MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 17

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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NOTICE SECTION

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

In the matter of the proposed) NOTICE OF PROPOSED
adoption of a rule relating to) ADOPTION
inactive vested members who)
purchase service in the retirement) (NO PUBLIC HEARING
systems administered by the Board) CONTEMPLATED)

TO: All Interested Persons.

1. On October 26, 1995, the Public Employees' Retirement Board proposes to adopt a rule relating to inactive vested members who purchase service in the retirement systems administered by the Board.

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

RULE I SERVICE PURCHASES BY INACTIVE VESTED MEMBERS

(1) An inactive vested member may purchase any additional service for which the member is eligible any time prior to retirement. The appropriate statutes and rules will be followed to calculate the cost to purchase the service except the inactive member's last termination date will be considered the purchase request date. Interest at 8% per year will be charged for each year, or portion of a year, from when the member last terminated to when the member either pays the cost of the purchase or begins installment payments.

AUTH: 19-2-403, MCA
IMP: 19-3-401, 19-5-301, 19-6-301, 19-7-301, 19-8-301, 19-9-301, 19-13-301, MCA

3. Adoption of the proposed rule is necessary to establish procedures for charging interest when inactive members purchase service and to set the rate of interest which will be charged. It is necessary to charge interest because the retirement systems must be maintained on a sound actuarial basis. If interest was not charged, the inactive member would be paying less than the actuarial cost and the retirement systems would be incurring an unfunded liability.

4. Interested persons may present their data, views, or arguments concerning the adoption of the proposed rule in writing no later than October 13, 1995 to:

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

5. A person directly affected by the adoption of the

proposed rule who wishes to express data, views and written or oral arguments at a public hearing must submit a written request for a hearing along with any written comments to the above address. A written request for hearing must be received no later than October 13, 1995.

6. If the agency receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the administrative code committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Those persons directly affected are the members of the retirement systems administered by the Board and 10 percent has been determined to be 3,105 persons based on June 1995 payroll reports for active members and the June 1994 GASB reports for inactive vested members.

By: _____
Terry Teichrow, President
Public Employees' Retirement Board

_____
Dal Smilie, Chief Legal Counsel and
Rule Reviewer

Certified to the Secretary of State on August 28, 1995.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the repeal of rule 2.5.118 and the amendment of rules 2.5.201, 2.5.202, 2.5.301, 2.5.401, 2.5.402, 2.5.603, 2.5.604, and 2.5.801 pertaining to state purchasing.	))))))	NOTICE OF PROPOSED REPEAL AND AMENDMENT OF RULES NO PUBLIC HEARING CONTEMPLATED

To: All Interested Persons

1. On November 1, 1995 the Department of Administration proposes to repeal rule 2.5.118 and amend rules 2.5.201, 2.5.202, 2.5.301, 2.5.401, 2.5.402, 2.5.603, 2.5.604, and 2.5.801 relating to state purchasing.

2. Rule 2.5.118, the rule proposed to be repealed, is on pages 2-132 through 2-134 of the Administrative Rules of Montana. (AUTH: Secs. 18-4-101 and 18-5-304, MCA; IMP, Title 18, chapter 5, part 3, MCA.)

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

2.5.201 DEFINITIONS In these rules, words and terms defined in Title 18, chapter 4, MCA, shall have the same meaning as in the statutes and, unless the context clearly requires otherwise or a different meaning is prescribed for a particular section, the following definitions apply:

(1)-(3) Remain the same.

~~(4) "Bidders list" means a list maintained by the division listing the names and addresses of suppliers of various goods and services from whom bids or proposals can be solicited.~~

(5)-(17) Remain the same, but are renumbered (4)-(16).

~~(18)~~ (17) "Office supply" means an item included under the office supply commodity class codes (#610, 615 and 620) maintained by the division. In the Central Stores Product Catalog, the inventory codes for these supplies are all items with prefixes beginning with the following numbers: 7001 through 7704, 7802 through 7904, 7907 and 9513. ~~Specifically these class codes include:~~

~~(a) Class code #610 carbon paper and ribbons of all types.~~

~~(b) Class code #615 adder and calculator rolls, adhesives, binders, binder sheets, blotters, desk pads, office books, box files, calendar pads, stands, chair mats, clipboards, typewriter correction materials, cleaners, brief covers and etc., desk accessories, file cards, cases, dividers, labels, folders and guides, index tabs, labels, letter openers, trays, list finders, pads, tablets, office machine pads, paper clips, fasteners, rubber bands, stamps, rulers, sheet protectors, staples, stock form copy sets, speed letters, tacks, tags, tape dispensers,

~~visible record flags, folders, hinges, signals strips and tabs.~~

~~(c) Class code #620 erasers, inks, leads, pens, and pencils.~~

(19)-(32) Remain the same, but are renumbered (18)-(31).

(32) "Vendors List" means a list maintained by the division listing the names and addresses of suppliers of various goods and services from whom bids or proposals can be solicited.

(AUTH: Sec. 18-1-114 and 18-4-221, MCA; IMP, Sec. 18-4-221, MCA.)

2.5.202 DEPARTMENT OF ADMINISTRATION RESPONSIBILITIES

(1) Remains the same.

(2) The department's procurement and printing division will establish a ~~bidders~~ vendors list, determine eligibility for residence preference of vendors for purchases made under Title 18, chapter 4, MCA, investigate complaints against vendors, and remove vendors from the state list as described in ARM 2.5.401, 2.5.402, ~~and~~ 2.5.403~~,~~, and 2.5.407.

(3)-(7) Remain the same.

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

2.5.301 DELEGATION OF PURCHASING AUTHORITY

(1)-(2) Remain the same.

(3) Unless specifically addressed in a delegation agreement, agencies must buy controlled items through the division except office supply items (as defined in ARM 2.5.201~~(17)~~) supplied by central stores or purchased through central stores term contracts. These items may be purchased directly from vendors if the vendor's price is a publicly advertised price, established catalog price, or discount price offered to the purchasing agency and is less than the price available from the central stores program or a central stores term contract and the specifications, terms, conditions, and delivery of these items meet or exceed the central stores program.

(4) Delegation is not necessary for the following purchases: salaries; fees for consulting services described in 18-8-101, MCA, et seq. or those services exempted by 18-8-103, MCA; travel and per diem; insurance; retirement and social security payments; freight; landfill charges; supplies or services whose prices are regulated by the public service commission or other governmental authority; training; training and conference space rental and catering; and fresh fruits and vegetables. (AUTH: Sec. 18-4-221, MCA; IMP, Sec. 18-4-221, 18-4-222 and 18-4-302, MCA.)

2.5.401 ~~BIDDERS~~ VENDORS LIST (1) The procurement and printing division maintains a ~~bidders~~ vendors list for all supply and service commodities. Names and addresses on ~~bidders~~ the vendors lists shall be available for public inspection but these lists shall not be used for private promotional, commercial or market purposes.

(2) To get on the ~~bidders~~ vendors list, a vendor must submit an affidavit on a form supplied by the division completed

as appropriate, including information sufficient to identify proper commodity(ies) on which the vendor wishes to bid. Affidavit forms are available from the procurement and printing division. (AUTH: Sec. 18-4-221, MCA; IMP, Sec. 18-4-221, MCA.)

2.5.402 SUSPENSION OR REMOVAL FROM ~~BIDDERS~~ VENDORS LIST

(1) The division has the authority to suspend or remove a vendor from the ~~bidders~~ vendors list if the division determines the vendor:

(a) has falsely submitted an affidavit for preference; or

(b) is not a responsible or responsive ~~bidder~~ vendor as defined in 18-4-301, MCA~~.~~ and ARM 2.5.407.

(2) Suspension from ~~bidders~~ vendors list:

(a) The division may suspend a vendor from the ~~bidders~~ vendors list upon written determination by the division that probable cause exists for suspension under 18-1-113 and 18-4-241, MCA. A notice of suspension, including a copy of the determination, shall be sent to the affected vendor. The notice must state that:

(i)-(iii) Remain the same.

(b) Remains the same.

(3) Removal from ~~bidders~~ vendors list:

(a) For cause:

(i) the division may remove a vendor from the ~~bidders~~ vendors list upon written determination by the division that cause exists under 18-1-113 and 18-4-241, MCA.

(ii)-(iii) Remain the same.

(b) For failure to respond:

(i) the division may remove a vendor from the ~~bidders~~ vendors list for failure to respond to invitation for bids or proposals on three (3) consecutive solicitations of those items. Prospective bidders and offerers may be reinstated on such lists as described in ARM 2.5.401.

(4) The department shall maintain a list of vendors removed or suspended from the ~~bidders~~ vendors list. The list shall be available to all state agencies and the public upon request. (AUTH: Sec. 18-4-221, MCA; IMP, Sec. 18-4-241 and 18-4-308, MCA.)

2.5.603 SMALL PURCHASES OF SUPPLIES AND SERVICES

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

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

(3)-(4) Text remains the same but are renumbered (2) and (3). (AUTH: Sec. 18-4-221 MCA; IMP, Sec. 18-4-305, MCA.)

2.5.604 SOLE SOURCE PROCUREMENT (1) The provisions of this rule apply to all sole source procurements of ~~$2,000~~ $5,000 or greater unless exigency procurements described in ARM 2.5.605 are necessary.

(2) Remains the same.

(3) ~~For purchases of $5,000 or less, the determination as to whether a procurement shall be made as a sole source may be made by the agency.~~ For purchases greater than $5,000, the determination as to whether a procurement shall be made as a sole source shall be made by the division, unless specifically authorized in a written agency delegation agreement. ~~The determination and the basis therefore must be in writing.~~ In cases of reasonable doubt, competition should be solicited. A request by a state agency to the division that a procurement be restricted to one vendor must be accompanied by a written justification.

(4) Remains the same.

(5) For the purpose of complying with 18-4-306, MCA, a record of sole source procurements greater than $5,000 shall be maintained by the procuring agency that lists:

(a)-(d) Remain the same.

(6) Remains the same. (AUTH: Sec. 18-4-221, MCA; IMP, Sec. 18-4-306, MCA.)

2.5.801 ADOPTION OF STATE PLAN OF OPERATION - FEDERAL SURPLUS PROPERTY (1) As authorized by Section 18-5-202, MCA, the department of administration (hereinafter department) hereby adopts and incorporates by reference the "State of Montana, Federal Surplus Property Plan of Operation in Compliance with 41 FR 101-44 and Public Law 94-519" (referred herein as the State Plan of Operation) promulgated by the department and filed with the General Services Administration of the United States government on July 1, 1977, and as revised March 19, 1984, pursuant to section 201(j)(4) of the Federal Property and Administrative Services Act of 1949 (40 USC 484). The state plan of operation establishes the operating procedure and practices to be followed by the department for the fair and equitable distribution of federal surplus personal property to those units of state and local government and certain nonprofit, tax-exempt, educational and health institutions as are determined to be eligible to receive such surplus personal property under section 203(j) of the act. Copies of the state plan of operation may be obtained from the Department of Administration, ~~Purchasing~~ Procurement and Printing Division, P.O. Box 200137, ~~Room 165, Mitchell Building,~~ Helena, Montana 59620~~-~~-0137. (AUTH: Sec. 28-6-303, MCA; IMP, Sec. 18-5-202, MCA).

4. We propose to repeal Rule 2.5.118 in an effort to comply with HJR 5 concerning the reduction in the number of administrative rules. We find ARM 2.5.118 concerning the Small Business Act to be administratively unnecessary to the operation of state purchasing. This section of rules is never utilized in a procurement, it unnecessarily repeats statute, and in fact, it

erroneously interprets statute.

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

ARM 2.5.201, 2.5.202, 2.5.401, and 2.5.402 are amended to change the term "bidders list" to "vendors list." This language change will make this term consistent throughout the procurement rules. "Vendor" is a broader term which includes both "bidder" and "offerer" and is more commonly used by this department.

ARM 2.5.201 is also amended to clear up a confusion over which office supply items may be purchased directly by a state agency. "Class codes" information is useful for the vendor community; "catalog prefixes" are useful to the agencies. In addition, the exhaustive list of office supplies is deleted as unnecessary and outdated.

ARM 2.5.301 is amended to state that agencies do not need to come through the Procurement and Printing Division for the procurement of training, or training and conference space rental and catering. In most instances, the specific training or conference center required by the agency is a sole-source situation. Coming through this division or completing the documentation for sole source is an unnecessary burden for the agencies, and does not improve the procurement process.

ARM 2.5.603 is amended to remove the requirements that: 1) an agency seek three phone or written quotes for purchases between $2,000-$5,000; and 2) that agencies use the division's vendors list in obtaining their quotes. This amendment makes it possible for the agencies to utilize their own internal procurement procedures for all non-controlled purchases under $5000, formally defined in rule as "small purchases."

ARM 2.5.604 is amended to limit the requirements for documenting sole source purchases to those over $5,000. This is part of a move on the part of this department to permit agencies more discretion in how they manage their "small purchases" as defined in ARM 2.5.603.

ARM 2.5.801 is amended to update an address and division name.

6. Interested persons may submit their data, views, or arguments concerning the proposed repeal or amendments to Marvin Eicholtz, Administrator, Procurement and Printing Division, PO 200135, Mitchell Building, Helena, Montana, 59620-0135 no later than October 12, 1995.

7. If a person who is directly affected by the proposed amendments or repeal of rules wishes to express his data, views, and arguments orally or in writing at a public hearing, he must make a written request for hearing and submit this request along with any written comments to Marvin Eicholtz, Administrator, Procurement and Printing Division, Department of Administration, PO 200135, Mitchell Building, Helena, Montana, 59620-0135. A written request for hearing must be received no later than October 12, 1995.

8. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less,

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

9. These rules will be effective November 1, 1995.

Dal Smilie, Chief Legal Counsel
Rule Reviewer

Lois Menzies, Director
Department of Administration

Certified to the Secretary of State on September 1, 1995 .

BEFORE THE STATE AUDITOR
AND COMMISSIONER OF INSURANCE
OF THE STATE OF MONTANA

In the matter of the proposed adoption of new rules I through IV for long term care	)))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION CONCERNING STANDARDS FOR MARKETING AND APPROPRIATE SALE CRITERIA AND NONFORFEITURE REQUIREMENTS AND FORMS

TO: All Interested Persons.

1. On October 5, 1995, at 1:30 p.m., a public hearing will be held in room 160 of the Mitchell Building, 126 N. Sanders, Helena, Montana, to consider the adoption of new rules I through IV.

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

Rule I STANDARDS FOR MARKETING (1) Every insurer, health care service plan or other entity marketing long-term care insurance coverage in this state, directly or through its producers, shall:

(a) Establish marketing procedures to assure that any comparison of policies by its agents or other producers will be fair and accurate;

(b) Establish marketing procedures to assure excessive insurance is not sold or issued;

(c) Display prominently by type, stamp or other appropriate means, on the first page of the outline of coverage and policy the following:

> "Notice to buyer: This policy may not cover all of the costs associated with long-term care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations."

(d) Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for long-term care insurance already has accident and sickness or long-term care insurance and the types and amounts of any such insurance;

(e) Establish auditable procedures for verifying compliance with this rule;

(f) If the state in which the policy or certificate is to be delivered or issued for delivery has a senior insurance counseling program approved by the Commissioner, the insurer shall, at solicitation, provide written notice to the prospective policyholder and certificateholder that such a

program is available and the name, address and telephone number of the program; and

(g) For long-term care health insurance policies and certificates, use the terms "noncancelable" or "level premium" only when the insured has the right to continue the long-term care insurance in force by the timely payment of premiums during which period the insurer has no right to unilaterally make any change in any provision of the insurance or in the premium rate.

(2) In addition to the practices prohibited in Chapter 18, Title 33, Montana Code Annotated, the following acts and practices are prohibited:

(a) Twisting or knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on or convert any insurance policy or to take out a policy of insurance with another insurer;

(b) High pressure tactics such as employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance; and

(c) Cold lead advertising such as making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.

(3) (a) With respect to the obligations set forth in this subsection, the primary responsibility of an association, as defined in Section 33-22-1107, MCA, when endorsing or selling long-term care insurance shall be to educate its members concerning long-term care issues in general so that its members can make informed decisions. Associations shall provide objective information regarding long-term care insurance policies or certificates endorsed or sold by such associations to ensure that members of such associations receive a balanced and complete explanation of the features in the policies or certificates that are being endorsed or sold.

(b) The insurer shall file with the insurance department the following material:

(i) the policy and certificate;

(ii) a corresponding outline of coverage; and

(iii) all advertisements requested by the insurance department.

(c) The association shall disclose in any long-term care insurance solicitation:

(i) the specific nature and amount of the compensation arrangements (including all fees, commissions, administrative fees and other forms of financial support) that the association receives from endorsement or sale of the policy or certificate to its members; and

(ii) a brief description of the process under which such policies and the insurer issuing such policies were selected.

(d) If the association and the insurer have interlocking directorates or trustee arrangements, the association shall disclose such fact to its members.

(e) The board of directors of associations selling or endorsing long-term care insurance policies or certificates shall review and approve such insurance policies as well as the compensation arrangements made with the insurer.

(f) The association shall also:

(i) at the time of the association's decision to endorse, engage the services of a person with expertise in long-term care insurance not affiliated with the insurer to conduct an examination of the policies, including its benefits, features, and rates and update such examination thereafter in the event of material change;

(ii) actively monitor the marketing efforts of the insurer and its agents; and

(iii) review and approve all marketing materials or other insurance communications used to promote sales or sent to members regarding such policies or certificates.

(g) No group long-term care insurance policy or certificate may be issued to an association unless the insurer files with the state insurance department the information required in this subsection.

(h) The insurer shall not issue a long-term care policy or certificate to an association or continue to market such a policy or certificate unless the insurer certifies annually that the association has complied with the requirements set forth in this subsection.

(i) Failure to comply with the filing and certification requirements of this rule constitutes an unfair trade practice in violation of Chapter 18 of Title 33, Montana Code Annotated.

AUTH: Sections 33-1-313 and 33-22-1121, MCA
IMP: Sections 33-22-1101 through 33-22-1121, MCA

Rule II APPROPRIATE SALE CRITERIA (1) This rule shall not apply to life insurance policies that accelerate benefits for long-term care.

(2) Every insurer, health care service plan or other entity marketing long-term care insurance (the "issuer") shall:

(a) develop and use appropriate sale criteria standards to determine whether the purchase or replacement of long-term care insurance is appropriate for the needs of the applicant;

(b) train its agents in the use of its appropriate sale criteria standards; and

(c) maintain a copy of its appropriate sale criteria standards and make them available for inspection upon request by the commissioner.

(3) (a) To determine whether the applicant meets the standards developed by the issuer, the agent and issuer shall develop procedures that take the following into consideration:

(i) the ability to pay for the proposed coverage and other pertinent financial information related to the purchase of the coverage;

(ii) the applicant's goals or needs with respect to long-term care and the advantages and disadvantages of insurance to meet these goals or needs; and

(iii) the values, benefits and costs of the applicant's existing insurance, if any, when compared to the values, benefits and costs of the recommended purchase or replacement.

