, which reclaimed oil is burned as a fuel without reintroduction to a refining process, so long as the reclaimed oil meets the used oil fuel specification under 40 CFR 266.40(e) 279.11; or

(viii) Remains the same but is renumbered (vii).

(d) Used oil that is recycled and is also a hazardous waste solely because it exhibits a characteristic of hazardous waste is not subject to the hazardous waste requirements of this chapter (including those requirements for recyclable materials specified under this rule), but instead is subject to the requirements contained in 40 CFR Part 279 (adopted and incorporated by reference in (5) below). Used oil that is recycled includes any used oil that is reused, following its original use, for any purpose (including the purpose for which the oil was originally used). That term includes, but is not limited to, oil that is re-refined, reclaimed, burned for energy recovery, or reprocessed.

(2)-(4) Remain the same.

(5) The department hereby adopts and incorporates by reference subpart O of 40 CFR Part 264, subpart O of 40 CFR Part 265, 40 CFR 265.71, 265.72, and subparts C-G of 40 CFR Part 266, and 40 CFR Part 279 (except the definition of "used oil" found in 40 CFR 279.1). The correct CFR edition is listed in ARM 16.44.102. These federal agency rules refer, respectively, to: standards for owners and operators of hazardous waste treatment, storage, and disposal facilities, specifically pertaining to incinerators (40 CFR Part 264, subpart O); interim status standards for owners and operators of hazardous waste treatment, storage, and disposal facilities, specifically pertaining to incinerators (40 CFR Part 265, subpart O); use of a manifest system for interim status facility owners and operators (40 CFR 265.71), manifest discrepancies (40 CFR 265.72),

and recyclable materials (40 CFR Part 266), and management of used oil (40 CFR Part 279). Subparts B-L, AA, and BB of 40 CFR Parts 264 and 265 are incorporated by reference in ARM 16.44.702 and 16.44.609. The equivalents of 40 CFR 264.75 and 40 CFR 265.75 are set forth in ARM 16.44.703 and 16.44.613, respectively. A copy of these provisions or any portion thereof may be obtained from the ~~Solid and Hazardous Waste Bureau~~ Waste Management Division, Department of Health and Environmental Sciences, ~~Cegawell Building Quality, PO Box 200901~~, Helena, MT 59620-0901.

AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA

16.44.334 ADDITIONAL REGULATION OF CERTAIN HAZARDOUS WASTE RECYCLING ACTIVITIES ON A CASE-BY-CASE BASIS (1) The department may decide on a case-by-case basis that persons accumulating or storing the recyclable materials described in ARM 16.44.306(1)(b)(~~iv~~) (iii) should be regulated under ARM 16.44.306(2) and (3). The basis for this decision is that the materials are being accumulated or stored in a manner that does not protect human health and the environment because the materials or their toxic constituents have not been adequately contained, or because the materials being accumulated or stored together are incompatible as further explained in 40 CFR Part 265, Appendix V. (Reference to 40 CFR Part 265, Appendix V, is not intended to be exclusive or formal authority for what is incompatible but is included here for illustrative purposes.) In making this decision, the department will consider the following factors:

(a)-(e) Remain the same.

(2) Remains the same.

(3) The department hereby adopts and incorporates herein by reference 40 CFR Part 265, Appendix V, which sets forth examples of incompatible wastes. The correct CFR edition is listed in ARM 16.44.102. A copy of 40 CFR Part 265, Appendix V, may be obtained from the ~~Solid and Hazardous Waste Bureau~~ Waste Management Division, Department of Health and Environmental Sciences, ~~Cegawell Building Quality, PO Box 200901~~, Helena, MT 59620-0901.

AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA

16.44.335 PROCEDURES FOR CASE-BY-CASE REGULATION OF HAZARDOUS WASTE RECYCLING ACTIVITIES (1) The department will use the following procedures when determining whether to regulate hazardous waste recycling activities described in ARM 16.44.306(1)(b)(~~iv~~) (iii) under the provisions of ARM 16.44.306(2) and (3):

(a)-(b) Remain the same.

AUTH: 75-10-404, ~~75-10-405~~, MCA; IMP: 75-10-405, MCA

16.44.402 HAZARDOUS WASTE DETERMINATION; APPLICABILITY OF RULES TO GENERATOR CATEGORIES; SPECIAL REQUIREMENTS FOR CONDITIONALLY EXEMPT SMALL QUANTITY GENERATORS (1)-(4) Remain the same.

(5) The following special requirements apply to a condi-

tionally exempt small quantity generator:

(a)-(c) Remain the same.

(d) If a conditionally exempt generator's hazardous wastes are mixed with used oil and ~~if the mixture is destined to be burned for energy recovery~~, the mixture is subject to ~~subpart E of 40 CFR Part 266 the requirements of 40 CFR Part 279~~ (incorporated by reference in ARM 16.44.306(5)). Any material produced from such a mixture by processing, blending, or other treatment is also so regulated if it is destined to be burned for energy recovery.

~~(e) The hazardous waste of a conditionally exempt generator may not be used for dust suppression or road treatment. If these hazardous wastes are mixed with used oil or with other materials, the resultant mixture is likewise prohibited from use in dust suppression or road treatment.~~

AUTH: 75-10-204, 75-10-405, MCA; IMP: 75-10-204, 75-10-405, MCA

16.44.612 EXCLUSIONS (1) The provisions of this subchapter do not apply to:

(a)-(g) Remain the same.

(h)(i) except as provided in ~~(g)-(b)~~ (h)(ii) of this rule, a person engaged in treatment or containment activities during immediate response to a hazardous waste discharge or an imminent and substantial threat of a hazardous waste discharge.

(ii) Remains the same.

(iii) Any person who is covered by ~~(g)-(a)~~ (h)(i) of this rule and who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of this subchapter for those activities.

(i)-(k) Remain the same.

AUTH: 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA

16.44.702 STANDARDS AND REQUIREMENTS FOR PERMITTED FACILITIES (1)-(4) Remain the same.

(5) The department hereby adopts and incorporates herein by reference 40 CFR Part 264, subparts B through and including BB, excluding subpart H and 40 CFR 264.75. The correct CFR edition is listed in ARM 16.44.102. The equivalent of subpart H is set forth in subchapter 8 of this chapter. The equivalent of 40 CFR 264.75 is set forth in ARM 16.44.703. Subparts B through BB, excluding subpart H, are federal agency rules setting forth, respectively, general facility standards (B); requirements for preparedness and prevention (C); requirements for contingency plan and emergency procedures (D); manifest system, recordkeeping and reporting requirements (E); ground-water monitoring requirements (F); closure and post-closure requirements (G); requirements for use and management of containers (I), tanks (J), surface impoundments (K), waste piles (L), land treatment units (M), landfills (N), and incinerators (O); corrective action for solid waste management units (S); requirements for drip pads at wood treating operations (W); requirements for miscellaneous units (X); air emission stan-

dards for process vents (AA); and air emission standards for equipment leaks (BB). A copy of 40 CFR Part 264, subparts B through and including BB, excluding subpart H, or any portion thereof, may be obtained from the ~~Solid and Hazardous Waste Bureau Waste Management Division~~, Department of Health and Environmental Sciences, ~~Cogswell Building Quality, PO Box 200901~~, Helena, MT 59620-0901.

(6) The department hereby adopts and incorporates herein by reference 40 CFR Part 264, appendices I, IV, V, VI and IX. These are appendices included as a part of federal agency rules setting forth respectively, recordkeeping instructions (I), Cochran's students' T-test for statistical analysis (IV), examples of potentially incompatible waste (V), political jurisdictions in which compliance with seismic location standards must be demonstrated (VI), and a list of groundwater monitoring parameters (IX). A copy of appendices I, IV, V, VI, and IX to 40 CFR Part 264 may be obtained from the ~~Solid and Hazardous Waste Bureau Waste Management Division~~, Department of Health and Environmental Sciences, ~~Cogswell Building Quality, PO Box 200901~~, Helena, MT 59620-0901.

AUTH: 75-10-405, 75-10-406, MCA; IMP: 75-10-405, 75-10-406, MCA

16.44.1101 APPLICABILITY (1) Remains the same.

(2) The following hazardous wastes and facilities are not subject to regulation under this subchapter:

(a) Used oil burned for energy recovery that is also a hazardous waste solely because it exhibits a characteristic of hazardous waste identified in ARM 16.44.320 through 16.44.324. Such used oil is subject to ~~regulation under subpart B of part 266 the requirements of 40 CFR Part 279~~ (incorporated by reference in ARM 16.44.306(4) (5)) rather than this subchapter;

(b) Remains the same.

