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MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 16

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

In the matter of the proposed) NOTICE OF PROPOSED ADOPTION
adoption of a new rule pertain-) OF A NEW RULE PERTAINING TO
ing to renewal dates) RENEWAL DATES

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Person:

1. On September 23, 1995, the Department of Commerce, Professional and Occupational Licensing Bureau, proposes to adopt a new rule pertaining to renewal dates.

2. The proposed new rule reads as follows:

"I. RENEWAL DATES (1) Specific procedures and grace periods for renewal are set forth by board rule, statute applicable to a particular profession, or 37-1-141, MCA. Such procedures shall take account of, and be based upon, the renewal dates set forth in this rule. An existing license expires on the renewal date set forth for each profession and occupation listed. If a timely and sufficient application is submitted on or prior to such date, the applicant's continued practice is governed under 2-4-631, MCA. In order for an application to be timely and sufficient, it must be completed with truthful information accompanied by the appropriate fee and submitted so that it is postmarked prior to or on the renewal date for the applicable profession.

(2) The following are renewal dates for the professions and occupations listed:

(a) January 1 is the renewal date for licenses and other authorities granted by the boards of nursing home administrators and psychologists;

(b) February 1 is the renewal date for licenses and other authorities granted by the boards of radiological technologists and speech-language pathologists and audiologists;

(c) March 1 is the renewal date for licenses and other authorities granted by the board of dentistry;

(d) March 31 is the renewal date for licenses and other authorities granted by the boards of barbers, medical examiners, and real estate appraisers, and is the renewal date for pharmacy wholesalers (regulated by the board of pharmacy);

(e) April 1 is the renewal date for licenses and other authorities granted by the boards of physical therapy examiners and horse racing;

(f) April 30 is the renewal date for licenses and other authorities granted by the board of alternative health care;

(g) May 1 is the renewal date for licenses and other authorities granted by the boards of respiratory care practitioners and clinical laboratory science practitioners;

(h) June 15 is the renewal date for licenses and other authorities granted by the board of occupational therapist practice;

(i) June 30 is the renewal date for licenses and other authorities granted by the boards of hearing aid dispensers, landscape architects, optometry, professional engineers and land surveyors (every even-numbered year), pharmacy and sanitarians;

(j) July 1 is the renewal date for licenses and other authorities granted by the boards of architects, funeral service, and is the renewal date for salons and booth rentals (regulated by the board of cosmetologists);

(k) July 2 is the renewal date for licenses and other authorities granted by the board of optometry;

(l) July 15 is the renewal date for licenses and other authorities granted by the state electrical board (every third year with the first renewal coming due on July 15, 1997);

(m) September 1 is the renewal date for licenses and other authorities granted by the boards of plumbers and chiropractors;

(n) October 31 is the renewal date for physician assistants-certified, nutritionists, acupuncturists and podiatrists (regulated by the board of medical examiners), and property managers, (regulated by the board of realty regulation);

(o) November 1 is the renewal date for licenses and other authorities granted by the board of veterinary medicine;

(p) November 30 is the renewal date for pharmacy technicians (regulated by the board of pharmacy);

(q) December 1 is the renewal date for licenses and other authorities granted by the board of private security patrol officers and investigators;

(r) December 31 is the renewal date for licenses and other authorities granted by the boards of outfitters, nursing, public accountants, realty regulation, social work examiners and professional counselors, and is the renewal date for dangerous drug registration (regulated by the board of pharmacy) and cosmetology, manicuring and electrology schools and cosmetologists (regulated by the board of cosmetologists)."

Auth: Sec. 37-1-101, MCA; IMP, Sec. 37-1-101, MCA

REASON: House Bill 518 removes the renewal dates from statute and places the authority to set renewal dates by rule of the Department of Commerce. The repeal of renewal dates in House Bill 518 is effective October 1, 1995. The Department needs to have rules replacing such renewal dates in place as soon as possible after October 1, 1995.

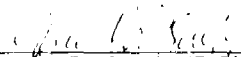
3. Interested persons may submit their data, views or arguments concerning the proposed adoption in writing to the Professional and Occupational Licensing Bureau, Department of Commerce, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., September 21, 1995.

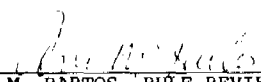
4. If a person who is directly affected by the proposed adoption wishes to present his data, views or arguments orally

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 Professional and Occupational Licensing Bureau, Department of Commerce, 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., September 21, 1995.

5. If the Board receives requests for a public hearing on the proposed 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 5,500 based on the approximately 55,000 licensees in Montana.

DEPARTMENT OF COMMERCE
PROFESSIONAL AND OCCUPATIONAL
LICENSING BUREAU
STEVE MELOY, BUREAU CHIEF

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


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, August 14, 1995.

BEFORE THE PROFESSIONAL AND
OCCUPATIONAL LICENSING BUREAU
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING ON
amendment of rules pertaining) THE PROPOSED AMENDMENT OF
to construction blasters and) RULES PERTAINING TO
hoisting and crane operators;) CONSTRUCTION BLASTERS AND
repeal of a rule pertaining to) HOISTING AND CRANE OPERATORS;
standard forms; and the adop-) REPEAL OF A RULE PERTAINING
tion of a new rule pertaining) TO STANDARD FORMS; AND THE
to boiler engineers) ADOPTION OF A RULE PERTAINING
) TO BOILER ENGINEERS

TO: All Interested Persons:

1. On September 18, 1995, at 9:00 a.m., a public hearing will be held in the conference room of the Professional and Occupational Licensing Bureau, Lower Level, Arcade Building, 111 N. Jackson, Helena, Montana, to consider the proposed amendment, repeal and adoption of rules pertaining to construction blasters, crane operators and boiler engineers.

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

"8.15.103 CONSTRUCTION BLASTER LICENSE REQUIREMENTS

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

(a) application fee	\$ 5.00	25
(b) examination fee	5.00	25
(c) license fee	15.00	30
(d) annual renewal fee	10.00	20
(e) reexamination fee	3.00	25
(f) duplicate license fee	2.00	10

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

Auth: Sec. 37-72-202, MCA; ~~IMP~~, Sec. 37-72-301, 37-72-302, 37-72-303, 37-72-304, 37-72-305, 37-72-306, MCA

"8.15.203 HOISTING OPERATORS LICENSE REQUIREMENTS

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

(a) A notarized certificate of experience provided by the bureau and signed by a person having actual knowledge of the applicant's past work experience. See ARM 8-15-207 Standard Forms.

(b) A report of physical examination filled out and signed by the physician having given the examination. The form is provided by the bureau. An alternate form may be used if approved by the bureau. This physical examination form must also be filled out and submitted for license renewals. See ARM 8-15-207 Standard Forms.

(c) A qualification and experience information form provided by the bureau. See ARM 8-15-207 Standard Forms.

(d) will remain the same.

(i) first-class hoisting	\$30+	60
(ii) second-class hoisting	20+	50

(iii) renewals 4; 20
(The license must be renewed within 13 months of obtaining the previous license. If not renewed within this period, the fee will be the same as for the original license. Failure to renew a license within 12 months of the date of expiration will require application procedure as for a new license.)
(iv) lost license replacement 2; 10
(8) through (8)(e) will remain the same."
Auth: Sec. 50-71-301, 50-76-104, MCA; IMP, Sec. 50-71-301, 50-76-102, 50-76-104, MCA

"8.15.204 MINE HOISTING OPERATORS LICENSE REQUIREMENTS

(1) through (10) will remain the same.
(a) A notarized certificate of experience signed by a person having actual knowledge of the applicant's past work experience. ~~See ARM 8.15.207 Standard Forms.~~
(b) A report of physical examination filled out and signed by the physician having given the examination. The form is provided by the bureau upon request. An alternate form may be used if approved by the bureau. This physical examination form must also be filled out and submitted for license renewals. ~~See ARM 8.15.207 Standard Forms.~~
(c) A qualification and experience information form provided by the bureau. ~~See ARM 8.15.207 Standard Forms.~~
(d) will remain the same.
(i) first-class mine hoisting license \$30; 60
(ii) second-class mine hoisting license 20; 50
(iii) renewals 4; 20
(This license must be renewed within 13 months of obtaining the previous license. If not renewed within this period, the fee will be the same as for the original license. Failure to renew a license within 12 months of the date of expiration will require application procedures as for a new license.)
(iv) lost license replacement 2; 10"
Auth: Sec. 50-71-301, 50-76-104, MCA; IMP, Sec. 50-73-302, 50-76-104, MCA

"8.15.205 CRANE HOISTING OPERATORS LICENSE REQUIREMENTS

(1) through (8) will remain the same.
(a) A notarized certificate of experience signed by a person having actual knowledge of the applicant's past work experience. ~~See ARM 8.15.207 Standard Forms.~~
(b) A report of physical examination filled out and signed by the physician having given the physical examination. The form is provided by the bureau upon request. An alternate form may be used if approved by the bureau. This physical examination form must also be filled out and submitted for license renewals. ~~See ARM 8.15.207 Standard Forms.~~
(c) A qualification and experience information form provided by the bureau. ~~See ARM 8.15.207 Standard Forms.~~
(d) will remain the same.
(i) first-class crane hoisting \$30; 60
(ii) second-class crane hoisting 20; 50
(iii) third-class crane hoisting 12; 40
(iv) renewals 4; 20
(The license must be renewed within 13 months of obtaining the

previous license. If not renewed within this period, the fee will be the same as for the original license. Failure to renew a license within 12 months of the date of expiration will require application procedures as for a new license.)

(v) lost license replacement 2- 10

(9) through (9)(d) will remain the same."

Auth: Sec. 50-71-301, 50-76-104, MCA; IMP, Sec. 50-71-301, 50-76-103, 50-76-104, MCA

3. The Department of Commerce is proposing to repeal ARM 8.15.207 which is found on ARM page 8-485.7. The authority section is 50-71-301, MCA, and the implementing section is 50-71-301, MCA. The Department is proposing repeal of this rule because it does not have statutory authority to enforce this rule as did the Department of Labor and Industry. The Department is drafting licensure forms which will be made available upon completion.

4. The proposed new rule will read as follows:

"I FEE SCHEDULE FOR BOILER ENGINEERS

- | | |
|---|------|
| (1) First-class engineer license | \$60 |
| (2) Second-class engineer license | 50 |
| (3) Third-class engineer license | 40 |
| (4) Agriculture-class engineer license | 40 |
| (5) Low-pressure engineer license | 40 |
| (6) Traction engineer license | 40 |
| (7) Annual renewal of license | 20 |
| (8) Replacement of lost license | 10 |
| (9) An applicant for licensure shall pay 50% of the | |

license fee for which application is being made. The payment shall be forfeited in the event the applicant fails to appear for the examination at the scheduled time or fails to pass the examination. This subsection repeats statutory language to provide licensees with a single referral source for all fees.

(10) An applicant who fails the examination shall again pay 50% of the licensure fee in order to re-take the examination.

(11) The applicant shall pay the remaining 50% of the licensure fee at the time of successful completion of the examination."

Auth: Sec. 50-74-309, MCA; IMP, Sec. 50-74-309, MCA

REASON: The amendment to section 50-74-309, MCA, by the 1995 Legislature in House Bill 68, authorizes the Department of Commerce to set fees by administrative rule, commensurate with program area costs. The fees must be deposited in the state special revenue fund for the use of the Department. The account balance may not exceed one-half of one year's approved appropriation.

The licensing functions for boiler operators, crane and hoist operators and construction blasters were transferred from the Department of Labor and Industry to the Department of Commerce. These programs were partially funded by the Workers' Compensation Administration Fund while administered by the

Department of Labor. Under the Department of Commerce, this program is mandated to set licensing fees commensurate with program area costs for administration of the program.

Appropriation for the licensing functions of boiler operators, crane and hoist operators and construction blasters is \$128,365. The fees, as proposed, are projected to generate \$135,410 each fiscal year. Revenue collected in fiscal year 1996 will be lower because the new fee schedule will not be in place for the entire year.

5. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Professional and Occupational Licensing Bureau, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., September 21, 1995.

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

DEPARTMENT OF COMMERCE
PROFESSIONAL AND OCCUPATIONAL
LICENSING BUREAU
STEVE MELOY, BUREAU CHIEF

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

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, August 14, 1995.

BEFORE THE BOARD OF PSYCHOLOGISTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of a rule pertaining) OF 8.52.616 FEE SCHEDULE
to fees)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On September 23, 1995, the Board of Psychologists proposes to amend the above-stated rule.

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

"8.52.616 FEE SCHEDULE (1) through (1)(b) will remain the same.

(c) Renewal fee

~~110~~ 150

(d) and (e) will remain the same."

Auth: Sec. 37-1-134, 37-17-202, MCA; IMP, Sec. 37-17-302, 37-17-303, 37-17-306, 37-17-307, MCA

REASON: The proposed amendment will increase renewal fees for licensees, as the Board has determined its costs have risen with no increase in income to compensate. The renewal fee has not increased since 1988, some seven years ago, and the Board's cash balance has been drawn down as a result. The fees must remain commensurate with program area costs for the Board to operate.

3. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Psychologists, 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., September 21, 1995.

4. If a person who is directly affected by the proposed amendment wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Psychologists, 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., September 21, 1995.

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

Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 20 based on the 203 licensees in Montana.

BOARD OF PSYCHOLOGISTS
PASTOR JEFF OLSGAARD, CHAIRMAN

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

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, August 14, 1995.

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

In the matter of the proposed) NOTICE OF PUBLIC HEARING ON
amendment, repeal and adoption) PROPOSED AMENDMENT, REPEAL
of rules pertaining to realty) AND ADOPTION OF RULES PER-
regulation) TAINING TO REALTY REGULATION

TO: All Interested Persons:

1. On September 28, 1995, at 9:00 a.m., a public hearing will be held in the Haynes Auditorium, Historical Society building, 225 N. Roberts, Helena, Montana, to consider the proposed amendment of ARM 8.58.406A, 8.58.406C, 8.58.412, 8.58.413, 8.58.414, 8.58.415A, 8.58.415B, 8.58.415C, 8.58.419, 8.58.423, 8.58.702, 8.58.707, 8.58.709, 8.58.710, 8.58.711, 8.58.712, 8.58.714; repeal ARM 8.58.409; and adoption of new rule I Pre-licensing Education - Sales and Brokers.

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

"8.58.406A APPLICATION FOR LICENSE--SALESPERSON AND
BROKER

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

(5) If an applicant currently holds, or has ever held a real estate license in another jurisdiction, a certified license history from that licensing jurisdiction is required before a Montana license will be issued.

(5) (6) For salesperson applications, the board will require a recent credit rating, supervising broker certification, and references attesting to good repute, honesty, trustworthiness, and competency. The board may utilize the content of the credit report in its assessment of the salesperson's qualifications, only to the extent that such report discloses judgments or similar items in which the applicant has been found liable for mismanagement, fraud, conversion, or conduct of a similar nature. The board may require that all deficient credit be paid or arrangements made with the creditor to do so. Those arrangements must be satisfactory to the board.

(6) (7) For broker applicants, the board will require a recent credit rating, and references attesting to good repute, honesty, trustworthiness, and competence. The board may utilize the content of the credit report in its assessment of the broker's qualifications, only to the extent that such report discloses judgments or similar items in which the applicant has been found liable for mismanagement, fraud, conversion, or conduct of similar nature. The board may require that all deficient credit be paid or arrangements made with the creditor to do so. Those arrangements must be satisfactory to the board.

(7) (8) For the purpose of determining the 37-51-302(2)(c) qualifications of a broker applicant, "actively engaged" will be applied to mean "engaged substantially full-time, day-to-day, as an occupation" and having obtained;

~~10 listings and 10 sales and attended, participated, observed, reviewed, and conducted the various stages of these transactions and the showings, negotiations, closings, and like matters pertaining to them, to the full extent possible within the scope of a salesperson's license.~~

(a) 30 real estate property transactions in two years. No more than 10 properties can be bare, non-agricultural land. A minimum number of five listings and five sales must be obtained. The minimum number of real estate transactions will increase by five transactions each year of licensing after the initial two-year requirement; or

(b) 10 farm and ranch, agricultural and commercial real estate property transactions in two years. A minimum of two listings and two sales must be obtained. The minimum number of real estate transactions will increase by two transactions each year of licensing after the initial two-year requirement. Land will be considered farm and ranch only if it contains a minimum of 80 acres.

(9) This experience in (8) (a) and (b) above may be obtained while licensed within the state, or licensed in another state. This subsection is advisory only, but may be a correct interpretation of the law. Dual agency transactions will count for two transactions. All other transactions will count as one transaction for the licensing applicant.

(8) and (9) will remain the same, but will be renumbered (10) and (11)."

Auth: Sec. 37-1-131, 37-51-203, MCA; IMP, Sec. 37-1-135, 37-51-202, 37-51-302, MCA

REASON: The amendment that constitutes the proposed subsection (5) is needed to insure that the Board will obtain from other states or jurisdictions in which an applicant has been licensed to sell or broker real estate certified information from the licensing agency in that state as to whether there has ever been final disciplinary action taken against that license holder in that jurisdiction. This ability would provide the Board with an additional screening mechanism by which it may judge the character and ability of the license applicant.

Proposed amendments to this rule also would permit license applicants with credit history problems to be licensed so long as they enter into payment plans to their creditors that are satisfactory to the Board.

The regulation is also proposed for amendment to clarify the qualifications for licensure as a broker by explicitly stating the minimum number of transactions required to request licensure as a broker. This amendment also takes into consideration dual agency transactions and states that each dual agency transaction will be considered as two transactions for the purpose of meeting the minimum number of transactions.

"8.58.406C APPLICATION FOR EQUIVALENCY--BROKER

(1) will remain the same.

~~(2) A salesperson who has been actively engaged as a salesperson for a period of 12 months and has obtained 15 listings and 15 sales in residential real estate or five listings and five sales in commercial or agricultural real estate, or any appropriate combination, may be considered as having equivalent experience under 37-51-302, MCA.~~

~~(3) A salesperson who has been actively engaged as a salesperson for a period of 36 months and has obtained five listings and five sales in residential real estate or three listings and three sales in commercial or agricultural real estate, or any appropriate combination, may be considered as having equivalent experience under 37-51-302, MCA.~~

~~(4) If the board determines that there is no equivalent education, a college degree with an emphasis in real estate and 12 months active practice as a salesperson may be considered by the board as equivalent experience.~~

(2) A minimum of a college degree with an emphasis in real estate and one year of current licensing as a real estate salesperson and activity equal to that required to obtain a broker license as found in ARM 8.58.406A(8).

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

Auth: Sec. 37-1-131, 37-51-203, MCA; IMP, Sec. 37-51-202, 37-51-302, MCA

REASON: This regulation is being amended to delete the requirements of a minimum number of properties sold within a specific time period. The Board believes that the same purpose may be served by instituting language for an equivalency calling for a college degree with emphasis in real estate and one year's activity in which a sufficient number of transactions have been completed that would qualify for licensure under 8.58.408B.

"8.58.412 INACTIVE LICENSES (1) through (1)(d) will remain the same.

(2) Inactive licensees must pay the renewal fee and provide verification of the necessary education annually to maintain licensed status."

Auth: Sec. 37-1-131, 37-51-203, MCA; IMP, Sec. 37-51-202, 37-51-204, 37-51-208, 37-51-302, MCA

REASON: Amendment to this regulation recognizes that section 37-51-204, MCA will be amended as of October 1, 1995 by deleting the maximum of 15 hours of continuing education in any two-year period. The Board has reconsidered the amount of continuing education needed per year and addresses that in other proposed amendments. This particular amendment will insure that individuals who have been without an active license will need to complete the continuing education for each year of inactive status before their licenses will be reactivated.

"8.58.413 REACTIVATION OF LICENSES (1) For an inactive real estate licensee to again become active, he or she must:

4a) file a change of address application and pay the required fee in accordance with ARM 8.58.411+.

~~(b) submit proof of obtaining 15 classroom or equivalent hours of continuing education for each two year period of inactive status or any combination of active and inactive status."~~

Auth: Sec. 37-1-131, 37-51-203, MCA; IMP, Sec. 37-51-204, 37-51-302, 37-51-311, MCA

REASON: This proposed amendment deletes language that would contradict the amendment proposed to be added to 8.58.412. The deletion of this language is consistent with the overall amendments to the continuing education requirements.

"8.58.414 TRUST ACCOUNT REQUIREMENTS (1) Each broker shall maintain a separate bank account which shall be designated a trust account wherein all down-payments, earnest money deposits, rent payments, security deposits, or other trust funds received by the broker or his salesperson on behalf of a principal, third-party or any other person shall be deposited except as provided in (19) below. Such trust accounts may be maintained in interest-bearing accounts with the interest payable to the broker, principal, third-party, or any other person, as may be designated by agreement. Interest payable to the broker shall be identified by agreement as consideration for services performed. Offices or firms having more than one broker, whether broker-owner or broker-associate, may utilize a single trust account.

(2) Trust accounts shall be maintained in ~~banks~~ a financial institution located in Montana.

(3) All monies, belonging to others and accepted by the broker while acting in his capacity as a broker, shall be deposited in a federally insured ~~bank or other recognized trust financial institution~~ in an account separate from money belonging to the broker.

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

(4) through (17) will remain the same.

(18) A salesperson shall place all deposits in the custody of the supervising broker in adequate time for the broker to comply with all trust account requirements.