(b) The issuer, and where an agent is involved, the agent shall make reasonable efforts to obtain the information set out in (3)(a) above. The efforts shall include presentation to the applicant, at or prior to application, the "Long-Term Care Insurance Personal Worksheet." The personal worksheet used by the issuer shall contain, at a minimum, the information in the format contained in Form A, in not less than twelve (12) point type. The issuer may request the applicant to provide additional information to comply with its appropriate sale criteria standards. A copy of the issuer's personal worksheet shall be filed with the commissioner.

(c) A completed personal worksheet shall be returned to the issuer prior to the issuer's consideration of the applicant for coverage, except the personal worksheet need not be returned for sales of employer group long-term care insurance to employees and their spouses.

(d) The sale or dissemination outside the company or agency by the issuer or agent of information obtained through the personal worksheet in Form A is prohibited.

(4) The issuer shall use the appropriate sale criteria standards it has developed pursuant to this rule in determining whether issuing long-term care insurance coverage to an applicant is appropriate.

(5) Agents shall use the appropriate sale criteria standards developed by the issuer in marketing long-term care insurance.

(6) At the same time as the personal worksheet is provided to the applicant, the disclosure form entitled "Things You Should Know Before You Buy Long-Term Care Insurance" shall be provided. The form shall be in the format contained in Form B, in not less than twelve (12) point type.

(7) If the issuer determines that the applicant does not meet its financial appropriate sale criteria standards, or if the applicant has declined to provide the information, the issuer may reject the application. In the alternative, the issuer shall send the applicant a letter similar to Form C. However, if the applicant has declined to provide financial information, the issuer may use some other method to verify the applicant's intent. Either the applicant's returned letter or a record of the alternative method of verification shall be made part of the applicant's file.

(8) The issuer shall report annually to the commissioner the total number of applications received from residents of this state, the number of those who declined to provide information on the personal worksheet, the number of applicants who did not meet the appropriate sale criteria standards, and the number of those who chose to confirm after receiving a appropriate sale criteria letter.

AUTH: Sections 33-1-313 and 33-22-1121, MCA
IMP: Sections 33-22-1101 through 33-22-1121, MCA

Rule III NONFORFEITURE BENEFIT REQUIREMENT (1) No policy or certificate may be delivered or issued for delivery in this state unless the policy or certificate provides for nonforfeiture benefits to the defaulting or lapsing policyholder or certificate holder.

(a) For purposes of this rule, attained age rating is defined as a schedule of premiums starting from the issue date which increases with increasing age at least one percent per year prior to age fifty (50), and at least three percent (3%) per year beyond age fifty (50).

(b) For purposes of this rule, the nonforfeiture benefit shall be a shortened benefit period providing paid-up long-term care insurance coverage after lapse. The same benefits (amounts and frequency in effect at the time of lapse but not increased thereafter) will be payable for a qualifying claim, but the lifetime maximum dollars or days of benefits shall be determined as specified in (1)(c).

(c) The standard nonforfeiture credit will be equal to 100 percent of the sum of all premiums paid, including the premiums paid prior to any changes in benefits. The insurer may offer additional shortened benefit period options, as long as the benefits for each duration equal or exceed the standard nonforfeiture credit for that duration. However, the minimum nonforfeiture credit shall not be less than thirty (30) times the daily nursing home benefit at the time of lapse. In either event, the calculation of the nonforfeiture credit is subject to the limitation of (1)(b).

(d) No policy or certificate shall begin a nonforfeiture benefit later than the end of the third year following the policy or certificate issue date except that for a policy or certificate with attained age rating, the nonforfeiture benefit shall begin on the earlier of:

(i) the end of the tenth year following the policy or certificate issue date; or

(ii) the end of the second year following the date the policy or certificate is no longer subject to attained age rating.

(e) Nonforfeiture credits may be used for all care and services qualifying for benefits under the terms of the policy or certificate, up to the limits specified in the policy or certificate.

(2) All benefits paid by the insurer while the policy or certificate is in premium paying status and in the paid up

status will not exceed the maximum benefits which would have been payable if the policy or certificate had remained in premium paying status.

(3) There shall be no difference in the minimum nonforfeiture benefits as required under this rule for group and individual policies.

(4) The requirements set forth in this rule shall become effective twelve (12) months after adoption of this provision and shall apply as follows:

(a) except as provided in (4)(b), the provisions of this rule apply to any long-term care policy issued in this state on or after the effective date of this amended regulation; and

(b) for certificates issued on or after the effective date of this rule, under a group long-term care insurance policy as defined in Section 33-22-1107 MCA, which policy was in force at the time this rule became effective, the provisions of this rule shall not apply.

(5) Premiums charged for a policy or certificate containing nonforfeiture benefits shall be subject to the loss ratio requirements of 6.6.3112 ARM treating the policy as a whole.

(6) This rule does not apply to life insurance policies or riders containing accelerated long-term care benefits.

AUTH: Sections 33-1-313 and 33-22-1121, MCA
IMP: Sections 33-22-1101 through 33-22-1121, MCA

RULE IV ADOPTION OF FORMS (1) The forms hereinafter listed are hereby adopted and made a part of these rules for all purposes, and the same must be used as herein directed in giving notice. Copies of the forms may be obtained from the State Auditor upon request at Room 270 Mitchell Building, P.O. 4009, Helena, Montana 59604.

(a) Form A Long-Term Care Insurance Personal Worksheet

(b) Form B Things You Should Know Before You Buy Long-Term Care Insurance

(c) Form C Long-Term Care Insurance Appropriate Sale Criteria Letter

AUTH: Sections 33-1-313 and 33-22-1121, MCA
IMP: Sections 33-22-1101 through 33-22-1121, MCA

3. Adoption of new rules I through IV are necessary because of the passage of Senate Bill 329 which revised the provisions of long-term health care insurance by prohibiting the issuance of a refund to a person who is not the owner of the policy; requiring appropriate sale criteria to accompany each application for long-term care policies; and allowing the commissioner of insurance to adopt rules pertaining to nonforfeiture benefits and appropriate sale criteria.

4. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Gary Spaeth, P.O. Box 4009, Helena, MT 59604-4009, and must be received no later than October 12, 1995.

5. Gary Spaeth has been designated to preside over and conduct the hearing.

By: _____
Frank G. Cote
Deputy Insurance Commissioner

_____
Gary L. Spaeth
Rules Reviewer

Certified to the Secretary of State this 1st day of September, 1995.

BEFORE THE BOARD OF MEDICAL EXAMINERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment, repeal and adoption of rules pertaining to physician, acupuncturist, emergency medical technician, physician assistant-certified, podiatrist, and nutritionist licensure	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT, REPEAL AND ADOPTION OF RULES PERTAINING TO PHYSICIANS, ACUPUNCTURISTS, EMERGENCY MEDICAL TECHNICIANS, PHYSICIAN ASSISTANTS-CERTIFIED, PODIATRISTS AND NUTRITIONISTS

TO: All Interested Persons:

1. On October 5, 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 the Board of Medical Examiners.

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

"8.28.401 BOARD MEETINGS (1) The president of the board elected in accordance with the provisions of ~~section~~ 37-3-201, MCA, shall preside over all proceedings before the board. In ~~his~~ the president's absence, the vice-president shall preside. In the absence of both, the senior member present shall preside."

Auth: Sec. 37-3-203, MCA; IMP, Sec. 37-3-204, MCA

"8.28.402 DEFINITIONS (1) through (2)(b) will remain the same.

(3) The term "secretary" used herein means the executive secretary of the Montana state board of medical examiners.

(4) will remain the same.

(5) "Applicant" means a person who has applied for a license ~~or certificate~~ to practice medicine in the state of Montana, or a person who has applied to take a licensing examination.

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

(8) "Foreign medical graduate" means a graduate of a medical school:

(a) not located in a state or territory of the United States, or the District of Columbia; and

(b) that is listed in the World Health Directory of Medical Schools."

Auth: Sec. 37-3-203, MCA; IMP, Sec. 37-3-102, 37-3-201, 37-3-305, 37-3-306, 37-3-307, 37-3-325, 37-3-326, MCA

"8.28.403A GRADUATE TRAINING REQUIREMENTS FOR FOREIGN MEDICAL GRADUATES (1) A license will not be granted to a foreign medical graduate ~~of any medical school that has not been approved by the council on medical education of the American medical association or its equivalent council of the American osteopathic association,~~ unless such graduate has had 3 years of post-graduate training education in a post-graduate institution that has been approved by ~~one of these councils~~ the council on medical education of the American medical association or the American osteopathic association or successors."

Auth: Sec. 37-3-203, MCA, IMP, Sec. 37-3-305, MCA

"8.28.404 INTERNSHIP (1) An ~~approved~~ internship not approved as required by ~~section~~ 37-3-102(~~3~~1), MCA, may be approved upon investigation by the board ~~by~~ through its executive secretary or some other regularly licensed physician or ~~in~~ any other ~~manner to be determined by~~ representative which the board may choose, at the expense of the applicant requesting approval of the internship."

Auth: Sec. 37-3-203, MCA; IMP, Sec. 37-3-102, MCA

"8.28.405 RESIDENCY (1) A ~~R~~residency which has not been approved as required by ~~section~~ 37-3-102(4~~2~~), MCA, may be approved ~~by an~~ upon investigation conducted by the board, through its executive secretary or any other representative which the board may choose, at the expense of the applicant."

Auth: Sec. 37-3-203, MCA; IMP, Sec. 37-3-102, MCA

"8.28.406 E.C.F.M.G. REQUIREMENTS (1) will remain the same.

(2) ~~The E.C.F.M.G. examination may be waived if the federal licensing examination (FLEX) is successfully passed. The applicant may then apply to E.C.F.M.G. and if qualified, under E.C.F.M.G. requirements, may receive a certificate. If, however, the E.C.F.M.G. examination is taken, a grade of 75 is required~~ Except as set forth in (1), a foreign medical graduate must pass the examination of the educational council on foreign medical graduates with a score of 75 or more."

Auth: Sec. 37-3-203, MCA; IMP, Sec. 37-3-305, 37-3-306, 37-3-307, 37-3-311, MCA

"8.28.407 FIFTH PATHWAY PROGRAM (1) The fifth pathway program ~~as approved by the American medical association council on medical education may be accepted by the board, if the applicant is a U.S. citizen who has completed 4 years of didactic instruction in a foreign medical school and has not met certain clinical or practice requirements of the school or government. Suitable evidence must be provided to the board of the fifth pathway program. This program will be accepted in lieu of the E.C.F.M.G. for U.S. citizens only~~ is one year of supervised clinical education or training in an educational center approved for that purpose by the American medical association or the American osteopathic association or successors.

(2) ~~Applicants who have graduated from medical school in the Republic of Mexico, and who have passed the E.C.F.M.G. and have not qualified through the fifth pathway program, shall be required to have taken at least 1 year's additional training in an A.M.A. approved hospital.~~ The fifth pathway program, as approved by the American medical association accreditation council for graduate medical education may be accepted by the board if the applicant:

(a) is a United States citizen, and

(b) has completed, in an accredited college or university in the United States, undergraduate premedical education of the quality acceptable for matriculation in an LCME-accredited U.S. medical school, and

(c) has completed four years of didactic instruction at a medical school outside the U.S. or Canada that is listed in the World Health Directory of Medical Schools, and

(d) has completed all of the formal requirements of the foreign medical school except internship, social service, or certain clinical or practice requirements of the school or government, and

(e) has attained a score satisfactory to the sponsoring medical school on a screening examination, and

(f) has passed the Foreign Medical Graduate Examination in the Medical Sciences, or parts I and II of the examination of the National board of medical examiners ("NBME"), or Component I of the Federation Licensing Examination ("FLEX"), or Steps 1 and 2 of the United States Medical Licensing Examination ("USMLE").

(3) Suitable evidence must be provided to the board of the fifth pathway program."

Auth: Sec. 37-3-203, MCA; IMP, Sec. 37-3-102, 37-3-306, 37-3-307, 37-3-309, MCA

"8.28.408 RECIPROCITY (1) An ~~A~~applicant~~s who are applying~~ for licensure by reciprocity or endorsement must have successfully passed an examination deemed essentially equivalent to the examination given by the board ~~to those applicants being licensed by examination~~. The examination given by the Licentiate Medical County of Canada is deemed essentially equivalent to that given by the board.

(2) An ~~A~~applicants for licensure by reciprocity may be required, in the discretion of the board, to take an examination ~~in the discretion of the board~~ after the board has examined the application, ~~and~~ the diploma of the applicant and all other information ~~surrounding the same~~ received.

(3) will remain the same.

(4) Licensure by ~~R~~reciprocity is in the discretion of the board, ~~on any applicant for reciprocity~~ after a full examination of all documents ~~furnished the board~~ received."

Auth: Sec. 37-3-203, MCA; IMP, Sec. 37-3-306, 37-3-307, 37-3-311, MCA

"8.28.409 APPLICATIONS FOR LICENSURE (1) will remain the same.

(2) The board ~~reserves the right under the provisions of section 37-3-309, MCA to~~ may make an independent investigation ~~on~~ of any applicant to determine ~~that he~~ whether the applicant has the qualifications necessary to be licensed, and whether ~~he~~ the applicant has previously been guilty of any offenses which would constitute unprofessional conduct. ~~and in addition~~ The board may require the applicant to release any information or records pertinent to the board's ~~information~~ investigation. The board shall require the applicant to furnish information on all states in which ~~he~~ the applicant has previously been licensed. ~~, and t~~The applicant must furnish references upon request by the board from ~~any~~ each community in which ~~he~~ the applicant has ~~previously~~ practiced.

(3) will remain the ~~s~~same."

Auth: Sec. 37-3-203, MCA; IMP, Sec. 37-3-101, 37-3-202, 37-3-309, MCA

"8.28.410 REFUSAL OF LICENSE (1) Whenever the board ~~shall have refused~~ refuses to grant a ~~certificate~~ license to an applicant for any reason, as provided in ~~section~~ 37-3-321, MCA, the board shall ~~cause~~ give at least ~~30~~ 20 days' ~~notification~~ notice of its action to the applicant at ~~his~~ the applicant's last known address. The notice must advise the applicant of a time and place ~~to~~ the applicant may appear before the board ~~if he desires~~ to be heard and to present evidence ~~or~~ and argument."

Auth: Sec. 37-3-203, MCA; IMP, Sec. 37-3-321, MCA

"8.28.411 REVOCATION OR SUSPENSION PROCEEDINGS (1) In those cases brought pursuant to the provisions of ~~section~~ 37-3-323, MCA, such proceedings may be initiated by any person or a member of the board by the filing of a written, signed complaint in which the charge or charges against the ~~person whose certificate is sought to be revoked or suspended~~ licensee ~~must be specifically~~ are stated separately and with particularity ~~and in which complaint each charge must be separately stated~~. Such a complaint may be delivered to and filed with the board by any person of legal age or may be delivered to and filed with the board by the executive secretary of the board or by the attorney for the board. ~~In either case, the complaint must be signed and verified as hereinbefore provided.~~"

Auth: Sec. 37-3-203, MCA; IMP, Sec. 37-3-323, MCA

"8.28.412 REINSTATEMENT (1) The board will decide reinstatement on an individual basis, upon the facts in the case."

Auth: Sec. 37-3-203, MCA; IMP, Sec. 37-3-324, MCA

"8.28.414 TEMPORARY CERTIFICATE (1) Temporary ~~certificates~~ licenses are entirely within the discretion of the board. The application~~s~~, examination and information furnished by the applicant will be carefully scrutinized ~~along with the type of examination taken by the applicant~~ to determine whether the applicant is qualified for a temporary ~~certificate~~ license.

(2) ~~All~~ temporary ~~certificates~~ license must be reviewed and signed by one member of the board, ~~and t~~The applicant for a temporary license must be interviewed by one of the board members. A ~~T~~temporary ~~certificates are~~ license is valid until the next board meeting, at which time the board may extend it for a period up to one year.

Auth: Sec. 37-3-203, MCA; IMP, Sec. 37-3-304, 37-3-307, MCA

"8.28.416 EXAMINATION ~~(1) The examination will be the federal licensing examination (FLEX), consisting of components I and II.~~

~~(2) All applicants for licensure to practice medicine and surgery by the FLEX examination shall pay an examination fee.~~

~~(3) Applicants seeking licensure on the basis of the FLEX examination must have attained a score of 75 or more on each component of the examination.~~

~~(4) Eligibility requirements are:~~

~~(a) Component I shall be given to candidates after graduation from medical school, providing they have successfully completed the FMGEMS and/or have been certified by the E.C.F.M.G.~~

~~(b) Component II shall be given to candidates who have passed component I and who have completed one year of post-graduate training in accordance with section 37-3-102 (3) and (4), MCA.~~

~~(c) Component I and II may be given to a candidate in the same sitting if the candidate meets all the requirements as set forth in (a) and (b).~~

~~(5) The following procedures will be used for retakes of the FLEX examination:~~

~~(a) If the candidate takes component I and component II in separate sittings, component I must be passed before component II may be taken.~~

~~(b) If both components are taken at once and one of the two is failed, only the component failed must be retaken.~~

~~(c) If an applicant fails to meet the minimum grade requirements in his first examination, he may be re-examined not more than 2 additional times on each of the component parts of the examination.~~

~~(d) Both components must be passed within a seven year period in order to be eligible for licensure.~~

~~(e) Anyone who has previously taken the examination as previously required by the board and is eligible for a retake must take the FLEX as set forth above.~~

(1) The board will administer USMLE Step III to applicants otherwise qualified for licensure in Montana.

(2) An applicant for USMLE Step III shall pay the examination fee listed in ARM 8.28.420.

(3) Eligibility requirements for USMLE Step III are:

(a) an M.D. or D.O. degree, and

(b) completion, or near completion, of one year of postgraduate training in a program of graduate medical education accredited by the accreditation council for graduate medical education or the American osteopathic association, and

(c) a score of 75 or more on one of the following:

(i) National Board of Medical Examiners Examination ("NBME") Parts I and II, taken before January 1, 2000; or

(ii) Federation Licensing Examination ("FLEX") Component I, taken before January 1, 2000; or

(iii) USMLE Steps I and II, and

(d) for foreign medical graduates not eligible for the Fifth Pathway, a score of 75 or more on ECFMG.

(4) USMLE Step III must be taken within seven years of the applicant's first examination under (3)(c) above.

(5) If an applicant fails to obtain a score or 75 or more in the first attempt at USMLE Step III, the applicant may be re-examined no more than two additional times.

(6) Prior to January 1, 2000, the board will accept the following combination of examinations passed with a score of 75 or more in satisfaction of the examination requirement for licensure:

(a) NBME Parts I, II and III; or

(b) NBME Part I or USMLE Step 1, plus NBME Part II or USMLE Step 2, plus NBME Part III or USMLE Step 3; or

(c) FLEX Components 1 and 2; or

(d) FLEX Component 1 plus USMLE Step 3; or

(e) NBME Part I or USMLE Step 1, plus NBME Part II or USMLE Step 2, plus FLEX Component 2.

(7) After January 1, 2000, the board will accept only USMLE Steps 1, 2 and 3, passed with a score of 75 or more.

