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1995 ISSUE NO. 2
JANUARY 26, 1995
PAGES 89-149



MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 2

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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BEFORE THE MILK CONTROL BUREAU
OF THE STATE OF MONTANA

In the matter of amendment) NOTICE OF PROPOSED AMENDMENT
of rule 8.79.301 relating)
to assessments) NO PUBLIC HEARING
) CONTEMPLATED
)
) DOCKET #21-95

TO: ALL LICENSEES UNDER THE MONTANA MILK CONTROL ACT
(SECTION 81-23-101, MCA, AND FOLLOWING), AND ALL INTERESTED
PERSONS:

1. On April 1, 1995, the department of commerce proposes to amend ARM 8.79.301 relating to an assessment to be levied upon licensees subject to 81-23-202, MCA. The proposed amendment will become effective July 1, 1995.

2. The purpose of the amendment is to change the amount of the assessment. The rule as proposed to be amended would read as follows. (new matter underlined, deleted matter interlined)

"8.79.301 LICENSEE ASSESSMENTS (1) Pursuant to section 81-23-202, MCA, the following assessments for the purpose of deriving funds to administer and enforce the Milk Control Act during the current fiscal year beginning July 1 and ending June 30, are hereby levied upon the Milk Control Act licensees of this department.

(a) A fee of ~~eight cents (\$0.08)~~ six cents (\$0.06) per hundredweight on the total volume of all milk subject to the Milk Control Act produced and sold by a producer-distributor.

(b) A fee of ~~eight cents (\$0.08)~~ six cents (\$0.06) per hundredweight on the total volume of all milk subject to the Milk Control Act produced and sold by a distributor home based in another state. Said fee is to be paid either by the foreign distributor or his jobber who imports such milk for sale within this state.

(c) A fee of ~~four cents (\$0.04)~~ three cents (\$0.03) per hundredweight on the total volume of all milk subject to the Milk Control Act sold by a producer.

(d) A fee of ~~four cents (\$0.04)~~ three cents (\$0.03) per hundredweight on the total volume of all milk subject to the Milk Control Act sold by a distributor, excepting that which is sold to another distributor."

AUTH: 81-23-104, 81-23-202, MCA

IMP: 81-23-202, MCA

3. The proposed amendment changes the current assessment rate from \$.08 per CWT to \$.06 per CWT. The purpose for lowering the rate is so fees collected are not excessive in relation to the current budget level of expenditure. The amendment is mandated by statute.

NOTE: The assessment rate should be lowered to \$.07 per CWT, however, the current cash balance is too high, and by lowering the rate to \$.06 per CWT the cash balance will be brought into perspective.

4. Interested parties may submit their data, views, or arguments concerning the proposed amendments in writing to the Milk Control Bureau, 1520 East Sixth Avenue - Rm. 50, PO Box 200512, Helena, MT 59620-0512. Any comments must be received no later than February 27, 1995.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Milk Control Bureau at the above address. A written request for hearing must be received no later than February 27, 1995.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10 percent (10%) or twenty-five (25), whichever is less, of the persons who are directly affected by the proposed amendment, 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 (10%) of those persons directly affected by this assessment has been determined to be 20 persons based on an estimate of 202 resident and nonresident producers, distributors, out-of-state distributors, and producer-distributors.

MONTANA DEPARTMENT OF COMMERCE

By: Andy J. Poole
Andy J. Poole, Deputy Director
Montana Department of Commerce

By: Annie Bartos
Annie Bartos, Rule Reviewer
Commerce Chief Legal Counsel 2-4-110

Certified to the Secretary of State January 13, 1995.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF PROPOSED AMENDMENT
of Rule 11.14.401 pertaining) OF RULE 11.14.401 PERTAINING
to family day care home) TO FAMILY DAY CARE HOME
provider responsibilities and) PROVIDER RESPONSIBILITIES
qualifications.) AND QUALIFICATIONS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On March 16, 1995, the Department of Family Services proposes to amend Rule 11.14.401 pertaining to family day care home provider responsibilities and qualifications.

2. The rule as proposed to be amended reads as follows:
11.14.401 FAMILY DAY CARE HOMES, PROVIDER RESPONSIBILITIES AND QUALIFICATIONS (1) through (11) remain the same.
(12) No provider shall actively operate another business in the facility during the time the children are present for day care services.

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

3. The rule currently fails to address whether a provider may operate a business during hours of operation. The proposed language should be added to prohibit operation of a business during hours of care. The home's activities should be focused on the children. Therefore, no business should be operated from the home during hours of care.

4. Interested persons may submit their data, views or arguments to the proposed amendment in writing to the Office of Legal Affairs, Department of Family Services, 48 North Last Chance Gulch, P.O. Box 8005, Helena, Montana 59604, no later than February 24, 1995.

5. If a person who is directly affected by the proposed amendment wishes to express data, views and arguments orally or in writing at a public hearing, that person must make a written request for a public hearing and submit such request, along with any written comments, to the Office of Legal Affairs, Department of Family Services, 48 North Last Chance Gulch, P.O. Box 8005, Helena, Montana 59604, no later than February 24, 1995.

6. If the Department of Family Services receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendment, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who are

directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

DEPARTMENT OF FAMILY SERVICES



Hank Hudson, Director



John Melcher, Rule Reviewer

Certified to the Secretary of State, January 13, 1995.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF PROPOSED AMENDMENT
of Rule 11.7.603 pertaining to) OF RULE 11.7.603 PERTAINING
foster care support services,) TO FOSTER CARE SUPPORT
diaper allowance.) SERVICES, DIAPER ALLOWANCE

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On March 16, 1995, the Department of Family Services proposes to amend Rule 11.7.603 pertaining to foster care support services, diaper allowance.

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

11.7.603 FOSTER CARE SUPPORT SERVICES, DIAPER ALLOWANCE

(1) Any child under the age of 3 who is placed in a licensed foster home is eligible for a diaper allowance if:

(a) the child is expected to be in foster care for more than 30 days;

(b) the department is making foster care payments for the child; and

(c) there is a need for diapers as documented by the placing worker.

(2) remains the same.

AUTH: Sec. 41-3-1103; 41-3-1142 and 52-2-111 MCA; IMP: Sec. 41-3-1103; 41-3-1142 and 52-2-111 MCA

3. The department intends to prohibit foster care support service payment for expenses of diapers for children more than three years old. Children in foster care over 3 who need diapers may qualify for medicaid payments for diapers. Therefore, the department should clarify that no payment for diapers from foster care support service funds for children over three may be made.

4. Interested persons may submit their data, views or arguments to the proposed amendment in writing to the Office of Legal Affairs, Department of Family Services, 48 North Last Chance Gulch, P.O. Box 8005, Helena, Montana 59604, no later than February 24, 1995.

5. If a person who is directly affected by the proposed amendment wishes to express data, views and arguments orally or in writing at a public hearing, that person must make a written request for a public hearing and submit such request, along with any written comments, to the Office of Legal Affairs, Department of Family Services, 48 North Last Chance Gulch, P.O. Box 8005, Helena, Montana 59604, no later than February 24, 1995.

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

DEPARTMENT OF FAMILY SERVICES



Hank Hudson, Director



John Melcher, Rule Reviewer

Certified to the Secretary of State, January 13, 1995.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the adoption) NOTICE OF PROPOSED ADOPTION
of Rule I and the amendment of) OF RULE I AND THE AMENDMENT
Rule 11.12.101 pertaining to) OF RULE 11.12.101 PERTAINING
definitions and medical) TO DEFINITIONS AND MEDICAL
necessity requirements of) NECESSITY REQUIREMENTS OF
therapeutic youth group homes) THERAPEUTIC YOUTH GROUP
) HOMES

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On March 16, 1995, the Department of Family Services proposes to adopt Rule I and amend Rule 11.12.101 pertaining to definitions and medical necessity requirements of therapeutic youth group homes.