(19) If a broker elects to use a title company to hold earnest money deposits, the broker shall:

(a) obtain from the title company a dated, signed receipt showing the date upon which the earnest money was delivered to the title company;

(b) maintain a detailed ledger showing the amounts deposited with the title company;

(c) instruct the title company that the earnest money is to be immediately deposited in the title company's trust account; and

(d) obtain and file with the board an agreement signed by the title company authorizing the board to audit the title company's trust account."

Auth: Sec. 37-1-131, 37-1-316, 37-51-203, MCA; IMP, Sec. 37-1-316, 37-51-202, 37-51-203, 37-51-321, MCA

REASON: Trust Account regulations are being amended to allow for a trust account in either a bank, or if the broker can provide assurance that the account would be available for audit by board representatives, in a trust account. Furthermore, the regulation is also revised to state that salespersons have a duty to transfer trust money to their brokers in sufficient time so that the brokers may timely deposit the trust money into the trust account.

"8.58.415A CONTINUING REAL ESTATE EDUCATION (1) Each licensee is required to complete a minimum of ~~15~~ 12 hours of continuing real estate education for every ~~two~~ (2) year period, beginning January 1, ~~1988~~ 1996.

(2) will remain the same.

(3) By October 1 of each ~~odd-numbered~~ year, the board shall prescribe topics in which the ~~15~~ 12 hours of education must be obtained. ~~Licensees requiring education for renewing will be granted credit for any continuing education credits obtained during either that renewal year or the year preceding and which were obtained from prescribed topics. For example, the board will prescribe topics by October 1, 1993, for 1994-95 and by October 1, 1995 for 1996-97. Licensees who need to report their education in 1994 may use any approved course from 1993 (even though not a prescribed topic) or any approved course from the 1994 prescribed topic list. Licensees who need to report their education in 1995 may use approved courses from the 1994-95 prescribed topic list. Licensees who need to report their education in 1996 may use approved courses from the 1995 prescribed list, the 1996 prescribed list, or any combination of those two lists. A minimum of seven hours must come from mandatory topics determined by the board and five hours may come from elective topics approved by the board.~~

(4) ~~The required hours shall be completed within the two year period and no No hours in excess shall carry over to any other two year period.~~

(5) ~~No course shall be repeated for credit unless the course content has been substantially changed or been substantially updated and the provider has obtained approval from the board to offer it for repeat credit in the same calendar year.~~

(6) ~~Proof of successful completion must be submitted to the board with the licensee's renewal application at the conclusion of every two (2) year period, except that inactive licensees shall provide proof of completion at the time of reinstatement in accordance with ARM-8.58.413.~~

(7) will remain the same.

(8) Course and instructor evaluation forms, approved by the board, must be provided and collected by a board representative and forwarded to the board office. No evaluation will be collected by the instructor.

(8) through (10) will remain the same, but will be renumbered (9) through (11)."

Auth: Sec. 37-1-131, 37-51-203, 37-51-204, MCA; IMP, Sec. 37-51-202, 37-51-203, 37-51-204, MCA

REASON: As of October 1, 1995, section 37-51-204, MCA, which had limited the Board of Realty Regulation to requiring no more than 15 hours of continuing education in any two-year period, has been amended to grant to the Board the ability to determine what amount of continuing education is appropriate. The Board is thus repealing that portion of the regulation that limits mandatory continuing education to 15 hours for every two years. In place of that requirement, the Board is imposing a requirement of 12 hours of continuing education every year. The Board believes that the increase to 12 hours of continuing education every year is more realistic than 15 hours every two years. Furthermore, the Board is proposing to require that seven hours come from required courses and five hours may be obtained from elective courses. The Board believes that this variety is essential as it allows the Board to determine certain areas of coursework that need to be emphasized while at the same time permitting licensees to attend and obtain credit for subjects related to real estate that interest the licensees but that the Board may not have included in its list of required coursework.

8.58.415B CONTINUING REAL ESTATE EDUCATION -- COURSE APPROVAL (1) ~~Requests for approval of any change in subject matter, and renewal of approval,~~ of a continuing real estate education course must be made on forms approved by the board and submitted 45 days prior to the intended course, with payment of the required fee.

~~(2) Approval of a course and renewal of approval of a course shall be for two year periods, but may be revoked for cause.~~

~~(2) Expiration of course approval is December 31 of each year, but may be revoked for cause. The initial approval of a course will be in effect for the remainder of that calendar year, and the next calendar year in its entirety, expiring on December 31.~~

~~(3) Instructor approval will be for specific topics and will not carry over to other topics of education. An instructor must make application for each topic and may not be deemed approved for other topics without approval from the board.~~

~~(4) Courses must consist of at least three two hours of instruction and must be designed so that no more than 10 minutes per hour are allowed for breaks in instruction.~~

~~(4) will remain the same, but will be renumbered (5).~~

~~(5) (6) Courses offered in another state and approved by that state's real estate licensing body for continuing education, is are recognized and approved, but must meet established topic requirements."~~

Auth: Sec. 37-1-131, 37-51-202, 37-51-203, 37-51-204, MCA; **IMP**, Sec. 37-51-202, 37-51-204, MCA

REASON: The Board has proposed these amendments so that the approval of continuing education course would be good for the year following the Board's approval of that course and to clarify that course instructors must be approved for each topic of education they intend to teach.

"8.58.415C CONTINUING REAL ESTATE EDUCATION -- INSTRUCTOR APPROVAL (1) Request for approval, ~~change, and renewal of approval~~ of a continuing education instructor must be made on forms approved by the board and submitted 45 days prior to the intended instruction with payment of the required fee.

(2) ~~Approval of an instructor and renewal of approval of an instructor shall be for a two year period, but may be revoked for cause. Expiration of instructor approval is December 31 of each year, but may be revoked for cause. The initial approval of an instructor will be in effect for the remainder of that calendar year, and the next calendar year in its entirety, expiring on December 31.~~

(3) will remain the same.

(a) at least a bachelor's degree in a field traditionally associated with the subject matter of real estate ~~transactions and a broker's license or a bachelor's degree in a field traditionally associated with the subject matter of real estate transactions and three years' experience as a licensed salesperson and current experience approved by the board; or~~

(b) at least two years of post secondary education in a field traditionally associated with the subject matter of real estate transactions with a generally recognized professional or educational designation ~~a designated real estate instructor or other nationally recognized instructor designation; or~~

(c) extensive instructional background in real estate education and a broker license or three years' experience as a licensed salesperson; or

(d) experience in the area of instruction and be a designated real estate instructor of the real estate educators association;

(e) ~~five years of experience in the real estate related subject area being taught.~~

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

(4) will remain the same."

Auth: Sec. 37-1-131, 37-51-203, 37-51-204, MCA; IMP, Sec. 37-51-202, 37-51-204, MCA

REASON: This proposed amendment provides that the approval of continuing education instructors will be good for the year in which the instructor is approved as well as for the succeeding year. The amendment also revises the qualifications for approval of instructor.

"8.58.419 GROUNDS FOR LICENSE DISCIPLINE - GENERAL PROVISIONS - UNPROFESSIONAL CONDUCT (1) will remain the same.

(a) ~~has violated 37-51-321(19), MCA, by "demonstrating his unworthiness or incompetency to act as a broker or salesman", and/or has failed to meet the generally accepted standards of practice.~~

(b) ~~has violated 37-51-321(7), MCA, by "intentionally violating a rule adopted by the board in the interest of the public and in conformity with this act".~~

(2) If the board determines that a licensee has committed an act in such fashion that violates a statute or rules administered by the board ~~has been violated~~, such act shall be deemed an act against the interest of the public for which the

board may reprimand, suspend, or revoke the license held by ~~take disciplinary action, as permitted by law, against the licensee or take any other action permitted by law.~~

(3)(a) ~~In all transactions, the licensee shall either be full agent of the seller or buyer, dual agent as provided by subsection (3)(b) of this rule, or shall be deemed the limited agent of the buyer as provided by this part. A licensee who enters into a written listing agreement with a prospective seller of property shall be considered to be the full agent of the seller and shall owe to the seller full fiduciary obligations. A licensee who accepts an offer of sub-agency from a listing agent shall be considered to be the sub agent of the seller and shall owe to the seller full fiduciary obligations. A licensee who enters into a written agreement with a prospective buyer of property, giving the licensee or other licensees affiliated with the licensee the exclusive right to represent the buyer for a stated period of time shall be considered to be the full agent of the buyer and shall owe to the buyer full fiduciary obligations. A licensee who shows property to a prospective buyer of property without entering into an exclusive agency agreement with that buyer and further without acting as a listing agent or sub agent, shall be considered to be the limited agent of the buyer, as to the property shown such buyer. The limited agent shall owe to such buyer the following duties:~~

~~(i) To the extent requested by buyer, licensee shall seek a property at a price and terms acceptable to the buyer; provided, however, that the licensee shall not be obligated to seek other properties for the buyer while the buyer is a party to a contract to purchase property, unless so requested by such buyer;~~

~~(ii) Licensee shall timely present all offers to and from the buyer, which he or she has received, even when the buyer is party to a contract to purchase a property;~~

~~(iii) Licensee shall disclose to the buyer material facts of which he or she has actual knowledge concerning the transaction and further concerning the property as is required by other provisions of this regulation;~~

~~(iv) Licensee shall advise the buyer to obtain expert advice as to material matters which are beyond the expertise of the licensee as is required by other provisions of this regulation;~~

~~(v) Licensee shall timely account for all monies and properties received in which the buyer has or may have an interest;~~

~~(vi) Licensee shall exercise reasonable skill and care; and~~

~~(vii) Licensee shall comply with all requirements of these rules and all applicable statutes and regulations including, but not limited to, fair housing and civil rights statutes.~~

~~(b) Licensees may act as the agent of more than one principal in the same transaction if the licensee reasonably believes that the duties owed to one principal will not directly conflict with the duties owed to the other in such fashion that adverse consequences are likely to result, and~~

~~unless such principal consents after full disclosure by the licensee.~~

~~(c) Licensees shall disclose in writing to each principal to the transaction or his or her agents the nature of their relationship to that principal no later than when an offer is prepared in the transaction.~~

~~(4) (3). In addition to all other provisions contained in the statutes and rules administered by the board, particularly 37-51-321, MCA, (statutory grounds for license discipline) failure to comply with any of the following shall constitute an act against the interest of the public:~~

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

~~(c) Licensees shall recommend that legal counsel be obtained when the interests of any party require it. Licensees will advise their client that outside professional services should be secured when appropriate. Statutory brokers or dual agents should so advise both parties in the transaction.~~

~~(d) Licensees shall recommend that the merchantability of title to property be determined when the interests of any party reasonably require it.~~

~~(e) and (f) will remain the same, but will be renumbered (d) and (e).~~

~~(g) Licensees shall endeavor to ascertain all pertinent facts concerning every property in any transaction in which the licensee acts, so that the licensee may fulfill the obligation to avoid error, exaggeration, misrepresentation, or concealment of pertinent facts.~~

~~(h) Licensees who have listed property shall make a prompt, reasonable, visual inspection of any property listed.~~

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

~~(j) Licensees shall disclose to principals and third parties all material facts concerning the property of which the licensee has actual knowledge regarding the property, provided that the fact that an occupant of the property has had AIDS or other communicable disease, or that the property was the site of a suicide, homicide, or other felony shall not be considered a material fact.~~

~~(k) The licensee or agency in advertising shall be especially careful to present a true picture and shall not advertise without disclosing his or her name and identity as a real estate licensee or real estate agency. Such disclosure shall be required whenever the licensee or agency negotiates or attempts to negotiate the listing, sale, purchase or exchange of real estate which belongs to the licensee, the agency, or the principal.~~

~~(l) will remain the same, but will be renumbered (g).~~

~~(m) The licensee or agency in advertising, when under a franchise agreement, shall incorporate his or her own name or agency name, other than that of the franchise, and state that the business is independently owned and operated.~~

~~(n) Licensees shall act to preserve and maintain that good repute, honesty, trustworthiness, and competency to transact business in a manner to safeguard the interests of the public as is required to obtain a license.~~

~~(o) through (s) will remain the same, but will be renumbered (h) through (l).~~

~~(t) (m)~~ Licensees shall make a reasonable attempt to get advise all principals to all agreements, financial obligations and recommendations regarding all real estate transactions in writing.

~~(u)~~ Licensees shall not undertake to make formal real estate appraisals that are outside the scope of the licensee's experience.

~~(v)~~ Licensees cooperating with the exclusive listing licensee shall not obtain the cooperation of a subsequent licensee without the written consent of the listing licensee.

~~(w)~~ Licensees shall not refuse, because of sex, race, creed, religion, color, age, familial status, physical or mental handicap, or national origin, to show, sell, lease, or rent any real estate to prospective renters, lessees, or purchasers, except when a distinction is based on reasonable grounds.

~~(x) (n)~~ Licensee shall submit all written offers to a principal when such offers are received prior to the listing agreement having been terminated or the transaction based on that listing having been closed, whichever occurs first. However, continuing to present offers after an offer has been accepted shall not be deemed to be a violation of 37-51-321-10, MCA governing statutes or regulations.

~~(y) (o)~~ Licensees shall not disclose the name of a person making an offer or the amount or terms of an offer to other persons interested in making offers, except that this shall not prohibit disclosing the existence of an offer. A buyer's broker may disclose this data to his/her clients. If a buyer broker has clients making competitive offers on the same property, the buyer broker cannot disclose the terms of competing offers.

~~(z) (p)~~ The licensee shall inform any seller the principal at the time an offer is prepared or presented that he will be expected to pay certain closing costs such as discount points and the approximate amount of said costs of the costs and fees associated with that offer. A statutory broker and a dual agent will inform both parties to the transaction.

(aa) through (ac) will remain the same, but will be renumbered (q) through (s).

~~(ad)~~ A broker shall not sign the application of a salesperson unless the broker and salesperson will be in lawful association, through employment contract or otherwise, and the broker will supervise the salesperson.

~~(ae)~~ A broker shall supervise salespersons and be responsible for their conduct.

(af) will remain the same, but will be renumbered (t).

~~(u)~~ Licensees may not violate the landlord tenant act (70-24-101, MCA).

~~(v)~~ Licensees may not violate the state and federal human rights statutes.

~~(w)~~ Licensees may not violate the Americans with Disabilities Act.

~~(x)~~ Licensee may not guarantee or authorize a person to guarantee future profits which may result from the resale of real property.

(y) Licensees may not offer real property for sale or lease without the knowledge and consent of the owner or the owner's authorized agent or on terms other than those authorized by the owner or the owner's authorized agent.

(z) Licensees may not induce a party to a contract of sale or lease to break the contract for the purpose of entering into a new contract with another principal.

(aa) Licensees may not represent oneself as a licensed appraiser when not licensed as such and solicit business as a licensed real estate appraiser without such license.

(ab) Licensees may not negotiate a sale, exchange, or lease of real property directly with a seller or buyer if the broker or salesperson knows that the owner has a written, outstanding contract in connection with the property granting an exclusive agency to another broker.

(ac) Licensees may not solicit, sell or offer for sale real property by conducting lotteries, raffles or contests for the purpose of influencing a purchaser or prospective purchaser of real property. Door prizes can be awarded so long as the participant is not required to pay any consideration or enter into any contract arrangement in order to participate in the door prize.

(ad) Licensees may not fail voluntarily to furnish a copy of a written instrument to a party executing it at the time of its execution.

(ae) Licensees may not pay a commission in connection to a real estate sale or transaction to a person who is not licensed as a real estate broker, real estate salesperson or property manager under this chapter; however, payment to the principal or reducing commission owed by the principal is not considered payment of a commission to an unlicensed person.

(af) Licensed brokers and salespersons performing property management duties shall abide by the rules set out in ARM 8.58.714.

(5) Licensees shall not knowingly submit false information to the board.

(6) will remain the same, but will be renumbered (4)."

Auth: Sec. 37-1-131, 37-1-136, 37-51-102, 37-51-203, 37-51-321, MCA; IMP, Sec. 37-51-102, 37-51-201, 37-51-202, 37-51-321, 37-51-512, MCA

REASON: As of October 1, 1995, the Board of Realty Regulation will be subject to new uniform standards for license discipline. The Board has proposed changes to its rules of unprofessional conduct to incorporate standards of the profession consistent with the dictates of section 16, House Bill 518. Agency relationships are deleted because they will be codified in section 37-51-102, MCA, as of October 1, 1995.

"8.58.423 GENERAL LICENSE ADMINISTRATION REQUIREMENTS

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

(5) The supervising broker is responsible for all real estate actions of the licensees under his supervision.

(6) The supervising broker or managing broker must provide continuous training in the area of real estate activity to all licensees under his supervision.

(7) All listings must be reviewed, signed and dated by the supervising broker or managing broker before the listing is effective.

(8) The supervising broker or managing broker is required to review, sign and date each item of the final agreement and all disclosure documents to the purchase and sales agreement or offers to lease within 10 business days of finalization.

(9) A broker shall not sign the application of a salesperson unless the broker and salesperson will be in lawful association, through employment contract or otherwise, and the broker will supervise the salesperson.

(10) The broker/owner may designate another broker to be the managing broker of the office."

Auth: Sec. 37-1-131, 37-51-203, MCA; IMP, Sec. 37-51-202, 37-51-203, 37-51-309, MCA

REASON: The Board is proposing to amend this regulation to make it more clear that the Broker is ultimately responsible for the conduct of salespersons and associate brokers under his or her supervision. The amendments to the regulation spell out the specific responsibilities of the broker as regards the transactions handled by his or her subordinates.

"8.58.702 APPLICATION FOR LICENSURE (1) through (3) will remain the same.

(4) All applicants successfully completing the examination must apply for licensure within 12 months from the date of examination. Failure to make application within that time shall invalidate examination results."

Auth: Sec. 37-1-131, 37-51-202, 37-51-203, MCA; IMP, Sec. 37-51-603, MCA

REASON: The Board is proposing to amend the regulation to require that applicants for a property manager's license must apply for their license within 12 months of examination. Such a requirement assures that the individual being licensed will be fairly current with the industry.

"8.58.707 LICENSE RENEWAL - LATE RENEWAL (1) will remain the same.

(2) Licensees failing to renew their licenses by ~~October~~ December 31 of each year may have their licenses reinstated by:

(a) payment of the current renewal fee as prescribed by the board by ~~November~~ January 15;

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

(3) Any licensee not renewed by ~~November~~ January 15 is automatically canceled and may not be reinstated."

Auth: Sec. 37-1-131, 37-51-202, 37-51-203, MCA; IMP, Sec. 37-51-604, MCA

REASON: The Board is revising renewal dates to coincide with renewal dates for licenses issued to real estate brokers and salespersons.

"8.58.709 CONTINUING PROPERTY MANAGEMENT EDUCATION

(1) Each property management licensee is required to complete a minimum of 8 6 hours of board-approved continuing property management education ~~for every two (2) years of licensing.~~ A minimum of three hours must come from mandatory topics determined by the board and three hours may come from elective topics approved by the board.

(2) ~~The required hours must be completed within the two-year period and no hours in excess will carry over to any other two-year period. Inactive licensees may obtain the full amount due just prior to reactivation.~~

(3) ~~No course shall be repeated for credit in the same calendar year unless the course content has been substantially changed or been substantially updated and the provider has obtained approval from the board to offer it for repeat credit.~~

(4) ~~Proof of successful completion must be submitted to the board with the licensee's renewal application at the conclusion of every two (2) year period, except that inactive licensees shall provide proof of completion at the time of reinstatement. No course completion certificates will be accepted by the board at any other time.~~

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

(6) A board representative may audit all board-approved courses at no charge for rule compliance.

(7) All approved education must be open and available to all licensees."

Auth: Sec. 37-1-131, 37-51-202, 37-51-203, MCA; IMP, Sec. 37-51-604, MCA

REASON: The Board has voted to amend the continuing education requirements to require six hours per year rather than eight hours every two years. The Board believes this increase in continuing education requirements is relatively modest but also is a progressive step. In addition, the Board is permitting the licensee the discretion to choose three elective topics for continuing education every year.

"8.58.710 CONTINUING PROPERTY MANAGEMENT EDUCATION -- COURSE APPROVAL (1) and (2) will remain the same.

(3) ~~Courses must consist of at least three two hours of instruction and must be designed so that no more than 10 minutes per hour are allowed for breaks in instruction.~~

(4) ~~Property management courses offered in other states and approved by those other states' real estate licensing agency for continuing education and which meet the property management topic requirements are recognized and approved, but must meet established topic requirements."~~

Auth: Sec. 37-1-131, 37-51-202, 37-51-203, MCA; IMP, Sec. 37-51-604, MCA

REASON: The amendments proposed for addition to this regulation would permit the Board to accept as appropriate and valid continuing education those courses approved in other states that meet topic requirements set forth by the Board.

"8.58.711 CONTINUING PROPERTY MANAGEMENT EDUCATION -- INSTRUCTOR APPROVAL (1) Request for approval, ~~change, and renewal of approval~~ of a continuing education instructor must be made on forms approved by the board and submitted 45 days prior to the intended instruction with payment of the required fee.

(2) ~~Approval of an instructor and renewal of approval of an instructor shall be for a two year period, but may be revoked for cause. Expiration of instructor approval is December 31 of each year, but may be revoked for cause. The initial approval of a course will be in effect for the remainder of that calendar year and the next calendar year in its entirety, expiring December 31.~~

(3) will remain the same.