(8) The board will accept an examination by the National Board of Examiners for Osteopathic Physicians and Surgeons, or its successor, passed with a score of 75 or more, regardless of date of examination."

Auth: Sec. 37-3-203, MCA; IMP, Sec. 37-3-306, 37-3-307, 37-3-308, 37-3-311, MCA

"8.28.418 ANNUAL REGISTRATION AND FEES (1) will remain the same.

(2) A physician actively engaged in the practice of medicine on a permanent ~~certificate~~ license shall pay an annual license fee. If the physician does not pay the annual license fee and return the required renewal form and required information before April 1, the physician must pay the delinquency penalty fee listed in ARM 8.28.420, in order to renew the physician's license.

(3) A physician with a permanent license not actively engaged in the practice of medicine in this state or absent from this state for a period of ~~1~~ one or more years may renew as an inactive licensee for ~~an~~ the annual fee listed in ARM 8.28.420.

(4) will remain the same."

Auth: Sec. 37-3-203, MCA; IMP, Sec. 37-3-313, MCA

"8.28.419 REGISTRY (1) The board will keep a register of all physicians licensed in Montana, showing the status of each license. ~~It shall show who is currently licensed and their status regarding annual registration.~~

Auth: Sec. 37-3-203, MCA; IMP, Sec. 37-3-205, MCA

"8.28.420 FEE SCHEDULE (1) The following fees will be charged:

(a)	Application fee - reciprocity or endorsement	~~$200.00~~	250.00
(b)	Temporary certificate fee	~~25.00~~	50.00
(c)	will remain the same.		
(d)	Examination fee		
	(i) for USMLE Step 3		500.00
	~~(i) Component I - FLEX~~		~~270.00~~
	~~(ii) Component II - FLEX~~		~~325.00~~
	~~(iii) Component III - FLEX~~		~~520.00~~
	~~(iv)~~ (ii) SPEX	~~290.00~~	300.00
(e)	Renewal fee (active)	~~140.00~~	150.00
(f)	Renewal fee (inactive)	~~55.00~~	60.00
(g)	will remain the same.		
(h)	Penalty fee	~~140.00~~	150.00
(i)	Verification fee	~~10.00~~	15.00"

Auth: Sec. 37-1-134, 37-1-319, 37-3-203, MCA; IMP, Sec. 37-1-134, 37-3-203, 37-3-304, 37-3-308, 37-3-309, 37-3-311, 37-3-313, MCA

"8.28.504 FEES (1) and (2) will remain the same.

(3) The board will charge a fee of $15.00 for written verification of licensure."

Auth: Sec. 37-13-201, 37-13-301, 37-13-302, 37-13-304, 37-13-305, MCA; IMP, Sec. 37-1-134, 37-3-203, 37-13-302, 37-13-304, 37-13-305, 37-13-306, MCA

"8.28.508 UNPROFESSIONAL CONDUCT ~~The term "unprofessional conduct" as used in section 37-13-311, MCA, includes, but is not limited to, the following:~~ In addition to those forms of unprofessional conduct defined in 37-1-316, MCA, the following is unprofessional conduct for a licensee or license applicant under Title 37, chapter 13:

(1) Commission of an act of sexual abuse, misconduct, or exploitation. Each of the following acts constitutes sexual abuse, misconduct or exploitation, even where the patient is perceived as seductive:

(a) physical or verbal sexual contact or intercourse during the course of the professional relationship, whether in or out of the practitioner's place of business;

(b) failure to maintain appropriate boundaries;

(c) failure to provide the patient with an opportunity to undress and dress in private;

(d) failure to provide the patient with the opportunity to wear underwear or a patient gown during treatment;

(e) failure to fully drape all parts of the patient's body except that being treated; failure to obtain informed verbal consent before undraping or treating the patient's breasts, buttocks, abdomen or genitals;

(f) use of inappropriate parts of the practitioner's body to brace the patient;

(g) palpation by other than the practitioner's hands; palpation beyond that which is necessary to accomplish a competent examination or treatment;

(h) sexual repartee, innuendo, jokes or flirtation;

(i) sexual comments about the patient's person or clothing;

(j) inquiry into the patient's sexual history or behavior beyond that which is necessary for a competent examination, diagnosis or treatment. The practitioner shall not be unnecessarily intrusive; the practitioner shall not verbalize any value judgment concerning the patient's sexual history or behavior;

(k) attempting to diagnose or treat a sexual issue beyond the practitioner's scope of training or practice;

(l) failure to refer a case of suspected sexual abuse for more specialized professional help~~.~~;

(2) Failure to obtain informed consent for treatment. In order to obtain informed consent, the practitioner must give the patient at least:

(a) a description of the proposed treatment, including:

(i) the body part to be treated,

(ii) the type of treatment,

(iii) the possible sensations the patient might feel,

(iv) the duration of treatment, and;

(v) the possible outcome of the treatment~~.~~;

(b) the practitioner's reason or rationale for the treatment proposed;

(c) the choice to accept or reject the proposed treatment, or any part of it, before or during the treatment~~.~~;

(3) Failure to maintain appropriate patient charts in the English language~~.~~;

(4) Failure to utilize sterile needle technique, as articulated by the national commission for the certification of acupuncturists, or its successor~~.~~;

(5) Conviction, including conviction following a plea of nolo contendere, of an offense involving moral turpitude, whether misdemeanor or felony, and whether or not an appeal is pending;

(6) Fraud, misrepresentation, deception or concealment of a material fact in applying for or securing a license, or license renewal, or in taking an examination required for licensure; as used herein, "material" means any false or misleading statement or information;

(7) Conduct likely to deceive, defraud or harm the public;

(8) Making a false or misleading statement regarding the licensee's skill or the effectiveness or value of the medicine, treatment, or remedy prescribed by the licensee or at the licensee's direction, in the treatment of a disease or other condition of the body or mind;

(9) Resorting to fraud, misrepresentation or deception in the examination or treatment of a person, or in billing, giving or receiving a fee related to professional services, or reporting to a person, company, institution or organization, including fraud, misrepresentation or deception with regard to a claim for benefits under Title 39, chapter 71 or 72;

(10) Use of a false, fraudulent, or deceptive statement in any document connected with the practice of acupuncture;

(11) Having been subject to disciplinary action of another state or jurisdiction against a license or other authorization to practice acupuncture, based upon acts or conduct by the licensee similar to acts or conduct that would constitute grounds for disciplinary action under Title 37, chapter 13 or these rules; a certified copy of the record of the action taken by the other state or jurisdiction is evidence of unprofessional conduct;

(12) Willful disobedience of a rule adopted by the board, or an order of the board regarding enforcement of discipline of a licensee;

(13) Habitual intemperance or excessive use of an addictive drug, alcohol or any other substance to the extent that the use impairs the user physically or mentally;

(14) Failing to furnish to the board or its investigators or representatives information legally requested by the board;

(15) Failing to cooperate with a lawful investigation conducted by the board;

(16) Failing to report to the board any adverse judgment, settlement or award arising from an acupuncture liability claim or other unprofessional conduct;

(17) Obtaining a fee or other compensation, either directly or indirectly, by the misrepresentation that a manifestly incurable disease, injury or condition of a person can be cured;

(18) Abusive billing practices;

(19) Testifying in court on a contingency basis;

(20) Conspiring to misrepresent or willfully misrepresenting a medical condition improperly to increase or decrease a settlement, award, verdict or judgment;

(21) Except as provided in this subsection, practicing acupuncture as the partner, agent or employee of, or in joint venture with, a person who does not hold a license to practice acupuncture within this state; however, this does not prohibit:

(a) the incorporation of an individual licensee or group of licensees as a professional service corporation under Title 35, chapter 4;

(b) the organization of a professional limited liability company under Title 35, chapter 8 for the providing of professional services as defined in Title 35, chapter 8;

(c) practicing acupuncture as the partner, agent or employee of, or in joint venture with, a hospital, medical assistance facility or other licensed health care provider; however,

(i) the partnership, agency, employment or joint venture must be evidenced by a written agreement containing language to the effect that the relationship created by the agreement may not affect the exercise of the acupuncturist's independent judgment in the practice of acupuncture;

(ii) the acupuncturist's independent judgment in the practice of acupuncture must in fact be unaffected by the relationship; and

(iii) the acupuncturist may not be required to refer any patient to a particular provider or supplier or take any other action that the acupuncturist determines not to be in the patient's best interest;

(22) Failing to transfer pertinent and necessary patient records to another licensed health care provider, the patient or the patient's representative when requested to do so by the patient or the patient's legally designated representative;

(23) Any other act, whether specifically enumerated or not, that in fact constitutes unprofessional conduct."

Auth: Sec. 37-1-134, 37-1-136, 37-1-319, 37-13-201, MCA; IMP, Sec. 37-13-201, 37-1-308, 37-1-309, 37-1-310, 37-1-311, 37-1-312, 37-1-316, 37-1-319, 37-13-311, 37-13-312, MCA

"8.28.904 DEFINITIONS (1) Advanced EMT service means ~~a comprehensive and integrated arrangement of personnel, facilities, communications and transportation necessary to allow an advanced emergency medical technician to function appropriately, and consistent with his level of training. An advanced EMT service, to assure adequate control of the practicing advanced EMT, must be approved by the board~~ an EMT-intermediate or advanced life support emergency medical service licensed by the department of public health and human services.

(2) through (20)(b) will remain the same.

~~(c) must have current ACLS certification by the American heart association.~~

(21) EMT-D service means an ~~arrangement of personnel, transportation, facilities, and equipment and communications sufficient to allow an EMT-D to function appropriately and consistent with this level of training and acts allowed. An EMT-D service must be approved by the board~~ EMT-defibrillation life support service licensed by the department of public health and human services.

(22) through (26)(a) will remain the same.

~~(b) is capable of demonstrating all patient care techniques required at the advanced EMT level;~~

~~(c)~~(b) is responsible for the proper application of patient care techniques and quality care provided by the advanced EMT in the local program;

~~(d)~~(c) has been approved in writing ~~by all the local hospital medical staff(s) to function as medical director~~ by a local hospital medical staff and/or department of emergency medicine, if one exists, or, if there is not a hospital in the community, by the medical staff and/or department of emergency medicine of a hospital in a nearby community to which patients are most commonly transported;

(d) approves all protocols for use by EMTs functioning in an advanced EMT service; and

(e) through (37) will remain the same."

Auth: Sec. 37-1-131, 50-6-203, MCA; IMP, Sec. 50-6-203, MCA

"8.28.908 EQUIVALENCY (1) through (5) will remain the same.

(a) he is certified by the board; or

(b) complies with 8.28.908(4)~~.~~; or

(c) is certified in another state and functioning on an out-of-state emergency medical service licensed by the department of public health and human services to provide services in Montana; or

(d) is certified in another state and functioning on an out-of-state emergency medical service which is exempt from the department of public health and human services licensure requirements pursuant to ARM 16.30.104(8) and (9).

(6) through (8)(d) will remain the same."

Auth: Sec. 37-1-131, 50-6-203, MCA; IMP, Sec. 50-6-203, 50-6-204, 50-6-205, MCA

"8.28.1109 EMT - ADVANCED; ACTS ALLOWED (1) through (3)(b) will remain the same.

(c) or, when he is participating in a continuing education program or clinical rotation approved by the off-line medical director.

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

Auth: Sec. 37-1-131, 50-6-203, MCA; IMP, Sec. 50-6-203, 50-6-205, MCA

"8.28.1505 FEES (1) through (5) will remain the same.

(6) The fee for verification of licensure is $15.00.

~~(6)~~ (7) All fees provided for in this rule are non-refundable.

~~(7)~~ (8) The date for annual license renewal and payment of fees therefore is set by the ~~board~~ department. ~~In the first year of implementation of this rule, license holders who have renewed within six months of the renewal date will not be required to pay an additional renewal fee.~~"

Auth: Sec. 37-1-134, 37-20-201, MCA; IMP, Sec. 37-1-134, 37-20-203, 37-20-302, MCA

"8.28.1701 FEES (1) The annual renewal fee for a podiatrist whether actively engaged or not, in the practice of podiatry in the state of Montana shall be ~~$140.00~~ 150.00.

(2) The following fees will be charged:

(a) Endorsement or reciprocity ~~$200.00~~ 250.00

(b) will remain the same.

(c) Penalty fee ~~140.00~~ 150.00

(d) Verification of licensure 15.00"

Auth: Sec. 37-1-134, 37-6-106, MCA; IMP, Sec. 37-1-134, 37-3-203, 37-6-302, 37-6-303, MCA

"8.28.1806 FEES (1) through (1)(c) will remain the same.

(d) Verification of licensure - $15.00."

Auth: Sec. 37-1-134, 37-25-201, MCA; IMP, Sec. 37-1-134, 37-3-203, 37-25-201, 37-25-302, 37-25-307, MCA

3. The Board is proposing to repeal ARM 8.28.413, 8.28.1114, 8.28.1124, and 8.28.1520, the text of which is located at pages 8-860, 8-895, 8-898.3 and 898.4, and 8-905 and 8-906, Administrative Rules of Montana, respectively. The authority section for 8.28.413 is 37-3-203, MCA and implementing section is 37-3-203, MCA; authority for 8.28.1114 is 37-1-131, 50-6-203, MCA and implementing is 50-6-203, 50-6-205, MCA; authority for 8.28.1124 is 37-1-131, 50-6-203, MCA and implementing is 50-6-203, 50-6-204, MCA; authority for 8.28.1520 is 37-20-202, MCA and implementing is 37-20-409, MCA.

4. The proposed new rules will read as follows:

"I MANAGEMENT OF INFECTIOUS WASTES (1) Each physician licensed by the board shall store, transport off the premises, and dispose of infectious wastes, as defined in 75-10-1003, MCA, in accordance with the requirements set forth in 75-10-1005, MCA.

(2) Used sharps are properly packaged and labeled within the meaning of 75-10-1005(1)(a), MCA, when this is done as required by the Occupational Safety and Health Administration (OSHA). If OSHA has no such requirements, the physician shall place them in a heavy, leakproof, puncture-resistant cardboard box and secure the lid with reinforced strapping tape. The container shall bear the words 'used medical sharps' on a distinctive label taped or securely glued on the container."

Auth: Sec. 37-1-131, 37-3-203, 75-10-1006, MCA; IMP, Sec. 75-10-1006, MCA

"II MANAGEMENT OF INFECTIOUS WASTES (1) Each acupuncturist licensed by the board shall store, transport off the premises, and dispose of infectious wastes, as defined in 75-10-1003, MCA, in accordance with the requirements set forth in 75-10-1005, MCA.

(2) Used sharps are properly packaged and labeled within the meaning of 75-10-1005(1)(a), MCA, when this is done as required by the occupational safety and health administration (OSHA). If OSHA has no such requirements, the acupuncturist shall place them in a heavy, leakproof, puncture-resistant cardboard box and secure the lid with reinforced strapping tape. The container shall bear the words 'used medical sharps' on a distinctive label taped or securely glued on the container."

Auth: Sec. 37-1-131, 37-13-201, 75-10-1006, MCA; IMP, Sec. 75-10-1006, MCA

"III MANAGEMENT OF INFECTIOUS WASTES (1) Each emergency medical technician licensed by the board shall store, transport off the premises, and dispose of infectious wastes, as defined in 75-10-1003, MCA, in accordance with the requirements set forth in 75-10-1005, MCA.

(2) Used sharps are properly packaged and labeled within the meaning of 75-10-1005(1)(a), MCA, when this is done as required by the occupational safety and health administration (OSHA). If OSHA has no such requirements, the emergency medical technician shall place them in a heavy, leakproof, puncture-resistant cardboard box and secure the lid with reinforced strapping tape. The container shall bear the words 'used medical sharps' on a distinctive label taped or securely glued on the container."

Auth: Sec. 37-1-131, 50-6-203, 75-10-1006; IMP, Sec. 75-10-1006, MCA

"IV MANAGEMENT OF INFECTIOUS WASTES (1) Each physician assistant-certified licensed by the board shall store, transport off the premises, and dispose of infectious wastes,

as defined in 75-10-1003, MCA, in accordance with the requirements set forth in 75-10-1005, MCA.

(2) Used sharps are properly packaged and labeled within the meaning of 75-10-1005(1)(a), MCA, when this is done as required by the occupational safety and health administration (OSHA). If OSHA has no such requirements, the physician assistant-certified shall place them in a heavy, leakproof, puncture-resistant cardboard box and secure the lid with reinforced strapping tape. The container shall bear the words 'used medical sharps' on a distinctive label taped or securely glued on the container."

Auth: Sec. 37-1-131, 37-20-201, 37-20-202, 75-10-1006, MCA; IMP, 75-10-1006, MCA

"V MANAGEMENT OF INFECTIOUS WASTES (1) Each podiatrist licensed by the board shall store, transport off the premises, and dispose of infectious wastes, as defined in 75-10-1003, MCA, in accordance with the requirements set forth in 75-10-1005, MCA.

(2) Used sharps are properly packaged and labeled within the meaning of 75-10-1005(1)(a), MCA, when this is done as required by the occupational safety and health administration (OSHA). If OSHA has no such requirements, the podiatrist shall place them in a heavy, leakproof, puncture-resistant cardboard box and secure the lid with reinforced strapping tape. The container shall bear the words 'used medical sharps' on a distinctive label taped or securely glued on the container."

Auth: Sec. 37-1-131, 37-6-106, 75-10-1006, MCA; IMP, 75-10-1006, MCA

"VI MANAGEMENT OF INFECTIOUS WASTES (1) Each nutritionist licensed by the board shall store, transport off the premises, and dispose of infectious wastes, as defined in 75-10-1003, MCA, in accordance with the requirements set forth in 75-10-1005, MCA.

(2) Used sharps are properly packaged and labeled within the meaning of 75-10-1005(1)(a), MCA, when this is done as required by the Occupational Safety and Health Administration (OSHA). If OSHA has no such requirements, the nutritionist shall place them in a heavy, leakproof, puncture-resistant cardboard box and secure the lid with reinforced strapping tape. The container shall bear the words 'used medical sharps' on a distinctive label taped or securely glued on the container."