(c) Hazardous wastes that are exempt from regulation under ARM 16.44.304 and 16.44.306(1)(c)(v)-(viii) (iv)-(vii), and hazardous wastes that are subject to the special requirements for conditionally exempt small quantity generators under ARM 16.44.402(2).

(d) Remains the same.

(3)-(6) Remain the same.

AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA

4. The department is proposing these amendments to the rules because they are necessary to bring state hazardous waste and used oil rules in line with federal rules governing those areas, and thereby to ensure that the state continues to have primary authority to administer and enforce state hazardous waste/used oil law and rules within Montana in place of comparable federal standards under the Resource Conservation and Recovery Act. The amendments require management of used oil in a manner consistent with federal standards found in 40 CFR Part 279, update existing incorporations by reference of federal regulations, and generally bring current state rules in line with EPA's hazardous waste and used oil regulations.

ARM 16.14.589 is being repealed because it is no longer needed, since the federal rules in 40 CFR Part 279 that are proposed for incorporation contain that prohibition as well, and because specific authority for the regulation of used oil pursuant to the Montana Hazardous Waste and Underground Storage Tank Act was added by the 1995 Legislature (HB 75), making advisable replacement of ARM 16.14.589, which was adopted under the more general authority of the Montana Solid Waste Management Act.

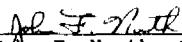
5. Interested persons may submit their data, views, or arguments concerning the proposed amendments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to J. Mark Stahly, Department of Environmental Quality, Cogswell Building, PO Box 200901, Helena, MT 59620-0901, no later than August 25, 1995.

6. J. Mark Stahly has been designated to preside over and conduct the hearing.


Mark A. Simonich, Director

Certified to the Secretary of State July 17, 1995.

Reviewed by:


John F. North, Chief Counsel

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

In the matter of the amendment of)	NOTICE OF PROPOSED
rule 16.24.104 concerning)	AMENDMENT OF RULE
eligibility requirements for the)	
Children's Special Health Services)	NO PUBLIC HEARING
Program)	CONTEMPLATED

(Children's Special
Health Services)

To: All Interested Persons

1. On September 1, 1995, the department proposes to amend ARM 16.24.104 regarding eligibility requirements for participation in the Children's Special Health Services Program.

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

16.24.104 APPLICANT ELIGIBILITY (1)-(7) Remain the same.

(8) Effective ~~July 8, 1994~~ [effective date of these amendments], the department hereby adopts and incorporates by reference the ~~1994~~95 federal poverty income guidelines published by the U.S. department of health and human services in the February ~~10~~9, ~~1994~~95, federal register [~~59 FR 6277~~ 60 FR 7773]. Copies of the federal poverty income guidelines may be obtained from the Family/Maternal and Child Health Services Bureau, CSHS Program, Department of Public Health and Environmental Sciences Human Services, Cogswell Building, Capitol Station, Helena, Montana 59620 [phone: (406) 444-3617].

AUTH: 50-1-202, MCA; IMP: 50-1-202, MCA

3. The department is proposing the above amendments in order to incorporate the latest federal poverty guidelines into its rule establishing the bases for eligibility for the services offered by the department's Children's Special Health Services Program. The rule requires eligible children to be members of families whose income, after out-of-pocket health insurance expenses are deducted, is at or less than 200% of the federal poverty guidelines. Those guidelines are increased annually on the federal level and published in the Federal Register. Therefore, incorporation of the latest version of the poverty guidelines is necessary to ensure that children who should be eligible for the program are not excluded simply because outdated federal guidelines are still referenced in the department's eligibility rule.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendments, in writing, to Sharon Wagner, Children's Special Health Services Program, Department of Public Health and Human Services, Cogswell

Building, Capitol Station, Helena, Montana, 59620, no later than August 24, 1995.

5. If a person who is directly affected by the proposed amendments wishes to express his/her data, views, and arguments orally or in writing at a public hearing, he/she must make written request for a hearing and submit this request along with any written comments he/she has to Sharon Wagner, Department of Public Health and Human Services, Cogswell Building, Capitol Station, Helena, Montana, 59620. A written request for hearing must be received no later than August 24, 1995.

6. If the agency receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the administrative code committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be in excess of 25 persons, based on the number of children estimated to be eligible for Children's Special Health Services assistance.


Rule Reviewer


PETER S. BLOUKE, Director

Certified to the Secretary of State July 17, 1995.

BEFORE THE BOARD OF OPTOMETRY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT OF
of a rule pertaining to general) 8.36.406 GENERAL PRACTICE
practice requirements) REQUIREMENTS

TO: All Interested Persons:

1. On March 16, 1995, the Board of Optometry published a notice of proposed amendment of the above-stated rule at page 329, 1995 Montana Administrative Register, issue number 5.

2. The board has amended the rule as proposed, but with the following changes:

"8.36.406 GENERAL PRACTICE REQUIREMENTS (1) and (1)(a) will remain the same as proposed.

(i) A PROFESSIONAL PARTNERSHIP;

(i) through (iii) will remain the same as proposed, but will be renumbered (ii) through (iv)."

Auth: Sec. 37-10-301, 37-10-311, MCA; IMP, Sec. 37-10-301, 37-10-311, MCA

3. The board accepted written comment through April 13, 1995. The Board has thoroughly considered all comments received. Those comments, and the Board's responses thereto follow:

COMMENT NO. 1: One comment was received stating another type of optometric practice should be added to the list of allowable practice arrangements: a professional partnership.

RESPONSE: The Board concurs with the comment and has amended the rule as shown above.

BOARD OF OPTOMETRY
LARRY BONDERUD, O.D., CHAIRMAN

BY:


ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE


ROBERT P. VERDON, RULE REVIEWER

Certified to the Secretary of State, July 17, 1995.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the adoption of) NOTICE OF ADOPTION
a rule regarding registration of)
interstate and intrastate motor)
carriers)
)

TO: All Interested Persons.

1. On May 25, 1995, the Department of Transportation published notice of the proposed adoption of new Rule I concerning the registration of interstate and intrastate motor carriers, at page 890 of the 1995 Montana Administrative Register, issue number 10.

2. The agency has adopted new Rule I as proposed, with the following changes.

RULE I (18.8.202) MOTOR CARRIERS OPERATING INTERSTATE

(1) Motor carriers operating interstate or both interstate and intrastate need only apply to the Montana department of transportation for their registration credentials. Interstate registration credentials will also be honored for intrastate operations.

(2) remains the same as the proposed rule.

(3) By reference, the department hereby adopts the rules promulgated by the single state registration system in accordance with 49 USC § 11506, a copy of which may be found at the offices of the Montana Department of Transportation, Motor Carrier Services Division, 2701 Prospect, P.O. Box 201001, Helena, MT 59620-1001.

(4) By reference, the department hereby adopts the rules of the interstate commerce commission codified as part 1023 of Title 49 of the Code of Federal Regulations, ~~as amended from time to time~~, a copy of which may be found at the offices of the Montana Department of Transportation, Motor Carrier Services Division, 2701 Prospect, P.O. Box 201001, Helena, MT 59620-1001.
AUTH: Chapter No. 358, Laws of 1995; IMP: Chapter No. 358, Laws of 1995

3. Comments received were as follows:

Comment: Written comment was received from the Transportation Division of the Public Service Commission recommending that the proposed rule be amended to read "(1) Motor carriers operating interstate or both interstate and intrastate need only apply to the Montana department of transportation for their registration credentials. Interstate registration credentials will also be honored for intrastate operations."

Response: The agency agrees the addition of the new language will provide needed clarification to the rule.


Comment: The Legislative Council commented that the proposed rule should be amended to provide a statement indicating where copies of the referenced federal materials may be obtained. The Legislative Council also suggested that the words "as amended from time to time" be deleted. Both suggestions were made pursuant to the language of section 2-4-307, MCA.

Response: The suggested changes made by the Legislative Council will be incorporated in the final rule.

MONTANA DEPARTMENT OF TRANSPORTATION

By: 

MARVIN DYE, Director


Lyle Manley, Rule Reviewer

Certified to the Secretary of State July 13 _____, 1995.