(a) at least a bachelor's degree in a field traditionally associated with the subject matter of property management transactions and a property manager's license or a bachelor's degree in a field traditionally associated with the subject matter of property management transactions and a broker's license and current experience approved by the board; or

(b) at least two years of post secondary education in a field traditionally associated with the subject matter of property management transactions with a generally recognized professional or educational designation a designated real estate instructor or other nationally recognized instructor designation; or

(c) extensive instructional background in property management education and property manager's license or extensive instructional background in property management education and be a broker, or such other qualifications as are determined by the department or board to meet the spirit and intent of these requirements; or

(d) experience in the area of instruction and have a designation as a real estate instructor by the real estate educators association; or

~~(e) five years of experience in the subject being taught.~~

(4) will remain the same."

Auth: Sec. 37-1-131, 37-51-202, 37-51-203, MCA; IMP, Sec. 37-51-604, MCA

REASON: These proposed amendments state that approval of a course shall be good for the year in which approval is granted and for the succeeding year. This amendment also provides the mechanism for gaining approval as an instructor of continuing education courses.

"8.58.712 TRUST ACCOUNT REQUIREMENTS (1) will remain the same.

(2) Trust accounts must be maintained in a federally insured bank or another recognized depository financial institution in Montana.

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

~~(b) Client's funds must be retained in this bank account until the transaction involved is consummated or terminated, at which time the property manager must account for the full amount received.~~

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

(4) will remain the same.

(5) All security deposits and other trust account money received by the property manager must be deposited in the property management trust account within three business days of receipt of the trust funds ~~unless otherwise provided in the lease agreement or rental agreement.~~

(6) through (12) will remain the same."

Auth: Sec. 37-1-131, 37-1-316, 37-51-203, MCA; IMP, Sec. 37-1-316, 37-51-202, 37-51-321, MCA

REASON: This regulation is being amended to strike the specific reference to the creation of a trust account within a bank. In its place, the Board is proposing that a trust account may be maintained in any financial institution in Montana.

"8.58.714 GROUNDS FOR DISCIPLINE OF PROPERTY MANAGEMENT LICENSEES - GENERAL PROVISIONS - UNPROFESSIONAL CONDUCT

(1) In any transaction in which a property management licensee is involved as a licensee or as a party, has held himself or herself out as a licensee, or in which any party has reasonably relied on a licensee's status as a licensee, violation of any statute or rule administered by the board may be considered by the board in determining whether or not the licensee has failed to meet the generally accepted standards of practice.

~~(a) has violated 37-51-606, MCA, by "demonstrating his unworthiness or lack of honesty"; and/or~~

~~(b) has violated 37-51-606, MCA, by offering or attempting to offer property for sale.~~

(2) If the board determines that a licensee has committed an act ~~in such fashion that violates~~ a statute or the rules administered by the board has been violated, such act shall be deemed an act against the interest of the public for which the board may reprimand, suspend, or revoke the license held by take disciplinary action permitted by law against the licensee ~~or take any other action permitted by law.~~

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

~~(e) Licensees shall recommend that legal counsel be obtained when the interests of any party require it.~~

(d) through (f) will remain the same, but will be renumbered (c) through (e).

~~(g) Licensees must act to preserve and maintain that good repute, honesty, trustworthiness, and competency to transact business in a manner to safeguard the interests of the public as is required to obtain a license.~~

(h) through (l) will remain the same, but will be renumbered (f) through (j).

~~(m) A licensee must not knowingly submit false information to the board.~~

(n) through (q) will remain the same, but will be renumbered (k) through (n).

(o) Licensees shall disclose to all customers and clients their agency relationship.

(u) A licensee may not openly advertise property belonging to others, whether by means of printed material, radio, television, or display or by other means, unless licensee has a signed property management agreement from the owner of the property. The agreement must be valid as of the date of advertisement.

(v) Licensees shall include the name of the property management company, or the term "property manager" in any real estate advertising, including property owned by the licensee.

(w) A licensee shall disclose the fact that he/she is a licensee when the licensee first seeks information from the owner, the owner's agent, or tenant about any property, whether for the licensee's own account or as agent for another.

(x) A licensee shall repay the recovery account for any amounts due and owing the account caused by any actions, negligence, or misrepresentation of the licensee.

(y) Licensees must first obtain a written management agreement with the owner or owner's agent before conducting any property management activity.

(4) will remain the same."

Auth: Sec. 37-1-131, 37-51-202, 37-51-203, MCA; IMP, Sec. 37-51-606, MCA

REASON: As of October 1, 1995, the Board of Realty Regulation will be subject to new uniform standards for license discipline. The Board has proposed changes to its rules of unprofessional conduct to incorporate standards of the profession consistent with the dictates of section 16, House Bill 518, which will be codified as section 37-1-316, MCA, as of October 1, 1995.

3. The Board is proposing to repeal ARM 8.58.409, the text of which can be located at page 8-1604.2, Administrative Rules of Montana. The Board is proposing to repeal ARM 8.58.409 because it believes that specific and stringent requirements on how to run and manage a branch office are no longer necessary with the stricter and strengthened regulations the Board has proposed to be adopted regarding supervision of associate brokers and salespersons by the managing brokers. The authority sections are 37-1-131, 37-51-203, MCA, and the implementing sections are 37-541-202, 37-51-308, MCA.

4. The proposed new rule will read as follows:

"I PRE-LICENSING EDUCATION - SALES AND BROKERS (1) No more than 8 hours of instruction may be offered per day, exclusive of examination time.

(2) Course must not have a title which misleads the public regarding the content of the course.

(3) Final course examination must consist of a minimum of 75 questions for 30 hours of instruction, or 150 questions for 60 hours of instruction.

(4) Candidates must receive a minimum of 70% on each pre licensing course examination.

(5) Pre-licensing course to obtain a sales license must consist of the following topics:

- (a) practices, principles and essentials of real estate;
 - (b) real estate law;
 - (c) taxation;
 - (d) construction and land development;
 - (e) property management and leasing;
 - (f) ethics and standards of practice;
 - (g) escrow and closing/settlement practices;
 - (h) finance;
 - (i) hazardous waste/environmental issues;
 - (j) agency;
 - (k) contract law and documents;
 - (l) state rules and regulations;
 - (m) forms of ownership;
 - (n) title and transfer of title;
 - (o) recording acts;
 - (p) negligence/misrepresentation (risk management);
 - (q) real estate security instruments;
 - (r) fair housing;
 - (s) regulation Z;
 - (t) landlord/tenant law.
- (6) Pre-licensing course to obtain a broker license must consist of the following topics:

- (a) a review of:
 - (i) real estate law;
 - (ii) taxation;
 - (iii) property management and leasing;
 - (iv) construction and land development;
 - (v) ethics and standards of practice;
 - (vi) escrow closing/settlement practices;
 - (vii) hazardous waste/environmental issues;
 - (viii) agency;
 - (ix) contract law and documents;
 - (x) state rules and regulation;
 - (xi) negligence/misrepresentation (risk management);
 - (xii) fair housing;
 - (xiii) landlord/tenant law.
- (b) real estate brokerage management;
- (c) trust account procedures;
- (d) planning and organizing a real estate office;
- (e) in-house training;
- (f) agent supervising and broker responsibilities."

Auth: Sec. 37-1-131, 37-51-202, 37-51-203, MCA; IMP, Sec. 37-51-203, 37-51-308, MCA


REASON: The Board believes that this proposed regulation adequately states the items that need to be taught in real estate education and examined in the licensing phases for both salespersons and brokers candidates.

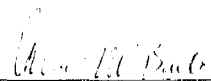
5. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Realty Regulation, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., September 25, 1995.

-1626-

6. Robert P. Verdon, attorney, has been designated to preside over and conduct this hearing.

BOARD OF REALTY REGULATION
STEVE CUMMINGS, CHAIRMAN

BY: 
ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, August 14, 1995.

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

In the matter of the proposed) NOTICE OF PUBLIC HEARING ON
adoption of 4 new rules) PROPOSED ADOPTION OF NEW
related to personal assistants) RULES
and the application of certain)
labor laws (HB 504))

TO ALL INTERESTED PERSONS:

1. On September 18, 1995, at 10:00 a.m., a public hearing will be held in Room 211, of the Helena College of Technology of the University of Montana, 1115 N. Roberts, Helena, Montana, to consider the adoption of 4 new rules related to the use of a personal assistant by a person with a disability pursuant to Chapter 525, Laws of 1995 (House Bill 504). The public hearing will be held concurrently with a public hearing conducted by the Department of Public Health and Human Services regarding the proposed adoption of rules to implement a self-directed personal care services program pursuant to House Bill 504. Additional sites for the hearing via teleconferencing are as follows:

Billings: Montana State University -- Billings, Special Education Building, Room 162, 1500 N. 30th Street, Billings, Montana

Great Falls: Montana State University College of Technology -- Great Falls, Room 147, 2100 16th Avenue South, Great Falls, Montana

Missoula: University of Montana -- Missoula, Field House, Room 161, Intersection of South 6th Avenue East and Van Buren Street, Missoula, Montana

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., September 11, 1995, to advise us of the nature of the accommodation that you need. Please contact the Legal/Centralized Services Division, Attn: Mark Cadwallader, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-4493; TDD (406) 444-0532; fax (406) 444-1394. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Mr. Cadwallader.

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

RULE 1 STATUS OF CERTAIN PERSONAL ASSISTANTS FOR THE PURPOSE OF UNEMPLOYMENT INSURANCE LAWS (1) For the purposes of unemployment insurance laws, a person with a disability who

receives services of a personal assistant or an immediately involved representative of the disabled person, such as a parent or guardian, is not the employer of the personal assistant despite the exercise of control over the selection, management and supervision of the personal assistant if:

(a) the personal assistant is providing services to the disabled person pursuant to 53-6-145, MCA, and rules adopted by the department of public health and human services implementing that statute; and

(b) the personal assistant is the employee of another person or entity that has the right to exercise an employer's control over the personal assistant, including the right to discipline and terminate employment.

AUTH: Sec. 53-6-145, MCA IMP: Sec. 53-6-145, MCA

RULE II STATUS OF CERTAIN PERSONAL ASSISTANTS FOR THE PURPOSE OF WAGE AND HOUR LAWS (1) For the purposes of wage and hour laws, a person with a disability who receives services of a personal assistant or an immediately involved representative of the disabled person, such as a parent or guardian, is not the employer of the personal assistant despite the exercise of control over the selection, management and supervision of the personal assistant if:

(a) the personal assistant is providing services to the disabled person pursuant to 53-6-145, MCA, and rules adopted by the department of public health and human services implementing that statute; and

(b) the personal assistant is the employee of another person or entity that has the right to exercise an employer's control over the personal assistant, including the right to discipline and terminate employment.

AUTH: Sec. 53-6-145, MCA IMP: Sec. 53-6-145, MCA

RULE III STATUS OF CERTAIN PERSONAL ASSISTANTS FOR THE PURPOSE OF WORKERS' COMPENSATION LAWS (1) For the purposes of workers' compensation and occupational disease laws, a person with a disability who receives services of a personal assistant or an immediately involved representative of the disabled person, such as a parent or guardian, is not the employer of the personal assistant despite the exercise of control over the selection, management and supervision of the personal assistant if:

(a) the personal assistant is providing services to the disabled person pursuant to 53-6-145, MCA, and rules adopted by the department of public health and human services implementing that statute; and

(b) the personal assistant is the employee of another person or entity that has the right to exercise an employer's control over the personal assistant, including the right to discipline and terminate employment.

AUTH: Sec. 53-6-145, MCA IMP: Sec. 53-6-145, MCA

RULE IV STATUS OF CERTAIN PERSONAL ASSISTANTS FOR THE PURPOSE OF THE SAFETY CULTURE ACT (1) For the purposes of the

Safety Culture Act, a person with a disability who receives services of a personal assistant or an immediately involved representative of the disabled person, such as a parent or guardian, is not the employer of the personal assistant despite the exercise of control over the selection, management and supervision of the personal assistant if:

(a) the personal assistant is providing services to the disabled person pursuant to 53-6-145, MCA, and rules adopted by the department of public health and human services implementing that statute; and

(b) the personal assistant is the employee of another person or entity that has the right to exercise an employer's control over the personal assistant, including the right to discipline and terminate employment.

AUTH: Sec. 53-6-145, MCA IMP: Sec. 53-6-145, MCA

REASON: There is reasonable necessity to adopt these rules in order to implement the provisions of House Bill 504 (Chapter 525, Laws of 1995). The proposed rules apply only to those persons with a disability (or their representatives) who are participating in a program established pursuant to 53-6-145, MCA, and rules adopted by the Department of Public Health and Human Services to implement that program.

3. Interested persons may present their data, views, or arguments concerning these proposed rules, either orally or in writing, at the hearing. Written data, views or arguments concerning these proposed rules may also be submitted to:

Mark Cadwallader
Legal/Centralized Services 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., September 21, 1995.

4. The rules proposed in this notice are intended to be read in conjunction with the program rules proposed by the Department of Public Health and Human Services. See MAR Notice No. DPHHS-7 (found at page 1656 in the August 24, 1995, issue of the Montana Administrative Register) for information regarding the program rules proposed by the Department of Public Health and Human Services. For information concerning the rules proposed by the Department of Public Health and Human Services, please contact Ms. Dawn Sliva, P.O. Box 4210, Helena, MT 59604-4210, telephone (406) 444-5622, fax (406) 444-1970.

5. The Department proposes to make these new rules effective October 1, 1995. However, because the statute granting rule-making authority to the Department does not go into effect until October 1, 1995, notice of the adoption of these rules cannot be published until October 12, 1995. The rules so adopted will be applied retroactively to October 1, 1995.

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

Laurie Ekanger, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

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

Certified to the Secretary of State: August 14, 1995.

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

In the Matter of Proposed	)	NOTICE OF PUBLIC HEARING ON
Amendment and Adoption of	)	THE PROPOSED AMENDMENT OF
Rules Pertaining to Pipeline	)	RULES 38.5.2202, 38.5.2301
Safety, Including Drug and	)	AND 38.5.2311, AND ADOPTION
Alcohol Testing.	)	OF NEW RULES I AND II

TO: All Interested Persons

1. On September 27, 1995 at 9:00 a.m. in the Bollinger Room, Public Service Commission, 1701 Prospect Avenue, Helena, Montana, the Public Service Commission will hold a hearing to consider the proposals identified in the above titles and described in the following paragraphs, all related to pipeline safety, including drug and alcohol testing.

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

38.5.2202 INCORPORATION BY REFERENCE OF FEDERAL PIPELINE SAFETY REGULATIONS (1) The public service commission hereby adopts and incorporates by reference the U.S. Department of Transportation Pipeline Safety Regulations, Code of Federal Regulations, Title 49, Chapter 1, Subchapter D, Parts 191, 192, and 193, including all revisions and amendments enacted by the department of transportation on or before ~~October 17, 1994~~ August 14, 1995. A copy of CFR Title 49, Chapter 1, Subchapter D, Parts 191, 192, and 193 may be obtained from the U.S. Department of Transportation, Research and Special Programs Administration, Western Region, Pipeline Safety, ~~555 Sang Street~~ 12600 W. Colfax Ave., Suite A-250, Lakewood, Colorado ~~80228~~ 80215-3736, or may be reviewed at the Public Service Commission Offices, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601. AUTH: Sec. 69-3-207, MCA; ~~IMR~~, Sec. 69-3-207, MCA

Rationale: The amendments are reasonably necessary to reenact the PSC's incorporation by reference of federal laws and inform the public of the new address of the referenced federal agency.

38.5.2301 SCOPE AND COMPLIANCE (1) This subchapter requires pipeline facilities subject to 49 Code of Federal Regulations (C.F.R.), Parts 192 and 193 to test employees for the presence of prohibited drugs and provide an employee assistance program. However, this subchapter does not apply

to "master meter systems" defined in 49 C.F.R. § 191.3 or to liquified petroleum gas (LPG) operators.

(2) Nothing contained in this subchapter shall be construed or applied in a manner inconsistent with the provisions and requirements of § 39-2-304, MCA, as amended by Ch. 448, L. 1995.

(3) and (4) remain the same. AUTH: Sec. 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

Rationale: Amendment to this rule is reasonably necessary so that it remains current with existing law, as the PSC has recently incorporated 49 C.F.R. Part 193 into its adopted pipeline safety rules, the federal DOT has recently exempted LPG operators, and the legislature has recently amended Section 39-2-304, MCA, to permit post-accident testing.

38.5.2311 DRUG TESTS REQUIRED: PRE-EMPLOYMENT, POST-ACCIDENT, REASONABLE CAUSE AND RETURN TO DUTY (1) Each operator shall conduct the following drug tests for the presence of a prohibited drug:

(a) and (b) remain the same.

(c) Each operator shall drug test each employee involved in a work-related accident that causes death or personal injury or property damage in excess of \$500.

~~+~~ (d) An employee who refuses to take or does not pass a drug test may not return to duty until the employee passes a drug test administered under this subchapter and the medical review officer has determined that the employee may return to duty. AUTH: Sec. 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

Rationale: This amendment is reasonably necessary to protect the public, including the results or reflecting the changes made through Ch. 448, L. 1995, in permissible drug testing in employment relationships.

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

RULE 1. SCOPE AND COMPLIANCE (1) This subchapter requires pipeline facilities subject to 49 Code of Federal Regulations (C.F.R.), Parts 192 and 193 to test employees for the presence of prohibited alcohol misuse and provide an employee assistance program. However, this subchapter does not apply to "master meter systems" defined in 49 C.F.R. § 191.3 or to liquified petroleum gas (LPG) operators.

(2) Nothing contained in this subchapter shall be construed or applied in a manner inconsistent with the provisions and requirements of section 39-2-304, MCA, as amended by Ch. 448, L. 1995. AUTH: Sec. 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

Rationale: This new rule is reasonably necessary to protect the public, reflecting recent changes made in federal law, and to maintain or preserve state certification in the federal pipeline safety program.

RULE II. INCORPORATION BY REFERENCE OF FEDERAL PIPELINE SAFETY REGULATIONS -- ALCOHOL MISUSE PREVENTION PROGRAM (1) Subject to [Rule I(1) and (2)] the commission hereby adopts and incorporates by reference the U.S. Department of Transportation Pipeline Safety Regulations, Drug and Alcohol Testing, Code of Federal Regulations, Title 49, Part 199, subpart B (199.200 through 199.245). A copy of the referenced CFR's is available from the U.S. Department of Transportation, Research and Special Programs Administration, Western Region, Pipeline Safety, 12600 W. Colfax Ave., Suite A-250, Lakewood, Colorado 80215-3736, or may be reviewed at the Public Service Commission Offices, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601. AUTH: Sec. 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

Rationale: This new rule is reasonably necessary to protect the public, reflecting recent changes made in federal law, and to maintain or preserve state certification in the federal pipeline safety program.

4. Interested parties may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted (original and 10 copies) to Martin Jacobson, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601 no later than September 27, 1995.

5. The Public Service Commission, a Commissioner, or a duly appointed presiding officer may preside over and conduct the hearing.

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


NANCY MCCAFFREE, Chair

CERTIFIED TO THE SECRETARY OF STATE AUGUST 14, 1995.


Reviewed By Robin A. McHugh

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC
rules 16.8.1301 and 16.8.1303) HEARING FOR PROPOSED
concerning open burning in) AMENDMENT OF RULES
eastern Montana.)

(Air Quality)

To: All Interested Persons

1. On October 6, 1995, at 8:00 a.m. or as soon thereafter as it may be heard, the board will hold a public hearing in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of the above-captioned rules.

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

16.8.1301 DEFINITIONS (1)-(2) Remain the same.

(3) "Eastern Montana open burning zone" means the following counties or portions of counties: Big Horn, Blaine, Carbon, Carter, Cascade, Chouteau, Custer, Daniels, Dawson, Fallon, Fergus, Garfield, Glacier, Golden Valley, Hill, Judith Basin, Liberty, McCone, Meagher, Musselshell, Park (that portion north of Interstate 90), Petroleum, Phillips, Pondera, Powder River, Prairie, Richland, Roosevelt, Rosebud, Sheridan, Stillwater, Sweet Grass, Teton, Toole, Treasure, Valley, Wheatland, Wibaux and Yellowstone.

(3)-(10) Remain the same but are renumbered (4)-(11).

AUTH: 75-2-111, 75-2-203, MCA; IMP: 75-2-203, MCA

16.8.1303 MINOR OPEN BURNING SOURCE REQUIREMENTS

(1) Unless required to obtain an open burning permit under another provision of this subchapter, a minor open burning source need not obtain an air quality open burning permit, ~~but must:~~

(2) A minor open burning source must:

(a) conform with BACT;

(b) comply with all rules in this subchapter, except ARM 16.8.1304; and

(c) comply with any requirements or regulations relating to open burning established by any agency of local government, including local air pollution agencies established under 75-2-301, MCA, of the Clean Air Act of Montana, or any other municipal or county agency responsible for protecting public health and welfare.

~~(d)(3) if it desires During September, October or November, to conduct essential agricultural open burning or prescribed wildland open burning during September, October or November, a minor open burning source must adhere to the time periods set for burning by the department and that are~~

available by calling (406) 444-3454 or (800) 225-6779; and

(e)(4) if it desires During December, January, or February, to conduct essential agricultural open burning or prescribed wildland open burning during December, January, or February, a minor open burning source must comply with the following conditions:

(a) Outside the eastern Montana open burning zone, a minor open burning source must:

(i) submit a written request to the department, demonstrating that the essential agricultural open burning or prescribed wildland open burning must be conducted prior to reopening of open burning in March;

(ii) receive specific permission for the each specific burning from the department; and

(iii) adhere to the time periods set for burning by the department and that are available by calling (406) 444-3454.

(b) Inside the eastern Montana open burning zone, a minor open burning source need only notify the department by telephone of any burning prior to ignition. Burning is allowed when ventilation conditions are good or excellent, as forecast by the national weather service. These forecasts are available from the national weather service offices in Billings and Great Falls.