Auth: Sec. 37-1-131, 37-25-201, 75-10-1006, MCA; IMP, Sec. 75-10-1006, MCA

"VII UNPROFESSIONAL CONDUCT In addition to those forms of unprofessional conduct defined in 37-1-316, the following is unprofessional conduct for a licensee or license applicant under Title 37, chapter 3:

(1) Conviction, including conviction following a plea of nolo contendere, of an offense involving moral turpitude, whether misdemeanor or felony, and whether or not an appeal is pending;

(2) Fraud, misrepresentation, deception or concealment of a material fact in applying for or securing a license, or license renewal, or in taking an examination required for licensure; as used herein, "material" means any false or misleading statement or information;

(3) Conduct likely to deceive, defraud or harm the public;

(4) Making a false or misleading statement regarding the licensee's skill or the effectiveness or value of the medicine, treatment, or remedy prescribed by the licensee or at the licensee's direction in the treatment of a disease or other condition of the body or mind;

(5) Resorting to fraud, misrepresentation or deception in the examination or treatment of a person, or in billing, giving or receiving a fee related to professional services, or reporting to a person, company, institution or organization, including fraud, misrepresentation or deception with regard to a claim for benefits under Title 39, chapter 71 or 72;

(6) Use of a false, fraudulent or deceptive statement in any document connected with the practice of medicine;

(7) Having been subject to disciplinary action of another state or jurisdiction against a license or other authorization to practice medicine, based upon acts or conduct by the licensee similar to acts or conduct that would constitute grounds for disciplinary action under Title 37, chapter 3 or these rules; a certified copy of the record of the action taken by the other state or jurisdiction is evidence of unprofessional conduct;

(8) Willful disobedience of a rule adopted by the board, or an order of the board regarding evaluation or enforcement of discipline of a licensee;

(9) Habitual intemperance or excessive use of an addictive drug, alcohol or any other substance to the extent that the use impairs the user physically or mentally;

(10) Failing to furnish to the board or its investigators or representatives information legally requested by the board;

(11) Failing to cooperate with a lawful investigation conducted by the board;

(12) Failing to report to the board any adverse judgment, settlement or award arising from a medical liability claim or other unprofessional conduct;

(13) Obtaining a fee or other compensation, either directly or indirectly, by the misrepresentation that a manifestly incurable disease, injury or condition of a person can be cured;

(14) Abusive billing practices;

(15) Commission of an act of sexual abuse, misconduct, or exploitation related to the licensee's practice of medicine;

(16) Administering, dispensing, prescribing or ordering a controlled substance, as defined by the federal food and drug administration or successors, otherwise than in the course of legitimate or reputable professional practice;

(17) Conviction or violation of a federal or state law regulating the possession, distribution or use of a controlled substance, as defined by the federal food and drug

administration or successors, whether or not an appeal is pending;

(18) Testifying in court on a contingency basis;

(19) Conspiring to misrepresent or willfully misrepresenting medical conditions improperly to increase or decrease a settlement, award, verdict or judgment;

(20) Except as provided in this subsection, practicing medicine as the partner, agent or employee of, or in joint venture with, a person who does not hold a license to practice medicine within this state; however, this does not prohibit:

(a) the incorporation of an individual licensee or group of licensees as a professional service corporation under Title 35, chapter 4;

(b) a single consultation with or a single treatment by a person licensed to practice medicine and surgery in another state or territory of the United States or a foreign country;

(c) the organization of a professional limited liability company under Title 35, chapter 8 for the providing of professional services as defined in Title 35, chapter 8;

(d) practicing medicine as the partner, agent or employee of, or in joint venture with, a hospital, medical assistance facility or other licensed health care provider; however,

(i) the partnership, agency, employment or joint venture must be evidenced by a written agreement containing language to the effect that the relationship created by the agreement may not affect the exercise of the physician's independent judgment in the practice of medicine, and

(ii) the physician's independent judgment in the practice of medicine must in fact be unaffected by the relationship, and

(iii) the physician may not be required to refer any patient to a particular provider or supplier or take any other action that the physician determines not to be in the patient's best interest;

(21) Failing to transfer pertinent and necessary medical records to another licensed health care provider, the patient or the patient's representative when requested to do so by the patient or the patient's legally designated representative;

(22) Any other act, whether specifically enumerated or not, that in fact constitutes unprofessional conduct;

(23) Failing to comply with an agreement the licensee has entered into with the program established by the board under 37-3-203(4)."

Auth: Sec. 37-1-319, MCA; IMP, Sec. 37-3-202, 37-3-305, 37-3-309, 37-3-323, MCA

"VIII UNPROFESSIONAL CONDUCT In addition to those forms of unprofessional conduct defined in 37-1-316, MCA, the following is unprofessional conduct for a licensee or license applicant under Title 37, chapter 25:

(1) Conviction, including conviction following a plea of nolo contendere, of an offense involving moral turpitude whether misdemeanor or felony, and whether or not an appeal is pending;

(2) Fraud, misrepresentation, deception or concealment of a material fact in applying for or securing a license, or

license renewal, or in taking an examination required for licensure; as used herein, "material" means any false or misleading statement or information;

(3) Conduct likely to deceive, defraud or harm the public;

(4) Making a false or misleading statement regarding the licensee's skill or the effectiveness or value of the treatment, or remedy prescribed by the licensee or at the licensee's direction in the treatment of a disease or other condition of the body or mind;

(5) Resorting to fraud, misrepresentation or deception in the examination or treatment of a person, or in billing, giving or receiving a fee related to professional services, or reporting to a person, company, institution or organization, including fraud, misrepresentation or deception with regard to a claim for benefits under Title 39, chapter 71 or 72;

(6) Use of a false, fraudulent or deceptive statement in any document connected with the practice of dietetics-nutrition;

(7) Having been subject to disciplinary action of another state or jurisdiction against a license or other authorization to practice dietetics-nutrition, based upon acts or conduct by the licensee similar to acts or conduct that would constitute grounds for disciplinary action under Title 37, chapter 25 or these rules; a certified copy of the record of the action taken by the other state or jurisdiction is evidence of unprofessional conduct;

(8) Willful disobedience of a rule adopted by the board, or an order of the board regarding enforcement of discipline of a licensee;

(9) Habitual intemperance or excessive use of an addictive drug, alcohol or any other substance to the extent that the use impairs the user physically or mentally;

(10) Failing to furnish to the board or its investigators or representatives information legally requested by the board;

(11) Failing to cooperate with a lawful investigation conducted by the board;

(12) Failing to report to the board any adverse judgment, settlement or award arising from a medical liability claim or other unprofessional conduct;

(13) Obtaining a fee or other compensation, either directly or indirectly, by the misrepresentation that a manifestly incurable disease, injury or condition of a person can be cured;

(14) Abusive billing practices;

(15) Commission of an act of sexual abuse, misconduct or exploitation related to the licensee's practice of dietetics-nutrition;

(16) Conviction or violation of a federal or state law regulating the possession, distribution or use of any drug or any controlled substance, as defined by the federal food and drug administration or successors, whether or not an appeal is pending;

(17) Testifying in court on a contingency basis;

(18) Conspiring to misrepresent or willfully misrepresenting medical conditions improperly to increase or decrease a settlement, award, verdict or judgment;

(19) Except as provided in this subsection, practicing dietetics-nutrition as the partner, agent or employee of, or in joint venture with, a person who does not hold a license to practice dietetics-nutrition within this state; however, this does not prohibit:

(a) the incorporation of an individual licensee or group of licensees as a professional service corporation under Title 35, chapter 4; or

(b) the organization of a professional limited liability company under Title 35, chapter 8 for the providing of professional services as defined in Title 35, chapter 8; or

(c) practicing dietetics-nutrition as the partner, agent or employee of, or in joint venture with, a hospital, medical assistance facility or other licensed health care provider; however,

(i) the partnership, agency, employment or joint venture must be evidenced by a written agreement containing language to the effect that the relationship created by the agreement may not affect the exercise of the nutritionist's independent judgment in the practice of dietetics-nutrition, and

(ii) the nutritionist's independent judgment in the practice of dietetics-nutrition must in fact be unaffected by the relationship, and

(iii) the nutritionist may not be required to refer any patient to a particular provider or supplier or take any other action that the nutritionist determines not to be in the patient's best interest;

(21) Failing to transfer pertinent and necessary patient records to another licensed health care provider, the patient or the patient's representative when requested to do so by the patient or the patient's legally designated representative;

(22) Practicing dietetics-nutrition as a registered or licensed nutritionist in this state without a current active Montana license; such unlicensed practice shall be grounds for denial of a license to that individual if the application is made subsequent to such conduct;

(23) Any other act, whether specifically enumerated or not, that in fact constitutes unprofessional conduct."

Auth: Sec. 37-1-319, 37-25-201, MCA; IMP, Sec. 37-25-308, MCA

"IX UNPROFESSIONAL CONDUCT In addition to those forms of unprofessional conduct defined in 37-1-316, the following is unprofessional conduct for a licensee or license applicant under Title 37, chapter 20:

(1) Conviction, including conviction following a plea of nolo contendere, of an offense involving moral turpitude, whether misdemeanor or felony, and whether or not an appeal is pending;

(2) Fraud, misrepresentation, deception or concealment of a material fact in applying for or securing a license, license renewal, utilization plan or in taking an examination required

for licensure; as used herein, "material" means any false or misleading statement or information;

(3) Conduct likely to deceive, defraud or harm the public, including but not limited to practicing while subject to a physical or mental condition which renders the licensee unable to safely engage in the practice of medicine;

(4) Making a false or misleading statement regarding the licensee's skill or the effectiveness or value of the medicine, treatment, or remedy prescribed by the licensee or at the licensee's direction in the treatment of a disease or other condition of the body or mind;

(5) Resorting to fraud, misrepresentation or deception in the examination or treatment of a person, or in billing, giving or receiving a fee related to professional services, or reporting to a person, company, institution or organization, including fraud, misrepresentation or deception with regard to a claim for benefits under Title 39, chapter 71 or 72;

(6) Use of a false, fraudulent or deceptive statement, whether written or verbal, in connection with the physician assistant-certified's practice of medicine;

(7) Having been subject to disciplinary action of another state or jurisdiction against a license or other authorization to practice medicine, based upon acts or conduct by the licensee similar to acts or conduct that would constitute grounds for disciplinary action under Title 37, chapter 20 or these rules; a certified copy of the record of the action taken by the other state or jurisdiction is evidence of unprofessional conduct;

(8) Willful disobedience of any section in Title 37, chapter 20, MCA, any rule adopted by the board, any order of the board regarding enforcement of discipline of a licensee, or any term, condition or limitation imposed on the licensee in a utilization plan;

(9) Habitual intemperance or excessive use of an addictive drug, alcohol or any other substance to the extent that the use impairs the user physically or mentally; this provision does not apply to a licensee who is maintaining an approved therapeutic regimen as described in 37-3-203, MCA;

(10) Failing to furnish to the board or its investigators or representatives information legally requested by the board;

(11) Failing to cooperate with a lawful investigation conducted by the board;

(12) Failing to report to the board any adverse judgment, settlement or award arising from a medical liability claim or other unprofessional conduct;

(13) Obtaining a fee or other compensation, either directly or indirectly, by the misrepresentation that a manifestly incurable disease, injury or condition of a person can be cured;

(14) Abusive billing practices;

(15) Commission of an act of sexual abuse, misconduct or exploitation related to the licensee's practice of medicine;

(16) Administering, dispensing, prescribing or ordering a controlled substance, as defined by the federal food and drug administration or successors, otherwise than in the course of legitimate or reputable professional practice;

(17) Conviction or violation of a federal or state law regulating the possession, distribution or use of a controlled substance, as defined by the federal food and drug administration or successors, whether or not an appeal is pending;

(18) Testifying in a legal proceeding on a contingency basis;

(19) Conspiring to misrepresent or willfully misrepresenting medical conditions improperly to increase or decrease a settlement, award, verdict or judgment;

(20) Except as provided in this subsection, practicing medicine as the partner, agent or employee of, or in joint venture with, a person who does not hold a license to practice medicine within this state; however, this does not prohibit:

(a) the incorporation of an individual licensee or group of licensees as a professional service corporation under Title 35, chapter 4; or

(b) the organization of a professional limited liability company under Title 35, chapter 8 for the providing of professional services as defined in Title 35, chapter 8; or

(c) practicing medicine as the partner, agent or employee of, or in joint venture with, a hospital, medical assistance facility or other licensed health care provider; however,

(i) the partnership, agency, employment or joint venture must be evidenced by a written agreement containing language to the effect that the relationship created by the agreement may not affect the exercise of the physician's independent judgment in the practice of medicine, and

(ii) the physician's independent judgment in the practice of medicine must in fact be unaffected by the relationship, and

(iii) neither the physician nor the physician assistant-certified may be required to refer any patient to a particular provider or supplier or take any other action that the physician or physician assistant-certified determines not to be in the patient's best interest;

(21) Failing to transfer pertinent and necessary medical records to another licensed health care provider, the patient or the patient's representative when requested to do so by the patient or the patient's legally designated representative;

(22) Promoting the sale of services, goods, appliances or drugs in such a manner as to exploit the patient for the financial gain of the licensee or a third party;

(23) Willfully harassing, abusing or intimidating a patient, either physically or verbally;

(24) Failing to maintain a record for each patient which accurately reflects the evaluation, diagnosis and treatment of the patient;

(25) Failing to exercise appropriate supervision over persons who provide health care under the supervision of the licensee;

(26) Any other act, whether specifically enumerated or not, that in fact constitutes unprofessional conduct."

Auth: Sec. 37-20-202, MCA; IMP, Sec. 37-1-319, 37-3-202, 37-20-201, 37-20-402, MCA

"X UNPROFESSIONAL CONDUCT In addition to those forms of unprofessional conduct defined in 37-1-316, MCA, the following is unprofessional conduct for a licensee or license applicant under Title 37, chapter 6:

(1) Conviction, including conviction following a plea of nolo contendere, of an offense involving moral turpitude, whether misdemeanor or felony, and whether or not an appeal is pending;

(2) Fraud, misrepresentation, deception or concealment of a material fact in applying for or securing a license, or license renewal, or in taking an examination required for licensure; as used herein, "material" means any false or misleading statement or information;

(3) Conduct likely to deceive, defraud or harm the public;

(4) Making a false or misleading statement regarding the licensee's skill or the effectiveness or value of the medicine, treatment or remedy prescribed by the licensee or at the licensee's direction in the treatment of a disease or other condition of the body or mind;

(5) Resorting to fraud, misrepresentation or deception in the examination or treatment of a person, or in billing, giving or receiving a fee related to professional services, or reporting to a person, company, institution or organization, including fraud, misrepresentation or deception with regard to a claim for benefits under Title 39, chapter 71 or 72;

(6) Use of a false, fraudulent or deceptive statement in any document connected with the practice of podiatric medicine;

(7) Having been subject to disciplinary action of another state or jurisdiction against a license or other authorization to practice podiatric medicine, based upon acts or conduct by the licensee similar to acts or conduct that would constitute grounds for disciplinary action under Title 37, chapter 6 or these rules; a certified copy of the record of the action taken by the other state or jurisdiction is evidence of unprofessional conduct;

(8) Willful disobedience of a rule adopted by the board, or an order of the board regarding evaluation or enforcement of discipline of a licensee;

(9) Habitual intemperance or excessive use of an addictive drug, alcohol or any other substance to the extent that the use impairs the user physically or mentally;

(10) Failing to furnish to the board or its investigators or representatives information legally requested by the board;

(11) Failing to cooperate with a lawful investigation conducted by the board;

(12) Failing to report to the board any adverse judgment, settlement or award arising from a medical liability claim or other unprofessional conduct;

(13) Obtaining a fee or other compensation, either directly or indirectly, by the misrepresentation that a manifestly incurable disease, injury or condition of a person can be cured;

(14) Abusive billing practices;

(15) Commission of an act of sexual abuse, misconduct or exploitation related to the licensee's practice of podiatric medicine;

(16) Administering, dispensing, prescribing or ordering a controlled substance, as defined by the federal food and drug administration or successors, otherwise than in the course of legitimate or reputable professional practice;

(17) Conviction or violation of a federal or state law regulating the possession, distribution or use of a controlled substance, as defined by the federal food and drug administration or successors, whether or not an appeal is pending;

(18) Testifying in court on a contingency basis;

(19) Conspiring to misrepresent or willfully misrepresenting medical conditions improperly to increase or decrease a settlement, award, verdict or judgment;

(20) Except as provided in this subsection, practicing podiatric medicine as the partner, agent or employee of, or in joint venture with, a person who does not hold a license to practice podiatric medicine within this state; however, this does not prohibit:

(a) the incorporation of an individual licensee or group of licensees as a professional service corporation under Title 35, chapter 4; or

(b) the organization of a professional limited liability company under Title 35, chapter 8 for the providing of professional services as defined in Title 35, chapter 8; or

(c) practicing podiatric medicine as the partner, agent or employee of, or in joint venture with, a hospital, medical assistance facility or other licensed health care provider; however,

(i) the partnership, agency, employment or joint venture must be evidenced by a written agreement containing language to the effect that the relationship created by the agreement may not affect the exercise of the podiatrist's independent judgment in the practice of podiatric medicine, and

(ii) the podiatrist's independent judgment in the practice of podiatric medicine must in fact be unaffected by the relationship, and

(iii) the podiatrist may not be required to refer any patient to a particular provider or supplier or take any other action that the podiatrist determines not to be in the patient's best interest;

(21) Failing to transfer pertinent and necessary medical records to another licensed health care provider, the patient or the patient's representative when requested to do so by the patient or the patient's legally designated representative;

(22) Any other act, whether specifically enumerated or not, that in fact constitutes unprofessional conduct."

Auth: 37-1-319, 37-6-106, MCA; IMP, Sec. 37-6-311, MCA

"XI ANKLE SURGERY CERTIFICATION (1) Ankle surgery certification will be granted to a doctor of podiatric medicine licensed to practice in Montana, or to an otherwise qualified applicant for a license to practice podiatric medicine in

Montana, who makes application on forms provided by the board, and who:

(a) submits proof of certification by the American board of podiatric surgery; or

(b) submits proof of current licensure or certification to perform ankle surgery in another state whose licensing standards at the time the license or certificate was issued were essentially equivalent, in the judgment of the board, to those of this state; or

(c)(i) submits proof of completion of a podiatric surgical residency approved in the year of the candidate's residency by the council on podiatric medical education or the American board of podiatric surgery or successor(s), and

(ii) submits evidence satisfactory to the board of not fewer than 25 ankle surgeries performed within the five years immediately preceding the application.

(2) The applicant shall submit a nonrefundable fee of $100 with the application for certification in ankle surgery."

Auth: Sec. 37-6-106, MCA; IMP, Sec. 37-6-107, MCA

5. Following are the reasons for the proposed amendments, repeals and adoptions:

AMENDMENTS

ARM 8.28.401

REASON: Stylistic changes to comply with gender neutrality policy.

ARM 8.28.402, 8.28.403A, 8.28.404, 8.28.405, 8.28.408, 8.28.409, 8.28.411, 8.28.412, 8.28.414, 8.28.419

REASON: Clarify ambiguities, set forth licensing requirements with more specificity, comply with gender neutrality policy, improve grammar and punctuation, and define undefined terms in existing statutes and rules.

ARM 8.28.406

REASON: Improve uniformity of licensing requirements, and eliminate potentially discriminatory waiver provision.

ARM 8.28.407, 8.28.416

REASON: Define a term used in existing rules and clarify existing language. Because the two former national physician examinations (the examination given by the National Board of Medical Examiners ["NBME"] and the Federation Licensing Examination ["FLEX"]) have been combined into a single national examination (the United States Medical Licensing Examination ["USMLE"], and because NBME and FLEX are no longer offered, it is necessary to amend these rules to reflect current educational, testing and licensing modalities and standards. For the same reasons, it is necessary to specify what combinations of components of the old exams and the new exam will demonstrate the level of medical knowledge required for licensure of physicians intending to practice in Montana.

ARM 8.28.410

REASON: House Bill 518, New Section 9(3) provides for 20 days' notice in the case of proposed disciplinary action for unprofessional conduct. Section 37-3-321, MCA provides that the board must afford a licensee a hearing prior to denial of licensure for unprofessional conduct or lack of qualifications. This amendment will make the rule consistent with the statute's specified time of notice.