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

In the matter of the	) NOTICE OF ADOPTION OF NEW
adoption of two new rules	) RULES I AND II, AND AMENDMENT
and the amendment of ARM	) OF ARM 24.21.411
24.21.411, related to)
apprenticeship programs)

TO ALL INTERESTED PERSONS:

1. On May 11, 1995, the Department published notice at pages 758 through 763 of the Montana Administrative Register, Issue No. 9, to consider the amendment of ARM 24.21.411 and the adoption of new rules I and II.

2. On June 2, 1995, a public hearing was held in Helena concerning the proposed rules/proposed amendments at which oral and written comments were received. Additional written comments were received prior to the closing date of June 9, 1995.

3. After consideration of the comments received on the proposed amendments to ARM 24.21.411, the Department has amended the rule exactly as proposed.

4. The Department has thoroughly considered the comments and testimony received on the proposed amendments to ARM 24.21.411. The following is a summary of the comments received, along with the Department's response to those comments:

Comment 1: Two commenters expressed concern that a new state agency was being established to handle apprenticeship registration.

Response 1: The change in the rule from "apprenticeship and training bureau" to "registration agency" is merely a stylistic change in language, and does not indicate that a new entity or agency will be administering the apprenticeship program. No new agency or program office is being established. The term "registration agency" is generic and allows the Montana Department of Labor and Industry to continue administering the apprenticeship program without regard to various name changes of the internal organization structure of the Department. In addition, the use of the term "registration agency" is consistent with the language used in the federal enabling legislation.

Comment 2: Several commenters stated that they would like to see journeyman to apprentice ratios either eliminated or lowered, citing the unavailability of certain skilled workers. Other commenters opposed changing the present ratios, stating that there is an adequate supply of journeyman workers, and that lowering the ratios would lead to an oversupply (and consequent unemployment) of skilled workers.

Response 2: The Department notes that the proposed amendments did not directly address lowering or eliminating ratio requirements for apprenticeship sponsors. Likewise, the proposed amendments do not address permanent changes to the ratio established for existing apprenticeship programs that are currently registered. The Department believes that ratio requirements are appropriate in most, if not all, apprenticeship occupations. However, because there are occasional shortages of skilled journeyman workers in certain industries and in certain locations, the Department believes that particular problems can best be addressed by case-by-case waivers of ratio requirements.

Comment 3: Several commenters questioned how the waiver process will be handled by the Department.

Response 3: Applications for a ratio waiver will be reviewed by a work group made up of apprenticeship program staff and a representative of the U.S. Department of Labor. Employers interested in requesting a waiver can contact Dan Miles, Apprenticeship Program, Job Service Division, Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624-1728, (406) 444-4511, for more detailed information as to what information and evidence of need for a waiver should be supplied with the application. The Department will also review the waiver request process after a period of time and determine whether more formal procedures should be developed.

Comment 4: Various commenters expressed an opinion as to the relative quality of apprentices trained within Montana versus those trained outside Montana.

Response 4: The Department believes that the high quality of Montana-trained apprentices reflects the high quality and standards of training done by Montana apprenticeship sponsors. The Department believes that the ratio requirements contribute to that high quality.

5. The Department did not receive any comments or testimony in opposition to proposed RULE I and has adopted RULE I (ARM 24.21.412) exactly as proposed.

6. After consideration of the comments received on the proposed RULE II, the Department has adopted RULE II (ARM 24.21.414) exactly as proposed.

7. The Department has thoroughly considered the comments and testimony received on proposed RULE II. The following is a summary of the comments received, along with the Department's response to those comments:

Comment 5: A commenter questioned the costs associated with the wage survey required by RULE II.

Response 5: The Department estimates that the cost of the wage survey, when done as part of the biennial prevailing wage survey to be approximately \$2,000. The Department believes that the survey is a cost effective and accurate way of determining the

typical wage paid to journeyman workers in the non-urban counties.

Comment 6: Several commenters expressed concerns that the use of survey data to set apprentice wages in rural counties would lead to inequitable wages in those areas.

Response 6: The Department believes that its survey methodology will fairly identify the typical wage actually being paid in those non-metropolitan regions, and will not unfairly exclude wages from large or small operations located in that county/region, or discriminate unfairly against union or non-union shops.

Comment 7: A commenter questioned why in the metropolitan counties the wage rate requires the inclusion of fringe benefits, while the rural rates did not.

Response 7: The metropolitan rates do not require the inclusion of fringe benefits.

Comment 8: A commenter questioned at what wage rate would a contractor based in a non-metropolitan (rural) county bid for work within a metropolitan county.

Response 8: RULE II (6) requires that the rate of pay for an apprentice be that which is applicable for an apprentice working in that county. In the question posed, the least the contractor would have to pay the apprentice would be the applicable percentage of the metropolitan county's prevailing rate.

Comment 9: The same commenter also asked at what wage rate would a contractor based in a metropolitan county bid in a rural county.

Response 9: Applying RULE II (6), the contractor could pay the apprentice the applicable percentage of the rural county's wage. Of course, the contractor is free to pay the apprentice a higher rate, should the contractor choose to do so.

Comment 10: A commenter objected to the inclusion of wage rates as part of the apprenticeship rules, stating that in several other states there is no minimum apprentice wage.

Response 10: The Department notes that there are a number of states that have a minimum apprenticeship wage. The Department believes that in highly competitive fields such as the building trades industry, having a minimum apprentice wage promotes the overall purposes of apprenticeship in Montana. The Department believes that a wage standard provides for meaningful development of an apprentice's wage, ending with a wage near that of a journeyman worker, while removing the incentive for an employer to unfairly compete with other employers by using apprentices solely as a source of cheap labor.

Comment 11: A commenter requested that Ravalli County be added to the list of counties in RULE II (3) because it is the fastest growing county in the state.

Response 11: The Department believes that Ravalli County has not yet reached a size to justify its inclusion with the other counties listed in RULE II (3). The Department will periodically review the population data for Ravalli County to determine whether the rule should be amended.

Comment 12: A commenter stated that the reason for RULE II is stated as balancing the needs of urban and non-urban employers, inferring that customers from farms, ranches and resort communities are not as able to bear the market costs as city dwellers. The commenter asserted that based on the cost and size of homes built outside incorporated cities, the opposite was true.

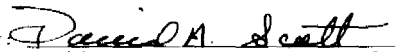
Response 12: The Department notes that wage rates are not based upon whether the work is done within the limits of an incorporated city, but based upon the county in which the work is being done. The Department believes that the rule as proposed fairly strikes a balance between the general economic conditions typically found in most areas of Montana.

8. The new rules and the amendments are effective August 1, 1995. However, as noted in RULE II (ARM 24.21.414), the rule will not apply to apprentice agreements registered with the Department before December 1, 1995. Prior to December 1, 1995, the Department will conduct a public rule hearing on wage rates for apprentices and formally adopt wage rates for apprentices.

Laurie Ekanger, Commissioner
DEPARTMENT OF LABOR & INDUSTRY


David A. Scott
Rule Reviewer

By


David A. Scott, Chief Counsel
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: July 17, 1995.

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

In the Matter of Adoption of a) NOTICE OF ADOPTION
Rule Pertaining to Filing of Proof) OF A NEW RULE I
of Insurance by Commercial Tow)
Truck Firms.)

TO: All Interested Persons

1. On May 25, 1995 the Department of Public Service Regulation published notice of public hearing on the proposed adoption of the rule identified in the above title at pages 892-894, issue number 10 of the 1995 Montana Administrative Register.

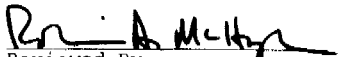
2. The Department has adopted the rule as proposed.

RULE I. 38.3.712 COMMERCIAL TOW TRUCK FIRMS -- PROOF OF REQUIRED INSURANCE AUTH: Sec. 69-12-201, MCA, IME: Secs. 5, 6, and 15, Ch. 283, L. 1995; and 69-12-402, MCA

3. The Department received one comment. Leonard Kuntz, Circle Sinclair Service, commented that the regulation of tow trucks is unnecessary. In response the regulation of tow trucks is a legislative decision, a decision not an issue in the present rulemaking. However, the Department has attempted to make its part of the administration of such regulation as unobtrusive as possible.