(5) During March through August, subject to (2) above, a minor open burning source may conduct open burning not prohibited under ARM 16.8.1302.

(6) The requirements of this rule are in addition to any other applicable state, federal or local open burning requirements.

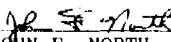
AUTH: 75-2-111, 75-2-203, MCA; IMP: 75-2-203, MCA

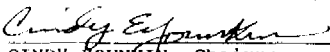
3. The proposed amendments to ARM 16.8.1301 and 16.8.1303 would allow minor open burners in eastern Montana to conduct essential agricultural open burning and prescribed wildland open burning without a permit during December, January and February if they notify the department prior to burning. Differences in geography, weather patterns and population necessitate different open burning requirements in certain portions of eastern Montana than in the western region of the state.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Yolanda Fitzsimmons, Department of Environmental Quality, Cogswell Building, PO Box 200901, Helena, MT 59620-0901, no later than September 29, 1995.

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

BOARD OF ENVIRONMENTAL REVIEW


JOHN F. NORTH,
Rule Reviewer


CINDY E. YOUNGKIN, Chairperson

Certified to the Secretary of State August 14, 1995.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING
rules 16.8.1402 and 16.8.1403) FOR PROPOSED AMENDMENT
concerning particulate emission) OF RULES
limits for fuel burning equipment)
and industrial processes.) (Air Quality)

To: All Interested Persons

1. On October 6, 1995, at 8:00 a.m., or as soon thereafter as it may be heard, the board will hold a public hearing in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of the above-captioned rules.

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

16.8.1402 PARTICULATE MATTER, FUEL BURNING EQUIPMENT

(1) No person shall cause, ~~suffer, allow or permit~~ authorize particulate matter caused by the combustion of fuel to be discharged from any stack or chimney into the outdoor atmosphere in excess of the hourly rates set forth in the following table:

Heat Input in Million British Thermal Units per hour	Maximum Allowable Emissions of Particulate Matter in lbs. per million British Thermal Units	
	Existing Fuel Burning Equipment	New Fuel Burning Equipment
<u>Up to and including 10 and below</u>	0.60	0.60
100	0.40	0.35
1,000	0.28	0.20
10,000 and above	0.19	0.12

(2) ~~For a~~ When the heat input falls between any 2 consecutive heat inputs values stated in the preceding table, maximum allowable emissions of particulate matter ~~are shown for~~ existing fuel burning equipment ~~on Figure 1~~ and for new fuel burning equipment ~~on Figure 2 (pages 16-220.1 and 16-220.2)~~ must be calculated using the following equations:

For existing fuel burning equipment: $E = 0.882 * H^{-0.1664}$

For new fuel burning equipment: $E = 1.026 * H^{-0.233}$

Where H is the heat input capacity in MMBtu per hour and E is the maximum allowable particulate emissions rate in lbs. per MMBtu.

For the purposes hereof of this rule, heat input shall will be calculated as the aggregate heat content of all fuels (using the upper limit of their range of heating value) whose products of combustion pass through the stack or chimney.

(3)-(4) Remain the same.

(5) This rule does not apply to particulate matter emitted from:

(a) those new stationary sources listed in ARM 16.8.1423 for which a particulate emission standard has been promulgated; and

(b) sources constructed after March 16, 1979, that have a specific particulate emission limitation contained in an air quality preconstruction permit obtained under ARM Title 16, chapter 8, subchapter 11, a court order, board order or department order, or a process specific rule.

AUTH: 75-2-111, 75-2-203, MCA; IMP: 75-2-203, MCA

16.8.1403. PARTICULATE MATTER, INDUSTRIAL PROCESSES

(1) No person shall cause, ~~suffer, allow, or permit~~ authorize particulate matter to be discharged, into the outdoor atmosphere from any operation, process or activity, into the outdoor atmosphere particulate matter in excess of the amount shown in the following table: When the process weight falls between two values in the table, the maximum weight discharged per hour shall be determined by interpolation.

(2) When the process weight exceeds 60,000 pounds per hour, the maximum allowable weight discharged per hour will be determined by use of the following equation:

$$E = 55.0 P^{0.11} - 40$$

Where E = maximum rate of emission in pounds per hour, P = process weight rate in tons per hour.

		Maximum hourly allowable emissions of particulate matter
Process Weight Rate		Rate of Emission
<u>lb/hr</u>	<u>Tons/hr</u>	<u>lb/hr</u>
100	0.05	0.551
200	0.10	0.877
400	0.20	1.40
600	0.30	1.83
800	0.40	2.22
1,000	0.50	2.58
1,500	0.75	3.38
2,000	1.00	4.10
2,500	1.25	4.76
3,000	1.50	5.38
3,500	1.75	5.96
4,000	2.00	6.52
5,000	2.50	7.58
6,000	3.00	8.56
Process Weight Rate		Rate of Emission
<u>lb/hr</u>	<u>Tons/hr</u>	<u>lb/hr</u>
7,000	3.50	9.49

8,000	4.00	10.4
9,000	4.50	11.2
10,000	5.00	12.00
12,000	6.00	13.6
16,000	8.00	16.5
18,000	9.00	17.9
20,000	10.00	19.2
30,000	15.00	25.2
40,000	20.00	30.5
50,000	25.00	35.4
60,000	30.00	40.0
70,000	35.00	41.3
80,000	40.00	42.5
90,000	45.00	43.6
100,000	50.00	44.6
120,000	60.00	46.3
140,000	70.00	47.8
160,000	80.00	49.0
200,000	100.00	51.2
1,000,000	500.00	69.0
2,000,000	1,000.00	77.6
6,000,000	3,000.00	92.7

(2) When the process weight rate falls between 2 process weight rate values in the table, or exceeds 3,000 tons per hour, the maximum hourly allowable emissions of particulate matter must be calculated using the following equations:

(a) Interpolation of the data in this table Maximum hourly allowable emissions of particulate matter, for process weight rates up to 60,000 lb/hr 30 tons per hour, must shall be accomplished by calculated use of using the following equation:

$$E = 4.10 P^{0.67}$$

(b) Interpolation and extrapolation of the data Maximum hourly allowable emissions of particulate matter, for process weight rates in excess of 60,000 pounds 30 tons per hour, must shall be accomplished by use of calculated using the following equation:

$$E = 55.0 P^{0.11} - 40$$

Where E = rate of emission in pounds per hour and P = process weight rate in tons per hour.

(3) This rule ~~shall~~ does not apply to particulate matter emitted from:

(a)-(c) Remain the same.

(d) incinerators; and

(e) sources constructed after March 16, 1979, that have a specific particulate emission limitation contained in an air quality preconstruction permit obtained under ARM Title 16, chapter 8, subchapter 11, a court order, board order or

department order, or a process specific rule.

Figures 1 and 2 of this rule are deleted also. They can be found at pages 16-220.1 and 16-220.2 of the Administrative Rules of Montana.

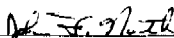
AUTH: 75-2-111, 75-2-203, MCA; IMP: 75-2-203, MCA


3. The proposed amendments to ARM 16.8.1402 and 16.8.1403 are necessary to exempt from general particulate mass emission limits emission sources that are subject to a particulate emission limit under an air quality permit, process-specific rule, or a court order, board order, or department order. The rationale for the amendments is that limits based upon an analysis of a specific source or process should supersede the limits applicable under a general rule. Other amendments to these rules are intended to clarify existing language.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Yolanda Fitzsimmons, Department of Environmental Quality, Cogswell Building, PO Box 200901, Helena, MT 59620-0901, no later than September 29, 1995.

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

BOARD OF ENVIRONMENTAL REVIEW


JOHN F. NORTH,
Rule Reviewer


CINDY E. YOUNKIN, Chairperson

Certified to the Secretary of State August 14, 1995.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING
rules 16.8.705 and 16.8.1102) FOR PROPOSED AMENDMENT
concerning replacing equipment) OF RULES
due to malfunctions.)

(Air Quality)

To: All Interested Persons

1. On October 6, 1995, at 8:00 a.m., or as soon thereafter as it may be heard, the board will hold a public hearing in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of the above-captioned rules.

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

16.8.705 MALFUNCTIONS (1) "Malfunction" means any sudden and unavoidable failure ~~of to operate in a normal manner by~~ air pollution control equipment, ~~or~~ process equipment, or a process ~~when it that~~ affects emissions, ~~to operate in a normal manner.~~ A failure caused entirely or in part by poor maintenance, careless operation, poor design, or any other preventable upset condition or preventable equipment breakdown is not a malfunction.

(2) The air quality ~~bureau~~ division of the department must be notified promptly by telephone (406-444-3454) whenever a malfunction occurs that ~~can be~~ is expected to create emissions in excess of any applicable emission limitation, or to continue for a period greater than 4 hours. If telephone notification is not immediately possible, notification at the beginning of the next working day is acceptable. The notification must include the following information:

(a)-(b) Remain the same.

(c) to the extent known, time and duration of the excess emissions;

(d) description of the corrective actions taken or expected to be taken to remedy the malfunction and to limit the excess emissions;

(e) documentation information sufficient to assure the department that the failure to operate in a normal manner by the air pollution control equipment, process equipment, or processes was not caused entirely or in part by poor maintenance, careless operation, poor design, or any other preventable upset condition or preventable equipment breakdown were at all times maintained and operated to the maximum extent practicable in a manner consistent with good practice for minimizing emissions; and

(f) Remains the same.

(3) Remains the same.

(4) If a malfunction occurs and creates emissions in excess of any applicable emission limitation, the department may elect to take no enforcement action if:

(a) the owner or operator of the source submits provided the notification required by (2) above;

(b) the malfunction ~~does~~ did not interfere with the attainment and maintenance of any state or federal ambient air quality standards; and

(c) the owner or operator of the source immediately ~~undertakes~~ took appropriate corrective measures.

(5) Within 1 week after a malfunction has been corrected, the owner or operator must submit a written report to the department ~~which that~~ includes:

(a) a statement that the malfunction has been corrected, the date of correction, and proof of compliance with all applicable air quality standards contained in this chapter or a statement that the source is planning to install or has installed temporary replacement equipment in accordance with the requirements of (7) below;

(b) a ~~specific~~ specific statement of the ~~specific~~ specific causes of the malfunction; and

(c) a description of ~~the any~~ any preventive measures ~~undertaken taken~~ and/or to be undertaken ~~to avoid such a malfunction in the future.~~ taken; and

(d) a statement affirming that the failure to operate in a normal manner by the air pollution control equipment, process equipment, or processes was not caused entirely or in part by poor maintenance, careless operation, poor design, or any other preventable upset condition or preventable equipment breakdown.

(6) The burden of proof is on the owner or operator of the source to provide sufficient information to demonstrate that a malfunction ~~did occur~~ occurred.

~~(7) No person may falsely claim a malfunction has occurred or submit to the department information, pursuant to this rule, which is false.~~

(7)(a) Malfunctioning process or emission control equipment may be temporarily replaced without obtaining an air quality preconstruction permit under the requirements of ARM Title 16, chapter 8, subchapter 11, if the department has been notified of the malfunction in compliance with the requirements of (2) above and if continued operation or non-operation of the malfunctioning equipment would:

(i) create a health or safety hazard for the public;
(ii) cause a violation of any applicable air quality rule;
(iii) damage other process or control equipment; or
(iv) cause a source to lay-off or suspend a substantial portion of its work force for an extended period.

(b) If construction, installation, or use of temporary replacement equipment under (a) above constitutes a major modification and subjects a major stationary source to the requirements of ARM Title 16, chapter 8, subchapters 9, 17, or 18, the source must comply with the requirements of the applicable subchapter prior to construction, installation, or use of the temporary replacement equipment.

(c) Any source that constructs, installs, or uses temporary replacement equipment under (a) above shall comply with the following conditions:

(i) Prior to operation of the temporary replacement equipment, the source shall notify the department in writing of its intent to construct, install, or use temporary replacement equipment.

(ii) Prior to operation of the temporary replacement equipment, the source shall demonstrate to the department that the estimated actual emissions from the temporary replacement equipment, operating at its maximum expected operating rate, are no greater than the potential to emit of the malfunctioning process or control equipment prior to the malfunction.

(iii) The source shall record, and report to the department at its request, operating information sufficient to demonstrate that the temporary replacement equipment operated within the maximum expected operating rate.

(iv) The temporary replacement equipment and the malfunctioning process or emission control equipment may not be operated simultaneously, except during a brief shakedown period or as otherwise approved in writing by the department.

(v) The temporary replacement equipment must be removed or rendered inoperable within 180 days after initial startup of the temporary replacement equipment, or within 30 days after startup of the repaired malfunctioning process or emission control equipment, whichever is earlier, unless the source has submitted to the department an application for a preconstruction permit for the temporary replacement equipment or the department has approved a plan for removing the temporary replacement equipment or rendering the temporary replacement equipment inoperable by a specific date.

AUTH: 75-2-111, 75-2-203, MCA; IMP: 75-2-203, MCA

16.8.1102 WHEN PERMIT REQUIRED--EXCLUSIONS (1) Except as hereafter specified, no person shall construct, install, alter or use any air contaminant source or stack associated with any source without first obtaining a permit from the department or the board. A permit ~~shall not be~~ is not required for the following:

(a)-(1) Remain the same.

(m) a new stack or other source of airborne lead contamination whose potential to emit lead is less than 5 tons per year; and

(n) Remains the same.

(o) asphalt concrete plants and mineral crushers which do not have the potential to emit more than 5 tons per year of any pollutant, other than lead, for which a rule has been adopted in this chapter; and

(p) temporary process or emission control equipment, replacing malfunctioning process or emission control equipment, and meeting the requirements of ARM 16.8.705(7).

AUTH: 75-2-111, 75-2-204, MCA; IMP: 75-2-204, 75-2-211, MCA

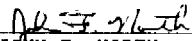
3. The proposed amendments to ARM 16.8.705 and 16.8.1102

are intended to allow a facility to respond to a malfunction of equipment by installing replacement equipment on a temporary basis without obtaining an air quality permit. The amendments are reasonably necessary to avoid unnecessary disruption of operation.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Yolanda Fitzsimmons, Department of Environmental Quality, Cogswell Building, PO Box 200901, Helena, MT 59620-0901, no later than September 29, 1995.

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

BOARD OF ENVIRONMENTAL REVIEW


JOHN F. NORTH,
Rule Reviewer


CINDY E. YOUNKIN, Chairperson

Certified to the Secretary of State August 14, 1995.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the repeal of) NOTICE OF PUBLIC HEARING
rule 16.8.1414 dealing with sulfur) FOR PROPOSED REPEAL
oxide emissions from lead smelters.) OF ARM 16.8.1414

(Air Quality)

To: All Interested Persons

1. On October 6, 1995, at 8:00 a.m. or as soon thereafter as it may be heard, the board will hold a public hearing in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the repeal of ARM 16.8.1414.

2. The rule proposed to be repealed can be found at page 16-228 of the Administrative Rules of Montana.

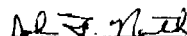
AUTH: 75-2-111, MCA; IMP: 75-2-203, MCA


3. The proposed repeal of the existing lead smelter rule is based upon the fact that the only lead smelter in the state, the Asarco smelter in East Helena, is now subject to specific requirements under the East Helena lead control provisions of the state implementation plan (SIP). It is unnecessary to duplicate those requirements in a general rule and some provisions of the current rule conflict with the requirements of the SIP.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Yolanda Fitzsimmons, Department of Environmental Quality, Cogswell Building, PO Box 200901, Helena, MT 59620-0901, no later than September 29, 1995.

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

BOARD OF ENVIRONMENTAL REVIEW


JOHN F. NORTH,
Rule Reviewer


CINDY YOUNKINN, Chairperson

Certified to the Secretary of State August 14, 1995.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING
rules 16.8.701, 16.8.945, and) FOR PROPOSED AMENDMENT
16.8.1701 amending volatile organic) OF RULES
compounds definitions.)

(Air Quality)

To: All Interested Persons

1. On October 6, 1995, at 8:00 a.m., or as soon thereafter as it may be heard, the board will hold a public hearing in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of the above-captioned rules.

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

16.8.701 DEFINITIONS (1)-(39) Remain the same.

(40)(a) "Volatile organic compounds (VOC)" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions, and including any such organic compound other than the following, which have been determined to have negligible photochemical reactivity: methane; ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,1,2-trichloro-2,2,2-trifluoroethane (CFC-113); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro-2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro-1-fluoroethane (HCFC-141b); 1-chloro-1,1-difluoroethane (HCFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; acetone; and perfluorocarbon compounds which fall into these classes:

(i)-(iv) Remain the same.

(b) Remains the same.

(41) and (42) Remain the same.

AUTH: 75-2-111, MCA

IMP: Title 75, chapter 2, MCA

16.8.945 DEFINITIONS (1)-(28) Remain the same.

(29)(a) "Volatile organic compounds (VOC)" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium

carbonate, which participates in atmospheric photochemical reactions, and including any such organic compound other than the following, which have been determined to have negligible photochemical reactivity: methane; ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,1,2-trichloro-2,2,2-trifluoroethane (CFC-113); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro-2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro-1-fluoroethane (HCFC-141b); 1-chloro-1,1-difluoroethane (HCFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; acetone; and perfluorocarbon compounds which fall into these classes:

(i)-(iv) Remain the same.

(b) Remains the same.

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-202, 75-2-203, 75-2-204, MCA

16.8.1701 DEFINITIONS (1)-(19) Remain the same.

(20)(a) "Volatile organic compounds (VOC)" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions, and including any such organic compound other than the following, which have been determined to have negligible photochemical reactivity: methane; ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,1,2-trichloro-2,2,2-trifluoroethane (CFC-113); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro-2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro-1-fluoroethane (HCFC-141b); 1-chloro-1,1-difluoroethane (HCFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; acetone; and perfluorocarbon compounds which fall into these classes:

(i)-(iv) Remain the same.

(b) Remains the same.

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-202, 75-2-203, 75-2-204, MCA

3. On October 5, 1994, and June 5, 1995, the US Environmental Protection Agency (EPA) amended the definition of volatile organic compounds (VOCs) under the federal Clean Air Act regulations, including adding an exemption for acetone. The

department of environmental quality has received several written requests for the state to change its definition of VOCs to coincide with the federal definition. The proposed amendments to ARM 16.8.701, ARM 16.8.945 and ARM 16.8.1701 would adopt the current federal definition and are reasonably necessary to maintain consistent regulation under state and federal law.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Yolanda Fitzsimmons, Department of Environmental Quality, Cogswell Building, PO Box 200901, Helena, MT 59620-0901, no later than September 29, 1995.

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

BOARD OF ENVIRONMENTAL REVIEW


JOHN F. NORTH,
Rule Reviewer


CINDY E. YOUNKIN, Chairperson

Certified to the Secretary of State August 14, 1995.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING
16.8.1903, regarding air quality) FOR PROPOSED AMENDMENT
operation fees, and 16.8.1905,) OF RULES
regarding air quality permit)
application fees.)

(Air Quality)

To: All Interested Persons

1. On October 6, 1995, at 8:00 a.m. or as soon thereafter as it may be heard, the board will hold a public hearing at Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider amendment of the above-captioned rules.

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

16.8.1903. AIR QUALITY OPERATION FEES (1) As a condition of continued operation, an annual air quality operation fee must, as a condition of continued operation, be submitted to the department by:

(a) Remains the same.

(b) each source of air contaminants ~~which that~~ will be required to obtain a permit pursuant to sec. 7661a of the Federal Clean Air Act, 42 USC 7401, et seq., as amended, and which does not otherwise hold an air quality permit issued by the department.

(2) Air quality permit fee schedules will require all sources of air contaminants required to obtain an air quality permit to contribute to those department activities funded by air quality permit fees. The department shall attempt to identify all sources of air contaminants subject to the annual air quality operating fee requirement and shall require payment from all such sources of air contaminants.

(2)(3) The Annually, the department shall give provide the owner or operator of each air contaminant source required to pay an air quality operation fee with written notice of the amount of the air quality operation fee to be assessed and the basis for such the fee assessment to the owner or operator of the air contaminant source annually. The air quality operation fee is due 30 days after receipt of the notice, unless the fee assessment is appealed pursuant to ARM 16.8.1906. If any portion of the fee is not appealed, that portion of the fee that is not appealed is due 30 days after receipt of the notice. Any remaining fee, which may be due after completion of the an appeal, is immediately due and payable immediately upon issuance of the board's decision or upon completion of any when judicial review of the board's decision has been completed, whichever is

later.

{3}{4} The air quality operation fee is based on the actual, or estimated actual, amount of air pollutants emitted during the previous calendar year and is the greater of a minimum fee of \$250300 or a fee calculated using the following formula:

tons of total particulate emitted,
multiplied by \$10-5614.00; plus
tons of sulfur dioxide emitted,
multiplied by \$10-5614.00; plus
tons of lead emitted,
multiplied by \$10-5614.00; plus
tons of oxides of nitrogen emitted,
multiplied by \$2-643.50; plus
tons of volatile organic compounds emitted,
multiplied by \$2-643.50.

{4}{5} An air quality operation fee is separate and distinct from any air quality permit application fee required to be submitted to the department pursuant to ARM 16.8.1905 by a source of air contaminants. However, ~~nothing in these rules may be deemed to allow the department may not assess to collect more than one fee simultaneously.~~

{5}{6} The ~~annual~~ Annual assessment and collection of the air quality operation fee, ~~as described above, shall take place will be~~ on a calendar year basis. The department may insert into any final permit issued after the effective date of these rules such include conditions in a permit as may be necessary to require the requiring payment of an air quality operation fee on a calendar year basis, including provisions which ~~pro-rate pro-rating~~ the required fee amount.