ARM 8.28.418

REASON: Implement 37-3-313(3), MCA, a general statute, by the specifics set forth in the proposed amendment.

ARM 8.28.420, 8.28.504, 8.28.1505, 8.28.1701, 8.28.1806

REASON: Due to the increase in numbers of applicants for licensure and participants in the impaired physician program authorized in 37-3-203, MCA, there are greater demands on the board's budget. The legislature approved an increase of $135,818 from the previous biennium. The raises authorized herein are estimated to generate $46,230. The remainder of the approved budget increase can be funded out of the board's existing cash reserve in its special revenue account. Additionally, 37-1-101, MCA, as amended by the 1995 Legislature, requires the department, rather than the board, to set the dates for annual renewal. Accordingly, ARM 8.28.1505 must be changed to be consistent with the statute. Since the first year of implementation of ARM 8.28.1505 has passed, the last sentence of the rule is no longer applicable.

ARM 8.28.508, New Rules VII, VIII, IX, X

REASON: House Bill 518 repealed the existing statutory definitions of "unprofessional conduct" by which the Board of Medical Examiners could impose license discipline on physicians, podiatrists, acupuncturists, physician assistants-certified and nutritionists, and thereby protect the public. House Bill replaced existing, specific statutory language with more generic definitions of "unprofessional conduct," designed to apply generally to all professions and occupations licensed under Title 37. In some cases, as here, the transition from specific to general statutory language lowered existing high standards, or lost some important element in the translation.

Recognizing that possibility, the Legislature wisely allowed the professional and occupational licensing boards to supplement House Bill 518's general definitions by board rules tailored to meet the needs of the specific professions, and the public served by them. House Bill 518, New Section 19(5). The definitions of "unprofessional conduct" proposed by these amendments and new rules will raise the standards of professional conduct, or maintain currently high standards, and improve protection of the public.

ARM 8.28.904

REASON: These proposed amendments eliminate the Board of Medical Examiner requirements for Advanced EMT and Emergency Medical Technician-Defibrillation services. The amendments are necessary because the Department of Public Health and Human

Services now has specific authority (50-6-301 - 50-6-327, MCA) for licensing of these services and has adopted administrative rules concerning their requirements. The proposed amendments assure coordination with the administrative rules adopted by the Department of Public Health and Human Services.

ARM 8.28.908

REASON: These proposed amendments establish a procedure for out-of-state emergency medical technicians to legally perform their services in Montana, providing they are functioning on an emergency medical service licensed by the Department of Public Health and Human Services or functioning on a service exempt from licensing by the Department of Public Health and Human Services. From a practical standpoint, this allows EMTs to legally function during patient transfers between in-state and out-of-state hospitals and for reciprocity along the border between Montana and other states.

ARM 8.28.1109

REASON: The proposed amendment provides that advanced EMT's may perform their "acts allowed" during continuing education programs and clinical rotations provided they obtain approval by their off-line medical director. Currently, the advanced EMTs, once they have completed their initial education, have no method of performing their skills in supervised clinical practice settings. This amendment assures the ability to provide on-going clinical education to the EMTs.

REPEALERS

ARM 8.28.413

REASON: The rule invades the jurisdiction of the Montana Supreme Court to regulate the practice of law.

ARM 8.28.1114

REASON: See reason for proposed amendment of ARM 8.28.904 above.

ARM 8.28.1124

REASON: See reason for proposed amendment of ARM 8.28.904 above.

ARM 8.28.1520, New Rules VII, VIII, IX, X

REASON: ARM 8.28.1520 defines "unprofessional conduct" for physician assistants-certified. In order to foster consistency in the professional standards and rules for the various professions regulated by the Board of Medical Examiners, the definitions of "unprofessional conduct" contained in existing ARM 8.28.1520 are re-cast in language comparable to that used in the proposed rules for physicians, podiatrists, acupuncturists, etc., with some additional provisions which the Board believes will enhance protection of the public.

For the same reasons, New Rules VII, VIII, IX and X are proposed for the professions identified in the respective texts.

NEW RULES

New Rules I, II, III, IV, V AND VI MANAGEMENT OF INFECTIOUS WASTES

REASON: The Board is required by 75-10-1006, MCA, to adopt rules concerning the management of infectious wastes.

New Rules VII, VIII, IX and X

REASON: See above reason for Proposed Repealers.

New Rule XI ANKLE SURGERY CERTIFICATION

REASON: Pursuant to 37-6-107, MCA, the Board is required to determine the standards and requirements necessary to protect the public for certification of licensed podiatrists or applicants to perform surgery on the ankle. After consultations with the Montana Podiatric Medical Association and research into national standards for qualification in ankle surgery, the Board proposes the foregoing rules.

6. 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 Medical Examiners, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., October 12, 1995.

7. Patricia I. England, attorney, has been designated to preside over and conduct this hearing.

BOARD OF MEDICAL EXAMINERS
JAMES BONNET, JR., M.D.
PRESIDENT

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, September 1, 1995.

BEFORE THE BOARD OF OUTFITTERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment and adoption of rules pertaining to the outfitting industry	) NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULES PERTAINING TO FEES AND ADOPTION OF NEW RULES ON MORATORIUM AND OPERATIONS PLAN REVIEW

TO: All Interested Persons:

1. On October 4, 1995, at 9:00 a.m., a public hearing will be held in the Professional and Occupational Licensing Bureau conference room, Lower Level, Arcade Building, 111 N. Jackson, Helena, Montana, to consider the proposed amendment of ARM 8.39.518, and the proposed adoption of new rules on operations plan review and regulation of a moratorium on outfitter licenses involving hunting use.

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

"8.39.518 LICENSURE--FEES FOR OUTFITTER, OPERATIONS PLAN, AND PROFESSIONAL GUIDE (1) through (c) will remain the same.

(i) annual license..... ~~150~~ 235

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

Auth: Sec. 37-1-131, 37-1-134, 37-47-201, 37-47-306, MCA; IMP, Sec. 37-1-134, 37-47-306, 37-47-307, MCA

3. The proposed new rules will read as follows:

"I PURPOSE (1) The purpose of the rules under this subchapter is to implement the intent of the Montana Legislature, as expressed in House Bills 195 and 196 from the 1995 Montana legislative session, to "encourage the continuance of a viable outfitting industry", to "protect the hunting resource, public health, public safety, and public welfare", and to reduce "new hunting uses of areas by outfitters when the new uses will cause undue conflict with existing hunting uses of the area."

Auth: Sec. 37-47-201, MCA; IMP, Sec. 37-47-201, 37-47-315, MCA

"II MORATORIUM (1) Except as provided in (2), the number of outfitting licenses for operations involving hunting use may not exceed the number of licenses existing on the passage date of House Bill 195 of the 1995 Montana legislative session.

(2) The moratorium on outfitting licenses for operations involving hunting use does not apply to individuals who submitted a completed application for license prior to the effective date of House Bill 195, and who met all qualifications for licensure on the date of application.

(3) Applications for licensure as an outfitter with an operations plan involving hunting use will be determined, once all qualifications are accepted by the board, if and when an existing license lapses, or is surrendered, revoked, or otherwise terminated.

(4) Applications will be considered completed, and will be added to a waiting list for available licenses, by categories identified in new rule III, only after the following conditions have been met:

(a) the application has been submitted with the required fee;

(b) the board has reviewed the applicant's qualifications and determined that the applicant is eligible for licensure with respect to the applicant's qualifications; and

(c) the review process under rules adopted pursuant to 37-47-202(5)(d), if applicable, has been completed by the board, with a finding that the proposed operations plan is eligible for licensure.

(5) An applicant who does not meet the experience requirements and other qualifications for licensure will not be added to the waiting list for available licenses. An applicant whose proposed operation plan has been disapproved by the board shall not be added to the waiting list for available licenses.

(6) Once added to the category-specific waiting list, applications shall be processed from this list according to conditions and priorities identified in new rule III."

Auth: Sec. 37-47-201, MCA; IMP, Sec. 37-47-201, 37-47-315, MCA

"III APPLICANT CATEGORIES - CONDITIONS AND PRIORITIES

(1) Consideration of applications for available licenses shall be subject to the conditions and priorities set forth in the categories below. Applications within the same category shall be prioritized on the waiting list according to the date on which the application is placed on the waiting list.

(a) Applications for licensure involving the corresponding surrender of an existing outfitter's license shall be approved without regard to the category-specific waiting list and without a review of the operation plan under 37-47-202(5)(d), provided that:

(i) the applicant is otherwise qualified for a license;

(ii) an existing outfitter surrenders his license on or before the date of licensure for the applicant and does so specifically for the benefit of the applicant; and

(iii) the number of clients proposed under the applicant's operations plan replaces, but does not exceed, the number of clients surrendered by the outfitter or outfitters transferring such use for the benefit of the applicant under an approved operations plan.

(b) Applications for licensure involving the proposed purchase of a portion of an existing outfitter's operations plan that is documented to have once existed as the entire operation of a separate licensed outfitter, shall be granted first priority under (b) through (d), provided that:

(i) the applicant is otherwise qualified for a license; and

(ii) the number of clients under the applicant's operations plan replaces, but does not exceed, the number of clients surrendered by the outfitter transferring such use under an approved operations plan.

(c) Available licenses not taken by applicants under (b) shall then be made available to applicants whose applications for licensure involve the proposed purchase of a portion of an existing outfitter's operations plan by the applicant that does not qualify for (b). Such applications shall be granted second priority under categories (b) through (d), provided that:

(i) the applicant is otherwise qualified for a license; and

(ii) the number of clients under the applicant's operations plan replaces, but does not exceed, the number of clients surrendered by the outfitter transferring such use under an approved operations plan.

(d) Available licenses not taken by applicants under (b) and (c) shall then be made available to applicants proposing new use. Applications for licensure involving new proposed use shall be considered under 37-47-202(5)(d) and rules adopted pursuant thereto. Such applications shall be granted third priority under categories (b) through (d), provided that:

(i) the board's consideration of the application under 37-47-202(5)(d) results in a final determination by the board that the new operations plan will not cause an undue conflict with existing hunting use of the proposed area."

Auth: Sec. 37-47-201, MCA; IMP, Sec. 37-47-201, 37-47-315, MCA

"IV REVIEW AND APPROVAL OF NEW OPERATIONS PLAN AND PROPOSED EXPANSION OF NET CLIENT HUNTING USE UNDER AN EXISTING OPERATIONS PLAN INVOLVING HUNTING USE (1) A currently licensed outfitter with an approved operations plan on file with the board of outfitters shall not initiate an expansion of net client hunting use under such plan without first applying for and receiving approval from the board for such expansion.

(2) Except as provided in (3) and (4), net client hunting use for outfitters licensed on or prior to October 1, 1995, shall be determined by taking the highest total number of hunting clients served by the outfitter and any guides working under the supervision of the outfitter in any one year from 1988 until 1995, as specified on the outfitter's client report logs submitted to the board. The existing net client hunting use of each outfitter shall be affirmed by oath of the outfitter, specifying the year from which the use is designated, and shall be submitted on a form provided by the board. The use designated by the outfitter shall be subject to random audit of client report logs.

(3) Net client hunting use for outfitters licensed on or after October 1, 1995, shall be equal to the net client hunting use transferred from an existing outfitter to the applicant under new rule III(a), (b) or (c) as applicable, or in the case of new use, shall be determined by the board as part of its order issued under (8).

(4) In cases where a federal agency regulates net client hunting use on federal lands, net client hunting use of the

outfitter providing authorized services on such lands shall be taken from the use designated by such federal agency. In all other cases, net client hunting use on federal lands shall be determined under either (2) or (3), as applicable.

(5) An application for proposed expansion in net client hunting use under an existing operations plan, and applications by license applicants proposing new operations plans involving hunting use, shall be made on forms provided by the board. If the proposal contemplates use on public land, the application must be accompanied by a letter or other written evidence of the public agency with jurisdiction, indicating that the use will be approved by the public agency if the board grants such approval. Solicitation of comments on applications shall be made by publication in the Montana administrative register, and by mailing a copy of the proposal, with an invitation to submit comments on the proposal, to:

(a) the Montana outfitters and guides association;

(b) the fishing outfitters association of Montana;

(c) any state, federal, local, or tribal land managing agency with jurisdiction over the outfitter's area of operation where the net increase in client hunting use is proposed;

(d) any regional outfitters or guides association of which the board is aware that is located in close proximity to the area to be affected by the proposal; and

(e) any sportspersons' association of which the board is aware that is located in close proximity to the area to be affected by the proposal.

(6) The hearing shall be scheduled no earlier than 30 days after and no later than 60 days after publication in the Montana administrative register. Comments may be presented in writing prior to or on the hearing date, or orally at the hearing.

(7) The board shall review the proposal and any comments submitted for consideration of the following:

(a) any documentation of prior hunting use by non-outfitted parties;

(b) any documentation of prior conflicts or other altercations between outfitted and non-outfitted parties in the area of the proposal;

(c) any documentation of prior hunting use by outfitted parties;

(d) any documentation of prior conflicts or other altercations between clients of one outfitter with the clients of another outfitter in the area of the proposal; and

(e) any data available from the department of fish, wildlife & parks or other agency as to the availability of game animals in the area of the proposal and the potential effect on such availability presented by the proposal.

(8) The board shall determine, based on its consideration of the factors presented under (7), whether the proposal will cause an undue conflict with existing hunting uses of the area, constituting a threat to the public health, safety, or welfare. The board shall issue an order, supported by findings of fact and conclusions of law, either granting, denying, or modifying the proposal.

(9) A party aggrieved by the board's decision may appeal such decision to the district court in the county affected by the proposal, within 30 days following publication of the final order in the Montana administrative register."

Auth: Sec. 37-47-201, MCA; IMP, Sec. 37-47-201, MCA

REASON: The change to the fee rule is necessary to produce adequate funding of the legislatively-approved appropriation for the board in fy 96 and fy 97. The current fee schedule generates approximately $262,000.00 per year in revenue. The board's cash balance as of July 1, 1995 was approximately $59,841.00. A combination of anticipated revenue and the board's cash balance is insufficient to meet expenditures, approved by the legislature for FY 96 and FY 97 at approximately $374,000.00 per year.

7/1/95 balance	$ 59,841.00
Anticipated revenue	262,527.00
Total resources	**$322,368.00**
Legislatively-approved Appropriation	$374,088.00
Projected shortfall as of 7/1/96	**(51,720.00)**
Projected yearly shortfall every year thereafter (revenue minus expenditures)	**(111,841.00)**

In light of the projected shortages detailed above, the board has voted to attempt to reduce expenditures to $325,771.00 dollars per year to reduce the revenue shortfall. With expenditures set at $325,771.00, the board will still have a revenue shortfall under existing income and cash balances.

7/1/95 balance	$ 59,841.00
Anticipated revenue	262,527.00
Total resources	**$322,368.00**
Board-reduced expenditures	$325,771.00
Projected shortfall as of 7/1/96	**(3,403.00)**
Projected yearly shortfall every year thereafter (revenue minus expenditures)	**(63,244.00)**

The fee increase proposed in this notice is necessary to make up the projected revenue shortfall, and will result in the board operating without a surplus cash balance.

$63,244.00 shortfall divided by 750 outfitters $85.00

The new rules are necessary to effectuate the purpose of the legislation, expressed in House Bills 195 and 196 from the 1995 Montana Legislature. House Bill 195 mandates that the Board enforce and regulate a moratorium on the issuance of outfitter licenses involving hunting clients. House Bill 196 mandates that the Board adopt standards for review of new operations plans involving hunting use and proposed expansions in net client hunting use under existing operations plans. The Board needs to get rules in place as close as possible to October 1, 1995 in order to evaluate applications submitted on or after that date.

4. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Outfitters, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., October 12, 1995.

5. Colleen A. Graham, attorney, has been designated to preside over and conduct the hearing.

BOARD OF OUTFITTERS
O. KURT HUGHES, CHAIRMAN

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, September 1, 1995.

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

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

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On October 14, 1995, the Board of Passenger Tramway Safety proposes to adopt the above-stated rules.

2. The proposed new rules will read as follows:

"I BOARD ENGINEER CONDUCTING ACCEPTANCE INSPECTION

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

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

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

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

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

Auth: Sec. 23-2-721, MCA; IMP, Sec. 23-2-271, MCA

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

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

3. Interested persons may submit their data, views or arguments concerning the proposed adoptions in writing to the Board of Passenger Tramway Safety, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., October 12, 1995.

4. If a person who is directly affected by the proposed adoptions wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Passenger Tramway Safety, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., October 12, 1995.

5. If the Board receives requests for a public hearing on the proposed adoptions from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed adoptions, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 2 based on the 15 licensed tramways in Montana.

BOARD OF PASSENGER TRAMWAY SAFETY
KEVIN TAYLOR, CHAIRMAN

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

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, September 1, 1995.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of Teacher Certification	)	NOTICE OF PROPOSED AMENDMENT OF ARM 10.57.403 CLASS 3 ADMINISTRATIVE CERTIFICATE; 10.57.405 CLASS 5 PROVISIONAL CERTIFICATE
	)	NO PUBLIC HEARING CONTEMPLATED

To: All Interested Persons

1. On October 18, 1995, the Board of Public Education proposes to amend 10.57.403 Class 3 Administrative Certificate and 10.57.405 Class 5 Provisional Certificate.

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

10.57.403 CLASS 3 ADMINISTRATIVE CERTIFICATE (1) through (8) remain unchanged.

(9) Supervisor endorsement: This administrative endorsement is issued in specific fields such as math, music, special education, and guidance and counseling, or in general areas such as elementary education, secondary education and curriculum development. This endorsement may be issued to applicants who submit acceptable evidence of successful completion, at an accredited institution of higher learning, of a master's degree in the area requested for endorsement. The applicant must meet eligibility requirements for a class 1 or class 2 teaching certificate endorsed in the field of specialization. Also required is verification of three years of successful experience as an appropriately certified and assigned teacher, or, for a school psychologist seeking a supervisor of special education endorsement, three years of teaching experience may be substituted by three years of experience as a school psychologist and completion of a special education teaching program to include a student teaching component. The following professional training is required:

(a) at least 14 graduate semester (21 graduate quarter) credits in education or the equivalent to include:

(i) general school administration,

(ii) administration in the special area to be endorsed,

(iii) supervision of instruction,

(iv) basic school finance, and

(v) school law.

(b) a supervised practicum/internship (minimum of 4 semester (6 quarter) credits or appropriate waiver). The recommendation of the appropriate official(s) is required.

AUTH: Sec. 20-4-102, MCA IMP: Sec. 20-4-106, MCA

10.57.405 CLASS 5 PROVISIONAL CERTIFICATE (1) through (6) remain unchanged.

(7) Administrative certificate:

(a) Superintendent endorsement: Class 5 certification with a plan of professional intent leading to a class 3 (administrative) certificate with a superintendent endorsement may be issued to applicants who meet the following minimum requirements:

(i) Eligibility for a class 1, 2, or 5 teaching certificate,

(ii) Verification of a minimum of three years of successful experience as an appropriately certified and assigned teacher, or, for a school psychologist seeking a supervisor of special education endorsement, three years of teaching experience may be substituted by three years of experience as a school psychologist and completion of a special education teaching program to include a student teaching component.