2. The rules as proposed to be amended and adopted read as follows:

11.12.101 YOUTH CARE FACILITY, DEFINITIONS (1) and (2) remain the same.

(3) ~~Additional~~ The following definitions apply only to for youth care facilities which are licensed as therapeutic youth group homes are found in [Rule I].†

(a) ~~"Therapeutic youth group home" is a youth care facility licensed by and under contract with the department as a therapeutic youth group home, in which staff who are trained to provide services to emotionally disturbed youth in a therapeutic environment, perform assessments, develop and implement planned treatment interventions designed to address a youth's therapeutic needs in accordance with an individualized written treatment plan, and provide group, individual and family therapy. Providers of moderate, campus based and intensive therapeutic youth group home services must directly employ or contract for services of clinicians, program managers, child care staff, relief staff, and administrative staff.~~

(b) ~~"Basic level" means the supervision and intensity of treatment classified under ARM 11.7.313 as supervision matrix level IV, and treatment matrix level II.~~

(c) ~~"Moderate level" means the supervision and intensity of treatment required in a therapeutic youth group home to manage and treat children who present emotional and/or behavioral disorders as evidenced by meeting three or more of the medical necessity criteria set forth in ARM 11.12.417. Therapeutic interventions such as individual and group therapy are provided several times per week. In addition to the treatment, the children are provided with 24 hour awake staff supervision.~~

(d) ~~"Campus based" means the supervision and intensity of treatment required in a therapeutic youth group home to manage and treat children who present severe emotional and/or behavioral~~

~~disorders as evidenced by meeting four or more of the medical necessity criteria set forth in ARM 11.12.417. Treatment, therapeutic interventions and supervision are tailored to the age and diagnosis of the children served. Therapeutic interventions are individualized and are provided several times per day. Campus based level care is provided on a campus where treatment is provided throughout the milieu. In addition to treatment, the children are provided with 24 hour awake staff supervision.~~

~~(e) "Intensive level" means the supervision and intensity of treatment required in a therapeutic youth group home to manage and treat children who present severe emotional and/or behavioral disorders as evidenced by meeting five or more of the medical necessity criteria set forth in ARM 11.12.417. Treatment, therapeutic interventions and supervision are tailored to the age and diagnosis of the children served. Therapeutic group and individual interventions are provided several times per day. In addition, specialized behavior management techniques are incorporated into the treatment and supervision of children requiring intensive level services. The children are provided with 24 hour awake supervision.~~

~~(f) "Lead clinical staff (LCS)" is an employee of, or under contract with, the moderate, campus based or intensive level therapeutic youth group home provider who is responsible for the supervision and overall provision of treatment services to children in the group home(s). The LCS must be a clinical psychologist, master level social worker (MSW), licensed professional counselor (LPC), or have a masters degree in a human services field with a minimum of one year of clinical experience.~~

~~(g) "Program manager" is an employee of the moderate, campus based or intensive level therapeutic youth group home provider who trains and supervises child care staff, and provides treatment under the clinical supervision of the LCS. Program managers must have a bachelor's degree in a human services field, or the experience or experience and education, equivalent to a bachelor's degree. Human services experience equivalent to a bachelor's degree for a non-degree program manager is six years. Each year of post-secondary education in human services for a non-degree program manager equals one year of experience.~~

~~(h) "Medical necessity statement" documents the moderate, campus based or intensive level of therapeutic youth group home services ordered by the physician, clinical psychologist, master level social worker (MSW), or licensed professional counselor (LPC).~~

AUTH: Sec. 41-3-1103; 41-3-1142 and 52-2-111, MCA. IMP: Sec. 41-3-1102; 41-3-1142 and 52-2-111, MCA.

Rule I THERAPEUTIC YOUTH GROUP HOMES, DEFINITIONS

(1) "Therapeutic youth group home" is a youth care facility licensed by and under contract with the department as a therapeutic youth group home, in which staff who are trained to provide services to emotionally disturbed youth in a therapeutic environment, perform assessments, develop and implement planned treatment interventions designed to address a youth's therapeutic

needs in accordance with an individualized written treatment plan, and provide group, individual and family therapy. Providers of moderate, campus based and intensive therapeutic youth group home services must directly employ or contract for services of clinicians, program managers, child care staff, relief staff, and administrative staff.

(2) "Basic level" means the supervision and intensity of treatment classified under ARM 11.7.313 as supervision matrix level IV, and treatment matrix level II.

(3) "Moderate level" means the supervision and intensity of treatment required in a therapeutic youth group home to manage and treat children who present emotional and/or behavioral disorders as evidenced by meeting three or more of the medical necessity criteria set forth in ARM 11.13.102. Therapeutic interventions such as individual and group therapy are provided several times per week. In addition to the treatment, the children are provided with 24 hour awake staff supervision.

(4) "Campus based" means the supervision and intensity of treatment required in a therapeutic youth group home to manage and treat children who present severe emotional and/or behavioral disorders as evidenced by meeting four or more of the medical necessity criteria set forth in ARM 11.13.102. Treatment, therapeutic interventions and supervision are tailored to the age and diagnosis of the children served. Therapeutic interventions are individualized and are provided several times per day. Campus based level care is provided on a campus where treatment is provided throughout the milieu. In addition to treatment, the children are provided with 24 hour awake staff supervision.

(5) "Intensive level" means the supervision and intensity of treatment required in a therapeutic youth group home to manage and treat children who present severe emotional and/or behavioral disorders as evidenced by meeting five or more of the medical necessity criteria set forth in ARM 11.13.102. Treatment, therapeutic interventions and supervision are tailored to the age and diagnosis of the children served. Therapeutic group and individual interventions are provided several times per day. In addition, specialized behavior management techniques are incorporated into the treatment and supervision of children requiring intensive level services. The children are provided with 24 hour awake supervision.

(6) "Lead clinical staff (LCS)" is an employee of, or under contract with, the moderate, campus based or intensive level therapeutic youth group home provider who is responsible for the supervision and overall provision of treatment services to children in the group home(s). The LCS must be a clinical psychologist, master level social worker (MSW), licensed professional counselor (LPC), or have a masters degree in a human services field with a minimum of one year of clinical experience.

(7) "Program manager" is an employee of the moderate, campus based or intensive level therapeutic youth group home provider who trains and supervises child care staff, and provides treatment under the clinical supervision of the LCS. Program managers must have a bachelor's degree in a human services field, or the experience or experience and education, equivalent to a bachelor's

degree. Human services experience equivalent to a bachelor's degree for a non-degree program manager is six years. Each year of post-secondary education in human services for a non-degree program manager equals one year of experience.

(8) "Medical necessity statement" documents the moderate, campus based or intensive level of therapeutic youth group home services ordered by the physician, clinical psychologist, master level social worker (MSW), or licensed professional counselor (LPC).

AUTH: Sec. 41-3-1103; 41-3-1142 and 52-2-111, MCA. IMP: Sec. 41-3-1102; 41-3-1142 and 52-2-111, MCA.

3. The department recently separated out medical necessity requirements for therapeutic youth group homes from licensing requirements by deleting these provisions from Chapter 12 and inserting them in a new chapter 13. See 1994 MAR p. 3013; 1994 MAR p. 2380. The definitions for the medical necessity requirements should also be moved and incorporated into the new chapter. Rule I incorporates the definitions which are proposed to be deleted from ARM 11.12.102.

4. Interested persons may submit their data, views or arguments to the proposed rules in writing to the Office of Legal Affairs, Department of Family Services, 48 North Last Chance Gulch, P.O. Box 8005, Helena, Montana 59604, no later than February 24, 1995.

5. If a person who is directly affected by the proposed amendment wishes to express data, views and arguments orally or in writing at a public hearing, that person must make a written request for a public hearing and submit such request, along with any written comments, to the Office of Legal Affairs, Department of Family Services, 48 North Last Chance Gulch, P.O. Box 8005, Helena, Montana 59604, no later than February 24, 1995.

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

DEPARTMENT OF FAMILY SERVICES


Hank Hudson, Director


John Melcher, Rule Reviewer

Certified to the Secretary of State, January 13, 1995.

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

In the matter of the amendment of)
rule 16.10.504 regarding licensing)
standards for drinking water)
manufacturers.)