AUTH: 75-2-111, 75-2-220, MCA; IMP: 75-2-211, 75-2-220, MCA

16.8.1905 AIR QUALITY PERMIT APPLICATION FEES

(1) Concurrent with the submittal of an air quality permit application, as required in ARM Title 16, chapter 8, subchapter 11 (Permit, Construction and Operation of Air Contaminant Sources), or ARM Title 16, chapter 8, subchapter 9 (Prevention of Significant Deterioration of Air Quality), the applicant shall submit an air quality permit application fee.

(2) A permit application is incomplete until the proper application fee is paid to the department. If the department determines that the air quality permit application a fee submitted with the an air quality permit application is insufficient, ~~it the department~~ shall notify the applicant in writing of the appropriate fee which that must be submitted for the application to be processed. If the fee assessment is appealed to the board pursuant to ARM 16.8.1906, and if the fee deficiency is not corrected by the applicant, the permit application is incomplete until issuance of the board's decision or ~~when until completion of any judicial review of the board's decision has been completed, whichever is later.~~ Upon final disposition of the an appeal, any portion of the fee which may be due to either the department or the applicant ~~as a result is must be paid~~ immediately due and payable.

(3) ~~Air~~ An air quality permit application fees ~~are is~~ separate and distinct from any air quality operation fee required to be submitted to the department pursuant to ARM 16.8.1903 ~~by a source of air contaminants~~. However, ~~nothing in these rules may be deemed to allow the department to collect may not assess~~ more than one fee simultaneously.

(4) The air quality permit application fee is based on the estimated amount of air pollutants to be emitted annually from the source of air contaminants. The estimated amount of air pollutants to be emitted annually is determined according to the emissions inventory included in the permit application. ~~Permit A permit~~ application fees may not be assessed for ~~that amount of~~ emissions ~~which are~~ covered by either an existing air quality permit ~~in existence at the time of the application~~, or an air quality permit application which is pending at the time of the application and for which the appropriate fee has been paid. However, the department may assess the minimum fee for those permit applications that do not result in an increase in emissions.

(5) The fee is the greater of:

(a) a fee calculated using the following formula:

tons of total particulate emitted,
multiplied by \$10-56 14.00; plus
tons of sulfur dioxide emitted,
multiplied by \$10-56 14.00; plus
tons of lead emitted,
multiplied by \$10-56 14.00; plus
tons of oxides of nitrogen emitted,
multiplied by \$2-64 3.50; plus
tons of volatile organic compounds emitted,
multiplied by \$2-64 3.50;

(b) or a minimum fee of:

(i) \$1000 for sources of air contaminants subject to ARM 16.8.901, et seq. (Prevention of Significant Deterioration of Air Quality), or ~~these~~ sources of air contaminants ~~which that~~ are major stationary sources or major modifications [as defined in 40 CFR 51.165(a), adopted by incorporation in ARM 16.8.1109(8)], and are seeking to locate within an area ~~which is~~ designated as nonattainment in 40 CFR 81.327 [adopted by incorporation in ARM 16.8.1109(8)] for any air contaminant; ~~or~~

~~(ii) \$1000 for sources of air contaminants required to obtain an air quality permit under ARM Title 16, chapter 8, subchapter 11 (Permit, Construction and Operation of Air Contaminant Sources), with a potential to emit greater than 250 tons of any pollutant in a year; or~~

~~(iii) \$250300 for all other sources of air contaminants, not subject to (b)(i) or (ii) above, required to obtain an air quality permit under ARM Title 16, chapter 8, subchapter 11.~~
AUTH: 75-2-111, 75-2-220, MCA; IMP: 75-2-211, 75-2-220, MCA

3. ARM 16.8.1902 requires annual review of air quality permit fees. The proposed amendments to the air quality operation and permit application fee schedules in 16.8.1903 and 16.8.1905 are necessary to meet the increased direct and

indirect costs of the department's air quality permit program. The amendments would produce the fees calculated by the department's Air Quality Division, as limited by the legislative appropriation, and as being necessary to fund the 1995 legislature's appropriation for operation of the air quality permit program for fiscal year 1996. In calculating the proposed fees, the Air Quality Division has consulted with interested parties. It is the intent of the board that the department continue its efforts to consult interested parties during the development of proposed air quality permit fee schedules.

The board is proposing new subsection (2) in ARM 16.8.1903 to clarify that the department is required to identify, and require a fee from, all sources of air contaminants required to obtain an air quality permit. This amendment is reasonably necessary to ensure that the costs of the department's air quality permitting program are equitably distributed among all regulated air contaminant sources. Also, to facilitate this effort and ensure compliance with permitting requirements, the department has indicated that it intends to develop a general permits program as provided under ARM 16.8.2016.

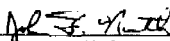
In the future, as the department proposes adoption of hazardous air pollutant standards, it may propose for Board adoption, air quality permit fees specifically for such pollutants. The department will continue to consult interested parties to ensure equitable distribution of fees.

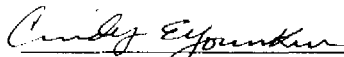
The board is proposing to delete 16.8.1905(5)(b)(ii) because this language is redundant. Because fees are based on estimated actual emissions, sources with estimated actual emissions of more than 250 tons of a pollutant per year are already covered under 16.8.1905(5)(b)(i) because they are all subject to prevention of significant deterioration or nonattainment area new source review. The board is also proposing other amendments to delete unnecessary language and to conform the rules to current rule drafting standards.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendment, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Yolanda Fitzsimmons, Department of Environmental Quality, Cogswell Building, P.O. Box 200901, Helena, MT 59620-0901, no later than September 29, 1995.

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

BOARD OF ENVIRONMENTAL REVIEW


JOHN F. NORTH,
Rule Reviewer


CINDY E. YOUNKIN, Chairperson

Certified to the Secretary of State August 14, 1995.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the adoption of	)	NOTICE OF PUBLIC
new rule I regarding temporary	)	HEARING FOR PROPOSED
water standards for Daisy Creek,	)	ADOPTION OF NEW RULE
Stillwater River, Fisher Creek,)	
and the Clark's Fork of the)	
Yellowstone River..)	

(Water Quality)

To: All Interested Persons

1. On October 6, 1995, at 8:00 a.m. or as soon thereafter as it may be heard, the board will hold a public hearing in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the adoption of the above-captioned rule.

2. The rule, as proposed in response to a petition for temporary standards submitted by Crown Butte Mines, Inc., appears as follows:

RULE I TEMPORARY STANDARDS (1) The standards for the parameters listed in this rule temporarily modify the specific standards for those parameters as provided in ARM 16.20.616 through 16.20.624 for each of the water bodies listed below, until the temporary standards expire or are terminated by the board. The standards for parameters not listed in this rule are the specific standards listed in the appropriate sections of ARM 16.20.616 through 16.20.624. The existing uses of the water bodies listed below must be maintained during the period that these temporary standards are in effect. No increase from existing conditions (except for pH) is allowed at any point in the affected water body for any of the parameters that have been temporarily modified. The requirements of ARM 16.20.631 through 16.20.635 apply to the waters listed in this rule except where those requirements conflict with the temporary standards listed below.

(2) The temporary standards listed in (a)-(d) below are based on the record, including a support document and implementation plan, of the hearing held by the Board of Environmental Review on October 6, 1995. The temporary standards for these stream segments are effective [on the date this rule goes into effect].

(a) Temporary water quality standards for Daisy Creek, a tributary of the Stillwater River in the Yellowstone River Drainage, are as follows and are in effect until [20 years from the effective date of this rule]. Metals standards are in terms of milligrams per liter total recoverable concentrations.

<u>Parameter</u>	<u>*Maximum Concentration</u>
Aluminum	12.2
Antimony	No increase from present conditions at any given point within the water body
Beryllium	No increase from present conditions at any given point within the water body
Cadmium	0.005
Chromium	0.002
Copper	4.48
Iron	8.56
Lead	0.002
Manganese	3.00
Nickel	No increase from present conditions at any given point within the water body
Mercury	No increase from present conditions at any given point within the water body
Silver	No increase from present conditions at any given point within the water body
Zinc	0.74

<u>Parameter</u>	<u>*Minimum Value</u>
pH (units)	5.0
Effective at the downstream boundary of the reach; values may exceed this concentration at upstream points in the reach, but there must be no increase from existing values at any point in the reach.	

(b) Temporary water quality standards for the Stillwater River, a tributary of the Yellowstone River, from Daisy Creek to the Absaroka wilderness boundary, are as follows and are in effect until [20 years from the effective date of this rule]. Metals standards are in terms of milligrams per liter total recoverable concentrations.

<u>Parameter</u>	<u>*Maximum Concentration</u>
Aluminum	0.084
Antimony	No increase from present conditions at any given point within the water body
Cadmium	0.0005
Chromium	No increase from present conditions at any given point within the water body
Copper	0.285
Iron	1.71
Lead	No increase from present conditions at any given point within the water body
Manganese	0.11
Mercury	No increase from present conditions at any given point within the water body
Silver	No increase from present conditions at any given point within the water body
Zinc	0.067

<u>Parameter</u>	<u>*Minimum Value</u>
pH (units)	5.3
Effective at the downstream boundary of the reach; values may	

exceed this concentration at upstream points in the reach, but there must be no increase from existing values at any point in the reach.

(c) Temporary water quality standards for Fisher Creek, a tributary of the Clark's Fork of the Yellowstone River, are as follows and are in effect until [20 years from the effective date of this rule]. Metals standards are in terms of milligrams per liter total recoverable concentrations.

<u>Parameter</u>	<u>*Maximum Concentration</u>
Aluminum	0.64
Beryllium	No increase from present conditions at any given point within the water body
Cadmium	0.008
Chromium	No increase from present conditions at any given point within the water body
Copper	0.14
Iron	1.05
Lead	No increase from present conditions at any given point within the water body
Manganese	0.11
Mercury	No increase from present conditions at any given point within the water body
Silver	No increase from present conditions at any given point within the water body
Zinc	0.06

<u>Parameter</u>	<u>*Minimum Value</u>
pH (units)	5.7
* Effective at the downstream boundary of the reach; values may exceed this concentration at upstream points in the reach, but there must be no increase from existing values at any point in the reach.	

(d) Temporary water quality standards for the Clark's Fork of the Yellowstone River, from Fisher Creek to the confluence with the Broadwater River, are as follows and are in effect until [20 years from the effective date of this rule]. Metals standards are in terms of milligrams per liter total recoverable concentrations.

<u>Parameter</u>	<u>*Maximum Concentration</u>
Aluminum	No increase from present conditions at any given point within the water body
Antimony	No increase from present conditions at any given point within the water body
Cadmium	No increase from present conditions at any given point within the water body
Chromium	No increase from present conditions at any given point within the water body
Copper	0.055
Iron	0.31
Lead	No increase from present conditions at any given point within the water body
Manganese	0.031

Mercury	No increase from present conditions at any given point within the water body
Silver	No increase from present conditions at any given point within the water body
Zinc	0.035

<u>Parameter</u>	<u>*Minimum Value</u>
pH (units)	6.4

Effective at the downstream boundary of the reach; values may exceed this concentration at upstream points in the reach, but there must be no increase from existing values at any point in the reach.

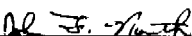
AUTH: 75-5-312, MCA; IMP: 75-5-312, MCA

3. The board is proposing this rule in response to a petition submitted by Crown Butte Mines, Inc., (CBMI) for the adoption of temporary standards for certain portions of Daisy Creek, Fisher Creek, Stillwater River, and the Clark's Fork of the Yellowstone River, according to the provisions of Senate Bill 346 (adopted by the 1995 legislature). The rule is necessary to temporarily modify the surface water quality standards for these water bodies so that improvements to water quality may be achieved by implementation of the plan submitted by CBMI for these stream segments. The temporary standards in this rule notice are the standards requested by CBMI in support of its petition, pursuant to the requirements of Senate Bill 346.

4. Interested persons may submit their views or arguments concerning the proposed rule, either orally or in writing, at the hearing. Oral or written views, arguments, or data, may also be submitted to Claudia Massman, Department of Environmental Quality, Cogswell Building, PO Box 200901, Helena, MT 59620-0901, no later than September 22, 1995.

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

BOARD OF ENVIRONMENTAL REVIEW


JOHN F. NORTH
Rule Reviewer


CINDY E. YOUNKIN, Chairperson

Certified to the Secretary of State August 14, 1995.

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

In the matter of the	)	NOTICE OF PUBLIC HEARING ON
adoption of Rules I through	)	THE PROPOSED ADOPTION OF
VIII pertaining to medicaid	)	RULES I THROUGH VIII
self-directed personal care	)	PERTAINING TO MEDICAID
services	)	SELF-DIRECTED PERSONAL CARE
	)	SERVICES

TO: All Interested Persons

1. On September 18, 1995, at 10:00 a.m., a public hearing will be held in Room 211, of the Helena College of Technology of the University of Montana, 1115 N. Roberts, Helena, Montana to consider the proposed adoption of Rules I through VIII pertaining to medicaid self-directed personal care services. The public hearing will be held concurrently with a public hearing conducted by the Department of Labor and Industry regarding the proposed adoption of rules related to the use of a personal assistant by a person with a disability. Additional sites for the hearing via teleconferencing are as follows:

Billings: Montana State University--Billings, Special Education Building, Room 162, 1500 N. 30th Street, Billings, Montana

Great Falls: Montana State University College of Technology--Great Falls, Room 147, 2100 16th Avenue South, Great Falls, Montana

Missoula: University of Montana--Missoula, Field House, Room 161, Intersection of South 6th Avenue East and Van Buren Street, Missoula, Montana

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the department no later than 5:00 p.m. on September 11, 1995, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970.

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

RULE I SELF-DIRECTED PERSONAL CARE SERVICES. DESCRIPTION AND PURPOSE (1) Self-directed personal care services are medically necessary in-home services provided to medicaid recipients whose disability functionally limits performing activities of daily living, and who take the responsibility or have a representative to take the responsibility of managing the

services. Self-directed personal care services are intended to provide control of service delivery to the recipient and to allow the recipient to direct health related tasks.

(2) Recipients must demonstrate capacity to manage services to a health care professional in order to participate in the program.

(3) Recipients who are unable to utilize self-directed personal care may receive services through the personal care services program managed by provider agencies under agreement with medicaid.

AUTH: Sec. 53-6-113 and 53-6-145 MCA

IMP: Sec. 53-6-101 and 53-6-145 MCA

RULE II SELF-DIRECTED PERSONAL CARE SERVICES, APPLICATION OF GENERAL PERSONAL CARE RULES (1) The following ARM cites apply to the self-directed personal care services program:

(a) ARM 46.12.555(2) through (5), (7) and (8), pertaining to a description of services provided;

(b) ARM 46.12.556(2), (4), (5), (9), (10), (17), (20) through (23) and (25), pertaining to requirements, limitations and termination of services;

(c) ARM 46.12.557 pertaining to reimbursement; and

(d) ARM 46.12.558(1) and (6) through (9), pertaining to compliance reviews.

AUTH: Sec. 53-6-113 and 53-6-145 MCA

IMP: Sec. 53-6-101 and 53-6-145 MCA

RULE III SELF-DIRECTED PERSONAL CARE SERVICES, RECIPIENT REQUIREMENTS (1) To qualify for self-directed personal care, the recipient must:

(a) have a medical condition which results in the need for personal care services;

(b) be capable of assuming the management responsibilities of attendants or have an immediately involved representative willing to assume this responsibility;

(c) have authorization from a health care professional to participate in the program; and

(d) be capable of making choices about activities of daily living, understand the impact of these choices and assume the responsibility of the choices.

(2) The recipient must be capable of acting as though the personal care attendant is their employee for the purpose of selection, management and supervision of the personal care attendant, although the personal care attendant is the employee of a self-directed personal care provider.

(a) The recipient has the primary responsibility in the scheduling, training and supervision of the personal care attendant. The recipient has the right to require that a particular person discontinue providing services to the recipient.

(b) The recipient shall cooperate with and assist the self-directed personal care provider with decisions related to:

(i) whether a particular person is to be hired as the recipient's personal care attendant;

(ii) whether the personal care attendant should be subject to progressive disciplinary action; and

(iii) whether the employment of a personal care attendant should be terminated.

(c) The recipient may have an immediately involved representative assume some or all of the responsibilities imposed by this rule. An immediately involved representative is a person who is directly involved in the day to day care of the recipient. An immediately involved representative must be available to assume the responsibility of managing the recipient's care, including directing the care as it occurs in the home.

AUTH: Sec. 53-6-113 and 53-6-145 MCA

IMP: Sec. 53-6-101 and 53-6-145 MCA

RULE IV SELF-DIRECTED PERSONAL CARE SERVICES. PLAN OF CARE REQUIREMENTS (1) A recipient must have a plan of care approved annually by a physician or health care professional prior to receiving self-directed personal care services. The plan must include:

(a) the recipient's need for personal care services as documented through completion of the department's personal care services recipient profile;

(b) tasks assigned to the personal care attendant;

(c) an emergency back-up plan;

(d) a training plan for attendants performing health related tasks;

(e) a method for recruiting personal assistants; and

(f) a schedule of supervision by a health care professional which is related to the recipient's health care needs and which is no less than once every 180 days.

AUTH: Sec. 53-6-113 and 53-6-145 MCA

IMP: Sec. 53-6-101 and 53-6-145 MCA

RULE V SELF-DIRECTED PERSONAL CARE SERVICES. PROVIDER REQUIREMENTS (1) Self-directed personal care providers have the following responsibilities:

(a) identify resources for personal care attendants;

(b) advise the recipient regarding program participation;

(c) assist in determining the amount of services available to the recipient;

(d) re-certify recipient's needs every 180 days;

(e) review the plan of care;

(f) act as a resource for attendant management issues;

(g) act as the employer of record for personal care attendants for the purpose of payroll and federal hiring practices; and

(h) act as a liaison between the recipient and the department.

AUTH: Sec. 53-6-113 and 53-6-145 MCA
IMP: Sec. 53-6-101 and 53-6-145 MCA

RULE VI SELF-DIRECTED PERSONAL CARE SERVICES, GENERAL REQUIREMENTS (1) Health maintenance activities include urinary system management, bowel treatments, administration of medications and wound care.

(2) Self-directed personal care providers are limited to businesses organized under the laws of the state of Montana.

(3) Self-directed personal care services may only be delivered by an attendant who is the employee of a medicaid enrolled provider and who is selected by the recipient or their immediately involved representative.

(4) Personal care services managed by provider agencies under agreement with medicaid are not available to individuals participating in the self-directed personal care program.

(5) Routine home health skilled nursing services are not available to recipients enrolled in this program for the completion of health maintenance activities.

(6) Recipients who have been terminated from the self-directed program may apply for personal care services through the medicaid personal care services program managed by approved provider agencies.

AUTH: Sec. 53-6-113 and 53-6-145 MCA
IMP: Sec. 53-6-101 and 53-6-145 MCA

RULE VII SELF-DIRECTED PERSONAL CARE SERVICES, COMPLIANCE REVIEWS (1) Compliance reviews shall be conducted on both the recipient and the provider by department staff at the provider's premises or the recipient's home.

(2) The compliance reviews shall be conducted:

(a) on an annual basis;

(b) at the time of initial re-certification for a new recipient; or

(c) at other times, as determined by the department.

(3) The department shall determine compliance in the following areas:

(a) service delivery;

(b) service authorization;

(c) attendant management;

(d) attendant recruitment;

(e) records maintenance;

(f) attendant surveys; and

(g) recipient surveys.

(4) Recipients and providers must achieve a 90% compliance rate as provided in ARM 46.12.558.

(5) Recipients and providers have two opportunities to achieve a 90% compliance rate or the following may occur:

(a) recipients shall be terminated from the self-directed program;

(b) providers shall be subject to department sanctions as provided in ARM 46.12.402 through 46.12.409.

AUTH: Sec. 53-6-113 and 53-6-145 MCA

IMP: Sec. 53-6-101 and 53-6-145 MCA

3. The personal care services program has been operational since 1977. The department (formerly Department of Social and Rehabilitation Services) established a pilot program between 1991 and 1993 to allow for self-directed personal care services. As a result, a self-directed type of option was incorporated into the program being managed under contract with West Mont Home Management. The program allowed for some consumer control of services, but individuals were still subject to agency policies. During the 1995 legislative session, a group of individuals successfully sought and obtained the passage of legislation directing the Department of Public Health and Human Services and Department of Labor and Industry to adopt rules governing the use of personal attendants by persons with disabilities.

These rules are necessary in order to implement House Bill No. 504, Chapter 525, Laws of Montana, 1995, which is codified as 53-6-145 MCA. The proposed rules allow medicaid recipients needing personal care services flexibility in selecting, managing and supervising their personal care assistant. The proposed rules incorporate many of the general rules applicable to the personal care program (Rule II). In addition, the proposed rules establish requirements for recipients to ensure they are medically capable of participating in the self-directed program (Rule III). Plan of care requirements (Rule IV), provider requirements (Rule V), general requirements (Rule VI) and compliance reviews (Rule VII) are necessary to ensure appropriate and medically necessary care for the disabled recipients.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Russell E. Cater, Chief Legal Counsel, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than September 21, 1995.

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

6. The proposed rule changes will be effective October 1, 1995.



Rule Reviewer



Director, Public Health and
Human Services

Certified to the Secretary of State August 14, 1995.