Nancy McCaffree, Chair

CERTIFIED TO THE SECRETARY OF STATE JULY 17, 1995.


Reviewed By

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

In the matter of the adoption	)	NOTICE OF ADOPTION OF RULE
of Rule I, and the amendment	)	I, AND THE AMENDMENT OF
of Rules 11.2.203, 11.2.214,	)	RULES 11.2.203, 11.2.214,
11.2.215 and 11.5.609	)	11.2.215 AND 11.5.609
pertaining to fair hearings	)	PERTAINING TO FAIR HEARINGS
and review of records by the	)	AND REVIEW RECORDS BY THE
department director.	)	DEPARTMENT DIRECTOR.


TO: All Interested Persons

1. On June 15, 1995, the Department of Family Services published notice of the proposed adoption of Rule I [11.14.114], and the amendment of Rules 11.2.203, 11.2.214, 11.2.215 and 11.5.609 pertaining to fair hearings and review of records by the department director, at page 997 of the 1995 Montana Administrative Register, issue number 11. On July 1, 1995, pursuant to SB 345, the Department of Family Services was abolished. The Department of Public Health and Human Services succeeds to the functions of the Department of Family Services in regard to this rule-making. Pursuant to Section 2-15-136, MCA, references to the Department of Family Services in documents are applicable to the new department effective July 1, 1995.

2. The department has adopted and amended the rules as proposed.

3. No comments were received.


Rule Reviewer


Director, Public Health
and Human Services

Certified to the Secretary of State July 17, 1995.

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

In the matter of the amendment)	NOTICE OF AMENDMENT OF RULE
of Rule 11.7.306 pertaining to)	11.7.306 PERTAINING TO THE
the right to a fair hearing in)	RIGHT TO A FAIR HEARING IN
regard to foster care support)	REGARD TO FOSTER CARE
services.)	SUPPORT SERVICES

1. On June 15, 1995, the Department of Family Services published notice of the proposed amendment of Rule 11.7.306 pertaining to the right to a fair hearing in regard to foster care support services, at page 1002 of the 1995 Montana Administrative Register, issue number 11. On July 1, 1995, pursuant to SB 345, the Department of Family Services was abolished. The Department of Public Health and Human Services succeeds to the functions of the Department of Family Services in regard to this rule-making. Pursuant to Section 2-15-136, MCA, references to the Department of Family Services in documents are applicable to the new department effective July 1, 1995.

2. The department has amended the rule as proposed.

3. No comments were received.


Rule Reviewer


Director, Public Health
and Human Services

Certified to the Secretary of State July 17, 1995.

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

In the matter of the amendment)	NOTICE OF AMENDMENT OF RULE
of Rule 11.12.104 pertaining)	11.12.104 PERTAINING TO THE
to the minimum requirements)	MINIMUM REQUIREMENTS FOR
for application for youth care)	APPLICATION FOR YOUTH CARE
facility licensure.)	FACILITY LICENSURE
)	

1. On June 15, 1995, the Department of Family Services published notice of the proposed amendment of Rule 11.12.104 pertaining to the minimum requirements for application for youth care facility licensure, at page 1000 of the 1995 Montana Administrative Register, issue number 11. On July 1, 1995, pursuant to SB 345, the Department of Family Services was abolished. The Department of Public Health and Human Services succeeds to the functions of the Department of Family Services in regard to this rule-making. Pursuant to Section 2-15-136, MCA, references to the Department of Family Services in documents are applicable to the new department effective July 1, 1995.

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


Rule Reviewer


Director, Public Health
and Human Services

Certified to the Secretary of State July 17, 1995.

VOLUME NO. 46

OPINION NO. 6

COUNTY ATTORNEYS - Salary of office manager/secretary;
COUNTY COMMISSIONERS - Power to set salary of persons hired to assist county officers;
COUNTY OFFICERS AND EMPLOYEES - Salary of office manager/secretary hired to assist county attorney;
PUBLIC EMPLOYEES - Salary of office manager/secretary hired to assist county attorney;
SALARIES - Salary of office manager/secretary hired to assist county attorney;
MONTANA CODE ANNOTATED - Sections 7-4-2401, -2403, -2502, -2503, -2505;
MONTANA CODES ANNOTATED, 1905 - Political Code § 4596;
OPINIONS OF THE ATTORNEY GENERAL - 43 Op. Att'y Gen. No. 77 (1990).

- HELD: 1. An office manager/secretary hired as a county employee to assist the county attorney is an "assistant" whose compensation may be set by the county commissioners under Mont. Code Ann. § 7-4-2505.
2. An "assistant" covered by Mont. Code Ann. § 7-4-2505(1) must be paid a salary to be determined by the commissioners which must be no greater than 90 percent of the principal officer's salary, absent a specific provision allowing greater compensation.

July 6, 1995

Mr. Russell R. Andrews
Teton County Attorney
P.O. Box 899
Choteau, MT 59422

Dear Mr. Andrews:

You have requested my opinion on the following questions:

1. Is the County Attorney's office manager/secretary an "assistant" to the county attorney for purposes of Mont. Code Ann. § 7-4-2505?
2. If so, does the statute establish a maximum compensation level at not more than 90 percent of the county attorney's salary?

Your questions require a construction of Mont. Code Ann. § 7-4-2505 and associated statutes. Section 7-4-2505 provides in pertinent part:

7-4-2505. Amount of compensation for deputies and assistants. (1) Subject to subsection (2), the boards of county commissioners in the several counties in the state shall fix the compensation allowed any deputy or assistant of the following officers:

- (a) clerk and recorder;
- (b) clerk of the district court;
- (c) treasurer;
- (d) county attorney;
- (e) auditor.

(2) (a) The salary of a deputy or an assistant listed in subsection (1), other than a deputy county attorney, may not be more than 90% of the salary of the officer under whom the deputy or assistant is serving.

The term "assistant" also appears in Mont. Code Ann. § 7-4-2502(1), which provides that the county commissioners may determine that county officers and their "assistants" be paid monthly, semimonthly, or biweekly, and in Mont. Code Ann. § 7-4-2401, which allows a county officer to appoint "as many deputies or assistants as may be necessary for the faithful and prompt discharge of the duties of his office." None of these statutes defines the term "assistant," and no case law or prior Attorney General's Opinion sheds any direct light on the interpretation of the term.

Courts in other states have found that the terms "assistant" and "deputy" are not synonymous. Montana law provides that a deputy has the authority to exercise any power which the principal officer may exercise. Mont. Code Ann. § 7-4-2403; see 43 Op. Att'y Gen. No. 77 (1990). Cases from other jurisdictions hold that an "assistant" need not be a deputy, but rather may be any person who aids or assists the principal officer in performing the functions of the office. See, e.g., United States v. Adams, 24 F. 348, 351 (D. Or. 1885). This case must be presumed to have expressed the general rule of law at the time the Montana statutes at issue here were adopted, and I must assume that the legislature was aware of the law when it adopted the statutory language. In re Wilson's Estate, 102 Mont. 178, 194, 56 P.2d 733, 737 (1936).

A second rule of statutory construction also counsels in favor of the view that "assistant" and "deputy" are not coterminous words. The rule has been expressed in various ways. In construing a statute, every word should be given effect if possible. Fletcher v. Paige, 124 Mont. 114, 119, 220 P.2d 484, 486 (1950). A construction which gives effect to all parts of a statute is favored over one which results in the nullification of part. It should not be assumed that the legislature added surplus words to a statute. State v. Berger, 259 Mont. 364, 367, 856 P.2d 552, 554 (1993). The common thread of these rules of construction is the requirement that a statute be construed

so that all of its parts have effect, if such a construction is reasonably possible. Continental Oil Co. v. Board of Labor Appeals, 178 Mont. 143, 151, 582 P.2d 1236, 1241 (1978).

The provision of Mont. Code Ann. § 7-4-2505 giving the commissioners power to set salaries has applied to both "deputies" and "assistants" since the statute was first adopted in 1895. Mont. Code § 4596 (1895). I must presume that the legislature intended to apply the statute to persons other than those sworn as deputy officers, since to do otherwise would render the term "assistant" meaningless.