NOTICE OF PROPOSED
AMENDMENT
NO PUBLIC HEARING
CONTEMPLATED

(Drinking Water)

To: All Interested Persons

1. On March 6, 1995, the department proposes to amend ARM 16.10.504 regarding licensure standards for producers, manufacturers, packagers, and processors of drinking water.

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

16.10.504 DRINKING WATER (1)-(5) Remain the same.

(6) In addition to the fee, the late fee, if applicable, and the application form identified in (5) above, the food manufacturing establishment must submit the following to the department for review:

(a)-(c) Remain the same.

(d) A copy, photocopy, or printer's proof of each label for each product to be marketed and for each size to be marketed; ~~and~~

(e) A description of the source of the water, water treatment used, all substances added to the water, and any other documentation required by the department to verify that labels and terminology used on the labeling conform with applicable law; and

(f) For products labeled "mineral water" or for a label containing the term "mineral water", copies of the results of laboratory testing of mineral content and total dissolved solids (TDS) of the product, obtained during the 12 months preceding the license year from an agency approved to test drinking water by the department or another public health agency.

(7) Remains the same.

AUTH: 50-31-104, 50-31-201, 50-50-103, MCA; IMP: 50-31-104, 50-31-201, 50-50-103, MCA

3. The department is proposing to amend this rule because, after recently adopting ARM 16.10.504, it was discovered that inadvertently omitted were requirements for the submission of documentation that containers labeled "mineral water" in fact contain mineral water. The documentation is necessary to ensure that mineral water and only mineral water is labeled as such and that the public is not victimized by false advertising.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendments, in writing, to Cynthia Brooks, Department of Health and Environmental Sciences, PO Box 200901, Helena, MT 59620-0901, no later than 5:00 p.m. on February 24, 1995.

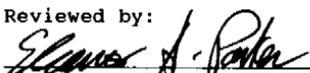
5. If a person who is directly affected by the proposed amendment wishes to express his/her data, views, and arguments orally or in writing at a public hearing, he/she must make written request for a hearing and submit this request along with any written comments he/she has to Cynthia Brooks, Department of Health and Environmental Sciences, PO Box 200901, Helena, MT 59620-0901. A written request for hearing must be received no later than 5:00 p.m. on February 24, 1995.

6. If the agency receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the administrative code committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be in excess of 25 persons, based on the number of persons producing, packaging, manufacturing, processing, and drinking water.


ROBERT J. ROBINSON, Director

Certified to the Secretary of State January 13, 1995.

Reviewed by:


Eleanor Parker, DHES Attorney

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

In the matter of the proposed) NOTICE OF PUBLIC HEARING ON
adoption of 15 new rules) PROPOSED ADOPTION OF NEW
related to the operation of) RULES AND REPEAL OF EXISTING
the uninsured employers' fund) RULE
and the underinsured employers')
fund, and the repeal of ARM)
24.29.2801)

TO ALL INTERESTED PERSONS:

1. On February 17, 1995, at 10:00 a.m., a public hearing will be held in the first floor conference room at the Walt Sullivan Building (Dept. of Labor Building), 1327 Lockey Street, Helena, Montana, to consider the adoption of 15 new rules related to the operation of the uninsured employers' fund and the underinsured employers' fund, and the repeal of ARM 24.29.2801.

The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the Department by not later than 5:00 p.m., February 13, 1995, to advise us of the nature of the accommodation that you need. Please contact the Employment Relations Division, Attn: Ms. Linda Wilson, P.O. Box 8011, Helena, MT 59604-8011; telephone (406) 444-6531; TDD (406) 444-5549; fax (406) 444-4140. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Ms. Wilson.

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

RULE I DEFINITIONS For the purpose of this subchapter, the following definitions apply, unless the context of the rule clearly indicates otherwise:

(1) "Cash balance" means all money held by the UEF that is not part of the administrative costs balance, the investment fund balance, or an earmarked fund.

(2) "Claimant" means an employee of an uninsured employer who claims to have suffered an industrial injury or occupational disease, or the beneficiary of that employee.

(3) "Department" means the department of labor and industry.

(4) "Earmarked fund" means money that has been collected by the UEF from an uninsured employer to pay for future liability for a particular claimant, and is to be paid only to or on behalf of that claimant.

(5) "Investment fund balance" means the money, other than earmarked funds, in the UEF account(s) invested by the board of

investments.

(6) "UIEF" means the underinsured employers' fund created in 39-71-534, MCA.

(7) "UEF" means the uninsured employers' fund created in 39-71-502, MCA.

AUTH: 39-71-203 MCA IMP: 39-71-503, -504 and 39-71-532 MCA

RULE II MONTHLY CALCULATIONS OF FUND BALANCES AND PAYMENTS

--UEF (1) The UEF calculates fund balances on a monthly basis.

(2) The UEF allocates its annual budget expenses on a monthly basis, and projects its annual budgeted costs in 12 equal portions.

(3) The UEF pays benefits on a monthly basis.

AUTH: 39-71-203 MCA IMP: 39-71-503 MCA

RULE III DETERMINING THE AMOUNT OF THE ADMINISTRATIVE COSTS BALANCE--UEF

(1) The administrative costs balance is calculated on a revolving 12 month balance of projected budgeted costs for the UEF. The administrative costs balance will therefore always be a positive number, representing the projected budget needed to operate and administer the UEF for the next 12 months.

AUTH: 39-71-203 MCA IMP: 39-71-503 MCA

RULE IV DETERMINING WHETHER THERE IS A POSITIVE FUND BALANCE--UEF

(1) There is a positive fund balance for the UEF only to the extent that the cash balance, plus any investment fund balance, less any earmarked funds, exceeds the administrative costs balance. When the cash balance, plus any investment fund balance, less any earmarked funds, is less than or equal to the administrative costs balance, the UEF does not have any funds (except for earmarked funds) with which to pay benefits.

AUTH: 39-71-203 MCA IMP: 39-71-503 MCA

RULE V MONTHLY CALCULATIONS OF FUND BALANCES AND TRANSFERS

--UIEF (1) The UIEF calculates fund balances on a monthly basis.

(2) The UIEF allocates its annual budget expenses on a monthly basis, and projects its annual budgeted costs in 12 equal portions.

(3) The UIEF transfers money to the UEF on a monthly basis.

AUTH: 39-71-203 MCA IMP: 39-71-532 MCA

RULE VI DETERMINING THE AMOUNT OF THE ADMINISTRATIVE COSTS BALANCE--UIEF

(1) The UIEF's administrative costs balance is calculated on a revolving 12 month balance of projected budgeted costs for the UIEF. The UIEF administrative costs balance will therefore always be a positive number, representing the projected budget needed to operate and administer the UIEF for the next 12 months.

AUTH: 39-71-203 MCA IMP: 39-71-532 MCA

RULE VII DETERMINING WHETHER THERE IS A POSITIVE FUND BALANCE--UIEF

(1) There is a positive fund balance for the UIEF only

to the extent that the UIEF cash balance, plus any UIEF investment fund balance, exceeds the UIEF administrative costs balance. When that cash balance, plus any investment fund balance, is less than or equal to the UIEF administrative costs balance, the UIEF does not have any money to transfer to the UEF.

AUTH: 39-71-203 MCA IMP: 39-71-532 MCA

RULE VIII NO BENEFITS PAID FROM THE UIEF TO CLAIMANTS

(1) Although a portion of 39-71-532, MCA, refers to "benefits paid or to be paid" by the UIEF to a claimant employed by an underinsured employer, there is no provision contained in the Workers' Compensation Act entitling a claimant to additional benefits from the UIEF because the employer was underinsured. Workers' compensation insurance covers the business operations of an employer. Workers' compensation insurance is generally not written naming individual workers as covered, and excluding non-named workers from coverage. Thus, an underinsured employer has workers' compensation insurance coverage for the employer's employees. As such, a claim made by an injured employee of an underinsured employer is covered by the employer's insurer. The claimant is entitled to benefits based upon the wages earned by the claimant, and benefit entitlement from the insurer is not limited because of any wrongful acts of the employer. Because the claimant's employer carries workers' compensation insurance, the claimant is not entitled to any benefits from the uninsured employers' fund (UEF).