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

In the matter of the	)	NOTICE OF PUBLIC HEARING ON
amendment of rules 46.10.512	)	THE PROPOSED AMENDMENT OF
and 46.10.514 pertaining to	)	RULES 46.10.512 AND
AFDC earned income	)	46.10.514 PERTAINING TO
disregards	)	AFDC EARNED INCOME
	)	DISREGARDS

TO: All Interested Persons

1. On September 13, 1995, at 10:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of rules 46.10.512 and 46.10.514 pertaining to AFDC earned income disregards.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the department no later than 5:00 p.m. on September 4, 1995, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970.

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

46.10.512 EARNED INCOME DISREGARDS AND DEEMING OF INCOME

~~(1) When testing net monthly income and determining grant amount, the following disregards are subtracted in the order listed from earned income of each working member of the assistance unit after exclusions provided in ARM 46.10.510 except as provided in ARM 46.10.513:~~

~~(a) \$90 from each person's earned income except for individuals whose income must be deemed, as in subsection (2). The standard work expense for these individuals is \$75.~~

~~(b) \$30 plus one-third or \$30 of the earned income if applicable.~~

~~(c) Payments for the care of each working person's dependent child or incapacitated adult living in the same home and receiving assistance under ARM Title 46 are not to exceed \$175 per month per child or in such case where the child is under age two, the monthly limit cannot exceed \$200.00.~~

~~(i) The amount actually paid in the budget month will be deducted. This amount may include payment for charges incurred in the month immediately prior to the budget month; however, charges incurred but not paid in the budget month will not be allowed under this rule.~~

~~(2) Individuals whose income must be deemed when determining eligibility are stepparents, sponsors of aliens,~~

parents and legal guardians of minor parents or pregnant minors, and spouse to spouse in family groups living together. Income of these individuals less disregards listed below must be counted as unearned income to the assistance unit whether or not such income is available.

(a) Disregard a \$75 standard work expense.

(b) Disregard an amount of earned and unearned income equal to the AFDC net monthly income standard for a family consisting of the stepparent and his children by a former marriage, if such children are claimed as dependents for federal income tax purposes and are living in the same household as the natural or adoptive parent's children but not included in the assistance unit.

(c) Disregard actual amounts paid by the stepparent to individuals not living in the household in which the natural or adoptive parent's children are living and claimed by the stepparent as dependents for federal income tax purposes. These amounts must be verified.

(d) Disregard actual payment by the stepparent of alimony or child support with respect to individuals not living in the household in which the natural or adoptive parent's children are living. These amounts must be verified.

(1) To determine the net monthly income and grant amount, the disregards set forth in (2)(a) through (c) are subtracted from the earned income as defined in ARM 46.10.505 of each gainfully employed member of the assistance unit, after exclusions provided in ARM 46.10.510 have been applied.

(2) Subject to the limitations specified in ARM 46.10.513, the following disregards will be applied in the order listed:

(a) a standard work expense disregard of \$90 for each member of the assistance unit who has earned income;

(b) \$30 plus one-third of the remaining earned income, or \$30, if applicable; and

(c) a dependent care disregard for payments for the care of a dependent child or incapacitated adult living in the same home as the wage earner and receiving AFDC, provided that the amount disregarded may not exceed \$175 per month per person for persons 2 years of age or older or \$200 per month per child for children younger than 2 years of age.

(i) a dependent care disregard applies only to payments for care during the time the wage earner is at the place of employment or is enroute between the place of employment and the dependent care site.

(ii) Only amounts actually paid in the budget month may be deducted. This may include payment for charges incurred in the month immediately prior to the budget month; however, charges incurred but not paid in the budget month will not be allowed under this rule.

(3) The income of certain individuals who live with the assistance unit, but are not members of the assistance unit, is considered in determining the assistance unit's eligibility and grant amount by means of a procedure described in (4) known as deeming. The following individuals' income is deemed available to the assistance unit:

(a) stepparents who are not the parent of any child in the assistance unit;

(b) sponsors of aliens for the 3 years immediately following the alien's entry into the United States;

(c) parents of minor parents or pregnant minors; and

(d) the spouse of a caretaker relative when the caretaker relative is included in the assistance unit and the spouse of a pregnant woman when the pregnant woman has no other eligible child in the home.

(4) The following amounts are subtracted from the earned and unearned income of individuals whose income is required to be deemed by (3)(a) through (d) and the net amount after these disregards are subtracted is counted as unearned income to the assistance unit, regardless of whether that amount is actually made available to the assistance unit for its support and maintenance:

(a) a standard work expense disregard of \$90;

(b) an amount of earned income, unearned income or both equal to the AFDC net monthly income standard for a family consisting of the person whose income is deemed and individuals who live with that person and are claimed as dependents of that person for federal income tax purposes but are not included in the assistance unit;

(c) actual verified amounts paid by the person whose income is deemed to individuals who do not live with that person but qualify as dependents of that person for federal income tax purposes; and

(d) actual verified alimony or child support payments made by the person whose income is deemed to individuals not living with that person.

AUTH: Sec. 53-4-212 MCA

IMP: Sec. 53-4-231, 53-4-241, and 53-4-242 MCA

46.10.514 ~~TERMINATION OF TERMINATED INCOME~~ (1) When unearned or earned income terminates, is no longer received by a member of the assistance unit or by a person whose income is deemed to the assistance unit, the AFDC payment shall be adjusted either the second month in which the household reports that the income has terminated or the month following the month in which the income is last received, whichever is later after the income terminates.

AUTH: Sec. 53-4-212 MCA

IMP: Sec. 53-4-231, 53-4-241, and 53-4-242 MCA

3. In determining eligibility for Aid to Families with Dependent Children (AFDC) and grant amount, the department sometimes is required to consider the income of certain individuals such as stepparents who live with the AFDC household but are not included in the assistance unit. In accordance with 42 U.S.C. §602(a)(31), portions of this income are disregarded in computing how much income is "deemed" to the AFDC

assistance unit, i.e., is considered available for the assistance unit's support and maintenance and is therefore counted.

ARM 46.10.512 specifies the income disregards applicable to stepparents and other persons whose income is deemed to the AFDC assistance unit. It also sets forth other disregards applicable to the earned income of members of the assistance unit in calculating eligibility and grant amount. The Omnibus Budget Reconciliation Act of 1993 (OBRA '93) amended section 402(a)(31) of the Social Security Act, 42 U.S.C. §602(a)(31), to increase the earned income disregard for persons whose income is deemed from \$75 to \$90. This increase made the earned income disregard for such individuals consistent with the earned income disregard applied to income of members of the assistance unit, which was increased from \$75 to \$90 in recent years.

This provision in OBRA '93 was effective beginning October 1, 1993. In accordance with this federal mandate, the Department increased the earned income disregard (also known as the standard work expense disregard) for stepparents and others whose income is deemed to \$90 at that time but did not amend ARM 46.10.512 to conform to the change in policy. The amendment of ARM 46.10.512 is now necessary to make the rule consistent with federal law.

Other changes in the organization and language of ARM 46.10.512 are being made at this time for purposes of clarity and style and do not reflect any change in policy. However, one substantive change is being made in ARM 46.10.512(2), which currently provides that the income of a pregnant minor or minor parent's legal guardian must be deemed to the assistance unit. This provision is being deleted because it is no longer the Department's policy to deem the guardian's income in these cases, as guardianship does not necessarily imply any duty to support.

ARM 46.10.514 sets forth the rule for adjusting the AFDC payment when income counted in determining the grant amount is no longer received. It currently states that the AFDC payment will be adjusted the second month after the income terminates, which does not correctly state the policy which the department has applied for several years. Since federal law does not require that the grant amount be adjusted at any specific time after income terminates, the department changed its policy several years ago after determining that a different practice would be fairer to recipients.

The department's current policy is to adjust the grant either the month in which the household reports the loss of income or the month following the month in which the income is last received, whichever occurs last. Thus under the current policy a recipient who promptly reports loss of income will receive an


increased grant sooner than the second month after termination, but a recipient who fails to report the change promptly may not get the increase until later than the second month. The amendment of ARM 46.10.514 is necessary at this time to encourage the reporting of income at an early date.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Russell E. Cater, Chief Legal Counsel, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than September 21, 1995.

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



Rule Reviewer



Director, Public Health and
Human Services

Certified to the Secretary of State August 14, 1995.

BEFORE THE ECONOMIC DEVELOPMENT DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the adoption) NOTICE OF ADOPTION OF NEW
of new rules pertaining to the) RULES TO IMPLEMENT THE JOB
implementation of the) INVESTMENT ACT
Job Investment Act)

To: All Interested Persons:

1. On June 29, 1995, the Economic Development Division published a notice of proposed adoption of new rules to implement the Job Investment Act, at page 1075, 1995 Montana Administrative Register, issue number 12.

2. The Division has adopted the new rules exactly as proposed and has numbered new rules I through XIII as ARM 8.99.601 through 8.99.613.

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

COMMENT NO. 1: As to rule IX, the loan loss reserve fund should not be implemented as a rule until there is specific wording as to what and how the loan loss reserve will be created.

RESPONSE: The Department will follow prudent banking practices in the establishment of an appropriate loan loss reserve fund for the program. This fund is anticipated to be set at a minimum percentage for all loan amounts authorized under the program and would be based on the estimated non-performing loan or those more than 90 days delinquent.

COMMENT NO. 2: The loan loss reserve fund should not be implemented until it is tied to the terms of the job investment loan agreement. The loan loss reserve fund should be based on all loans that are more than 30 days delinquent.

RESPONSE: The Department will follow prudent banking practices in the establishment of an appropriate loan loss reserve fund for the program. This fund is anticipated to be set at a minimum percentage for all loan amounts authorized under the program and would be based on the estimated non-performing loan or those more than 90 days delinquent.

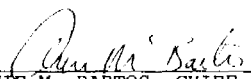
COMMENT NO. 3: The loan loss reserve fund should not be implemented until it is tied to the terms of the job investment loan agreement. A loan that is more than 90 days delinquent is a non-performing loan and the loan loss reserve fund should be based on the 90 day delinquency.

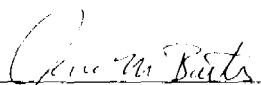
RESPONSE: The Department will follow prudent banking practices in the establishment of an appropriate loan loss reserve fund for the program. This fund is anticipated to be set at a minimum percentage for all loan amounts authorized under the program and would be based on the estimated non-performing loan or those more than 90 days delinquent.

COMMENT NO. 4: Confidentiality and open meetings should not be implemented until there is language for the public to be allowed to see confidential reports only if and after there is a default or if the loan is more than 90 days delinquent. The public and the legislature have the right to review all documents and facts as to why a business is going under or not making payments to the state for the loan.

RESPONSE: The rule provides for open meetings and public files of documents relative to the loan review committee's action regarding the application for a loan, the committee's approval or disapproval of the application, the terms and interest rate of financing, and the loan repayment schedule and record. The rules also provide for full disclosure of the name and address of the applicant, short description of the project, the amount of the loan, the program under which the applicant is applying and other information in which the demand of individual privacy does not clearly exceed the merits of public disclosure.

DEPARTMENT OF COMMERCE
JON NOEL, DIRECTOR

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


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, August 14, 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 one new rule) RULE I AND AMENDMENT OF
related to the operation of) EXISTING RULES
the uninsured employers' fund)
and the underinsured employers')
fund, and the amendment of ARM)
24.29.2831 and 24.29.2837)

TO ALL INTERESTED PERSONS:

1. On June 29, 1995, the Department published notice at pages 1099 through 1101 of the Montana Administrative Register, Issue No. 12, to consider the adoption of one new rule related to the operation of the uninsured employers' fund and the underinsured employers' fund, and the amendment of ARM 24.29.2831 and 24.29.2837.

2. On July 21, 1995, a public hearing was held in Helena concerning the proposed new rule and the proposed amendments. No oral or written comments from members of the public were offered at that time. No written comments were received prior to the closing date of July 28, 1995.

3. The Department has amended ARM 24.29.2831 and 24.29.2837 exactly as proposed.

4. During the comment period, agency staff noted that there was a typographical error in RULE I. In order to correct that error, the Department has adopted RULE I as proposed with the following change: (deleted matter stricken, new matter underlined)

RULE I (24.29.2839) COMPROMISE OF PENALTIES ASSESSED

(1) Same as proposed.

(2) The UIEF, in its sole discretion, may enter into a compromise settlement with an ~~uninsured~~ underinsured employer of the amount assessed pursuant to ARM 24.29.2837, upon such terms and conditions that the UIEF deems expedient and appropriate.

AUTH: Sec. 39-71-203 MCA

IMP: Sec. 39-71-506, 39-71-533 MCA

5. The new rule and amendments are effective September 1, 1995.

Laurie Ekanger, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

David A. Scott
David A. Scott
Rule Reviewer

By:

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

Certified to the Secretary of State: August 14, 1995.

Montana Administrative Register

16-8/24/95

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF
rule 16.8.1907 increasing fees for) AMENDMENT OF RULE
the smoke management program.)

(Air Quality)

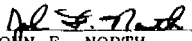
To: All Interested Persons

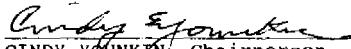
1. On June 15, 1995, the board published notice of proposed amendment of rule at page 1004 of the 1995 Montana Administrative Register, Issue No. 11, to consider the amendment of the above-captioned rule.

2. The rule was amended as proposed with no changes.

3. No comments were received.

BOARD OF ENVIRONMENTAL REVIEW


JOHN F. NORTH,
Rule Reviewer


CINDY YOUNKLEY, Chairperson

Certified to the Secretary of State August 14, 1995 .

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

* * * * *

IN THE MATTER OF the Petition of HAVRE) UTILITY DIVISION
PIPELINE COMPANY, LLC for a Declaratory)
Ruling on Public Utility Status.) DOCKET NO. 95.2.5

DECLARATORY RULING

Introduction

1. On February 15, 1995 the Montana Public Service Commission (PSC) received a Petition for Declaratory Ruling on Public Utility Status from Havre Pipeline Company, LLC (Havre or Petitioner). Havre requested that the PSC determine what Havre's public utility status would be if it purchased natural gas gathering and transmission pipeline facilities from Northern Natural Gas Company (Northern). With this purchase, Havre would also acquire "farm tap" customers within the system.

2. On February 28, 1995 the PSC issued notice of the petition and opportunity to comment to the following parties: Montana Consumer Counsel, Montana Power Company, Montana-Dakota Utilities Company, Montana Land and Mineral Owners Association, Great Falls Gas Company, and Williston Basin Interstate Pipeline Company. Only Petitioner filed comments.

3. On July 11, 1995 Havre submitted its Supplemental Filing in Support of Petition for Declaratory Ruling. Havre informed the PSC that the Federal Energy Regulatory Commission (FERC) granted Havre's Petition for a Declaratory Order Disclaiming Natural Gas Act Jurisdiction, issued June 6, 1995. FERC determined that the pipeline facilities upstream of the inlet of the compressor stations will be exempt gathering facilities under section (1)(b) of the Natural Gas Act (NGA), and the remaining Montana facilities will constitute intrastate pipeline facilities as defined in section 2(16) of the Natural Gas Policy Act (NGPA). Havre also submitted additional factual data in support of its petition to the PSC, in particular documenting ownership status and clarifying limited liability corporate status of Havre.

4. Pursuant to § 2-4-501, MCA, and the procedures in ARM 38.2.101 and Model Rules ARM 1.3.226 through 1.3.229, the PSC exercises jurisdiction to make declaratory rulings binding on requesting parties as to the facts presented.

Facts Presented

5. UMC Petroleum Corporation (UMC), Havre's manager and owner of substantial working interests in the Montana properties served by Northern's System, executed an Asset Purchase Agreement with Northern dated December 16, 1994, and transferred the right to purchase Northern's System to Havre, as a recently organized limited liability company. Until the FERC's Order granting Northern authority to abandon its Montana facilities by sale to Havre, Northern had operated the System as an interstate pipeline subject to FERC's jurisdiction and provided "farm tap" service to farms subject to PSC jurisdiction.

6. Pursuant to its option to purchase, Havre intends to acquire, own and operate natural gas gathering and transmission facilities from Northern. Havre's members are Montana gas producers currently attached to the system, producing about 95 percent of the gas carried to market by the pipeline facilities. Havre intends to engage in intrastate gathering and transportation, along with interstate transportation authorized by section 311(a)(2) of the NGPA. Upon FERC's Order, Havre seeks a ruling from the PSC that portions deemed transmission facilities would be a "public utility," subject to the PSC's jurisdiction, but that its gathering portion would not be a public utility.

7. The System consists of 500 miles of pipelines located in Blaine, Chouteau and Hill Counties, Montana, and related facilities, including three compressor stations and more than 350 natural gas metering stations. Low pressure gathering lines of 3-inch to 20-inch pipelines (more than 400 miles) serve the three gathering systems in the Bullhook Tiger Ridge and Sherard production areas. Each gathering system collects gas at the wellhead and gathers it to a central point in the field. There the gas enters compression facilities which converge at the Blaine County No. 1 compressor station via 12-inch higher-pressure lateral pipelines. Gas is then delivered to connecting pipelines through either (a) a 46-mile, 16-inch high-pressure pipeline extending from the Blaine County No. 1 compressor to the U.S./Canadian border, or (b) interconnections with the pipeline system of Montana Power Company (MPC), an intrastate pipeline company serving Montana's gas customers. FERC has certified the two 12-inch pipelines, the 16-inch pipeline and the following three compressor stations, as transmission facilities: (1) the Blaine County No. 1 station -- two 5,500 horsepower reciprocating compressor units; (2) the Hill County No. 1 station -- one 1,460 horsepower compressor unit; and (3) the Blaine County No. 3 station -- one 750 horsepower compressor unit.

8. Havre proposes to engage in intrastate transportation, subject to transportation tariffs, for the portion of the System deemed to be transmission facilities by FERC, together with transportation authorized by Section 311(a)(2) of

the NGPA. Havre intends to operate solely as a gatherer and transporter of gas, and not as a purchaser and reseller of natural gas.

9. On both the gathering and transmission facilities Northern has a number of "farm tap customers," landowners receiving service as a result of easements and contractual agreements granting Northern the right to construct, operate and maintain pipelines across the customers' properties. Service is provided off a short connection, and the landowners are responsible for the pipeline to their premises. For the 12 months ending May 31, 1994, Northern's farm tap sales totalled 29,737 Mcf under rates approved by the PSC. Havre would assume the obligation to continue service under the farm tap tariffs, upon transfer of the facilities, and may arrange for acquisition of gas by purchase or through third-party contractors for sale to the landowners. Havre concedes the PSC's pipeline safety jurisdiction over intrastate pipelines as provided in 49 CFR Subchapter D, §§191, 192 and 199 (Pipeline Safety).

The Questions Presented

10. The petition presents the following questions of law for the PSC's determination:

Would the PSC have regulatory authority pursuant to § 69-3-102, MCA, over Havre Pipeline Company, LLC, as a public utility under the definition of § 69-3-101, MCA, if Havre acquired and engaged in intrastate operation of (1) those parts of the Montana Pipeline System deemed by FERC to be "transportation" and (2) those parts deemed to be lower pressure "gathering" systems? Would delivering natural gas to "farm tap" customers pursuant to easement agreements and in accordance with previous "farm tap" tariffs constitute Havre's pipeline system a public utility?

Applicable Law

11. Section 69-3-101(1), MCA, provides that the term "public utility":

[S]hall embrace every corporation, both public and private, company, individual, association of individuals, their lessees, trustees, or receivers appointed by any court, whatsoever, that now or hereafter may own, operate, or control any plant or equipment, any part of a plant or equipment, or any water right within the state for the production, delivery, or furnishing for or to other persons, firms, asso-

ciations, or corporations, private or municipal:

(a) heat;

....

(d) power in any form or by any agency;

Pursuant to § 69-3-102, MCA, the PSC is "invested with full power of supervision, regulation, and control of such public utilities, subject to the provisions of [Title 69]"

Analysis

12. Havre inquires whether the PSC would have jurisdiction over Havre for the intrastate natural gas activities of gathering, transmission and "farm tap" service. Havre maintains that the gathering function of the System on the low pressure lines would not submit Havre to regulatory oversight so long as Havre is not a reseller of the natural gas. Havre is willing to accept regulatory jurisdiction over intrastate transportation of natural gas for others and to submit tariffs for PSC approval. Havre is equivocal on regulation of "farm tap" service.

13. To support its position on the distinction between the gathering and transmission portions of its proposed natural gas pipeline system, Havre cites definitions from case law.

The term "gathering" refers to the process of collecting gas at the point of production (the wellhead) and moving it to a collection point for further movement through a pipeline's principal transmission system.

"Transportation" involves the movement of gas through a pipeline's principal transmission system. Transportation facilities which receive natural gas after gathering may conduct transportation in interstate commerce, which is subject to [FERC's] jurisdiction under § 1(b), or transportation in intrastate commerce, which is excluded from [FERC] regulation under the NGA.

Northern Natural Gas Company, Div. of Enron vs. F.E.R.C., 929 F.2d 1261 (8th Cir. 1991).

Gathering

14. In gathering, the producers do not sell their gas to Havre; there is no change in ownership. Havre would provide private gathering service to the compressors for its members. At that point, the movement would become "transportation" like that provided by MPC pursuant to tariffs, and Havre would charge tariffed transportation rates, if the declaratory relief is granted.