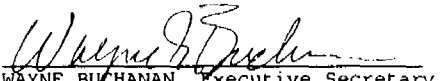
AUTH: Sec. 20-2-114, MCA IMP: Sec. 20-2-121, MCA

3. The board is proposing these amendments to the rules in order to change the language to include school psychologist to the supervisor endorsement and administrative certificate language.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to Wilbur Anderson, Chairman, Board of Public Education, 2500 Broadway, Helena, MT 59620, no later than October 17, 1995.

5. If a person who is directly affected by the proposed amendments wishes to express their data, views or arguments orally or in writing at a public hearing, they must make written request for a hearing along with any written comments they have to Wilbur Anderson of the Board of Public Education, 2500 Broadway, Helena, MT 59620, no later than October 17, 1995.

6. If the board receives request for a public hearing on the proposed amendments from either 10 or 25%, whichever is less, of the persons who are directly affected by the proposed amendments, from a governmental subdivision or agency, or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of the those directly affected has been determined to be 51 as there are 511 active school districts in Montana.



WAYNE BUCHANAN, Executive Secretary
Board of Public Education

Certified to the Secretary of State on 9/1/95.

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

In the matter of the adoption of a new rule relating to the adjustment of the Teton-Spring Creek bird preserve boundary.	))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

To: All Interested Persons.

1. On October 10, 1995, at 7:00 p.m. a public hearing will be held in the meeting room of the Choteau Country Club at Choteau, Montana, to consider the adoption of new rule I.

2. The proposed new rule provides as follows:

Rule I TETON-SPRING CREEK BIRD PRESERVE BOUNDARY ADJUSTMENT (1) The boundary of the Teton-Spring Creek bird preserve established by 87-5-405 MCA, is adjusted by changing the eastern boundary in sections 12 and 13 in township 24 north, range 5 west, to the Truchot Road. This boundary adjustment removes all land in section 12 and all land in the northern ¼ of section 13 in township 24 north, range 5 west from inclusion within the preserve.

AUTH: 87-1-301, 87-5-402, MCA IMP: 87-1-305, 87-5-401, MCA

3. The rationale for the proposed new rule is as follows: The commission and department have been requested by Charles Crane, a landowner on the eastern side of the Teton-Spring Creek bird preserve, and by the Montanans for Private Property Rights, an organization from Choteau, to make the boundary change. The existing eastern boundary line in sections 12 and 13 runs through a plowed field. The boundary line is impossible for hunters to identify and also makes it difficult to conduct game damage hunts. Establishing the Truchot Road as the boundary will respond to these problems with a clearly defined and easily identified boundary.

4. Interested persons may present their data, views or arguments either orally at the hearing or in writing. Written data, views or arguments may be submitted to Mike Aderhold, Region 4 Supervisor, Montana Fish, Wildlife & Parks, P.O. Box 6610, Great Falls, Montana 59406, and must be received no later than October 12, 1995.

5. Mike Aderhold, or another hearing examiner designated by the commission and department, will preside over and conduct the hearing.

RULE REVIEWER

Robert N. Lane

DEPT. OF FISH, WILDLIFE & PARKS

Patrick Graham, Director, DFWP, and Secretary of Fish, Wildlife & Parks Commission

Certified to the Secretary of State on September 1, 1995.

17-9/14/95 MAR Notice No. 12-2-220

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the proposed adoption of rules regarding staggered registration of motor carriers with multiple fleets of vehicles	))))))	NOTICE OF PUBLIC HEARING

TO: All Interested Persons.

1. On October 5, 1995, at 9 a.m., a public hearing will be held in the auditorium of the Department of Transportation building at 2701 Prospect, Helena, Montana, to consider the adoption of rules made necessary by the passage of SB 47 during the 1995 Legislative Session (Chapter 42, Laws of 1995). The proposed rules concern staggered registration of motor carriers with multiple fleets of vehicles licensed under the International Registration Plan or "IRP". The rules will be effective on January 1, 1996, because that is the effective date of SB 47.

2. The proposed rules provide as follows:

RULE I TERM PERMIT AND TRAILER IMPLEMENTATION (1) Term permits and trailer registrations issued to vehicles licensed under an annual registration period will be prorated to coincide with the vehicle registration period. This rule expires December 31, 1996.

AUTH: 61-3-716 and 61-10-155 MCA
IMP: 61-3-313, 61-3-711 through 61-3-733, 61-10-107 and 61-10-121 MCA

REASON: Fees for term permits and trailer registrations are not prorated for a partial year but are a "flat fee" for a 12-month period. During the initial implementation of staggered registration for vehicles licensed under the International Registration Plan (IRP) some fleets will be assessed less than 12 months of registration fees; other fleets will be assessed more than 12 months of registration fees. This temporary rule allows permit fees and trailer fees to be charged to coincide with the same expiration date as registration fees. It is not necessary for the proposed rule to exist beyond December 31, 1996, because at that time all such permits and registrations will coincide. Eventually, the rule will allow the Department to even out the workload in the licensing section and more evenly distribute the cash collections throughout the year.

RULE II FLEET TRANSFERS (1) Motor carriers with multiple fleets of vehicles may transfer vehicles owned by that carrier from one fleet to another fleet only one time each calendar year.

(2) Ad valorem taxes on the transferred vehicles will be prorated to the end of the annual registration period of the fleet into which the vehicles were transferred.

(3) Gross vehicle weight fees are not transferrable but will be credited to the fleet from which the vehicles were transferred. Gross vehicle weight fees will be assessed in the fleet into which the vehicles have been transferred.

(4) All registration fees must be repaid on vehicles transferred into the new fleet.

AUTH: Chapter No. 42, Laws of 1995, 61-3-716 MCA
IMP: Chapter No. 42, Laws of 1995, 61-3-717, 61-3-725 MCA

REASON: The proposed rule establishes uniform administrative procedures and clarifies the statutory requirements of section 61-3-725, MCA, by providing motor carriers with multiple fleets of vehicles a standard procedure for transferring vehicles from one IRP fleet to another IRP fleet owned by the same company or carrier. Under this rule, owner-operators are not limited to transferring from one company (motor carrier) to another company only once during the calendar year.

RULE III CHANGE OF REGISTRATION PERIOD (1) Motor carriers with multiple fleets of vehicles may change the annual registration period for a fleet, upon request of the owner, to the same registration period of one or more of the owner's other fleets.

(2) The change of registration period for a fleet must be done during the renewal period assigned to the fleet before transfer.

(3) Ad valorem taxes and gross vehicle weight fees will be prorated to the end of the new registration period.

(4) The annual registration period begins on the first day of a calendar quarter. As used in this subsection, "calendar quarter" means a period of three consecutive months which end on March 31, June 30, September 30, or December 31.

AUTH: Chapter No. 42, Laws of 1995, 61-3-716 MCA
IMP: Chapter No. 42, Laws of 1995, 61-3-716 MCA

REASON: This rule establishes guidelines and procedures for consolidating IRP fleets of vehicles for a carrier with multiple fleets.

RULE IV GRACE PERIOD (1) Grace periods do not apply to vehicles licensed under 61-3-711 through 61-3-717 and 61-3-721 through 61-3-733, MCA. Vehicle registrations must be renewed on or before the last day of the month for the designated annual registration period.

AUTH: Chapter No. 42, Laws of 1995, 61-3-716 MCA
IMP: Chapter No. 42, Laws of 1995

REASON: Proposed rule IV establishes uniform procedures and clarifies the statutes with regard to grace periods. Vehicles licensed under the International Registration Plan (IRP) must renew registrations prior to the expiration date of the current

registration.

RULE V PAYMENT OF FEES (1) Vehicles subject to staggered registration through the IRP must remit all fees at the time of registration. Fees may not be remitted quarterly, semi-annually or monthly.

AUTH: Chapter No. 42, Laws of 1995, 61-3-716 MCA
IMP: Chapter No. 42, Laws of 1995

REASON: This rule is necessary to ensure that all fees, including gross weight fees, for vehicles registered under the International Registration Plan be paid at the time of registration.

RULE VI TERM PERMIT EXPIRATION (1) Special permits and restricted route load permits issued on IRP credentials to a vehicle licensed under the international registration plan expire with the registration.

AUTH: Chapter No. 42, Laws of 1995, 61-3-716 MCA
IMP: Chapter No. 42, Laws of 1995

REASON: Proposed rule VI provides the same expiration date for all credentials issued on an IRP cab card. The proposed rule also aids the application of uniform enforcement by providing a single expiration date.

3. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Carolyn Knuckles at the Montana Department of Transportation, 2701 Prospect, P.O. Box 201001, Helena, MT 59620-1001, and must be received no later than 5 p.m., October 13, 1995.

4. William D. Hutchison has been designated to preside over and conduct the hearing.

MONTANA DEPARTMENT OF TRANSPORTATION

By: Marvin Dye
MARVIN DYE, Director

Lyle Manley
Lyle Manley, Rule Reviewer

Certified to the Secretary of State August 30, 1995.

BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION
OF THE STATE OF MONTANA

In the matter of the repeal of Rule 36.2.201, board model procedural rule	)	NOTICE OF PROPOSED REPEAL
	)	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On October 14, 1995, the Department of Natural Resources and Conservation proposes to repeal rule 36.2.201 which is the board model procedural rule.

2. Rule 36.2.201, the rule proposed to be repealed, is on page 36-31 of the Administrative Rules of Montana.
AUTH: Section 2-4-201, MCA
IMP: Section 2-4-201, MCA

3. The repeal of Rule 36.2.201 is necessary because the Board of Natural Resources and Conservation was eliminated by Section 500, Chapter 418, Laws of Montana 1995.

4. Interested parties may submit their data, views, or arguments concerning the proposed repeal in writing to Don MacIntyre, Department of Natural Resources and Conservation, 1520 East Sixth Avenue, Helena, Montana 59620. Any comments must be received no later than October 12, 1995.

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

ARTHUR R. CLINCH, DIRECTOR

DONALD D. MacINTYRE,
RULE REVIEWER

Certified to the Secretary of State September 1, 1995.

BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION
OF THE STATE OF MONTANA

In the matter of the repeal of Rule 26.2.101, department of state lands model procedural rule	)	NOTICE OF PROPOSED REPEAL
	)	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On October 14, 1995, the Department of Natural Resources and Conservation proposes to repeal rule 26.2.201 which is the Department of State Lands model procedural rule.

2. Rule 26.2.201, the rule proposed to be repealed, is on page 26-23 of the Administrative Rules of Montana.

AUTH: Section 2-4-201, MCA
IMP: Section 2-4-201, MCA

3. The repeal of Rule 26.2.201 is necessary because the Department of State Lands was eliminated by Section 500, Chapter 418, Laws of Montana 1995.

4. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to Don MacIntyre, Department of Natural Resources and Conservation, 1520 East Sixth Avenue, Helena, Montana 59620. Any comments must be received no later than October 12, 1995.

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

ARTHUR R. CLINCH, DIRECTOR

DONALD D. MacINTYRE,
RULE REVIEWER

Certified to the Secretary of State September 1, 1995.

BEFORE THE MONTANA DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

In the matter of the proposed amendment of Rules 36.24.101 through 36.24.104 and 36.24.106 through 36.24.110 pertaining to wastewater treatment revolving fund act	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

To: All Interested Persons.

1. On November 9, 1995, the Department of Natural Resources and Conservation proposes to amend Rules 36.24.101 through 36.24.104 and 36.2.106 through 36.2.110, pertaining to the wastewater treatment revolving fund act.

2. The purpose of the proposed amendments is to expand the eligible water pollution control projects for which direct loans can be made to municipalities to include solid waste management systems as an approved non-point source project. The rules proposed to be amended provide as follows:

36.24.101 PURPOSE Subsection (1) remains the same.

(2) The act creates a financing mechanism for wastewater treatment projects and certain ~~non-profit~~ non-point source control pollution projects through use of loans and other financial incentives.

(3) The board of ~~health and~~ environmental ~~science~~ review has adopted rules to assure that the state's wastewater treatment program complies with the Clean Water Act. ARM 16.18.301 et seq.

Subsection (4) remains the same.

AUTH: 75-5-1105, MCA
IMP: 75-5-1103, MCA

36.24.102 DEFINITIONS AND CONSTRUCTION OF RULES Subsections (1) through (3) remain the same.

(4) "Application" means the form of application provided by the department and the department of ~~health~~ environmental quality which must be completed and submitted in order to request a loan.

~~(5) "Application fee" means the fee which must accompany a completed application in the amount specified in these rules.~~

Subsections (6) through (13) will be renumbered (5) through (12).

(13)~~(42)~~ "~~Wastewater~~ Debt" means debt incurred to acquire, construct, extend, improve, add to, or otherwise pay expenses related to the system, without regard to the source of payment and security for such debt (i.e., without regard to whether it is general obligation revenue or special assessment debt).

Subsection (14) remains the same.

(15) "Department of ~~health~~ environmental quality" means the Montana department of ~~health and environmental sciences~~ environmental quality.

(16) "Eligible water pollution control project" means projects that meet the requirements of the federal act and approved by the department of ~~health~~ environmental quality, including certain sewage system projects, storm sewer or storm drainage projects, wastewater treatment system projects, and solid waste management system projects that have been approved as part of the state's non-point source management plan.

Subsections (17) through (21) remain the same.

(22) "Gross revenues" means with respect to revenue bonds, all revenues derived from the operation of a sewage, ~~or~~ wastewater, storm sewer or storm drainage system, or solid waste management system, including but not limited to rates, fees, charges, and rentals imposed for connections with and for the availability, benefit, and use of the water, sewage, ~~or~~ wastewater, storm sewer or storm drainage system, or solid waste management system as now constituted and of all replacements and improvements thereof and additions thereto, and from penalties and interest thereon, and from any sales of property acquired for the system and all income received from the investment of all moneys on deposit in system accounts.

Subsection (23) remains the same.

(24) "Intended use plan" means the document prepared by the department of environmental quality, which identifies uses of the funds in the program and describes how those uses support the goals of the program.

Subsection (24) will be renumbered (25).

Subsection (25) will be renumbered (26).

~~(26)~~(27) "Municipality" means a city, town, county, water and sewer district, solid waste district or other local government unit or any combination thereof having authority to own and operate a water, sewage, wastewater, storm sewer or storm drainage, or solid waste management system, or ~~wastewater~~ treatment work.

Subsection (27) will be renumbered (28).

(29) "Non-point source" means a diffuse source of pollutants resulting from the activities of man over a relative large area, the effects of which normally must be addressed or controlled by a management or conservation practice. Non-point source pollutants are not traceable to a discrete, identifiable origin, but generally result from land runoff, precipitation, drainage, or seepage.

(30) "Non-point source project" means a project that has been approved in the state's non-point source management plan.

~~(28)~~(31) "Origination fee" means the fee imposed on borrowers ~~pro rata~~ to pay a proportionate share of ~~the~~ costs of issuing the ~~series of the state's bonds, the proceeds of which are used to make a loan~~ state's bonds to fund the program, as adjusted from time to time as may be required by the department.

~~(29)~~(32) "Outstanding bond" means any bonds currently outstanding payable from gross or net ~~wastewater~~ system revenues.

~~(30) "Pro rata share" means a fraction, the numerator of which is the committed amount of the loan of a borrower to be funded from proceeds of state bond of a series and the denominator of which is the original principal amount of such series of bonds.~~

(33) "Priority list" means the list of projects expected to receive financial assistance under the program, ranked in accordance with a priority system developed under Section 216 of the Act.

Subsection (31) will be renumbered (34).

Subsection (32) will be renumbered (35).

(36) "Project costs" means the costs of a project which under accepted accounting practice are capital costs of projects authorized in accordance with law, including but not limited to, payments due for work and materials performed and delivered under construction contract, architectural, engineering feasibility inspection, supervision, fiscal and legal expenses, the cost of lands and easements, interest accrued on bonds during the period of construction of facilities financed thereby and for six months thereafter, the establishment of reserve requirement, to the extent permitted by the EPA and payment of cost of issuing bonds.

Subsection (33) will be renumbered (37).

(38)~~(43)~~ "~~Wastewater~~ Revenue" means revenues (gross or net) received by the municipality from or in connection with the operation of the system.

Subsection (34) will be renumbered (39).

~~(35)~~(40) "Sewage system" means ~~any device for collection or conducting sewage, or other waste, to an ultimate disposal point~~ a conduit intended to carry liquid and water carried wastes from residences, commercial buildings, industrial plants and institutions, together with minor quantities of ground, storm, and surface waters that are not admitted intentionally.

(41) "Solid waste management system" means any system which controls the storage, treatment, recycling, recovery, or disposal of solid waste, and for purposes of this chapter, improvements to such system that qualify as a non-point source project, including the acquisition of land, installation of liners, monitoring of wells, construction and closure of landfills, transfer stations, container sites, incinerating facility, or composting facilities, and all necessary and related equipment.

Subsection (38) will be renumbered (42).

(43) "Special improvement district bonds" means bonds payable from special assessments.

Subsection (36), (37), and (39) will be renumbered (44), (45), and (46).

(47) "Storm drainage or storm sewer system" means any device or system for the collection, conveyance, disposal and treatment of storm waters and runoff.

~~(40)~~(48) "System" means the sewage, ~~or~~ wastewater, storm drainage or storm sewer system, or solid waste management system of a municipality and all extension, improvements, and betterments thereof.

Subsection (41) will be renumbered (49).
Subsection (42) will be renumbered (13) above.
Subsection (43) will be renumbered (38) above.
Subsection (44) will be renumbered (50).
AUTH: 75-5-1105, MCA
IMP: 75-5-1102, MCA

36.24.103 DIRECT LOANS (1) The department may make a direct loan to a municipality for the purpose of financing or refinancing eligible project costs of an eligible water pollution control project. The loan must be evidenced by a bond issued by the governing body of the municipality pursuant to a bond resolution. The bond resolution must be in a form acceptable to the department and contain provisions and covenants appropriate to the type of bond being issued, consistent with the provisions of these rules, the commitment agreement and any financial or other requirements imposed by the department pursuant to these rules. The department has adopted a form of bond resolution that is available for review by prospective borrowers. The bond shall be issued in full compliance with all pertinent statutory provisions of Montana law and these rules, and applicable provisions of the code so that the interest thereon is exempt from federal income taxation.

(2) Anytime after receipt of notice that the proposed project has been placed on the priority list or the state's non-point source management plan, as the case may be and intended use plan and the engineering report for the proposed project, including compliance with the Montana Environmental Protection Act has been approved, a municipality may file an application for financing from the SRF. The municipality shall indicate on the application the type of bond it proposes to issue to secure the requested loan. The municipality shall submit with its application the financial information necessary to enable the department to determine compliance with the provisions of these rules and sufficient information to determine whether the project proposed to be financed is an eligible water pollution control project.