I conclude that the intent of the legislature was to give the commissioners authority to set the salary, within the limits set forth in subsection (2) of Mont. Code Ann. § 7-4-2505, of all county employees hired by county officers to assist them in the performance of their duties. I note here that the statute must be read to be limited to persons who serve as employees of the county. Independent contractors or consultants cannot be considered "assistants" for purposes of the statute, since such persons would not be entitled to a "salary" from the county treasury. So construed, the statute would apply to an office manager/secretary hired as a county employee to assist the county attorney.

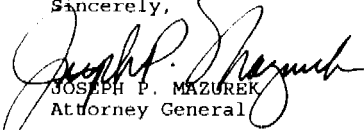
Your second question is simply answered by reference to the statute. Mont. Code Ann. § 7-4-2505(2) places on the salary of a "deputy or assistant" covered by the statute an upper limit of 90 percent of the principal officer's salary. I note that there is no statutory floor, and the commissioners have the power to set an "assistant's" salary anywhere under the ceiling, constrained only by federal or state minimum wage laws, applicable collective bargaining agreements, or specific statutes defining the compensation of deputies or assistants, e.g., Mont. Code Ann. § 7-4-2503(3)(d) (providing certain salary benefits for deputy county attorneys); see generally Farrell v. Yellowstone County, 68 Mont. 313, 316, 218 P. 559, 560 (1923) (absent statute, commissioners have discretion to set deputy salary at the level they deem appropriate).

THEREFORE, IT IS MY OPINION:

1. An office manager/secretary hired as a county employee to assist the county attorney is an "assistant" whose compensation may be set by the county commissioners under Mont. Code Ann. § 7-4-2505.
2. An "assistant" covered by Mont. Code Ann. § 7-4-2505(1) must be paid a salary to be determined by the commissioners which must be no greater than 90 percent

of the principal officer's salary, absent a specific provision allowing greater compensation.

Sincerely,


JOSEPH P. MAZUREK
Attorney General

jpm/cdt/brf

VOLUME NO. 46

OPINION NO. 7

CITIES AND TOWNS - Authority of self-governing local government to charge fire service fee upon state property in fire service area;

FIRE DEPARTMENTS - Authority of self-governing local government to charge fire service fee upon state property in fire service area;

LOCAL GOVERNMENT - Authority of self-governing local government to charge fire service fee upon state property in fire service area;

MUNICIPAL GOVERNMENT - Authority of self-governing local government to charge fire service fee upon state property in fire service area;

TAXATION AND REVENUE - Authority of self-governing local government to charge fire service fee upon state property in fire service area;

MONTANA CODE ANNOTATED - Sections 7-1-101, -102, -106, -111, -112, -113, -114, 15-6-201(1)(a)(ii);

MONTANA CONSTITUTION - Article VIII, section 5; article XI, sections 5, 6;

OPINIONS OF THE ATTORNEY GENERAL - 44 Op. Att'y Gen. No. 34 (1992), 43 Op. Att'y Gen. No. 53 (1990), 43 Op. Att'y Gen. No. 46 (1989), 43 Op. Att'y Gen. No. 41 (1989), 42 Op. Att'y Gen. No. 73 (1988), 42 Op. Att'y Gen. No. 21 (1987), 37 Op. Att'y Gen. No. 68 (1977).

HELD: The City of Helena, a self-governing city, is precluded from assessing fire service fees to state property located in the City of Helena fire service area, since the fees are in reality a tax rather than an assessment commensurate with a specific benefit conferred on the property assessed.

July 7, 1995

Ms. Lois A. Menzies, Director
Department of Administration
Mitchell Building, Room 155
P.O. Box 200101
Helena, MT 59620-0101

Dear Ms. Menzies:

You have requested my opinion on the following question:

May the City of Helena charge a fire service fee upon state property included in the City of Helena fire service area?

In order to provide fire protection for the City of Helena, the City has enacted a series of resolutions establishing a City of

Helena fire service area. The cost of maintaining the fire service area will be covered by levying a fire service fee on all real property in the fire service area. Property in the fire service area, including state property, will be assessed as follows: (1) \$.008 per square foot of floor area of structure, including basements, garages, etc. (\$2 minimum); (2) \$2 for each parcel of vacant property; and (3) \$6 for each trailer space within a trailer court (to be assessed against the court owner). The revenue from the fire service fees will cover the entire expense of the city fire department's budget.

The City has adopted a charter form of government with self-government powers pursuant to article XI, section 5, of the Montana Constitution. The Montana Constitution allows local governments which have adopted a self-government charter to "exercise any power not prohibited by this constitution, law, or charter." Mont. Const. art. XI, § 6; Mont. Code Ann. § 7-1-101. Under the above constitutional provision, "the assumption is that local government *possesses* the power unless it has been specifically denied." D & F Sanitation Serv. v. City of Billings, 219 Mont. 437, 445, 713 P.2d 977, 982 (1986). A self-governing local government may also provide "any services or perform any functions not expressly prohibited by the Montana constitution, state law, or its charter." Mont. Code Ann. § 7-1-102; D & F Sanitation, 713 P.2d at 982 (statutory preemption of self-government powers of municipality requires express prohibition by statute forbidding local governments with self-government powers from acting in certain area). The powers and authority of a self-governing local government are to be liberally construed and "[e]very reasonable doubt as to the existence of a local government power or authority shall be resolved in favor of the existence of that power or authority." Mont. Code Ann. § 7-1-106; Lechner v. City of Billings, 244 Mont. 195, 200, 797 P.2d 191, 195 (1990); Diefenderfer v. City of Billings, 223 Mont. 487, 490, 726 P.2d 1362, 1364 (1986).

As explained in 43 Op. Att'y Gen. No. 53 at 184, 185 (1990), "the Legislature has provided specific statutory limitations on the exercise of power by a unit of local government with self-government powers." Mont. Code Ann. §§ 7-1-111 and -112 set forth specific powers that a self-governing local government is prohibited from exercising, and Mont. Code Ann. § 7-1-114 lists the state laws with which a self-governing local government must comply. 43 Op. Att'y Gen. No. 53 at 184, 186 (1990); 43 Op. Att'y Gen. No. 41 at 130, 132 (1989). In addition, Mont. Code Ann. § 7-1-113 prohibits self-governing local governments from exercising "any power in a manner inconsistent with state law or administrative regulation in any area affirmatively subjected by law to state regulation or control." 43 Op. Att'y Gen. No. 53 at 186; 43 Op. Att'y Gen. No. 41 at 132.

Previous Attorney General's Opinions have held that in determining whether a self-governing local government is

authorized to exercise a specific power, it is necessary to engage in the following three-part analysis:

- (1) consult the [local government's] charter and consider constitutional ramifications;
- (2) determine whether the exercise is prohibited under the various provisions of [Title 7, chapter 1, part 1, MCA] or other statute specifically applicable to self-government units; and
- (3) decide whether it is inconsistent with state provisions in an area affirmatively subjected to state control as defined by section [7-1-113, MCA].

44 Op. Att'y Gen. No. 34 (1992); 43 Op. Att'y Gen. No. 53 at 184, 185-86; 43 Op. Att'y Gen. No. 41 at 130, 132; 37 Op. Att'y Gen. No. 68 at 272, 274 (1977).

Before I begin my analysis of whether the City has the authority to adopt the resolutions in question, I emphasize that my review in this opinion is limited to whether the City has the authority to charge a fire service fee to state property in a fire service area. Regarding the first step of this analysis, in adopting the Helena City Charter, the City has reserved all powers not prohibited by the Montana Constitution, state law or its charter. See City of Helena Charter, art. I, § 1.01. The City's charter contains no provision which would prohibit it from creating a fire service area and levying fees on the state property in that fire service area.

With respect to consideration of constitutional ramifications, you maintain that the fees levied on the state property in the fire service area are in reality taxes and, therefore, these fire service fees charged by the City are in violation of the constitutional and statutory provisions which exempt state property from taxation. Mont. Const. art. VIII, § 5 provides, among other things, that the legislature may exempt state property from taxation. The legislature implemented the above constitutional provision by enacting Mont. Code Ann. § 15-6-201(1)(a)(ii), which specifically exempts state property from taxation. Conversely, the City claims that the fire service fees are not taxes but instead are "assessments," and therefore these fire service fees levied on state property are not prohibited by Mont. Code Ann. § 15-6-201(1)(a)(ii).

In Vail v. Custer County, 132 Mont. 205, 217, 315 P.2d 993, 1000 (1957), the Montana Supreme Court explained the differences between a property tax and an assessment:

A tax is levied for the general public good. It creates a lien. An assessment is imposed against specific property to defray the cost of a specific

benefit to the property, the benefit to be commensurate with the assessment.