15. Montana Power Company (MPC) first applied to the PSC to establish new transportation rates in Docket No. 90.1.1. After a rate hearing and settlement negotiations, the PSC granted MPC's request to implement transportation rates. (Order No. 5474c, October 3, 1991.) In Order No. 5474c (§§ 5-6), the PSC discussed a "fully-bundled service (MPC's traditional and present service)" in which "the total of procurement, production, processing, storage, supply, transmission, delivery, and all other related aspects of natural gas service are a package to the customer -- MPC provides natural gas as a product and service to the customer's burner tip." The PSC contrasted this full service with an unbundled service in which the components become separable and customers can choose one or more services.

16. Producers acting like producers, gathering and collecting their gas for market, are not performing a public utility function. If, however, the producers provide what looks like a product with service, the PSC would examine the matter to determine public utility status. Havre would own the facilities, which is the first prong of public utility status. Havre would not use the gathering facilities to provide utility service to others, the second prong. The gathering would be a private collection service for private producers to a privately owned central compression point. There would be no end-user, and therefore no public utility status to the point of the compressors. Producing and gathering would not be regulated as a public utility service, as discussed in the MOGA declaratory ruling. The PSC determines that the gathering function of Havre's system would not be regulated.

Transportation

17. "Transportation" of gas for purposes of pipeline safety and intrastate gas transportation as a public utility function have different meanings. Title 49 CFR § 192.3 (pipeline safety) provides encompassing definitions, including all aspects of the movement of gas by pipeline. The PSC has pipeline safety enforcement jurisdiction over intrastate pipelines, with penalty provisions under § 69-3-207, MCA. This jurisdiction extends to the full gamut of intrastate transportation as defined under the pipeline safety provisions, in-

cluding high-pressure gathering, transmission, distribution of gas by pipeline and limited jurisdiction over the storage of gas.

18. "Transportation" of gas in conjunction with tariffs has a more limited meaning, referring to the transportation service unbundled from an integrated utility service. Havre requests authority to provide transportation service similar to that which MPC provides according to tariffs. When MPC applied for approval of transportation rates in 1990, the PSC considered the request as a matter of first impression. (Docket No. 90.1.1, Order No. 5474c.) MPC's concern was that large customers capable of finding alternatives to traditional service would bypass the system. MPC maintained that bypass would harm remaining customers, while unbundling service into separate services, such as transportation, would benefit MPC and its remaining customers by sharing some system costs. (Order No. 5474c, ¶ 5.)

19. In addition to the issue of bypass, the PSC considered the federal trend toward unbundling of transportation and sales. In 1978 Congress enacted the Natural Gas Policy Act (NGPA) removing FERC's jurisdiction of prices at the wellhead and authorizing FERC to allow interstate and intrastate pipelines to transport gas in interstate commerce without certificate and abandonment requirements. FERC implemented procedures to promote open access transportation by interstate pipelines in 1985 in Order No. 436. The interstate natural gas industry was changing to an unbundled transportation and sales business with companies transporting gas for shippers for a fee. (Order No. 5474c, ¶¶ 13-17.)

20. The PSC found that the natural gas industry was evolving from a fully-bundled, regulated business to an unregulated supply business, with an unbundled, but regulated, transportation business. The PSC also found that gas transportation would allow the marketplace to determine the price of natural gas in Montana, provide more supply options, and allow fuller use of MPC's pipeline system, increasing revenues to contribute to offset fixed transmission costs for all customers. (Order No. 5474c, ¶¶ 58 and 62.) Transportation customers "would be responsible for procuring their own gas supplies and contracting with MPC for transportation of their gas supplies to their delivery points on MPC's system. Customers could select from the menu of unbundled transportation features (including transmission and storage functions) which they deemed necessary to properly transport and shape their gas supplies for their requirements." (Order No. 5474c, ¶ 79.)

21. Montana Oil and Gas Association (MOGA), independent gas producers opposed to gas transportation, requested a declaratory ruling in anticipation of Order No. 5474c. MOGA asked whether §§ 69-3-101 and 69-3-102, MCA, would apply to independent producers selling gas to selected industrial end-

users transporting on MPC's facilities, if the PSC approved MPC's transportation proposal. The PSC never regulated gas producers for producing and selling gas in the field. The producers did not want to turn the act of selling gas at the wellhead into a public utility function by using MPC's transportation facilities. The PSC ruled that public utility status under § 69-3-101, MCA, requires the ownership, operation or control of the facilities and provision of service on these facilities to someone other than the gas producers. Producers, acting like producers, would remain unregulated. A producer could be subject to regulation as a public utility for a contractual agreement to sell to another, if the producer owned, operated or controlled the facilities and engaged in delivery of the gas to the end-user/purchaser.

22. As the only intervening party not to approve the settlement in Docket No. 90.1.1, MOGA maintained that MPC was a distribution system only and not a transmission system. MOGA expressed concern that its producers would have to go through two or three systems, paying multiple transportation charges. (Order No. 5474c, ¶¶ 37-45.) MPC maintained that the producers in a competitive environment would have more opportunities to reach markets for gas supplies. (Order No. 5474c, ¶¶ 46-47.) The PSC concluded that Montana producers would have more opportunities to sell to others under gas transportation and open access. (Order No. 5474c, ¶¶ 66-70.)

23. Pursuant to its authority under § 69-3-102, MCA, the PSC will have jurisdiction over Havre's transportation rates upon Havre's acquiring the Northern pipeline system. As defined in § 69-3-101, MCA, Havre would own plant and equipment for transportation of the natural gas to others. Havre would submit transportation tariffs similar to those of MPC and provide transportation service accordingly. Havre states that it will not purchase or resell the gas, thereby providing only the transportation component and not a full utility service.

Farm Taps

24. Havre requests the same level of regulatory oversight as exists over Northern's farm tap tariffs. While it "acquiesces" to continued "light-handed" oversight, Havre maintains that deliveries to farm tap customers after Northern's sale to Havre would have a different character and would no longer have any public utility status. According to Havre, Northern has delivered its own gas to the farm tap customers, but Havre would own no gas. Havre would either have to purchase gas for farm tap delivery or arrange for the transfer of the farm tap gas delivery obligation to a third party.

25. If Havre purchased gas for farm tap deliveries, Havre contends that it could "avoid public utility status" if the PSC ruled either (1) that there were no actual deliveries to the public, or (2) that Havre would not be providing ser-

vice to the burner tip but rather a license to tap into its pipelines to remove gas.

26. To avoid public utility status, Havre cites Re Lake-Hubbard Natural Gas Service, PSC Docket No. 995, P.U.R. 1928C 358 to support its contention that "farm tap deliveries are not sales to the public." The 1928 PSC held that the principal issue was whether the property was dedicated to a public use, which would bring the owner of the pipeline facility under the jurisdiction of the PSC. Distributing gas to users for compensation would not subject the owner of the facilities to regulation, without a profession of public service and the willingness to serve at least a limited portion of the public, said the 1928 PSC. The PSC further stated that willingness to serve only particular individuals, either as an accommodation or for other unique reasons, would not subject the owners of the facility to public utility regulation.

27. The PSC rejects Havre's reasoning that it would not be professing public service, but merely serving particular individuals for reasons of accommodation or otherwise. The reliance on a 1928 case is misplaced. The pipeline owners and developers (Lake and Hubbard) would be regulated today for the 1928 service to the end-user for which they received compensation. The PSC has since construed "public utility" § 69-3-101, MCA, in numerous decisions and orders to mean an entity providing service to an end-user (furnishing or delivering heat, light or power, including natural gas) on facilities it owns, operates or controls.

28. The farm tap service constitutes just such a utility service under the definition, i.e., delivery of natural gas on facilities owned by Havre to the end-user farmers. MPC also provides this service at set tariffs, similarly in exchange for pipeline easements. All the components of service are present. The farm tap customers on the gathering and transmission lines receive service on distribution lines to the service lines up to the customer meters. A customer meter measures the transfer of gas from an operator to a consumer. The service lines providing farm tap service are generally very short, just a few feet to place the meter and appurtenant equipment. The operator provides service to this meter or to the customer's piping, whichever is farther downstream. If there is no meter, the service line extends to the customer's piping. Under the farm tap tariffs, the customer's piping is right at the meter where the gas is transferred. The customer then pipes the gas, sometimes across hill and dale, to the premises.

29. The PSC finds that the farm tap service is indeed a public utility service. Components of full service are present, albeit it off a gathering system and limited to the few short feet of service line per each farm tap connection. Upon Havre's acquiring the system, the PSC would continue to regulate the farm tap service pursuant to the tariffs. The PSC

further finds that pipeline safety enforcement would apply to the system, consistent with pipeline safety requirements.

DECLARATORY RULING

On the petition of Havre Pipeline Company, LLC, for a declaratory ruling assuming that Havre exercises its option to acquire the pipeline facilities of Northern Natural Gas Company, the PSC rules as follows:

(1) Gathering system. The PSC would not regulate the gathering portions of the pipeline system, so long as the producers are acting like producers, collecting the gas at the well-head and gathering it to the collection points, i.e., the compression facilities. Havre has stated that this service is private carriage, because the ownership of the gas has not changed. This decision on the gathering system is based on the fact that gathering itself has never been regulated as a public utility function.

(2) Transportation system. Havre has agreed that the PSC would exercise jurisdiction over the transportation component of its pipeline system. Havre must file transportation tariffs upon acquiring the system.

(3) Farm tap service. The PSC would continue to exercise jurisdiction over the farm tap service pursuant to the tariffs filed at the PSC by Northern, regardless of the form of acquisition of this portion of the system.

Done and Dated this 8th day of August, 1995 by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION


NANCY MCCONFREE, Chair



DAVE FISHER, Vice Chair


BOB ANDERSON, Commissioner


DANNY OBENG, Commissioner


BOB ROWE, Commissioner

ATTEST:


Kathlene M. Anderson
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.

ANNOUNCEMENT OF NEW ADMINISTRATIVE RULES TITLES

After considerable deliberation, the Secretary of State's Office has decided that the rules of the Department of Natural Resources and Conservation will remain in Title 36. The new Department of Public Health and Human Services rules will be placed in Title 37. And the Department of Environmental Quality rules will be housed in Title 17.

We feel that this arrangement will best suit the needs of the departments, the public, and the Administrative Rules Bureau. This allows the departments to create a more "user friendly" set of rules--for all the users of the Administrative Rules.

The transition to the two new titles (17 and 37) will be gradual, as will be the phasing out of Titles 11 (Family Services), 16 (Health and Environmental Sciences), 26 (State Lands), and 46 (Social and Rehabilitation Services).

In the Accumulative Table at the back of each Register, you will see that we now have added the new title numbers and have put them in the appropriate places. Accumulative Table entries will be listed with the department name under which they were proposed, e.g., Department of Health and Environmental Sciences as opposed to Department of Environmental Quality. Rulemaking actions initiated after July 1, 1995, will be included under the new department names and numbers.

We will continue to keep you informed as changes due to the reorganization occur.

Please contact the Administrative Rules Bureau at (406) 444-2055 if you have questions or concerns or wish to offer comments or suggestions. We appreciate your patience.

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

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

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

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

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

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- 2.5.403 Application of Preferences to Contracts Involving Federal Funds in State Purchasing, p. 1466

(Public Employees' Retirement Board)

- I-III Mailing Information on Behalf of Non-profit Organizations, p. 727, 1318
- 2.43.418 Accrual of Membership Service - Service Credit for Elected Officials, p. 733, 1319
- 2.43.432 Purchase of Additional Service in the Retirement Systems Administered by the Board, p. 516, 1033
- 2.43.451 and other rule - Purchase of Service for Members who are Involuntarily Terminated after January 1, 1995 but before July 1, 1997 - Limitations on Their Return to Employment within the Jurisdiction, p. 730, 1320
- 2.43.606 Conversion of an Optional Retirement Upon Death or Divorce from the Contingent Annuitant, p. 1289
- 2.43.612 and other rules - Eligibility for and Calculation of Annual Benefit Adjustments for Montana Residents -

Annual Certification of Benefits Paid by Local Pension Plans, p. 150, 533

- (Teachers' Retirement Board)
2.44.301A and other rules - Creditable Service for Members after July 1, 1989 - Calculation of Age - Installment Purchase - Value of Housing - Direct Transfer or Rollover - Reporting of Termination Pay - Payment for Service--Calculation of Retirement Benefits - Definitions - Membership of Teacher's Aides and Part-time Instructors - Transfer of Service Credit from the Public Employees' Retirement System - Eligibility Under Mid-term Retirements - Computation of Average Final Compensation - Adjustment of Benefits - Limit on Earned Compensation - Adjustment of Disability Allowance for Outside Earnings - Membership of Part-time and Federally Paid Employees - Interest on Non-payment for Additional Credits - Purchase of Credit During Exempt Period - Calculation of Annual Benefit Adjustment - Eligibility for Annual Benefit Adjustment, p. 977

- (State Compensation Insurance Fund)
I and other rule - Policy Charge - Minimum Yearly Premium, p. 1067
I and other rule - Temporary - Policy Charge - Minimum Yearly Premium, p. 516, 922
2.55.404 Scheduled Rating - High Loss Modifier, p. 1, 350

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I-IV Importation of Mint Plants and Equipment into Montana, p. 422, 1323
4.12.1221 and other rules - Alfalfa Leaf-Cutting Bees - Registration - Fees - Standards - Certification - Sale of Bees, p. 1292

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- I Supervision, Rehabilitation and Liquidation of State Regulated Employer Groups, p. 1470
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6.6.3505 and other rules - Annual Audited Reports - Establishing Accounting Practices and Procedures to be Used in Annual Statements in Order to Comply with Accreditation Requirements, p. 157, 455
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6.6.5101 and other rules - Plan of Operation for the Small Employer Health Reinsurance Groups, p. 1468

(Classification and Rating Committee)

- 6.6.8001 and other rules - Informal Advisory Hearing Procedure - Agency Organization - Adoption of Model Rules - Definitions - Administrative Appeal of Classification Decision - General Hearing Procedure - Updating References to the NCCI Basic Manual for Workers' Compensation and Employers' Liability Insurance, 1980 Edition, p. 985
- 6.6.8301 Updating References to the NCCI Basic Manual for Workers' Compensation and Employers' Liability Insurance, 1980 Ed., p. 522, 1035
- 6.6.8301 Updating References to the NCCI Basic Manual for Workers' Compensation and Employers' Liability Insurance, 1980 Ed., as Supplemented through July 1, 1995, p. 245
- 6.6.8301 Updating References to the NCCI Basic Manual for Workers' Compensation and Employers' Liability Insurance, 1980 Ed., as Supplemented through August 30, 1994, p. 2570, 351

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- 8.4.507 and other rules - Required Reports - Vaginal Birth After Cesarean (VBAC) Deliveries - Management of Infectious Waste, p. 2998, 459

(Board of Architects)

- 8.6.407 and other rules - Examination - Individual Seal - Standards for Professional Conduct, p. 2771, 352

(Board of Cosmetologists)

- 8.14.814 Fees - Initial, Renewal, Penalty and Refund Fees, p. 160, 461

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- 8.16.408 and other rules - Applications to Convert Inactive Status Licenses to Active Status Licenses - Dental Hygienists - Definitions - Use of Auxiliary Personnel and Dental Hygienists - Dental Auxiliaries, p. 1380

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- 8.30.404 and other rules - Reciprocity - Fees - Definitions - Continuing Education - Sponsors - Standards for Approval - Prior Approval of Activities - Post Approval of Activities - Review of Programs - Hearings - Attendance Record Report - Disability or

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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 July 1995, appear. Vacancies scheduled to appear from September 1, 1995, through November 30, 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 August 2, 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 JULY, 1995

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Agriculture Development Council (Agriculture)			
Mr. P.L. "Joe" Boyd	Governor	reappointed	7/1/1995
Billings			7/1/1998
Qualifications (if required):	actively engaged in agriculture		
Mr. Larry Johnson	Governor	reappointed	7/1/1995
Kremlin			7/1/1998
Qualifications (if required):	actively engaged in agriculture		
Mr. Jon Noel	Governor	reappointed	7/1/1995
Helena			7/1/1998
Qualifications (if required):	Director of the Department of Commerce		
Alfalfa Leaf-Cutting Bee Committee (Agriculture)			
Ms. Sue Blodgett	Governor	not listed	7/1/1995
Bozeman			7/1/1998
Qualifications (if required):	representative of the extension service of Montana State University		
Mr. Ralph Peck	Governor	Giacometto	7/1/1995
Helena			7/1/1998
Qualifications (if required):	representative of the Department of Agriculture		
Mr. Allen Whitmer	Governor	reappointed	7/1/1995
Bloomfield			7/1/1998
Qualifications (if required):	representative of an alfalfa seed association		

BOARD AND COUNCIL APPOINTEES FROM JULY, 1995

Appointee	Appointed by	Succeeds	Appointment/End Date
Blue Ribbon Telecommunications Task Force			
Ms. Doris Barta	Governor	(Administration) new appointment	7/17/1995 1/1/1997
Billings			
Qualifications (if required):	public member		
Ms. Cheryl Beatty	Governor	new appointment	7/17/1995 1/1/1997
Anaconda			
Qualifications (if required):	public member		
Ms. Cathy Brightwell	Governor	new appointment	7/17/1995 1/1/1997
Helena			
Qualifications (if required):	public member		
Dr. John Cleveland	Governor	new appointment	7/17/1995 1/1/1997
Missoula			
Qualifications (if required):	ex-officio member		
Mr. Bill Cochran	Governor	new appointment	7/17/1995 1/1/1997
Billings			
Qualifications (if required):	public member		
Ms. Cynthia Denton	Governor	new appointment	7/17/1995 1/1/1997
Hobson			
Qualifications (if required):	public member		
Mr. Jim Ereaux	Governor	new appointment	7/17/1995 1/1/1997
Pablo			
Qualifications (if required):	public member		
Ms. B.J. Hawkins	Governor	new appointment	7/17/1995 1/1/1997
White Sulphur Springs			
Qualifications (if required):	ex-officio member		

BOARD AND COUNCIL APPOINTEES FROM JULY, 1995

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Blue Ribbon Telecommunications Task Force	(Administration) cont.		
Mr. Jim Hayhurst	Governor	new appointment	7/17/1995
Helena			1/1/1997
Qualifications (if required):	public member		
Lieutenant Billi Heigh	Governor	new appointment	7/17/1995
Helena			1/1/1997
Qualifications (if required):	ex-officio member		
Mr. Tony Herbert	Governor	new appointment	7/17/1995
Helena			1/1/1997
Qualifications (if required):	ex-officio member		
Mr. Fred Lark	Governor	new appointment	7/17/1995
Lewistown			1/1/1997
Qualifications (if required):	ex-officio member		
Ms. Joan Mandeville	Governor	new appointment	7/17/1995
Great Falls			1/1/1997
Qualifications (if required):	public member		
Mr. Mike Mason	Governor	new appointment	7/17/1995
Kalispell			1/1/1997
Qualifications (if required):	public member		
Mr. Danny Oberg	Governor	new appointment	7/17/1995
Helena			1/1/1997
Qualifications (if required):	ex-officio member		
Mr. David Owen	Governor	new appointment	7/17/1995
Helena			1/1/1997
Qualifications (if required):	ex-officio member		

BOARD AND COUNCIL APPOINTEES FROM JULY, 1995

Appointee	Appointed by	Succeeds	Appointment/End Date
Blue Ribbon Telecommunications Task Force (Administration) cont.			
Mr. Jim Pool	Governor	new appointment	7/17/1995
Helena			1/1/1997
Qualifications (if required):	public member		
Mr. Mike Strand	Governor	new appointment	7/17/1995
Helena			1/1/1997
Qualifications (if required):	public member		
Mr. Tim Sweeney	Governor	new appointment	7/17/1995
Helena			1/1/1997
Qualifications (if required):	ex-officio member		
Ms. Dixie Swenson	Governor	new appointment	7/17/1995
Bozeman			1/1/1997
Qualifications (if required):	ex-officio member		
Mr. Jeff Tabor	Governor	new appointment	7/17/1995
Billings			1/1/1997
Qualifications (if required):	public member		
Mr. Edward Van Tighem	Governor	new appointment	7/17/1995
Great Falls			1/1/1997
Qualifications (if required):	ex-officio member		
Mr. Marc Wilson	Governor	new appointment	7/17/1995
Bigfork			1/1/1997
Qualifications (if required):	ex-officio member		
Dr. Oak Winters	Governor	new appointment	7/17/1995
Bozeman			1/1/1997
Qualifications (if required):	ex-officio member		

BOARD AND COUNCIL APPOINTEES FROM JULY, 1995

Appointee	Appointed by	Succeeds	Appointment/End Date
Board of Barbers (Commerce)			
Mr. Max DeMars	Governor	reappointed	7/1/1995
Big Timber			7/1/1998
Qualifications (if required):	a practicing barber		
Board of Cosmetologists (Commerce)			
Mr. Dick Meyers	Governor	reappointed	7/6/1995
Billings			7/1/1999
Qualifications (if required):	affiliated with a school of cosmetology		
Board of Crime Control (Justice)			
Ms. Elaine Allestad	Governor	Heggem	7/6/1995
Big Timber			1/1/1997
Qualifications (if required):	county commissioner		
Mr. Craig Anderson	Governor	reappointed	7/6/1995
Glendive			1/1/1999
Qualifications (if required):	representative of youth justice		
Mr. Randy Bellingham	Governor	reappointed	7/6/1995
Billings			1/1/1999
Qualifications (if required):	representative of justice		
Mayor Fred Brown	Governor	reappointed	7/6/1995
Libby			1/1/1999
Qualifications (if required):	mayor		
Mr. Gary Buchanan	Governor	reappointed	7/6/1995
Billings			1/1/1999
Qualifications (if required):	public member		