AUTH: 75-5-1105, MCA
IMP: 75-5-1113, MCA

36.24.104 TYPES OF BONDS; FINANCIAL AND OTHER REQUIREMENTS Subsections (1) and (a) remain the same.

(i) the bond will not cause the municipality to exceed its statutory indebtedness limitation; ~~and~~

(ii) all statutory requirements for the issuance of such bonds shall have been met prior to the issuance of the bonds; and

~~(ii)~~(iii) the election authorizing the issuance of the bonds has been conducted by the date of a binding commitment unless such requirement is waived by the department.

(b) the department may accept revenue bonds issued by a municipality in accordance with the provisions of Title 7, chapter 7, part 44, ~~MCA,~~ or Title 7, chapter 13, part 2, MCA, or

other applicable statutory provisions, subject to the following terms and conditions:

Subsections (i) through (v)(A) remain the same.

(B) a certificate as to the municipality's current population and number of ~~wastewater~~ system users, ~~customers~~ a schedule of the 10 largest users of the system showing the percentage of total revenues provided by such user and the amount of outstanding ~~wastewater~~ system debt;

(C) a description of the existing and proposed facilities constituting the system, including a discussion of the additional capital needs for the system over the next three-year period;

(D) a copy of the ordinance or resolution establishing and describing the system of rates and charges for the use or availability of the system;

~~(C)~~(E) a pro forma showing revenues of the system in an amount sufficient to meet the requirements of these rules and any outstanding obligations payable from the system;

~~(D)~~(F) if the pro forma indicates an increase in rates and charges to meet the requirements of these rules, a copy of the proposed rates and charge resolution and a proposed schedule for the adoption of the charges and if subject to review ~~by the public service commission~~ or approval by another entity, the schedule for ~~hearing before the public service commission~~ the rate approval;

(G) any other information deemed necessary by the department to assess the feasibility of the project and the financial security of the bonds.

Subsection (vi) remains the same.

(vii) the municipality may pledge water system revenues for a loan where the financed project consists of treatment of side stream waste from a water system or otherwise constitutes a wastewater project;

(viii) in the case of loans to finance solid waste management system projects, particularly where there is no existing system or history of revenues, the department may require among other things: a financial feasibility study; a description of other solid waste management services available in the area; and that the municipality to place the fees and charges on the tax bill and collect in accordance with the provisions of Title 7, chapter 13, part 2, MCA, or require that the debt be secured by the full faith and credit of the municipality.

(c) ~~County water and sewer district bonds. Bonds~~ General obligation bonds issued by county water and sewer districts shall comply with the requirements of 36.24.104(1)(a) hereof, and the provisions of Title 7, chapter 13, parts 22 and 23, MCA. Revenue bonds issued by county water and sewer districts created pursuant to Title 7, chapter 13, parts 22 and 23, MCA will be accepted as evidence of the loan, subject to the following terms and conditions:

Subsections (i) through (v) remain the same.

(vi) the payment of principal and interest on the bonds must be secured by a reserve account equal to the reserve

requirement, such requirement to be ~~met~~ proportionately funded from each periodic draw so that the requirement is fully satisfied upon the ~~issuance of the bond~~ final draw;

Subsection (vii) through (d)(ii) remain the same.

(iii) five percent (5%) of the principal amount of the loan be deposited into the revolving fund and the city or county shall agree to maintain in the revolving fund to the extent allowed by law, an amount not less than 5% of the principal of the bonds secured by the revolving fund~~;~~. The department may, if the financial risks associated with a proposed district warrant it, as a condition to the purchase of such bond, require the city or county to establish a district reserve fund and fund it from the proceeds of the loan, as permitted by law;

Subsections (iv) and (v) remain the same.

(vi) if the project to be financed from the loan secured by a special assessment bond is not part of a ~~wastewater~~ system currently existing and operated by the municipality receiving the loan and for the normal maintenance and operation of which the municipality is responsible and provides for such through rates and charges, a special maintenance district must be created at the time the improvement district is created pursuant to the applicable statutes in order to provide for the operation and maintenance of the project or an agreement must have been entered into at the time the loan is made between the municipality and another governmental entity, pursuant to which the governmental entity agrees to operate and maintain the project.

AUTH: 75-5-1105, MCA
IMP: 75-5-1113, MCA

36.24.106 COVENANTS REGARDING FACILITIES FINANCED BY THE LOAN (1) Specific requirements and covenants with respect to the system or improvements to the system being financed from the proceeds of the loan must be contained in the ~~form of~~ bond resolutions, forms of which are available from the department, and may include the requirements and covenants set forth herein. The bond resolution should be consulted for more specific detail as to each of these covenants.

Subsections (2) and (3) remain the same.

(4) The department, the department of ~~health~~ environmental quality, and the EPA and their designated agents have the right at all reasonable times during normal business hours and upon reasonable notice to enter into and upon the property of the borrower for the purpose of inspecting the system or any or all books and records of the borrower relating to the system.

(5) The borrower agrees that it will comply with the provisions of the Montana single audit act, Title 2, chapter 7, part 5, and to the extent not required by the single audit act to also provide for each fiscal year to the department and the department of ~~health~~ environmental quality, promptly when available:

Subsections (a) and (b) remain the same.

(6) The borrower shall maintain proper and adequate books of record and accounts to be kept showing complete and correct entries of all receipts, disbursements, and other transactions relating to the system, the monthly gross revenues derived from its operation, and the segregation and application of the gross revenues in accordance with this resolution, in such reasonable detail as may be determined by the borrower in accordance with generally accepted governmental accounting practice and ~~principals~~ principles. It will maintain the books on the basis of the same fiscal year as that utilized by the borrower. The borrower shall, within ~~180~~ 120 days after the close of each fiscal year, cause to be prepared and supply to the department a financial report with respect to the system for such fiscal year. The report must be prepared at the direction of the financial officer of the borrower in accordance with applicable generally accepted governmental accounting principles and, in addition to whatever matters may be thought proper by the financial officer to be included therein, must include the following:

Subsections (a) through (e) remain the same.

(7) The borrower shall covenant to take all necessary and legal action to collect such rates and charges, including terminating service, imposing reconnection fees and placing delinquent charges as a lien against the property and enforcing such lien to the extent permitted by law.

~~(7)~~(8) The borrower shall also have prepared and supplied to the department and the department of ~~health~~ environmental quality, within ~~180~~ 120 days of the close of every other fiscal year, an audit report prepared by an independent certified public accountant or an agency of the state in accordance with generally accepted governmental accounting ~~principals~~ principles and practice with respect to the financial statements and records of the system. The audit report shall include an analysis of the borrower's compliance with the provisions of the resolution.

Subsections (8) through (12) will be renumbered (9) through (13).

AUTH: 75-5-1105, MCA
IMP: 75-5-1113, MCA

36.24.107 FEES Subsection (1) remains the same.

(a) If an environmental impact statement is required pursuant to the Montana Environmental Policy Act and the department or the department of ~~health~~ environmental quality rules, the applicant shall bear the cost of the environmental impact statement.

(b) An administrative fee up to 1% of the amount of the committed amount of the loan must be charged each borrower. The department shall retain the administrative fee from the proceeds of the loan at the time of closing and transfer the fee to the state revolving fund administration account as provided in the indenture of trust. The department and department of ~~health~~ environmental quality may determine and establish from time to time, the precise amount of the administrative fee to be

charged, based on the projected costs of administering the program and other revenues available to pay such costs.

(c) Each borrower shall be charged a an administrative expense surcharge on its loan equal to .75% per annum on the outstanding principal amount of the loan, payable on the same dates that payment of principal and interest on the loan are due. The department and department of ~~health~~ environmental quality may determine and establish from time to time, the precise amount of the administrative expense surcharge to be charged, based on the projected costs of administering the program and other revenues available to pay such costs. The administration expense surcharge must be deposited in the special administrative costs account as provided in the indenture of trust.

Subsection (d) remains the same.

(e) All borrowers unless excepted from the requirement by the department shall pay a loan loss reserve surcharge equal to 1% per annum on the outstanding principal amount of the loan, payable on the same dates that payments of principal surcharge must be deposited in the loan loss reserve account established in the indenture of trust until the loan loss reserve requirement as defined in the general resolution is satisfied at which point it can be deposited in the state allocation account or to such other fund or account in the State Treasury authorized by state law as a department of environmental quality or department representative shall designate, or segregated in a separate subaccount in the Loan Loss Reserve Account and applied to any costs of activities under the program authorized by state law as a department of environmental quality or department representative shall designate. The department and department of ~~health~~ environmental quality may determine and establish from time to time, the precise amount of the loan loss reserve surcharge to be charged, based on the loan loss reserve requirement and the amounts in the match account. The borrower shall repay the following items: the loan at an interest rate determined in accordance with 36.24.110, plus the loan loss reserve surcharge plus the administrative expense surcharge. The borrower shall propose rates and charges for all wastewater services necessary to repay the above items. The department and the department of ~~health~~ environmental quality shall rank all applications. Based on a consideration of social economic factors and measures of financial condition the department and department of ~~health~~ environmental quality may agree not to impose the loan loss reserve surcharge on the borrower. Any excess fees on revenue generated within or by the program shall be used exclusively for purposes authorized by the federal act.

AUTH: 75-5-105, MCA
IMP: 75-5-1113, MCA

36.24.108 EVALUATION OF FINANCIAL MATTERS AND COMMITMENT AGREEMENT Subsection (1) remains the same.

(2) ~~Prior to~~ Upon approval of the application, the department ~~requesting the board of examiners to issue the state~~

~~bonds in an amount sufficient to fund a loan to a municipality,~~ may require the municipality, upon approval by its governing body, ~~shall have entered~~ to enter into a commitment agreement in the form provided by the department with the department, pursuant to which the municipality agrees to adopt the bond resolution and issue the bond described therein, and to pay its origination fee in the event the municipality ~~agrees to pay its pro rata share of the costs of issuance of the state's bonds~~ elects not to issue its bond.

AUTH: 75-5-1105, MCA
IMP: 75-5-1113, MCA

36.24.109 REQUIREMENTS FOR DISBURSING OF LOAN Subsections (1)(a) through (b) remain the same.

(c) a certificate of an official of the municipality that there is no litigation threatened or pending challenging the municipality's authority to undertake the project, to incur the loan, issue the bonds, collect ~~wastewater~~ the system charges in a form acceptable to the department;

Subsections (d) through (g) remain the same.

(h) a certified copy of the ~~wastewater~~ rate and charge ordinance, if applicable, and if subject to approval by ~~the public service commission,~~ another entity, evidence that such approval has been obtained;

(i) all permits or licenses that may be required by the state, any of its agencies and political subdivisions with respect to the project;

~~(i)~~(j) executed copy of the construction contract accompanied by the appropriate performance and payment bonds;

~~(j)~~(k) any additional documents required by the department or department of ~~health~~ environmental quality as a condition to the approval of the loan described in the bond purchase agreement;

~~(k)~~(l) a written order signed by a department of ~~health~~ environmental quality representative authorizing a disbursement;

Subsections (l) and (m) will be relettered (m) and (n).

AUTH: 75-5-1105, MCA
IMP: 75-5-1113, MCA

36.24.110 TERMS OF LOAN AND BONDS (1) ~~Rate of Interest.~~ (a) and (b) remain the same.

(2) ~~Loan term and loan repayments.~~ Unless the department otherwise agrees, each loan shall be payable, including principal and interest thereon and the administrative expense surcharge and loan loss reserve surcharge, if any, over a term approved by the department, not to exceed 20 years. In no case shall the term of a loan exceed the useful life of the project being financed. Interest, administrative expense surcharge and loan loss reserve surcharge, if any, payments on each disbursement of each loan or portion thereof which is not a construction loan shall begin no later than 15 days prior to the next interest payment date (unless the loan is closed within 15 days of the next interest payment date, in which case the first payment date shall be no later than 45 days prior to the next

following interest payment date). For construction loans, the department may permit principal amortization to be delayed until as late as one year after completion of the project, provided that the payment of interest on each disbursement of a construction loan shall begin no later than 45 days prior to the next interest payment date (unless the loan is closed within 15 days of the next interest payment date, in which case the first payment date shall be no later than 15 days prior to the next following interest payment date) unless the state has provided for the payment of interest on its bonds by capitalizing interest. In any event, the payment of interest must commence no later than the payment of principal.

Subsection (3) remains the same.

AUTH: 75-5-1105, MCA
IMP: 75-5-1113, MCA

3. Interested parties may submit their data, views or arguments concerning the proposed rules in writing to Anna Miller, Department of Natural Resources and Conservation, 1520 E. Sixth Avenue, Helena, MT 59620, on or before October 16, 1995.

4. If a person who is directly affected by the proposed amendments wishes to express their data, views and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Anna Miller, Department of Natural Resources and Conservation, 1520 E. Sixth Avenue, Helena, MT 59620. The comments must be received on or before October 16, 1995.

5. If the agency receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendments; from the administrative code committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be greater than 25 based on population of potential local government entities.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

/s/ Donald D. MacIntyre
for ARTHUR R. CLINCH, DIRECTOR

/s/ Donald D. MacIntyre
DONALD D. MacINTYRE,
RULE REVIEWER

Certified to the Secretary of State on Sept. 1, 1995.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of new rule I (2.5.407) and amendments of rules 2.5.202, 2.5.502, 2.5.505, 2.5.601, 2.5.602, and 2.5.607 pertaining to state purchasing.	))))))	NOTICE OF ADOPTION OF RULE AND AMENDMENTS PERTAINING TO STATE PURCHASING.

TO: All interested persons.

1. On July 27, 1995, the Department of Administration published notice to adopt Rule I pertaining to standards of responsibility for vendors, and to amend rules 2.5.202, 2.5.502, 2.5.505, 2.5.601, 2.5.602, 2.5.607, relating to state purchasing on page 1371 of the 1995 Montana Administrative Register, issue no. 14.

2. The Department of Administration has adopted Rule I (2.5.407), and amended 2.5.502, 2.5.505, 2.5.601, and 2.5.607 exactly as proposed.

3. The Department will amend 2.5.202 and 2.5.602 as proposed, but with the following changes:

2.5.202 DEPARTMENT OF ADMINISTRATION RESPONSIBILITIES

(1)-(4) Remain the same.

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

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

(b)-(d) Remain the same.

(6)-(7) Remain the same.

(AUTH: Sec. 18-4-221 MCA; IMP, Sec. 2-17-301, 2-17-302, 18-4-221 and 18-4-222 MCA.)

2.5.602 COMPETITIVE SEALED PROPOSALS

(1)-(2) Remain the same.

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

(a)-(b) Remain the same.

(4) FACSIMILE TRANSMISSION OF A PROPOSAL IS ONLY ACCEPTABLE ON AN EXCEPTION BASIS WITH PRIOR APPROVAL OF THE PROCUREMENT OFFICER.

~~(4)~~ (5) Proposals shall not be opened publicly but shall

be opened in the presence of a procurement official. Proposals and modifications shall be time-stamped upon receipt and held in a secure place by an employee of the agency until the established due date. Proposals and modifications shall be shown only to procurement officials having a legitimate interest in them.

~~(5)~~ (6) After the date established for receipt of proposals, a register of proposals shall be prepared which shall include for all proposals the name of each offerer~~, the number of modifications received, if any,~~ and a description sufficient to identify the supply or service offered. The register of proposals shall be open to public inspection only after award of the contract. ~~Proposal documents, such as financial information and trade secrets, that are identified, justified by the proposer or offerer, and agreed to by the department as requiring confidentiality will remain confidential after award.~~

(5)-(7) The text remains the same, but are renumbered (7)-(9).

~~(9)~~ (10) ~~Proposal documents, such as financial information and trade~~ TRADE secrets, that are identified, ~~justified~~ by the proposer or offerer, ~~and agreed to by the department as requiring confidentiality~~ will remain confidential after award. All other proposal documents are available for public inspection after the contract is executed.

(10) Remains the same, but is renumbered (11).

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

4. The Department accepted written and oral comments through August 24, 1995. Oral comments were received from the staff of the Administrative Code Committee and one state agency and are summarized as follows, along with the responses of the Department:

COMMENT 1: One comment questioned the necessity of adopting Rule I concerning standards the procurement officer may use to make a determination of nonresponsibility.

RESPONSE: Section 18-4-308, MCA, states that a written determination of nonresponsibility of a bidder or offerer must be made in "accordance with rules adopted by the department." This statute was adopted in 1983; however, due to an oversight of the department, rules to implement this section were never adopted. It was not until an issue involving the nonresponsibility of a vendor came up that the department realized that the rule-making process had not been completed. Adoption of Rule I completes this requirement.

COMMENT 2: One comment questioned whether the amendment in 2.5.202 (5) (a) affected only graphic arts equipment because of the way the sentence was worded.

RESPONSE: The rule language was meant to apply to all printing-related equipment within a 10-mile radius of the capitol area and the rule language was changed to reflect this.

COMMENT 3: One comment questioned why facsimile copies of bid or contract security would not be accepted, as stated in ARM 2.5.502.

RESPONSE: Only an *original* bid or contract security instrument is considered negotiable and valid for insuring the security of the bid or the performance of the contract.

COMMENT 4: One comment was received questioning why facsimile copies of Requests for Proposals (RFP's) would not be accepted, noting that at times, it would be in the best interest of the state to do so.

RESPONSE: The Department will amend the proposed rule to permit acceptance of facsimile copies of RFP's on an exception basis.

COMMENT 5: An issue was raised over ARM 2.5.602 concerning the responsibility the department had for determining what should be retained as confidential material in an RFP.

RESPONSE: ARM 2.5.602 will be amended to delete the department from the responsibility of the final determination of what should be retained as confidential material. Only trade secrets, not financial information, identified by the vendor as such, will be considered confidential material. All other documents will be considered mandated by the Montana Constitution to be open records and will be available for public inspection after the contract is executed.

Dal Smilie, Chief Legal Counsel
Rule Reviewer

Lois A. Menzies, Director
Department of Administration

Certified to the Secretary of State on August 30, 1995.

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

In the matter of the amendment of ARM 2.43.606 pertaining to conversion of an optional retirement upon death or divorce from the contingent annuitant	) NOTICE OF AMENDMENT))))

TO: All Interested Persons.

1. On July 13, 1995, the Public Employees' Retirement Board published notice of the proposed amendment of ARM 2.43.606 pertaining to conversion of an optional retirement upon death or divorce from the contingent annuitant, at page 1289 of the Montana Administrative Register, Issue No. 13.

2. The Board has amended 2.43.606 as proposed.

3. No written or oral comment was received.

Terry Teichrow, President
Public Employees' Retirement Board

Dal Smilie, Chief Legal Counsel and
Rule Reviewer

Certified to the Secretary of State on August 28, 1995.

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

In the matter of the adoption of new rule I (2.55.409)on a policy charge; and the amendment of rule 2.55.326.	NOTICE OF ADOPTION AND AMENDMENT OF RULES

TO: All Interested Persons:

1. On June 29, 1995, the State Compensation Insurance Fund published notice of the proposed adoption of rule I (2.55.409) and the amendment of rule 2.55.326 at page 1067-1069 of the 1995 Montana Administrative Register, Issue No. 12.