AUTH: 39-71-203 MCA IMP: 39-71-532 MCA

RULE IX COLLECTION OF PENALTIES AND OTHER PAYMENTS FROM UNINSURED EMPLOYERS

(1) The department collects penalties from uninsured employers in the manner specified by 39-71-504, MCA. The department will assess a penalty on every uninsured employer of which it becomes aware, unless the department determines that the uninsured period is de minimis.

(2) The amount of the penalty is \$200.00, or twice the amount of the premium that the uninsured employer should have paid on the past 3-year payroll while the employer was uninsured, whichever is greater.

(3) To the extent that the state compensation insurance fund (plan No. 3) has a multiple pricing of premium structure in effect during any period in which the employer was uninsured, the penalty will be calculated using the rate that would have been charged by the state fund during that period. If there is evidence that a premium modifier would have been applied by plan No. 3, the penalty will be calculated according to a premium rate that includes the modifiers.

(4) Amounts collected from an employer to reimburse the UEF for benefits paid to a claimant must be deposited with the UEF. Any amount collected from an employer for future liability on a particular claim becomes an earmarked fund when there is an assignment agreement between the claimant and the UEF.

AUTH: 39-71-203 MCA IMP: 39-71-504 MCA

RULE X COLLECTION OF PENALTIES AND OTHER PAYMENTS FROM UNDERINSURED EMPLOYERS

(1) The department collects penalties from underinsured employers in the manner specified by 39-71-532, MCA. The department will assess a penalty on every underinsured employer of which it becomes aware. Because an underinsured employer is defined by 39-71-531, MCA, as an employer that knowingly misrepresents the duties of a worker in order to lower the premium rate, no penalty will be imposed on an employer that makes inadvertent misrepresentations.

AUTH: 39-71-203 MCA IMP: 39-71-532 MCA

RULE XI CALCULATION OF PENALTY ON UNDERINSURED EMPLOYERS

(1) The minimum amount of penalty for underinsured employers is \$200.00 for each employee not properly classified.

(2) Subject to the minimum amount of penalty, the amount of penalty ranges from 100% of the amount of the proper premium to 200% of the proper premium, for each employee not properly classified. In deciding what is the amount of the penalty, the department will consider the following factors:

(a) the clarity of the relevant classification codes, whereby clearer classification distinctions favor a higher penalty and less clear classification distinctions favor a lower penalty, and

(b) the gravity of the violation, judged on:

(i) whether the employer has a history of non-compliance with the Workers' Compensation Act, which indicates that a higher penalty should be imposed;

(ii) any mitigating circumstances, which indicate that a lower penalty should be imposed; and

(iii) any other information that goes to the gravity of the violation.

(3) The department does not consider any of the following factors as proper grounds for minimizing the percentage of penalty imposed:

(a) claimed economic hardship on the employer;

(b) claims that the employer's competitors also misreport duties, if the classifications are reasonably clear;

(c) the fact that the employer has already paid the insurer the underpaid premium, unless the employer voluntarily brought the underpayment to the attention of the insurer or the UIEF; or

(d) the fact that no claims were filed arising from the period of misreporting.

(4) For the purpose of calculating the penalty, the "proper premium" referred to in (2) is the premium that would have been charged had the employee been reported in the correct classification. To the extent that the employer's insurer has a multiple pricing of premium structure in effect during any period in which the employer was underinsured, the penalty will be calculated using the rate that should have been in effect. If there is evidence that a premium modifier would have been applied, the penalty will be calculated according to a premium rate that includes the modifiers.

(5) The department may, in its discretion, assess a

different percentage penalty for each employee misclassified, if the circumstances justify different percentages based upon the factors contained in (2), above.

AUTH: 39-71-203 MCA IMP: 39-71-532 MCA

RULE XII CLAIMS FOR BENEFITS (1) Prior to July 1, 1987, 39-71-503, MCA required the UEF to keep "proper reserves and surpluses." During the period January 13, 1981, to June 30, 1987, the UEF was insolvent. Based on the legal principle in workers' compensation that the statutes in effect at the time of an injury determine a claimant's entitlement to benefits, the UEF did not accept liability for any injuries that occurred during the period of insolvency.

(2) Effective July 1, 1987, 39-71-503, MCA was amended to remove the requirement that the UEF keep proper reserves and surpluses. Any claimant incurring an industrial injury or occupational disease in the course of employment with an uninsured employer on or after July 1, 1987, is eligible to apply for benefits by completing forms provided by the department. Upon receipt by the UEF of properly executed forms from a claimant, the department will initiate an investigation to determine whether the claimant meets eligibility requirements for benefits from the UEF. If the claimant is found to be eligible, the department will send a written notice to the employer advising of the employers' responsibilities under the law.

AUTH: 39-71-203 MCA IMP: 39-71-503 MCA

RULE XIII PAYMENT OF ACCRUED BENEFITS (1) Although the purpose of the UEF is to pay claims as though the claimant's employer was properly insured, because the UEF does not have a stable source of funding, it is not always financially possible to pay every claim in full. Accordingly, the department has been granted the authority to make such payments as it deems appropriate, depending on available funds.

(2) Subject to [RULE XV], the UEF will pay compensation benefits for losses incurred prior to the time the claimant applied for benefits in a lump sum, during the month in which the UEF accepts liability for the claim. The lump sum payment for accrued compensation benefits will be paid from the positive fund balance, and treated as part of the month's claim for current benefits. If as a result of the inclusion of the accrued compensation benefits there is a proportionate reduction in benefits, there is no entitlement to retroactive reimbursement.

(3) The UEF will pay medical expenses incurred prior to the time the claimant applied for benefits in a lump sum, during the month in which the UEF accepts liability for the claim. The lump sum payment for accrued medical expenses will be paid from the positive fund balance, and treated as part of the month's claim for current benefits. If as a result of the inclusion of the accrued medical expenses there is a proportionate reduction in medical benefits, there is no entitlement to retroactive reimbursement.

(4) The UEF pays current benefits in the manner described in [RULE XIV].

AUTH: 39-71-203 MCA IMP: 39-71-503, -504 and 39-71-510 MCA

RULE XIV PRIORITY OF PAYMENT OF CURRENT BENEFITS (1) In keeping with the provision contained in 39-71-503, MCA, that disability benefits are to be paid before medical benefits, the department will pay compensation benefits before paying any other benefits.

(2) In the event that the amount of compensation claims for a month exceed the positive fund balance, compensation benefits will be paid on a proportionate basis to the point where there is no longer a positive fund balance. As provided by 39-71-510, MCA, any such reduction does not entitle a claimant to retroactive reimbursements of compensation benefits in the future.

(3) If, after paying all compensation benefits for the month, a positive fund balance still exists, other benefits, such as payments to medical or rehabilitation providers, will be paid. In the event that the amount of other benefit claims for a month exceed the positive fund balance, those benefits will be paid on a proportionate basis to the point where there is no longer a positive fund balance. As provided by 39-71-510, MCA, any such reduction does not entitle a claimant (or the provider to whom such benefits are paid) to retroactive reimbursements of benefits in the future.

(4) Earmarked funds may be used to pay that claimant's benefits at full value, regardless of whether there is a positive fund balance for the month.

AUTH: 39-71-203 MCA IMP: 39-71-503, -504 and 39-71-510 MCA

RULE XV PAYMENT OF CLAIMS WHERE LIABILITY IS DISPUTED

(1) This rule is intended to balance the rights of a claimant to back-due benefits where the claim was disputed with the rights of other claimants whose claims have been accepted. In order to pay benefits to claimants who prevail in disputed compensability cases without establishing reserves for the payment of disputed and litigated claims, and without unduly prejudicing the rights of other claimants, the UEF will pay back-due benefits awarded as the result of litigation according to this rule. The UEF may also settle disputed liability issues by making payments in the manner provided by this rule, or by means of a non-acceptance of liability settlement.