See 42 Op. Att'y Gen. No. 21 at 76, 82-83 (1987).

The difference between a "tax" and an "assessment" is not determined by how it is referenced, but rather how it is calculated and whether it benefits the public generally or operates to benefit a specific piece of property. 42 Op. Att'y Gen. No. 73 at 289, 291-92 (1988), held that regular and special assessments levied by a conservation district were taxes and not "assessments" as the term was defined by the court in Vail and used in 42 Op. Att'y Gen. No. 21 (1987). The conservation district apportioned the amount of the assessments levied on the basis of the property's taxable valuation. 42 Op. Att'y Gen. No. 73 at 291. The opinion closely examined whether the conservation district assessments were intended "to compensate the district for benefits directly conferred upon a particular piece of property within its jurisdiction in direct proportion to the cost of those benefits." Id. at 291, quoting 42 Op. Att'y Gen. No. 21. The opinion concluded that the assessments on the property were a tax because the amount of the assessment levied could not be directly related to the value of the benefits conferred on the assessed property. Id.

Similarly, 43 Op. Att'y Gen. No. 46 (1989), relying on the rationale in 42 Op. Att'y Gen. No. 73 (1988), held a water and sewer assessment levy was a tax rather than an "assessment" as defined by the Court in Vail. The opinion explained that the water and sewer district levied the assessments to meet general federal loan obligations. 43 Op. Att'y Gen. No. 46 at 158, 159 (1989). The water and sewer assessment levy was "assessed on the basis of proportional land size or valuation and without reference to whether the amount taxed bears a direct relationship to the benefit specially conferred on the particular taxpayer's property." 43 Op. Att'y Gen. No. 46 at 160. The opinion concluded that there was no close relationship between the assessment levy amount and the actual benefit conferred on the assessed property. 43 Op. Att'y Gen. No. 46 at 160.

Here, I conclude that the fire service fees assessed by the City upon the property in the fire service area are taxes rather than assessments as defined by the Court in Vail. The fire service fees are similar to those assessments in 42 Op. Att'y Gen. No. 73 (1988) and 43 Op. Att'y Gen. No. 46 (1989). A direct correlation does not exist between the amount of fire service fees charged each piece of property in the fire service area and the value of the fire protection benefit conferred on the property. For instance, the City charges a flat rate of \$2 for fire protection for each parcel of vacant property regardless of the size of the vacant property or the potential fire hazard that may be lurking on the property. An owner of a vacant gravel lot, which logically would not create a grave fire

hazard, would be charged the same fire service fee as the owner of a wooded lot or an owner who stored flammable material on his or her lot. The \$2 fire service fee does not accurately reflect the specific cost of providing fire protection to every vacant piece of property in the fire service area.

Similarly, structures are charged \$.008 per square foot without any consideration of the unique potential fire hazards in each structure. Under the City's fire service fee a one-story building with the same square footage as a two-story building is charged the same fire service fee, even though the two-story building may present a more difficult fire-fighting situation because of its height. The charging of a fire service fee on a flat square-footage rate for every structure does not consider that different structures, based on their location, dimensions and building materials, may cost more to provide fire protection than other structures with the same square footage. The fire service fees charged for structures are clearly not always commensurate with the benefit to those structures. The fire service fees cannot be considered assessments because the fees are not necessarily based on the value of the fire protection rendered to a specific structure.

Even the \$6 rate for each trailer space cannot be considered an assessment as defined in Vail. The owner of a trailer court pays a flat \$6 rate for each trailer space, regardless of the size of the lot or of the trailer which occupies it. The fees are inexact and do not reflect in every instance the true cost of providing protection to each trailer space.

Furthermore, the fire service fees simply cannot be traced to the cost of providing the specific benefit of fire protection to each specific piece of property or structure within the city limits. The revenue from the fire service fees covers not only the cost of providing fire suppression services to property and structures within the city limits but also the city fire department's entire budget. In addition to suppressing fires, the fire department also provides emergency medical response services, responds to hazardous waste spills, extricates accident victims from their automobiles, educates the public on fire safety, and conducts fire safety inspections of buildings open to the public. The general public, rather than a specific property owner, benefits from these worthy and necessary services, and clearly the cost of these benefits cannot be calculated on the basis of square footage of a structure. These services paid for by the fire service fees are provided for the general public good and not to any specific piece of property and, therefore, the fire service fees levied to pay for these services must be considered a tax. Vail, supra.

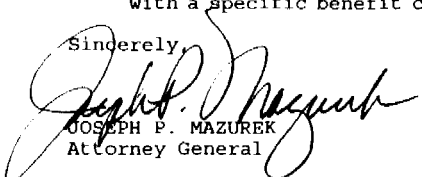
I conclude that the fire service fees assessed by the City of Helena upon state property in the fire service area are prohibited by Mont. Code Ann. § 15-6-201(1)(a)(ii) because the fire service fees are taxes rather than assessments. In light

of this conclusion, it is not necessary to examine the remaining two factors in the three-part analysis regarding the powers of self-governing local government units.

THEREFORE, IT IS MY OPINION:

The City of Helena, a self-governing city, is precluded from assessing fire service fees to state property located in the City of Helena fire service area, since the fees are in reality a tax rather than an assessment commensurate with a specific benefit conferred on the property assessed.

Sincerely,



JOSEPH P. MAZUREK
Attorney General

jpm/msw/dm

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

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

The Administrative Code Committee has the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. In addition, the Committee may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt or amend a rule.

The Committee welcomes comments from the public and invites members of the public to appear before it or to send it written statements in order to bring to the Committee's attention any difficulties with the existing or proposed rules. The address is Room 138, Montana State Capitol, Helena, Montana 59620.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE
MONTANA ADMINISTRATIVE REGISTER

Definitions: Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 1995. This table includes those rules adopted during the period April 1, 1995 through June 30, 1995 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 March 31, 1995, 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 and 1995 Montana Administrative Register.

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BOARD APPOINTEES AND VACANCIES

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

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

In this issue, appointments effective in June 1995, appear. Vacancies scheduled to appear from August 1, 1995, through October 31, 1995, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and 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 July 3, 1995.

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 JUNE, 1995

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Dentistry Mr. Thad Langford Bozeman Qualifications (if required): dentist	Governor	Rector	6/16/1995 3/29/2000
Board of Plumbers Mr. Terry Campbell Helena Qualifications (if required): representing the Department of Environmental Quality	Governor	reappointed	6/21/1995 5/4/1999
Ms. Jo Hawkins Helena Qualifications (if required): public member	Governor	Linden	6/1/1995 5/4/1999
Mr. Mark Jones Shepherd Qualifications (if required): journeyman plumber	Governor	Kent	6/1/1995 5/4/1999
Mr. Donald Kent Bozeman Qualifications (if required): journeyman plumber	Governor	Jones	6/21/1995 5/4/1999
Mr. Elmer Lazure Helena Qualifications (if required): public member	Governor	reappointed	6/1/1995 5/4/1999
Mr. Robert Nault Havre Qualifications (if required): master plumber	Governor	reappointed	6/1/1995 5/4/1999

BOARD AND COUNCIL APPOINTEES FROM JUNE, 1995

Appointee	Appointed by	Succeeds	Appointment/End Date
Board of Regents of Higher Education (Education)			
Mr. Michael Green	Governor	Brown	6/16/1995
Malta			6/1/1996
Qualifications (if required): student representative			
Board of Review (Governor)			
Mr. Jon Noel	Governor	new appointment	6/19/1995
Helena			1/2/1997
Qualifications (if required): presiding officer			
Board of Veterans' Affairs (Military Affairs)			
Mr. Ruben McKinney	Governor	reappointed	6/12/1995
Havre			5/18/2000
Qualifications (if required): veteran			
Flathead Basin Commission (Governor)			
Ms. Colleen Allison	Governor	reappointed	6/30/1995
Columbia Falls			6/30/1999
Qualifications (if required): public member			
Mr. Bill Gregg	Governor	reappointed	6/30/1995
Polson			6/30/1999
Qualifications (if required): public member			
Ms. Marilyn Wood	Governor	reappointed	6/30/1995
Kalispell			6/30/1999
Qualifications (if required): public member			
Health Care Advisory Council (Health and Environmental Quality)			
Mr. Max Agather	Governor	new appointment	6/5/1995
Kalispell			6/30/1997
Qualifications (if required): representative of Region 5			