2. The Board adopts Rule I as proposed.
AUTH: Sec. 39-71-2315 and 39-71-2316 MCA
IMP: Sec. 39-71-2311 and 39-71-2316 MCA

3. The Board has amended rule 2.55.326 as proposed.
AUTH: Sec. 39-71-2315 and 39-71-2316 MCA
IMP: Sec. 39-71-2311 and 39-71-2316 MCA

4. The Board thoroughly considered the following comments:

COMMENT 1: Mr. Tutwiler, Montana Chamber of Commerce testified in support of the amendment.

COMMENT 2: Mr. Don Allen, Montana Coalition for Work Comp System Improvement testified in support of the amendment.

RESPONSE: The Board acknowledges both comments.

5. The Board has adopted the new rule I (2.55.409) and amended rule 2.55.326 exactly as proposed.

Dal Smilie, Chief Legal Counsel
Rule Reviewer

Rick Hill
Chairman of the Board

Nancy Butler, General Counsel
Rule Reviewer

Certified to the Secretary of State September 1, 1995.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 4.12.1221 and ARM 4.12.1224; Repeal of ARM 4.12.1226, 4.12.1227 and 4.12.1228	) NOTICE OF AMENDMENT) AND REPEAL PERTAINING) TO THE REGISTRATION,) FEES, STANDARDS, CERTI-) FICATION AND SALE OF BEES

TO: All Interested Persons

1. On July 13, 1995, the Department of Agriculture published a notice of proposed amendment and repeal of the above-stated alfalfa leafcutting bee rules at page 1292 of the 1995 Montana Administrative Register, issue no. 13.

2. The department has amended ARM 4.12.1221 and ARM 4.12.1224 and repealed ARM 4.12.1226 through 4.12.1228 as proposed.

3. No comments were received.

MONTANA DEPARTMENT OF AGRICULTURE

W. RALPH PECK, DIRECTOR
DEPARTMENT OF AGRICULTURE

TIMOTHY J. MELOY
RULE REVIEWER

Certified to the Secretary of State this 1st day of Sept 1995.

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

In the matter of the adoption of a new rule for the administration of the 1995 Federal Community Development Block Grant Program	)))))	NOTICE OF ADOPTION OF A NEW RULE PERTAINING TO THE ADMINISTRATION OF THE 1995 FEDERAL COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM

TO: All Interested Persons:

1. On June 15, 1995, the Department of Commerce published a notice of proposed adoption by reference of the above-stated rule at page 993, 1995 Montana Administrative Register, issue number 11.

2. The Division has adopted the new rule I (8.94.3711) exactly as proposed.

3. The Department received no comments during the formal public comment period for this proposal. However, during an earlier, uncompleted proceeding to adopt the same rule, the Department received several oral and written comments. A few of these comments suggested that the proposed rule be modified. A summary of these comments and the Department's responses to them follow:

COMMENT: The Department of Commerce should consider developing a consolidated application form for the Home Investment Partnerships (HOME) and CDBG Housing Programs to simplify the application process. Consolidating the application process would eliminate duplication of ranking and review processes in each program. Smaller organizations would benefit from a joint application process because they would not have to bear the cost of completing two different applications.

RESPONSE: HOME and CDBG staffs will review current application forms and identify areas of duplication and develop a joint application form for common areas for the FY 1996 grant competitions. A joint form would incorporate common information needed for both application processes. However, because the CDBG and HOME programs were created by separate federal statutes and have been implemented by different federal regulations, applicants will also have to provide information unique to each program's requirements. The HOME and CDBG staffs will also review their ranking criteria and administrative processes to identify unnecessary duplication, working towards elimination of duplicative areas by FY 1996.

COMMENT: The Department should determine which housing services and programs may be more cost effectively developed and administered on a statewide basis in order to ensure that essential housing programs are available throughout the state. The needs of the very low income households should be made the priority for the housing programs of the state.

RESPONSE: In order to implement a specific housing service or programs on a statewide basis the Department would have to earmark funds for this purpose and increase the

Department's administrative involvement in housing programs. An earmarked allocation would also be required if the Department were to give priority to the needs of a particular economic group.

From the inception of the CDBG and HOME programs it has been the Department's policy to provide grant funds to local governments through a competitive process. This approach enables each community to best identify its own individual priority needs, rather than requiring the Department to establish what may be inappropriate priorities on their behalf. Because of its commitment to this competitive system, the Department does not believe that establishing special earmarked allocations would be desirable. It should be noted, however, that the Montana Board of Housing does have programs that provide financial assistance to individuals on a statewide basis.

COMMENT: The Department should consider amending the CDBG application guidelines to provide for the funding of fair housing education and enforcement programs.

RESPONSE: The Department currently provides training to all CDBG grantees regarding fair housing requirements and monitors all grant projects for compliance with these requirements. At this time, however, the Department does not believe that circumstances warrant modifying the program to provide separate funding for fair housing education and enforcement activities. The Montana Human Rights Commission has lead responsibility in these areas and provides significant technical support to local governments regarding them.

LOCAL GOVERNMENT ASSISTANCE
DIVISION
DEPARTMENT OF COMMERCE

BY: Ann M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL

Ann M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, September 1, 1995.

BEFORE THE BOARD OF INVESTMENTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of rules pertaining to definitions, forward commitment fees, investment policy and interest rate reduction for loans to for-profit borrowers funded from the coal tax trust and the adoption of new rules pertaining to infrastructure loans	NOTICE OF AMENDMENT OF 8.97.1301 DEFINITIONS, 8.97.1303 FORWARD COMMITMENT FEES AND YIELD REQUIREMENTS FOR ALL LOANS, 8.97.1501 INVESTMENT POLICY, CRITERIA, AND PREFERENCES AND 8.97.1502 INTEREST RATE REDUCTION FOR LOANS TO FOR-PROFIT BORROWERS FUNDED FROM THE COAL TAX TRUST, AND THE ADOPTION OF NEW RULES PERTAINING TO INFRASTRUCTURE LOANS

TO: All Interested Persons:

1. On June 29, 1995, the Board of Investments published a notice of public hearing on the proposed amendment of the above-stated rules at page 1070, 1995 Montana Administrative Register, issue number 12. The hearing was held on July 19, 1995, at 9:00 a.m., in Helena, Montana.

2. The Board has amended ARM 8.97.1303, 8.97.1501, and 8.97.1502 and adopted new rules I (8.97.1503), II (8.97.1504) and III (8.97.1505) exactly as proposed. The Board has amended ARM 8.97.1301 as proposed, but with the following changes:

"8.97.1301 DEFINITIONS In addition to the definitions set forth in 17-5-1503 and 17-6-302, MCA, the following definitions apply in all sub-chapters contained in Title 8, chapter 97, of these rules:

(1) through (26) will remain the same as proposed.

(27) "Permanent full-time employee" means an employee who is scheduled to work ~~40 hours per week~~ full-time (i.e. a minimum of 35-40 hours per week) for an indefinite period of time. Temporary or part-time employees, and employees on contract or supplied by personnel supply companies, are not to be counted for purposes of qualification for the loan (i.e. the employer must provide a W-2 to its employee).

(28) through (44) will remain the same as proposed."

Auth: Sec. 17-5-1504, 17-5-1521, 17-6-308, 17-6-311, 17-6-315, 17-6-324, MCA; IMP, Sec. 17-5-1504, 17-5-1521 17-6-304, 17-6-308, 17-6-211, 17-6-315, 17-6-324, MCA

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

COMMENT: One written comment was received from Representative John Cobb. Representative Cobb expressed concern that the new company creating jobs would cause other Montana businesses to go out of business. He also did not want urban businesses treated more favorably than rural businesses, thus weakening the rural economy. Lastly, he inquired if it

would be possible to allow several local businesses to create jobs if loan proceeds were used to improve infrastructure.

RESPONSE: The Board has always been sensitive to job displacement if state funds are used to fund a project. The Board is also sensitive in allowing the free enterprise system to work. The Board's programs have not favored urban areas over rural areas over the ten plus years that these programs have existed. HB 602 makes it clear that at least 50 basic sector of the economy jobs must be created to qualify for an infrastructure loan.

BOARD OF INVESTMENTS
WARREN VAUGHAN, CHAIRMAN

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


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, September 1, 1995.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of rules 16.20.603, 617, 618, 619, 620, 621, 622, 623, 624, 641, 707, 712, 1003, 1802 concerning surface and groundwater water quality standards, mixing zones, and nondegradation of water quality.	NOTICE OF AMENDMENT OF RULES (Water Quality)

To: All Interested Persons

1. On May 11, 1995, the Board of Health and Environmental Sciences filed notice of proposed amendment of the above-captioned rules, with no hearing contemplated, at page 743 of the 1995 Montana Administrative Register, Issue No. 9. On June 29, 1995, the board filed a notice of public hearing on the amendment of the above-captioned rules at page 1098 of the 1995 Montana Administrative Register, Issue No. 12, because the Montana Environmental Information Center and the Greater Yellowstone Coalition requested a public hearing.

2. The Board of Environmental Review (which by law has succeeded to the authority and responsibilities of the Board of Health and Environmental Sciences, as of July 1, 1995) has, on August 4, 1995, adopted the rules as proposed except for the proposed amendments to ARM 16.20.712. The board is withholding action on those amendments until the board's hearing scheduled on October 6, 1995.

3. The board has thoroughly considered all comments received on the rules adopted on August 4, 1995. Those comments, in summary form, and the board's responses are as follows:

Comment: Several commentors stated that the board should not adopt the proposed health risk levels for carcinogens even though the 1995 legislature required the adoption of those health risk levels with the passage of SB 331.

Response: Under 2-4-305, MCA, a rule that implements a statute must be consistent and not in conflict with that statute. Carcinogen standards are set by 75-5-301, MCA, as amended by SB 331, at $1x10^{-3}$ for arsenic, and $1x10^{-3}$ for other carcinogens. Adoption of any other standard would not be consistent with 75-5-301, MCA. The rule must therefore be amended as proposed.

BOARD OF ENVIRONMENTAL REVIEW

JOHN F. NORTH,
Rule Reviewer

CINDY E. YOUNKIN, Chairperson

Certified to the Secretary of State September 1, 1995.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the repeal of ARM 16.20.612 regarding water use classifications on Indian reservations	))))	NOTICE OF REPEAL OF RULE

(Water Quality)

To: All Interested Persons

1. On April 13, 1995, the board published notice of the above proposed repeal of ARM 16.20.612 at page 530 of the 1995 Montana Administrative Register, Issue No. 7.

2. The board has repealed ARM 16.20.612, as proposed.

3. The board received comments from various Indian Tribes. A summary of those comments and the board's responses follow:

Comment: The Confederated Salish and Kootenai Tribes commented that all waters within the reservation have been classified and water quality standards have been adopted by the Tribal Council for those waters. The Tribes further stated that state regulation of waters within the reservation would be less protective than Tribal regulation. Therefore, the Tribes opposed repeal of the rule. The Tribes also commented that repeal of the rule was without legal effect because the United States Environmental Protection Agency (US EPA) has recently indicated that it would issues NPDES permits to point sources within the reservation.

Response: The board acknowledges that the Tribes have recently adopted water quality standards and have classified waters within the reservation. This fact, however, does not prevent the state from establishing classifications and standards within the reservation in order to issue permits based on state water quality standards to non-tribal members within the reservation. State issued permits would not be less protective than federal or tribal permits. In fact, the Tribes have adopted standards that are essentially identical to the state. Finally, the issuance of EPA permits does not prevent the state from issuing discharge permits under the authority of the Montana Water Quality Act. The repeal of this rule is necessary in order for the state to issue legally defensible permits within the boundaries of the reservation based on state standards.

Comment: The Chippewa Cree Tribe of the Rocky Boy's Reservation commented that the Tribe is the proper governing body to classify streams within the reservation even though the Tribe has not yet applied for treatment as a state under the Clean Water Act. The Tribe also stated that Section 518 of the federal

Clean Water Act is a congressional recognition of the Tribe's authority to assert regulatory authority under the provisions of that act. Further, the Tribe commented that repeal of the rule may compromise water rights negotiations between the state and the Tribe.

Response: The board acknowledges that tribes have authority to establish classifications within the reservations. Section 518 of the Clean Water Act does not, however, automatically confer regulatory authority to the tribes over point source discharges within the reservation. Under Section 518, a tribe may apply to the US EPA for primary regulatory authority under the Clean Water Act. Until tribes are granted this authority, the Montana Department of Environmental Quality (DEQ) is obligated to implement the Montana Water Quality Act within the reservations. Unless this rule is repealed, implementation of the Act will be compromised significantly within the reservations. Finally, the protection of water quality is independent of and has no effect on the tribes' water rights. Repeal of this rule will simply allow the state to continue issuing discharge permits to nonmembers within the reservations.

Comment: The Blackfeet Tribe commented that the Tribe is currently applying to obtain primary regulatory authority under the Clean Water Act. The Tribe commented that until the tribal proposal has been approved, the US EPA retains primary enforcement authority within the reservation. Finally, the Tribe also commented that the repeal of ARM 16.20.612 would have a chilling effect on discussions between the state and the Tribe concerning water rights issues.

Response: The federal Clean Water Act specifically does not preempt state laws concerning water quality protection on a reservation without an approved tribal program. Regardless of which governmental agency is eventually granted primacy under the federal Clean Water Act, the state believes that it retains its authority to enforce the provisions of the Montana Water Quality Act. With regard to water rights negotiations, it is the board's position that protection of water quality is not a water rights issue and is therefore not relevant to this proceeding.

Comment: The Assiniboine and Gros Ventre Tribes of the Fort Belknap Reservation and the Crow Tribe commented that the repeal of ARM 16.20.612 would violate federal law. The Tribes assert that various federal court decisions have held that Indian tribes have exclusive jurisdiction to regulate waters within their reservations unless congress has expressly granted the states regulatory authority by statute or treaty. The Fort Belknap Tribes and the Crow Tribes also commented that repeal of this rule would harm negotiations with the state over water resources within the reservation.

Response: As stated above, the provisions of the Clean Water

Act do not preempt state water quality laws. The repeal of this rule will have the effect of establishing state classifications and standards within the reservation. The establishment of such standards does not violate federal law. The legal question as to the extent of the state's regulatory authority within the reservation has not been finally decided by the US Supreme Court. Until the legal issue is resolved by the court or congress, the repeal of this rule affirms the state's position that it has authority to regulate water quality within the reservation boundaries. The repeal of this rule is not relevant to water resources within the reservation.

Comment: The Assiniboine and Sioux Tribes of the Fort Peck Reservation opposed the repeal of ARM 16.20.612 for two primary reasons: (1) Montana lacks jurisdiction to classify waters within Indian Reservations that are reserved for the tribes; and (2) Congress has expressly authorized tribes to regulate waters within the reservations. In support of the first assertion, the Tribes cited various supreme court decisions establishing reserved water rights and other cases holding that state laws regulating tribal property have no effect in Indian country unless congress has expressly authorized it. The Tribes also stated that the compact entered between the state and the Tribes regarding tribal water rights on the Fort Peck Reservation confirmed that the state had no authority to regulate water within the reservation. In support of its second assertion, the Tribes assert that congress has expressly delegated authority to the Tribes to regulate water quality under the provisions of the Clean Water Act.

Response: In response to the first assertion, the repeal of ARM 16.20.612 has nothing to do with the Tribes' reserved water rights established under federal common law. For this same reason, the repeal of this rule will have no effect on the compact entered between the Fort Peck Tribe and the state concerning the tribes' water rights. In addition, the precise legal issue as to the extent of the state's regulatory authority to implement water quality laws within the reservation has not been resolved by the US Supreme Court; therefore, it is the state's position that it may assert such authority. In response to the second assertion, the Clean Water Act does not provide an express delegation of regulatory authority to the tribes. It simply provides a mechanism for EPA to grant a tribe primacy under the Clean Water Act after a tribe has applied for such status. EPA regulations confirm that the Tribes' potential authority to regulate water quality must be determined on a case by case basis. In addition, whether or not a tribe has been granted primacy, the state is obligated under the Montana Water Quality Act to administer and enforce the provisions of that Act to non-tribal members within the reservations.

Comment: The Bureau of Indian Affairs commented that repeal of ARM 16.20.612 conflicted with the federal government's recognition of reserved and aboriginal water rights. That is,

the state has no authority over tribal water that is primarily in reserved or aboriginal status.

Response: As stated above, the state's authority to regulate water quality is independent of the issue of reserved water rights. The fact that a tribe has a reserved water right under federal common law does not mean that a tribe can regulate conduct of nonmembers on fee lands. Regardless of whether EPA or the tribes assert regulation under the federal Clean Water Act, the state has authority, independent of federal law, to regulate water quality under the Montana Water Quality Act. The precise scope of the state's authority within the reservations may eventually be resolved by the courts or congress. In the interim, the repeal of this rule will allow the state to issue legally-defensible permits within reservations.

Comment: The US EPA commented that the existing rule is helpful in clarifying that the tribes will eventually have the opportunity to establish their own standards within the reservation. If the state repeals this regulation, the repeal will have little effect on EPA's process for approving tribal water quality programs. EPA also stated that, absent EPA or tribally adopted water quality standards, EPA uses state water quality standards to issue federal NPDES permits within the reservations.

Response: Although a tribe may eventually adopt its own standards within a reservation, the repeal of this rule allows the state to regulate the conduct of nonmembers within a reservation under state law. Currently, there are no state water quality standards applicable to any of the seven reservations within Montana. However, both the EPA and the state are required to issue permits based on applicable standards. The repeal of this rule will allow both the state and EPA to administer the provisions of state and federal water quality laws respectively based on state standards.

BOARD OF ENVIRONMENTAL REVIEW

JOHN F. NORTH,
Rule Reviewer

CINDY E. YOUNKIN, Chairperson

Certified to the Secretary of State September 1, 1995.

BEFORE THE BOARD OF LAND COMMISSIONERS
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 26.6.411, pertaining to nonexport agreement for timber sales from state lands.	))))	NOTICE OF AMENDMENT

To: All Interested Persons

1. On June 29, 1995, the agency published a notice at page 1104 of the Montana Administrative Register, Issue No. 12, of the amendment of ARM 26.6.411, pertaining to changes in the nonexport agreement for timber sales from state lands.

2. The agency has amended ARM 26.6.411 exactly as proposed and as directed by Chapter 372, Laws of 1991.

3. The agency did not receive any comments on the proposed amendment.

Reviewed by:

Donald D. MacIntyre
Rule Reviewer

Marc Racicot
Chair

Certified to the Secretary of State August 21, 1995.

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

In the matter of the amendment of rule 16.24.104 concerning eligibility requirements for the children's special health services program	)))))	NOTICE OF THE AMENDMENT OF RULE 16.24.104 CONCERNING ELIGIBILITY REQUIREMENTS FOR THE CHILDREN'S SPECIAL HEALTH SERVICES PROGRAM

TO: All Interested Persons

1. On July 27, 1995, the Department of Public Health and Human Services published notice of the proposed amendment of rule 16.24.104 concerning eligibility requirements for the children's special health services program at page 1413 of the 1995 Montana Administrative Register, issue number 14.

2. The Department has amended rule 16.24.104 as proposed.

3. No written comments or testimony were received.

Dawn Sliva
Rule Reviewer

Director, Public Health and
Human Services

Certified to the Secretary of State September 1, 1995.

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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