(2) Where the UEF is subject to a final order from a court of competent jurisdiction requiring it to pay benefits, the UEF will pay back-due compensation benefits on a month-at-a-time basis, in addition to any current compensation benefits due the claimant. The back-due compensation payments will be made in the order of the oldest payments first, until the arrearages are eliminated. Thus, the first payment to claimant will be the amount owed for the current month, plus the amount that would have been paid for the first month of the claim. If a compensation payment would have been subject to a proportionate reduction during the month it would have been due (had liability

been accepted), then it will be paid at the reduced rate applicable to the period during which it would have been paid had liability not been disputed. The monthly back-due compensation amount will be added to the current month's compensation claims and paid from the positive fund balance. The monthly back-due compensation amount is not subject to any proportionate reduction that might be applied to the current month's compensation benefits.

(3) Where the UEF is subject to a final order from a court of competent jurisdiction requiring it to pay benefits, the UEF will pay other back-due benefits (such as medical benefits) on a month-at-a-time basis, in addition to any current "other benefits" due the claimant. Because of the requirement that compensation benefits be paid before other benefits are paid, there may be times when back-due "other payments" are not paid during a given month. The back-due other payments will be made in the order of the oldest payments first, until the arrearages are eliminated. If an "other benefit" payment would have been subject to a proportionate reduction during the month it would have been due (had liability been accepted), then it will be paid at the reduced rate applicable to the period during which it would have been paid had liability not been disputed. The monthly back-due "other" amount will be added to the current month's "other benefits" claims and paid from the positive fund balance. The monthly back-due "other benefits" amount is not subject to any proportionate reduction that might be applied to the current month's payments.

(4) In order to calculate the proportionate reduction that a payment would have been subject to, had liability not been disputed, the UEF will re-compute the total claims made during the month the benefit should have been paid by adding the claims due during that month and the amount that would have been paid, had liability not been disputed. The UEF will not seek reimbursement for benefits already paid, if the recalculation shows that there should have been a proportionate reduction in benefits.

(5) Where the UEF is subject to a final order from a court of competent jurisdiction requiring it to pay a penalty for unreasonable conduct in handling a claim, the UEF will pay the penalty as a current benefit.

(6) The UEF may, in its sound discretion, resolve disputes concerning payment of benefits by agreeing to pay back-due benefits in a manner consistent with this rule. Such resolutions may involve claims where initial compensability has been accepted or where initial compensability has been denied.

(7) The UEF may, in its sound discretion, resolve disputes concerning disputed initial liability by agreeing to make a payment in compromise settlement of the claim. In such instance, the entire amount of the payment must be treated as part of that month's current claim for compensation benefits, and is subject to a proportionate reduction if the positive fund balance is insufficient to pay compensation benefits in full.

(8) The UEF pays current benefits in the manner described in [RULE XIV].

AUTH: 39-71-203 MCA IMP: 39-71-503, -504 and 39-71-510 MCA

REASON: These rules are reasonably necessary to establish criteria for imposing discretionary penalties due the Uninsured Employers' Fund (UEF) and Underinsured Employers' Fund (UIEF), to establish a process for the administration of the UIEF and the transfer of funds from the UIEF to the UEF, and to explain how benefits are paid by the UEF. Chapter 467, Laws of 1993, created the UIEF, which is operated and administered in conjunction with the UEF. Additional UEF staff were authorized by the 1993 Legislature to improve the enforcement and collection practices. These rules also are reasonably necessary to more fully explain the operations of the UEF and to establish practices that are designed to ensure the financial viability of the UEF. The proposed rules clarify the procedures used by the UEF in paying benefits during periods when claims exceed available funds, or when there are back-due benefits owed to a claimant.

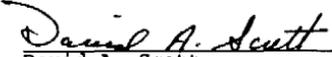
3. The Department of Labor and Industry proposes to repeal ARM 24.29.2801 in its entirety. ARM 24.29.2801 is found at pages 24-2293 and 24-2294 of the Administrative Rules of Montana. Authority to repeal the rule is section 39-71-203, MCA. There is reasonable necessity for the proposed repeal because the proposed new rules more completely address the subject matter of 24.29.2801.

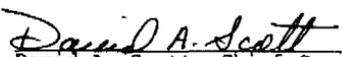
4. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to:
Dennis Zeller, Bureau Chief
Workers' Compensation Regulations Bureau
Employment Relations Division
Department of Labor and Industry
P.O. Box 8011
Helena, Montana 59604-8011
and must be received by no later than 5:00 p.m., February 24, 1995.

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

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

Laurie Ekanger, Commissioner
DEPARTMENT OF LABOR & INDUSTRY


David A. Scott
Rule Reviewer

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

Certified to the Secretary of State: January 13, 1995.

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

In the matter of the adoption)	CORRECTED NOTICE
of new rule I (2.55.407) per-)	OF AMENDMENT OF
taining to Optional Deductible)	ARM 2.55.322
Plans and new rule II (2.55.408))	
pertaining to Retrospective Rating)	
Plans, and the amendment of rules)	
2.55.322, 2.55.324, and 2.55.325)	
pertaining to premium rates.)	

TO: All Interested Persons:

1. On October 13, 1994, the Board published a notice of public hearing at page 2690 of the 1994 Montana Administrative Register, Issue No. 19, of the proposed amendment and adoption of the above-captioned rules; and on December 8, 1994, the Board published notice of adoption and amendments of the same, at page 3084 of the 1994 Montana Administrative Register, Issue No. 23.

2. Both notices inadvertently omitted paragraph (2) of ARM 2.55.322. The corrected rule amendment reads as follows:

2.55.322 CALCULATION OF CREDIBILITY WEIGHTED RATE (1) Same as proposed and adopted.

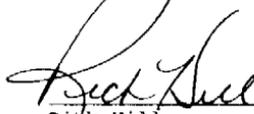
(2) remains the same.

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

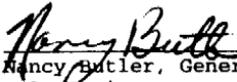
IMP: Sec. 39-71-2311, 39-71-2316, and 39-71-2330, MCA.



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 January 13, 1995.

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

In the matter of the adoption of) NOTICE OF ADOPTION
rules I-V VI regarding procedures &) OF NEW RULES
criteria for the certification of)
air and water pollution equipment)
as eligible for special property)
tax treatment.)

(Air & Water Quality)

To: All Interested Persons

1. On September 8, 1994, the department published notice of the above proposed new rules at page 2482 of the Montana Administrative Register, Issue No. 17.

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

RULE I (16.9.101) DEFINITIONS For the purpose of this subchapter, the following definitions apply, in addition to the definitions contained in 15-6-135, MCA:

(1)-(3) Same as proposed.

(4) "Substantial compliance" means either full compliance with all applicable rules, laws, orders, or permit conditions, or noncompliance with such requirements, provided that incidents of noncompliance are isolated or casual, do not involve continuous acts or patterns of noncompliance, and do not result in the initiation filing by DHES of an administrative or judicial enforcement action. For purposes of this definition, issuance by DHES of a citation or a notice of violation, without an accompanying compliance or penalty order, ~~or a citation~~ does not constitute the initiation filing of an ~~administrative or judicial~~ enforcement action.

RULE II (16.9.102) APPLICATION FOR CERTIFICATION AS AIR OR WATER POLLUTION EQUIPMENT (1) Same as proposed.

(2) The applicant shall submit an original signed application to DHES with copies to DOR and the county commissioners of the county in which the property is located. Applications must contain the following information:

(a)-(c) Same as proposed.

(d) identification of existing or pending air or water quality permits for the equipment, and a description of the applicant's compliance status in regard to ~~applicable~~ rules, laws, orders, and permit conditions applicable to the equipment;

(e) certification that the applicant is in substantial compliance with all ~~applicable~~ rules, laws, orders, and permit conditions applicable to the equipment; and

(f) Same as proposed.

(3) Within 45 days of receipt of an application, DHES

shall determine whether additional information is required to make a certification decision. If DHES determines that additional information is required, DHES shall notify the applicant in writing and specify the date by which any additional information must be submitted. If the information is not submitted as required, the application must be considered withdrawn unless the applicant requests in writing, and DHES approves, an extension of time for submission of the additional information. DHES may make additional information requests within 45 days after receipt of any required additional information, following the same procedure as the original information request. DHES shall notify DOR and the appropriate county commissioners of any information requests.