BOARD AND COUNCIL APPOINTEES FROM JUNE, 1995

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Health Care Advisory Council Mr. Peter Blouke Helena Qualifications (if required): Human Services	(Health and Environmental Quality) cont. Governor	new appointment	6/5/1995 6/30/1997
Mr. Kent Burgess Billings Qualifications (if required):	Governor	new appointment representative of Region 3	6/5/1995 6/30/1997
Ms. Cynthia Lewis Helena Qualifications (if required):	Governor	new appointment representative of Region 4	6/5/1995 6/30/1997
Dr. Lawrence R. Palazzo Glasgow Qualifications (if required):	Governor	new appointment representative of Region 1	6/5/1995 6/30/1997
Ms. Kathleen Richardson Havre Qualifications (if required):	Governor	new appointment representative of Region 2	6/5/1995 6/30/1997
Montana Lewis & Clark Bicentennial Celebration Advisory Council Colonel Harold Stearns Missoula Qualifications (if required):	Governor	(Historical Society) not listed representative of military affairs	6/1/1995 8/26/1996
Montana Sentencing Commission Mr. Frank DiFonzo Sidney Qualifications (if required):	(Corrections and Human Services) Governor	new appointment	6/22/1995 5/31/1997
		chief of police	

BOARD AND COUNCIL APPOINTEES FROM JUNE, 1995

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Sentencing Commission Mr. Tony Harbaugh Miles City Qualifications (if required): county sheriff	(Corrections and Human Services) cont. Governor	new appointment	6/22/1995 5/31/1997
Mr. Mike Salvagni Bozeman Qualifications (if required): county attorney	Governor	new appointment	6/22/1995 5/31/1997
Mr. John G. Thomas Helena Qualifications (if required): member of Board of Pardons	Governor	new appointment	6/22/1995 5/31/1997
Peace Officers Standards and Training Advisory Council (Justice) Ms. Surry Latham Missoula Qualifications (if required): dispatcher	Governor	Warrington	6/26/1995 12/31/1995
Reserved Water Rights Compact Commission (Natural Resources and Conservation) Ms. Tara DePuy Livingston Qualifications (if required): public member	Governor	reappointed	6/1/1995 6/1/1999
Mr. Gene Etchart Glasgow Qualifications (if required): public member	Governor	reappointed	6/1/1995 6/1/1999
Mr. Jack Salmond Choteau Qualifications (if required): public member	Governor	reappointed	6/1/1995 6/1/1999

BOARD AND COUNCIL APPOINTEES FROM JUNE, 1995

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Reserved Water Rights Compact Commission (Natural Resources and Conservation) cont.			
Rep. Bob Thoft	Governor	reappointed	6/1/1995
Stevensville			6/1/1999
Qualifications (if required): public member			
State Tax Appeal Board (Administration)			
Mr. Gregory Thornquist	Governor	Taylor	6/12/1995
Billings			3/1/1997
Qualifications (if required): public member			
Youth Justice Advisory Council (Justice)			
Mr. Craig Anderson	Governor	new appointment	6/16/1995
Glendive			6/16/1997
Qualifications (if required): public member			
Judge Catharin Aragon	Governor	new appointment	6/16/1995
Harlem			6/16/1997
Qualifications (if required): public member			
Judge Diana Barz	Governor	new appointment	6/16/1995
Billings			6/16/1997
Qualifications (if required): public member			
Mr. Randy H. Bellingham	Governor	new appointment	6/16/1995
Billings			6/16/1997
Qualifications (if required): public member			
Captain Kevin Clader	Governor	new appointment	6/16/1995
Missoula			6/16/1997
Qualifications (if required): public member			

BOARD AND COUNCIL APPOINTEES FROM JUNE, 1995

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Youth Justice Advisory Council (Justice) cont.			
Mr. Al Davis	Governor	new appointment	6/16/1995
Helena			6/16/1997
Qualifications (if required): public member			
Mr. Rick Day	Governor	new appointment	6/16/1995
Helena			6/16/1997
Qualifications (if required): public member			
Ms. Gail Gray	Governor	new appointment	6/16/1995
Helena			6/16/1997
Qualifications (if required): public member			
Mr. Allen Horsfall	Governor	new appointment	6/16/1995
Hamilton			6/16/1997
Qualifications (if required): public member			
Mr. Hank Hudson	Governor	new appointment	6/16/1995
Helena			6/16/1997
Qualifications (if required): public member			
Rep. Royal C. Johnson	Governor	new appointment	6/16/1995
Billings			6/16/1997
Qualifications (if required): public member			
Mr. Pat Lovett	Governor	new appointment	6/16/1995
Helena			6/16/1997
Qualifications (if required): public member			
Mr. Ted O. Lympus	Governor	new appointment	6/16/1995
Kalispell			6/16/1997
Qualifications (if required): public member			

BOARD AND COUNCIL APPOINTEES FROM JUNE, 1995

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Youth Justice Advisory Council (Justice) cont.			
Ms. Kate Mrigudic	Governor	new appointment	6/16/1995
Missoula			6/16/1997
Qualifications (if required):	public member		
Mr. Stephen Nelsen	Governor	new appointment	6/16/1995
Bozeman			6/16/1997
Qualifications (if required):	public member		
Mr. Kim Olson	Governor	new appointment	6/16/1995
Bozeman			6/16/1997
Qualifications (if required):	public member		
Mr. David Pope	Governor	new appointment	6/16/1995
Bozeman			6/16/1997
Qualifications (if required):	public member		
Ms. Sally Stansberry	Governor	new appointment	6/16/1995
Missoula			6/16/1997
Qualifications (if required):	public member		

VACANCIES ON BOARDS AND COUNCILS -- August 1, 1995 through October 31, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Alternative Health Care Board (Commerce) Dr. Michael Bergkamp, Helena Qualifications (if required): none listed	Governor	9/1/1995
Ms. Dolly Browder, Missoula Qualifications (if required): certified nurse midwife	Governor	9/1/1995
Dr. Daniel M. Molloy, Billings Qualifications (if required): medical doctor	Governor	9/1/1995
Dr. Tom Rasmussen, Helena Qualifications (if required): public member	Governor	9/1/1995
Board of Medical Examiners (Commerce) Dr. Gordon Lynn Bell, Glasgow Qualifications (if required): being a medical doctor	Governor	9/1/1995
Dr. Lawrence McEvoy, Clancy Qualifications (if required): doctor of medicine	Governor	9/1/1995
Board of Outfitters (Commerce) Mr. Jack Billingsley, Glasgow Qualifications (if required): licensed outfitter from District 4	Governor	10/1/1995
Mr. R. Craig Madsen, Great Falls Qualifications (if required): licensed outfitter from District 3	Governor	10/1/1995
Board of Private Security Patrol Officers and Investigators (Commerce) Mr. Gary Gray, Great Falls Qualifications (if required): contract security member	Governor	8/1/1995
Ms. Mary'l G. Luntsford, Kalispell Qualifications (if required): represents a proprietary security company	Governor	8/1/1995

VACANCIES ON BOARDS AND COUNCILS -- August 1, 1995 through October 31, 1995

Board/current position holder	Appointed by	Term end
Capitol Restoration Commission (Administration) Mr. Ralph T. Anderson, Clancy Qualifications (if required): none specified	Governor	9/24/1995
Sen. Chet Blaylock, Laurel Qualifications (if required): none specified	Governor	9/24/1995
Ms. Elinor Clack, Havre Qualifications (if required): none specified	Governor	9/20/1995
Ms. Iva Kolstad, Ledger Qualifications (if required): none specified	Governor	10/21/1995
Ms. Pat Regan, Billings Qualifications (if required): none specified	Governor	10/2/1995
Mr. Ernie Richards, Butte Qualifications (if required): none specified	Governor	10/2/1995
Ms. Barbara J. Spilker, Helena Qualifications (if required): none specified	Governor	9/24/1995
Mr. Hal G. Stearns, Missoula Qualifications (if required): none specified	Governor	9/20/1995
Child Support Advisory Council (Social and Rehabilitation Services) Ms. Judy Browning, Helena Qualifications (if required): none specified	Director	9/1/1995
Mr. James B. Wheelis, Qualifications (if required): none specified	Director	9/1/1995