BOARD AND COUNCIL APPOINTEES FROM JULY, 1995

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Crime Control (Justice) cont. Senator Delwyn Gage Cut Bank Qualifications (if required): legislator	Governor	reappointed	7/6/1995 1/1/1999
Ms. Sherry Matteucci Billings Qualifications (if required): U.S. Attorney	Governor	Mohr	7/6/1995 1/1/1999
Rep. Debbie Shea Butte Qualifications (if required): legislator	Governor	Peterson	7/6/1995 1/1/1999
Board of Environmental Review (Environmental Quality) Mr. Daniel Dennehy Butte Qualifications (if required): public health officer	Governor	new appointment	7/17/1995 12/31/1998
Mr. Joe Gerbase Billings Qualifications (if required): representing planners	Governor	new appointment	7/19/1995 12/31/1996
Mr. Paul Hanson Glendive Qualifications (if required): public member	Governor	new appointment	7/19/1995 12/31/1998
Mr. Russell Hudson Libby Qualifications (if required): public member	Governor	new appointment	7/19/1995 12/31/1996
Mr. Roger Perkins Laurel Qualifications (if required): hydrologist	Governor	new appointment	7/19/1995 12/31/1996

BOARD AND COUNCIL APPOINTEES FROM JULY, 1995

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Environmental Review	(Environmental Quality) cont.		
Dr. Garon Smith	Governor	new appointment	7/19/1995
Missoula			12/31/1996
Qualifications (if required):	scientist		
Ms. Cindy Younkin	Governor	new appointment	7/19/1995
Bozeman			12/31/1998
Qualifications (if required):	public member and attorney		
Board of Funeral Services	(Commerce)		
Mr. John Michelotti	Governor	reappointed	7/1/1995
Billings			7/1/2000
Qualifications (if required):	mortician		
Board of Hearing Aid Dispensers	(Commerce)		
Ms. Kristy Foss	Governor	reappointed	7/1/1995
Billings			7/1/1998
Qualifications (if required):	hearing aid dispenser		
Board of Nursing	(Commerce)		
Ms. Terry Buhr	Governor	Chatham	7/17/1995
Lewistown			7/1/1999
Qualifications (if required):	LPN		
Ms. Nancy Heyer	Governor	reappointed	7/17/1995
Missoula			7/1/1999
Qualifications (if required):	registered professional nurse		
Board of Pharmacy	(Commerce)		
Mr. Wayne Hedman	Governor	Mitchell	7/1/1995
Hamilton			7/1/2000
Qualifications (if required):	pharmacist		

BOARD AND COUNCIL APPOINTEES FROM JULY, 1995

Appointee	Appointed by	Succeeds	Appointment/End Date
Board of Professional Engineers and Land Surveyors (Commerce)			
Mr. David Bowman	Governor	reappointed	7/1/1995
Ernis			7/1/1999
Qualifications (if required): being a professional land surveyor			
Mr. David F. Gibson	Governor	reappointed	7/1/1995
Bozeman			7/1/1999
Qualifications (if required): being a professional engineer in engineering teaching			
Mr. James Shockley	Governor	reappointed	7/1/1995
Victor			7/1/1999
Qualifications (if required): public member			
Dr. Fred Walter	Governor	reappointed	7/1/1995
Butte			7/1/1999
Qualifications (if required): being a professional engineer			
Board of Sanitarians (Commerce)			
Ms. Melissa Tuemmler	Governor	reappointed	7/1/1995
Ulm			7/1/1998
Qualifications (if required): sanitarian			
Board of Veterinary Medicine (Commerce)			
Ms. Mary Hinebaugh	Governor	not listed	7/31/1995
Rosebud			7/31/2000
Qualifications (if required): public member			
Dr. Deborah Yarborough	Governor	Pruyn	7/31/1995
Kalispell			7/31/2000
Qualifications (if required): veterinarian			

BOARD AND COUNCIL APPOINTEES FROM JULY, 1995

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Water Well Contractors (Environmental Quality)			
Mr. Pat Byrne	Governor	reappointed	7/1/1995
Great Falls			7/1/1998
Qualifications (if required): water well contractor			
Committee on Telecommunications Services for the Handicapped (Social and Rehabilitation Services)			
Mr. Ron Bibler	Governor	reappointed	7/1/1995
Great Falls			7/1/1998
Qualifications (if required): handicapped			
Mr. John Delano	Governor	reappointed	7/1/1995
Helena			7/1/1998
Qualifications (if required): nonhandicapped and engaged in business			
Mr. Ben Havidahl	Governor	reappointed	7/1/1995
Helena			7/1/1998
Qualifications (if required): hard-of-hearing			
Department of Corrections (Corrections)			
Mr. Rick Day	Governor	reappointed	7/1/1995
Helena			1/1/1997
Qualifications (if required): none specified			
Department of Environmental Quality (Environmental Quality)			
Mr. Mark Simonich	Governor	new department	7/1/1995
Helena			1/1/1997
Qualifications (if required): none specified			
Department of Natural Resources and Conservation (Natural Resources and Conservation)			
Mr. Arthur R. Clinch	Governor	Simonich	7/1/1995
Columbia Falls			1/1/1997
Qualifications (if required): none specified			

BOARD AND COUNCIL APPOINTEES FROM JULY, 1995

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Department of Public Health and Human Services			
Mr. Peter Blouke	Governor	(Public Health and Human Services)	7/1/1995
Helena		new department	1/1/1997
Qualifications (if required): none specified			
Executive Board of Montana State University			
Mr. Dick Roehm	Governor	(Education)	7/5/1995
Bozeman		reappointment	4/15/1998
Qualifications (if required): public member			
Ms. Carol Willis	Governor	Tierney	7/5/1995
Billings			4/15/1998
Qualifications (if required): public member			
Executive Board of Montana Tech			
Mr. Truxton Fisher	Governor	reappointment	7/5/1995
Butte			4/15/1998
Qualifications (if required): public member			
Executive Board of Western Montana College			
Ms. Patricia J. Blade	Governor	(Education)	7/5/1995
Dillon		reappointed	4/15/1998
Qualifications (if required): public member			
Executive Board of the University of Montana			
Ms. Arlene Breum	Governor	(Education)	7/5/1995
Missoula		reappointment	4/15/1998
Qualifications (if required): public member			

BOARD AND COUNCIL APPOINTEES FROM JULY, 1995

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Game Farm Advisory Council			
Ms. Nancy Espy	Governor	new appointment	7/19/1995
Boves			7/19/1997
Qualifications (if required):	representing the Board of Livestock		
Dr. Anne Johnson	Governor	new appointment	7/19/1995
Malta			7/19/1997
Qualifications (if required):	licensed veterinarian		
Mr. Chris Marchion	Governor	new appointment	7/19/1995
Anaconda			7/19/1997
Qualifications (if required):	representing sportspersons of Montana		
Mr. David Simpson	Governor	new appointment	7/19/1995
Hardin			7/19/1997
Qualifications (if required):	representing the Fish, Wildlife and Parks Commission		
Mr. Ward Swanser	Governor	new appointment	7/19/1995
Billings			7/19/1997
Qualifications (if required):	representing game farm industry		
Historical Society Board of Trustees (Historical Society)			
Ms. Ana Brenden	Governor	reappointed	7/1/1995
Scobey			7/1/2000
Qualifications (if required):	public member		
Mr. John Burke	Governor	reappointed	7/1/1995
Butte			7/1/2000
Qualifications (if required):	public member		
Mr. Jack Hayne	Governor	reappointed	7/1/1995
Dupuyer			7/1/2000
Qualifications (if required):	public member		

BOARD AND COUNCIL APPOINTEES FROM JULY, 1995

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Independent Living Council (Public Health and Human Services)			
Mr. Roland F. Kennerly	Director	Collins	7/1/1995
Browning			0/0/0
Qualifications (if required): none specified			
Interdepartmental Coordinating Committee of Women (Governor)			
Ms. Lou Moore	Governor	not listed	7/10/1995
Helena			0/0/0
Qualifications (if required): none specified			
Juvenile Justice and Juvenile Mental Health Study Commission (Justice)			
Mr. Craig Anderson	Governor	new appointment	7/1/1995
Glendive			6/30/1997
Qualifications (if required): member of the Youth Justice Advisory Council			
Mr. Fred Anderson	Governor	new appointment	7/1/1995
Miles City			6/30/1997
Qualifications (if required): public member			
Ms. Robin Bullock	Governor	new appointment	7/1/1995
Butte			6/30/1997
Qualifications (if required): victim of a violent crime committed by a juvenile			
Mr. Derek Cabreera	Governor	new appointment	7/1/1995
Bozeman			6/30/1997
Qualifications (if required): former juvenile delinquent			
Mr. Larry Epstein	Governor	new appointment	7/1/1995
Cut Bank			6/30/1997
Qualifications (if required): county attorney			

BOARD AND COUNCIL APPOINTEES FROM JULY, 1995

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Juvenile Justice and Juvenile Mental Health Study Commission (Justice) cont.			
Mr. Mike Ferriter	Governor	new appointment	7/1/1995
Helena			6/30/1997
Qualifications (if required):	representing the Department of Corrections		
Ms. Janice Henderson	Governor	new appointment	7/1/1995
Qualifications (if required):	parent of youth being treated/supervised		6/30/1997
Judge John Larson	Governor	new appointment	7/1/1995
Missoula			6/30/1997
Qualifications (if required):	youth court judge		
Ms. Jani McCall	Governor	new appointment	7/1/1995
Billings			6/30/1997
Qualifications (if required):	member of a private agency providing youth treatment service		
Mr. Dick Meeker	Governor	new appointment	7/1/1995
Helena			6/30/1997
Qualifications (if required):	juvenile probation officer		
Ms. Lois Poulton	Governor	new appointment	7/1/1995
Winnett			6/30/1997
Qualifications (if required):	justice of the peace		
Ms. Candy Wimmer	Governor	new appointment	7/1/1995
Helena			6/30/1997
Qualifications (if required):	representing the Board of Crime Control		

BOARD AND COUNCIL APPOINTEES FROM JULY, 1995

Appointee	Appointed by	Succeeds	Appointment/End Date
Microbusiness Advisory Council (Commerce)			
Mr. Mark Dahl	Governor	Story	7/24/1995
Butte			6/30/1997
Qualifications (if required): banker			
Ms. Candace Eide	Governor	Peterson	7/24/1995
Glendive			6/30/1997
Qualifications (if required): representing low income groups			
Mr. Jim Hollenback	Governor	Harris	7/24/1995
West Superior			6/30/1997
Qualifications (if required): microbusiness owner			
Mr. Richard C. King	Governor	reappointed	7/24/1995
Havre			6/30/1997
Qualifications (if required): experience in revolving loan fund			
Mr. Duane Kurokawa	Governor	reappointed	7/24/1995
Wolf Point			6/30/1997
Qualifications (if required): banker			
Ms. Billie Lee	Governor	Smith	7/24/1995
Ronan			6/30/1997
Qualifications (if required): representing small cities			
Mr. Stephen Mehring	Governor	Young	7/24/1995
Great Falls			6/30/1997
Qualifications (if required): experience in revolving loan fund			
Montana Mint Committee (Agriculture)			
Mr. Darrel Sperry	Governor	Sonstelie	7/1/1995
Corvallis			7/1/1998
Qualifications (if required): mint grower			

BOARD AND COUNCIL APPOINTEES FROM JULY, 1995

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
State Electrical Board (Commerce)			
Mr. Charles Sweet	Governor	reappointed	7/1/1995
Kalispell			7/1/2000
Qualifications (if required):	licensed master electrician		
SummitNet Executive Council (Governor)			
Dr. Richard Crofts	Commissioner	not listed	7/1/1995
Helena			6/30/1996
Qualifications (if required):	none specified		
Mr. Gregg Groepper	Governor	not listed	7/20/1995
Helena			6/30/1997
Qualifications (if required):	none specified		
Tax Policy Task Force (Revenue)			
Mr. Dennis Burr	Governor	new appointment	7/14/1995
Helena			1/1/1997
Qualifications (if required):	public member		
Mr. Bill Chapman	Governor	new appointment	7/14/1995
Cut Bank			1/1/1997
Qualifications (if required):	public member		
Rep. Jerry L. Driscoll	Governor	new appointment	7/14/1995
Billings			1/1/1997
Qualifications (if required):	public member		
Ms. Susan Good	Governor	new appointment	7/14/1995
Great Falls			1/1/1997
Qualifications (if required):	public member		

BOARD AND COUNCIL APPOINTEES FROM JULY, 1995

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Tax Policy Task Force (Revenue) cont.			
Ms. Sue Olson	Governor	new appointment	7/14/1995 1/1/1997
Roundup Qualifications (if required): public member			
Mr. Jerry Pederson	Governor	new appointment	7/14/1995 1/1/1997
Butte Qualifications (if required): public member			
Mr. John Shepherd	Governor	new appointment	7/14/1995 1/1/1997
Portland Qualifications (if required): ex-officio member			
Ms. Delores Storm	Governor	new appointment	7/14/1995 1/1/1997
Forsyth Qualifications (if required): public member			
Ms. Candace Torgerson	Governor	new appointment	7/14/1995 1/1/1997
Helena Qualifications (if required): public member			
Teachers' Retirement Board (Administration)			
Mr. Joseph Cross	Governor	reappointed	7/1/1995 7/1/1999
Billings Qualifications (if required): teacher member			
Tourism Advisory Council (Commerce)			
Ms. Maureen Averill	Governor	reappointed	7/1/1995 7/1/1998
Bigfork Qualifications (if required): representing Glacier Country			

BOARD AND COUNCIL APPOINTEES FROM JULY, 1995

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Tourism Advisory Council (Commerce) cont.			
Ms. Betsy Baungart	Governor	Hemion	7/1/1995
Helena			7/1/1998
Qualifications (if required): representing Gold Country			
Ms. Diane Brandt	Governor	reappointed	7/1/1995
Glasgow			7/1/1998
Qualifications (if required): representing Missouri Country			
Ms. Edythe McCleary	Governor	reappointed	7/1/1995
Hardin			7/1/1998
Qualifications (if required): representing Custer Country			
Ms. Lisa Reid Perry	Governor	reappointed	7/1/1995
Shepherd			7/1/1998
Qualifications (if required): representing Custer Country			
Vocational Education Advisory Council (Governor)			
Ms. Elaine Forrest	Governor	Haagenstad	7/19/1995
Lame Deer			7/19/1997
Qualifications (if required): representing minorities			
Mr. Greg Harding	Governor	Simmons	7/19/1995
Pablo			7/19/1997
Qualifications (if required): representing small business			
Mr. Jon Jourdonnais	Governor	reappointed	7/19/1995
Great Falls			7/19/1997
Qualifications (if required): representing business			

BOARD AND COUNCIL APPOINTEES FROM JULY, 1995

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Vocational Education Advisory Council (Governor) cont.			
Mr. Roy Korkalo	Governor	Swysgood	7/19/1995
Livingston			7/19/1997
Qualifications (if required):	representing business		
Mr. Dennis Lerum	Governor	reappointed	7/19/1995
Missoula			7/19/1997
Qualifications (if required):	representing postsecondary vocational education		
Ms. Felicity McFerrin	Governor	Clark	7/19/1995
Helena			7/19/1997
Qualifications (if required):	representing labor		
Ms. Sandy Mordinger	Governor	Schaal	7/19/1995
Helena			7/19/1997
Qualifications (if required):	representing postsecondary vocational education		
Mr. Jesse O'Hara	Governor	reappointed	7/19/1995
Great Falls			7/19/1997
Qualifications (if required):	representing guidance		
Ms. Christie Pilcher	Governor	Dietz	7/19/1995
Helena			7/19/1997
Qualifications (if required):	representing secondary vocational education		
Mr. James Schultz	Governor	reappointed	7/19/1995
Lewistown			7/19/1997
Qualifications (if required):	representing agriculture		
Ms. Carol Thomas	Governor	Korb	7/19/1995
Great Falls			7/19/1997
Qualifications (if required):	representing postsecondary vocational education		

BOARD AND COUNCIL APPOINTEES FROM JULY, 1995

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Vocational Education Advisory Council	(Governor) cont.		
Ms. Avis Ann Tobin	Governor	reappointed	7/19/1995
Helena			7/19/1997
Qualifications (if required):	representing business		
Mr. Howard Williams	Governor	reappointed	7/19/1995
Helena			7/19/1997
Qualifications (if required):	representing labor		

VACANCIES ON BOARDS AND COUNCILS -- September 1, 1995 through November 30, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Alternative Health Care Board (Commerce)		
Dr. Michael Bergkamp, Helena	Governor	9/1/1995
Qualifications (if required): none listed		
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	Governor	9/1/1995
Qualifications (if required): being a medical doctor		
Dr. Lawrence McEvoy, Clancy		
Qualifications (if required): doctor of medicine	Governor	9/1/1995
Board of Outfitters (Commerce)		
Mr. Jack Billingsley, Glasgow	Governor	10/1/1995
Qualifications (if required): licensed outfitter from District 4		
Mr. R. Craig Madsen, Great Falls		
Qualifications (if required): licensed outfitter from District 3	Governor	10/1/1995
Capitol Restoration Commission (Administration)		
Mr. Ralph T. Anderson, Clancy	Governor	9/24/1995
Qualifications (if required): none specified		
Senator Chet Blaylock, Laurel		
Qualifications (if required): none specified	Governor	9/24/1995

VACANCIES ON BOARDS AND COUNCILS -- September 1, 1995 through November 30, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<u>Capitol Restoration Commission</u> (Administration) cont. Senator Robert Brown, Whitefish 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
<u>Child Support Advisory Council</u> (Social and Rehabilitation Services) Senator Sue Bartlett, Helena Qualifications (if required): none specified	Director	9/1/1995
Ms. Judy Browning, Helena Qualifications (if required): none specified	Director	9/1/1995
Mr. Ken Caruso, Huson Qualifications (if required): none specified	Director	9/1/1995

VACANCIES ON BOARDS AND COUNCILS -- September 1, 1995 through November 30, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Child Support Advisory Council (Social and Rehabilitation Services) cont.		
Ms. Rosemary Hertel, Helena	Director	9/1/1995
Qualifications (if required): none specified		
Ms. Susan Leaphart, Missoula	Director	9/1/1995
Qualifications (if required): none specified		
Mr. Randle Romney, Helena	Director	9/1/1995
Qualifications (if required): none specified		
Mr. James B. Wheelis, Kalispell	Director	9/1/1995
Qualifications (if required): none specified		
Mr. Tim Wise, Kalispell	Director	9/1/1995
Qualifications (if required): none specified		
Mr. Robert R. Zenker, Virginia City	Director	9/1/1995
Qualifications (if required): none specified		
Historic Preservation Review Board (Historical Society)		
Mr. Dale Herbert, 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		

VACANCIES ON BOARDS AND COUNCILS -- September 1, 1995 through November 30, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Independent Living Advisory Council (Social and Rehabilitation Services)		
Ms. Ellen Alweis, Billings	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		
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		
State Employee Benefits Advisory Council (Administration)		
Ms. Cathy Kendall, Helena	Director	9/1/1995
Qualifications (if required): none specified		
Mr. Scott Seacat, Helena	Director	9/1/1995
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- September 1, 1995 through November 30, 1995

Board/current position holder	Appointed by	Term end
State Employee Benefits Advisory Council (Administration) cont.		
Mr. Arthur N. Whitney, Helena Qualifications (if required): none specified	Director	9/1/1995
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	Director	9/1/1995
Ms. Debbie Gebase, Boulder 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	Director	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
Ms. Joanne Shydian, Helena Qualifications (if required): none specified	Director	9/1/1995

VACANCIES ON BOARDS AND COUNCILS -- September 1, 1995 through November 30, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Water Pollution Control Advisory Council (Health and Environmental Sciences)		
Mr. Donald L. Burnham, Helena	Governor	11/7/1995
Qualifications (if required): livestock feeder		
Mr. Gary Fritz, Helena	Governor	11/7/1995
Qualifications (if required): administrator of the water resources of DNRC		
Mr. Leo Giacometto, Helena	Governor	11/7/1995
Qualifications (if required): represents Department of Agriculture		
Mr. Pat Graham, Helena	Governor	11/7/1995
Qualifications (if required): represents Department of Fish, Wildlife & Parks		
Mr. Robert Dennis Greenlief, Butte	Governor	11/7/1995
Qualifications (if required): representative of labor		
Mr. Don Jenkins, Whitehall	Governor	11/7/1995
Qualifications (if required): representative of industry concerned with inorganic waste		
Ms. Barbara J. Morgan, Eureka	Governor	11/7/1995
Qualifications (if required): municipal government representative		
Mr. Douglas Parker, Missoula	Governor	11/7/1995
Qualifications (if required): representative of inorganic industry		
Mr. Doug Richardson, Billings	Governor	11/7/1995
Qualifications (if required): representative of industry concerned with organic waste		
Mr. Keith Ward, Missoula	Governor	11/7/1995
Qualifications (if required): representative of an organization concerned with fishing for sport		

VACANCIES ON BOARDS AND COUNCILS -- September 1, 1995 through November 30, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Water Pollution Control Advisory Council (Health and Environmental Sciences) cont. Mr. Robert E. Willems, Harlowton	Governor	11/7/1995
Qualifications (if required): supervisor of a soil and water conservation district		
Water and Wastewater Operators Advisory Council (Health and Environmental Sciences) Mr. Steven Ruhd, Conrad	Governor	10/16/1995
Qualifications (if required): water treatment operator		