(4) ~~DHES shall issue written notice to the applicant of the department's determination that a certification application is complete.~~ DHES shall make a final decision whether to certify within 120 days after the date it ~~issues the notice the application is complete,~~ receives a complete certification application. DHES shall provide written notice of its final determination to the applicant, DOR, and the appropriate county commissioners.

(5) Monetary valuations or costs used by DHES in the certification process are for purposes of identifying qualifying portions of the equipment, and are not binding on DOR or a county as to ~~market value for tax purposes actual taxable valuation.~~

RULE III (16.9.103) ELIGIBILITY CRITERIA (1) Same as proposed.

(2) ~~As provided in 15-2-135(2)(a), MCA, operational techniques that reduce pollutants but do not require the installation or modification of specific facilities, machinery, devices, or equipment are not eligible for certification under this subchapter.~~

(3) Same as proposed.

(4) For certification to be granted, an applicant must be in substantial compliance, on the date of application, with all ~~applicable rules, laws, orders, and permit conditions applicable to the equipment that is the subject of the application. Certification shall remain in effect only for as long as substantial compliance continues. Any failure to remain in substantial compliance shall void certification for all of the applicant's air and water pollution equipment.~~ Procedures for compliance inspection and ~~voidance of certification~~ are as provided in [RULE V].

(5) Examples of equipment or facilities that may, to the extent used for pollution control purposes, qualify for certification include, but are not limited to, the following are:

(a)-(k) Same as proposed.

(6) (a)-(d) Same as proposed.

(e) fuel changes except to the extent they are used for ~~achieve~~ pollution control and require the installation or modification of specific facilities, machinery, devices, or equipment; and

(f) energy conservation measures, except to the extent they are used for achieve pollution control and require the installation or modification of specific facilities, machinery, devices, or equipment.

RULE IV (16.9.104) APPORTIONMENT PROCEDURES (1) Same as proposed.

(2) The applicant shall provide DHES with all information necessary to conduct an apportionment under this rule. DHES shall conduct the apportionment based upon the specific facts and circumstances of each case. Methods for apportionment include, but are not limited to, the following:

(a) ~~determination assessment~~ of the difference in value between equipment with integrated pollution controls and similar equipment without pollution controls. An example is a fluidized bed boiler with limestone injection for air emission control. The value of the fluidized bed boiler would be compared with the value of a similarly-sized conventional boiler, and the difference would be certified as the air pollution equipment value;

(b) ~~determination assessment~~ of the difference in value between a facility designed for multiple purposes and a facility designed for pollution control only. The difference would be denied certification;

(c)-(d) Same as proposed.

RULE V (16.9.105) COMPLIANCE (1) Same as proposed.

(2) ~~Failure to operate any certified air and water pollution equipment in substantial compliance with all applicable rules, laws, orders, or permit conditions shall void the certification for all of the applicant's equipment for as long as the failure persists. DHES shall provide written notice of its determination of a failure of substantial compliance to the applicant, the DOR, and the appropriate county commissioners. In the event that substantial compliance is restored, the applicant must provide DHES with written notice, and DHES shall conduct an inspection and report its compliance determination to the applicant, the DOR, and the appropriate county commissioners within a reasonable time thereafter.~~

(3) ~~DHES must submit certification and compliance determinations on pollution control equipment for which certification has already been received must be submitted to DOR by DHES no later than February March 1 of the year following the year of inspection for which tax adjustments are sought.~~

RULE VI (16.9.106) INFORMAL CONFERENCE (1) DHES shall provide an applicant with an opportunity for an informal conference for reconsideration of a department determination regarding certification or noncompliance. The applicant must request an informal conference in writing within 10 days after receiving a notice of certification or noncompliance.

AUTH: 15-6-135, MCA; IMP: 15-6-135, MCA

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

COMMENT: A commenter suggested that the rules' interpretation of "substantial compliance" should conform more closely to the statutory language. The commenter also suggested that the department has no authority to "void" certification, as stated in Rule III(4) and Rule V(2), but only to report substantial noncompliance to the department of revenue (DOR).

RESPONSE: The department has modified the definition of "substantial compliance" to more closely conform to the language of the tax certification statute, 15-6-135, MCA. The statute and the revised rules exclude incidents of noncompliance that are isolated or casual and do not involve continuous acts or patterns of noncompliance. The department also modified the definition to clarify that issuance of a citation or a notice of violation accompanied by a compliance or penalty order would constitute "initiation" by DHES of an enforcement action. The department has deleted references to "voiding" certification, although it is clear under the statute that the department's noncompliance report to DOR has the legal effect of voiding certification.

COMMENT: A commenter stated that, without a definition of "complete application", it was difficult to track the 120-day period, specified in Rule II(4), for acting on a complete application. The commenter also expressed concern that the application process could continue indefinitely, under the proposed provisions for requests for additional information.

RESPONSE: The department has modified the rules to require the department to issue written notice to the applicant when an application is complete. The 120-day period will start on the date of the completeness notice. The department recognizes that the application process could be extended through additional information exchanges. The proposed rules mitigate this to some extent by requiring the department to decide, within 45 days of a submittal, whether more information is required. However, an absolute limit on information requests would result in the unnecessary denial of applications for inadequate information.

COMMENT: A commenter suggested that the term "taxable valuation" in Rule II(4) should be changed to "market value". Another commenter suggested that, in Rule IV(2)(a) and (b), the term "assessment" should be changed to "determination".

RESPONSE: The department agrees that the terms "market value for tax purposes" in Rule II(4), and "determination" in Rule IV(2)(a) and (b), are more appropriate. The department has modified the rules accordingly.

COMMENT: Several commenters stated that the scope of decertification for lack of substantial compliance under the proposed rules was too broad, and could be interpreted as requiring decertification of all of an applicant's air and water pollution equipment, at all of applicant's facilities, when a single piece of equipment at one facility is not in substantial compliance with applicable requirements.

RESPONSE: While the statute is not clear on this point, the department believes that the better interpretation is to link certification of particular equipment to substantial compliance with requirements applicable to that equipment. In other words, a failure of substantial compliance would result in decertification only of that particular equipment associated with the noncompliance. The department has modified the rules accordingly.

COMMENT: A commenter suggested that the department perform inspections after issuing a noncompliance determination, to verify whether substantial compliance is restored.

RESPONSE: The department has modified the rules to provide for such inspections, to be performed within a reasonable time after an applicant submits a written notice of restoration of compliance.

COMMENT: Several commenters requested that the department provide applicants with an opportunity for an informal conference regarding certification or compliance determinations.

RESPONSE: The department has added RULE VI accordingly.

COMMENT: The department of revenue (DOR) requested that the deadline for notices to DOR be February 1st, rather than March 1st.

RESPONSE: The department has modified the rules accordingly.

COMMENT: A county health agency requested that the rules recognize the role of county health agencies or districts in pollution control matters.

RESPONSE: By providing notice of key developments to appropriate county commissioners, the department has created a mechanism for involving county health agencies and districts in proceedings under these rules and therefore has made no further change in the rules to address the comment.

COMMENT: Several commenters requested that the illustrative examples, in Rule III(5), of equipment that may qualify for certification be expanded to include equipment required by law for pollution control. In support of this argument, two commenters used the example of a fluidized bed boiler, which

DHES has recognized as meeting Best Available Control Technology (BACT) air quality requirements.

RESPONSE: The department disagrees with the proposed changes, because they could lead to results contrary to the intent of the tax certification statute. The Statement of Intent for HB 436 directs the department to apportion the value of multipurpose equipment into that used for production and other purposes and that used for pollution control. BACT equipment, such as the fluidized bed boiler, may have both production and pollution control components. To certify the entire fluidized bed boiler, simply because it is required as BACT, would violate the tax statute's directive to apportion multipurpose equipment. When specific pollution control equipment is required by law, the department will certify the equipment to the extent that it is used for pollution control purposes.