VACANCIES ON BOARDS AND COUNCILS -- August 1, 1995 through October 31, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Child Support Advisory Council (Social and Rehabilitation Services) cont. Sen. Sue Bartlett, Helena Qualifications (if required): none specified	Director	9/1/1995
Mr. Ken Caruso, Huson Qualifications (if required): none specified	Director	9/1/1995
Ms. Rosemary Hertel, Helena Qualifications (if required): none specified	Director	9/1/1995
Ms. Susan Leaphart, Missoula Qualifications (if required): none specified	Director	9/1/1995
Mr. Randle Romney, Helena Qualifications (if required): none specified	Director	9/1/1995
Mr. Tim Wise, Kalispell Qualifications (if required): none specified	Director	9/1/1995
Mr. Robert R. Zenker, Virginia City Qualifications (if required): none specified	Director	9/1/1995
Ethics Advisory Council (Secretary of State) Ms. Emily Budziak Williams, Bozeman Qualifications (if required): none specified	Secretary of State	8/31/1995
Mr. David Hoffman, Dillon Qualifications (if required): none specified	Secretary of State	8/31/1995
Ms. Betsy Horsman-Witala, Helena Qualifications (if required): none specified	Secretary of State	8/31/1995

VACANCIES ON BOARDS AND COUNCILS -- August 1, 1995 through October 31, 1995

Board/current position holder	Appointed by	Term end
Ethics Advisory Council (Secretary of State) cont.		
Mr. Garth B. Jacobson, Helena	Secretary of State	8/31/1995
Qualifications (if required): none specified		
Ms. Amy Kelley, Helena	Secretary of State	8/31/1995
Qualifications (if required): none specified		
Ms. Pam Merrell, Butte	Secretary of State	8/31/1995
Qualifications (if required): none specified		
Mr. James Polsin, Missoula	Secretary of State	8/31/1995
Qualifications (if required): none specified		
Mr. John Vincent, Bozeman	Secretary of State	8/31/1995
Qualifications (if required): none specified		
Ms. Tootie Welker, Helena	Secretary of State	8/31/1995
Qualifications (if required): none specified		
Flathead Basin Commission (Governor)		
Mr. Glenn Marx, Helena	Governor	10/10/1995
Qualifications (if required): on Governor's staff and serves executive director		
Governor's Trade Advisory Council (Agriculture)		
Mr. Gregory D. Barkus, Kalispell	Governor	8/31/1995
Qualifications (if required): none specified		
Mr. James L. Brock, Great Falls	Governor	8/31/1995
Qualifications (if required): none specified		
Mr. Richard F. Croner, Butte	Governor	8/31/1995
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- August 1, 1995 through October 31, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Governor's Trade Advisory Council (Agriculture) cont.		
Ms. Terry Denton Weaver, Billings Qualifications (if required): none specified	Governor	8/31/1995
Mr. Marvin Dye, Helena Qualifications (if required): none specified	Governor	8/31/1995
Ms. Kathy Fisher Ogren, Missoula Qualifications (if required): none specified	Governor	8/31/1995
Mr. Leo Giacometto, Helena Qualifications (if required): none specified	Governor	8/31/1995
Ms. Linda Klette Rice, Havre Qualifications (if required): none specified	Governor	8/31/1995
Ms. Alyce Kuehn, Sidney Qualifications (if required): none specified	Governor	8/31/1995
Mr. Eugene P. Lewis, Great Falls Qualifications (if required): none specified	Governor	8/31/1995
Ms. Fran Marceau, Kalispell Qualifications (if required): labor representative	Governor	8/29/1995
Mr. Jon Noel, Helena Qualifications (if required): none specified	Governor	8/31/1995
Ms. Laurie Shadoan, Bozeman Qualifications (if required): none specified	Governor	8/31/1995
Mr. Jim Waldo, Billings Qualifications (if required): labor representative	Governor	8/29/1995

VACANCIES ON BOARDS AND COUNCILS -- August 1, 1995 through October 31, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Historic Preservation Review Board (Historical Society)		
Mr. Dale Herbolt, Helena	Governor	10/1/1995
Qualifications (if required): archeologist		
Mr. David Johns, Butte	Governor	10/1/1995
Qualifications (if required): public member		
Mr. Don Wetzel, Harlem	Governor	10/1/1995
Qualifications (if required): public member		
Independent Living Advisory Council (Social and Rehabilitation Services)		
Ms. Ellen Alweis, Billings	Director	10/1/1995
Qualifications (if required): none specified		
Ms. Kathy Collins, Helena	Director	10/1/1995
Qualifications (if required): none specified		
Ms. June Hermanson, Polson	Director	10/1/1995
Qualifications (if required): none specified		
Ms. Jan LaValley-Miller, Great Falls	Director	10/1/1995
Qualifications (if required): none specified		
Mr. Mike Mayer, Missoula	Director	10/1/1995
Qualifications (if required): none specified		
Indian Burial Preservation Board (Commerce)		
Ms. Karen Atkinson, Pablo	Governor	8/22/1995
Qualifications (if required): represents Salish Kootenai Tribe		
Mr. Francis Auld, Elmo	Governor	8/22/1995
Qualifications (if required): represents Salish Kootenai Tribe		

VACANCIES ON BOARDS AND COUNCILS -- August 1, 1995 through October 31, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Indian Burial Preservation Board (Commerce) cont.		
Mr. Carl Fourstar, Poplar	Governor	8/22/1995
Qualifications (if required): represents Assiniboine Tribe		
Dr. Randall Skelton, Missoula	Governor	8/22/1995
Qualifications (if required): physical anthropologist		
Ms. Charline Smith, East Missoula	Governor	8/22/1995
Qualifications (if required): physical anthropologist		
Rep. Jay Stovall, Billings	Governor	8/22/1995
Qualifications (if required): public member		
Mr. William Tallbull, Buzby	Governor	8/22/1995
Qualifications (if required): represents Northern Cheyenne Tribe		
Mr. Clarence "Curly Bear" Wagner, Browning	Governor	8/22/1995
Qualifications (if required): represents Blackfeet Tribe		
Local Government Records Committee (Secretary of State)		
Ms. Peggy Lamberson Bourne, Great Falls	Secretary of State	10/1/1995
Qualifications (if required): none specified		
Ms. Marcia Porter, Missoula	Secretary of State	10/1/1995
Qualifications (if required): none specified		
Ms. Bonnie Ramey, Boulder	Secretary of State	10/1/1995
Qualifications (if required): none specified		
Ms. Lorraine Van Ausdol, Helena	Secretary of State	10/1/1995
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- August 1, 1995 through October 31, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
State Employee Benefits Advisory Council (Administration)		
Mr. Mark Cress, Helena Qualifications (if required): none specified	Director	9/1/1995
Ms. Nancy Ellery, Helena Qualifications (if required): none specified	Director	9/1/1995
Mr. Dave Evenson, Helena Qualifications (if required): none specified	Governor	9/1/1995
Ms. Debbie Gebase, Boulder Qualifications (if required): none specified	Director	9/1/1995
Mr. Ken Givens, Helena Qualifications (if required): none specified	Governor	9/1/1995
Ms. Cathy Kendall, Helena Qualifications (if required): none specified	Director	9/1/1995
Mr. Curt Nichols, Helena Qualifications (if required): none specified	Director	9/1/1995
Mr. Jim Penner, Helena Qualifications (if required): none specified	Governor	9/1/1995
Mr. William Salisbury, Helena Qualifications (if required): none specified	Director	9/1/1995
Mr. Thomas Schneider, Helena Qualifications (if required): none specified	Director	9/1/1995
Mr. Arthur N. Whitney, Helena Qualifications (if required): none specified	Director	9/1/1995

VACANCIES ON BOARDS AND COUNCILS -- August 1, 1995 through October 31, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Water and Wastewater Operators Advisory Council (Health and Environmental Sciences)		
Mr. Steven Ruhd, Conrad	Governor	10/16/1995
Qualifications (if required): water treatment operator		
Wheat and Barley Committee (Agriculture)		
Mr. Fred L. Elling, Rudyard	Governor	8/20/1995
Qualifications (if required): Republican represents District II		
Ms. Judy Vermulm, Cut Bank	Governor	8/20/1995
Qualifications (if required): Democrat represents District III		