COMMENT: One commenter questioned the validity of the apportionment methods described in Rule IV(2)(a) and (b), which compare hypothetical equipment values to actual equipment values to identify a certifiable increment. The commenter expressed concern that the use of hypotheticals is contrary to the statute and would result in unverifiable determinations. Another commenter suggested that the rules require that a cost method be used in all apportionments.

RESPONSE: The department believes that the apportionment methods described are a reasonable method to implement the statutory directive to apportion multipurpose equipment. Values developed for hypothetical equipment will be supported by verifiable cost information. While cost methods will often be used to apportion multipurpose equipment, the rules also must allow for any other method that achieves a fair and reasonable apportionment.

COMMENT: A commenter suggested an alternative apportionment method that would certify a portion of "common property", such as a plant administration building, using the percentage derived by dividing the value of plant pollution control equipment by the value of all plant equipment.

RESPONSE: The department interprets the statute as allowing certification only for equipment or facilities that are actually designed, constructed, and used for pollution control. In the department's view, a plant administration building is not designed, constructed, or used for pollution control.

COMMENT: A commenter questioned whether, under the language of the proposed rules, certification is possible for any portion of equipment that is also used for production.

RESPONSE: The department believes that the rules as proposed clearly allow for apportionment of multipurpose equipment, and for certification of any equipment to the extent that it is

used for pollution control.

COMMENT: One commenter stated that certifying only the pollution control portions of equipment or facilities limits the tax incentive to install pollution control equipment. Better tax incentives would result if the total tax were less for pollution control equipment than for equipment without such controls.

RESPONSE: The department acknowledges the commenter's point, but believes that the matter would require statutory change.

COMMENT: A commenter suggested that water monitoring wells and air monitoring equipment are not treated consistently under the proposed rules.

RESPONSE: The department believes that air and water monitoring equipment are treated consistently under the rules. In Rules III(5)(k) and III(6)(a), both monitoring wells and continuous air emission monitors are recognized as certifiable to the extent that they are part of a pollution control system.

COMMENT: A commenter suggested that continuous air emission monitors (CEMs) should not have to be part of an emission control system to be certified. The commenter states that, regardless of whether a CEM is part of a system or operates independently, if the CEM is used to adjust operations to stay in compliance, it should be certified.

RESPONSE: The proposed rules allow for certification of CEMs if they function to adjust operations to stay in compliance. Such use of CEMs to regulate emissions would, in the department's view, make the CEM part of an "emission control system".

COMMENT: A commenter indicated that some information submitted with applications may be proprietary, and requested language in the rules to ensure that proprietary information would remain confidential.

RESPONSE: The department's ability to restrict public access to records is limited by the Montana Constitution and by statute. Changes in the rules would not affect these underlying legal limitations. The law does recognize some protection for trade secrets. For example, 75-2-105, MCA, allows for the creation of trade secret confidentiality through a judicial declaratory judgment action. The department recommends that applicants avoid submitting proprietary information whenever possible. Where proprietary information is essential to an application, the applicant and the department should consult to determine what protection may be available under existing law.

COMMENT: A commenter requested that the rules provide that applicants not be required to submit any information previously submitted to the department.

RESPONSE: The proposed rules do not require applicants to resubmit information previously submitted in the context of a tax certification application. Applicants do have the responsibility to forward to certification reviewers any material previously submitted to the department in another context, e.g., in a permit application.

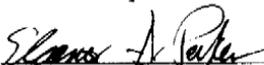
4. The department has made other minor changes and clarifications to the rules for purposes of internal consistency and conformity with 15-6-135 and 2-4-305, MCA.



ROBERT J. ROBINSON, Director

Certified to the Secretary of State January 13, 1995.

Reviewed by:



Eleanor A. Parker, DHES Attorney

BEFORE THE PETROLEUM TANK RELEASE COMPENSATION BOARD
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF
rule 16.47.342 pertaining to the) AMENDMENT OF RULE
review of corrective action plans)

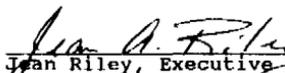
To: All Interested Persons

1. On October 27, 1994, the Petroleum Tank Release Compensation Board of the State of Montana published notice of the proposed amendment of the above-captioned rule at page 2786 of the Montana Administrative Register, Issue No. 20.

2. The board has amended the rule as proposed.

3. No comments were received.

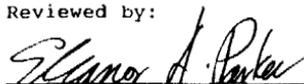
MONTANA PETROLEUM TANK RELEASE
COMPENSATION BOARD
Gary Tschache, Chairman



Jean Riley, Executive Director

Certified to the Secretary of State January 13, 1995.

Reviewed by:



Eleanor Parker, DHES Attorney

BEFORE THE DEPARTMENT OF JUSTICE
DIVISION OF FORENSIC SCIENCE
OF THE STATE OF MONTANA

In the matter of the amendment)
of rules 23.4.201, 23.4.212,)
23.4.217, and 23.4.221, rules) NOTICE OF AMENDMENT
pertaining to sampling bodily)
substances for drug and)
alcohol analysis.)

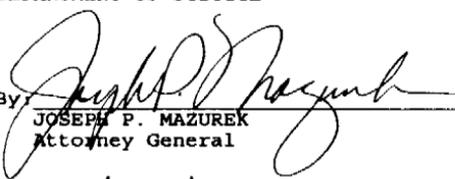
TO: All Interested Persons

1. On October 27, 1994, the Department of Justice published notice of the proposed amendment to rules 23.4.201, 23.4.212, 23.4.217, and 23.4.221 concerning the sampling of bodily substances for drug and alcohol analysis at page 2788 of the 1994 Montana Administrative Register, issue number 20.

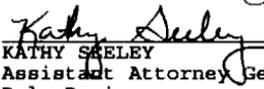
2. The agency has amended Rules 23.4.201, 23.4.212, 23.4.217, and 23.4.221 as proposed.

3. No comments or testimony were received.

DEPARTMENT OF JUSTICE

By: 

JOSEPH P. MAZUREK
Attorney General

By: 

KATHY SEELEY
Assistant Attorney General
Rule Reviewer

Certified to the Secretary of State 4/10/95

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

In the matter of the proposed) NOTICE OF DECISION NOT TO
amendment of rules related to) AMEND 24.30.1703,
fees for construction blaster) CONSTRUCTION BLASTER
licenses) LICENSE REQUIREMENTS

TO ALL INTERESTED PERSONS:

1. On September 8, 1994, the Department published notice at pages 2491 to 2492 of the Montana Administrative Register, Issue No. 17, to consider the amendment of ARM 24.30.1703, related to fees for construction blaster licenses.

2. On October 7, 1994, a public hearing was held in the first floor conference room at the Walt Sullivan Building (Dept. of Labor Building), 1327 Lockey Street, Helena, Montana, to consider the proposed amendments.

3. In light of the comments made at the hearing and in writing, and in consideration of proposed legislation concerning regulation of construction blasters that is pending before the 1995 Legislature, the Department of Labor and Industry has decided not to adopt the proposed amendments to ARM 24.30.1703 at this time. In the event the Department decides to propose amendments to the rule at some time in the future, notice will be given pursuant to the provisions of the Montana Administrative Procedure Act.

Laurie Ekanger, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Daniel A. Scott
David A. Scott
Rule Reviewer

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

Certified to the Secretary of State: January 13, 1995.

BEFORE THE BOARD OF NURSING
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the petition) NOTICE OF PETITION FOR
for declaratory ruling on the) DECLARATORY RULING
performance of clinical labora-)
tory testing by licensed)
practical nurses)

1. On February 23, 1995, at 9:00 a.m., in the conference room of the Professional and Occupational Licensing Bureau, 111 North Jackson, Arcade Building, Lower Level, Helena, Montana, the Board of Nursing will consider a petition for declaratory ruling on the authority of licensed practical nurses to perform clinical laboratory testing.

2. This petition is filed on behalf of the licensed practical nurses at the Doctor's Walk In Clinic, 1005 24th Street West, Billings, Montana 59102, by Pam Husky, LPN, and Sandy Gable, LPN.

3. The Petitioners allege that licensed practical nurses are frequently requested by physicians to perform the following laboratory tests:

CBC - Becton Dickinson QBC Autoread
K+ - Reflotron
Cholesterol - Reflotron
Uric Acid - Reflotron
Strep test - Kodak Surecell
Mono - Pacific Biotech
UCG - Urine pregnancy - Kodak Surecell
Chlamydia - Kodak Surecell
UA's - Chemstrip 10 with SG strips for urinalysis

The Petitioners further allege that all LPN's performing such testing are under the direct supervision of a physician and that tests are performed in compliance with all CLIA State and Federal regulations. The Petitioners further allege that they are enrolled with the College of American Pathologists Proficiency Testing Program and that all proficiency results have been of a high standard. The Petitioners finally allege that a procedures manual has been developed to ensure the health and safety of the public.

4. The statute upon which the Petitioners request the declaratory ruling is incorrectly cited in their Petition as section 37-8-202(5)(a), MCA. The scope of practice of a licensed practical nurse, to which Petitioners make reference, is now found at section 37-8-102(5)(a), which provides:

(5)(a) "Practice of practical nursing" means the performance for compensation of services requiring basic knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing procedures. Practical nursing practice utilizes standardized procedures in the observation and care of the ill, injured, and

infirm; in the maintenance of health; in action to safeguard life and health; and in the administration of medications and treatments prescribed by a physician, advanced practice registered nurse, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments. These services are performed under the supervision of a registered nurse or a physician, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments.

5. The Petitioners further state that their petition relates to ARM 8.32.1406 and 1407.

8.32.1406 STANDARDS RELATED TO THE LICENSED PRACTICAL NURSE'S CONTRIBUTION TO THE NURSING PROCESS The licensed practical nurse shall:

- (1) contribute to the nursing assessment by:
 - (a) collecting, reporting and recording objective and subjective data in an accurate and timely manner. Data collection includes;
 - (i) observation about the condition or change in condition of the client,
 - (ii) signs and symptoms of deviation from normal health status.
 - (2) participate in the development of the strategy of care by:
 - (a) providing data;
 - (b) contributing to the identification of priorities;
 - (c) contributing to setting realistic and measurable goals;
 - (d) assisting in the identification of measures to maintain comfort, support human functions and responses, maintain an environment conducive to well-being, and provide health teaching.
 - (3) participate in the implementation of the strategy of care by:
 - (a) providing care for clients under the supervision of a registered nurse, a physician, dentist, osteopath, or podiatrist;
 - (b) providing an environment conducive to safety and health;
 - (c) documenting nursing interventions and responses to care;
 - (d) communicating nursing interventions and responses to care to appropriate members of the health team.
 - (4) contribute to the evaluation of the responses to individuals or groups to nursing interventions;
 - (a) evaluation data shall be documented and communicated to appropriate members of the health care team;
 - (b) the licensed practical nurse shall contribute to the modification of the strategy of care on the basis of the evaluation.

8.32.1407 STANDARDS RELATING TO THE LICENSED PRACTICAL NURSE'S RESPONSIBILITIES AS A MEMBER OF THE HEALTH TEAM The licensed practical nurse shall:

- (1) have knowledge of the statutes and regulations governing nursing and function within the legal boundaries of practical nursing practice;
- (2) accept responsibility for individual nursing actions and competence;
- (3) function under the supervision of a registered nurse, a physician, dentist, osteopath, or podiatrist;
- (4) consult with registered nurses and/or other health team members and seek guidance as necessary;
- (5) obtain instruction and supervision as necessary when implementing nursing techniques or practices;
- (6) function as a member of the health team;
- (7) contribute to the formulation, interpretation, implementation and evaluation of the objectives and policies related to practical nursing practice within the employment setting;
- (8) participate in the evaluation of nursing through peer review;
- (9) report unsafe nursing practice to the board and unsafe practice conditions to recognized authorities;
- (10) report the practice of nursing by unlicensed individuals to the board;
- (11) conduct practice without discrimination on the basis of age, race, religion, sex, sexual preference, national origin or handicap;
- (12) respect the dignity and rights of clients regardless of social and economic status, personal attributes or nature of health problems;
- (13) respect the client's right to privacy by protecting confidential information, unless obligated by law to disclose such information;
- (14) respect the property of clients, family, significant others and the employer.

6. The Petitioners request that the Board of Nursing declare that the performance of clinical laboratory testing by licensed practical nurses to be within the scope of permissible functions of a licensed practical nurse.

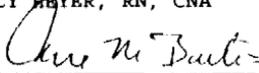
7. The Petitioners note the following interested parties at the Doctor's Walk In Clinic:

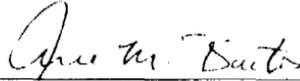
Pam Husky, LPN, Office Manager
Sandy Gable, LPN, Lab Manager
Virginia Plumber, LPN
Kim Tripp, LPN
Ellen Harris, LPN

7. Interested persons may submit their data, views or arguments, either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Nursing, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., February 23, 1995.

BOARD OF NURSING
NANCY HEYER, RN, CNA

By:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, January 13, 1995.

BEFORE THE BOARD OF OPTOMETRY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

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

TO: All Interested Persons:

1. On October 13, 1994, the Board of Optometry published a notice of petition for declaratory ruling from Thomas A. Rasmussen, an optometrist licensed to practice in Montana. Specifically, Dr. Rasmussen questioned whether an optometrist could transfer ownership of his interest in a corporation that was engaged in the practice of optometry to a trust and practice under that trust arrangement.

2. Dr. Rasmussen noted that section 37-10-311, MCA, states that a certificate of registration to practice optometry may be suspended or revoked for unprofessional conduct, which includes "directly or indirectly accepting employment to practice optometry from a person not having a valid certificate of registration as an optometrist or accepting employment for or from a company or corporation"

3. Dr. Rasmussen inquired whether his license would be subject to suspension, revocation or other sanction if he were to place his corporate assets, including the optometric practice, into trust.

4. The Board considered the petition at its meeting of October 28, 1994. It ruled that Dr. Rasmussen or any other practitioner seeking to practice optometry under a trust arrangement would be subject to possible sanctions under section 37-10-311, MCA. The Board also noted that ARM 8.36.406, an administrative regulation governing the conduct of the practice of optometry, requires that an "optometric practice must be owned and under the direct supervision of an optometrist with valid Montana certificate of registration" This rule provides an exception for optometrists who associate with other optometrists or with physicians.

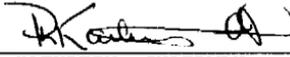
5. While section 37-10-311, MCA, seems to indicate that an optometrist is liable for even practicing in a corporate scheme, an optometrist is permitted to do so just as long as the corporation is a professional corporation, chartered under Title 35, chapter 4 and all shareholders are licensed optometrists. The statutes do not make exceptions for operating in a trust.

6. Any interested parties may request judicial review of this declaratory ruling by filing a petition for judicial review in a District Court of the State of Montana within thirty (30) days of this ruling pursuant to sections 2-4-501 and 2-4-702 MCA.

DATED this 27 day of December, 1994.

BOARD OF OPTOMETRY

BY:



PAUL KATHREIN, CHAIRMAN

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 September 30, 1994. This table includes those rules adopted during the period October 1, 1994 through December 31, 1994 and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through September 30, 1994, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1994 and 1995 Montana Administrative Register.

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BOARD APPOINTEES AND VACANCIES

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

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

In this issue, appointments effective in December, 1994, would usually be published. However, there were none effective in that month. Vacancies scheduled to appear from February 1, 1995, through April 30, 1995, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a new board should refer to the bill that created the board for details about the number of members to be appointed and qualifications necessary.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of January 10, 1995.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

VACANCIES ON BOARDS AND COUNCILS -- February 1, 1995 through April 30, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Architects (Commerce) Ms. Pamela J. Bancroft, Bozeman Qualifications (if required): registered architect on Montana State University School of Architecture staff	Governor	3/27/1995
Board of Athletics (Commerce) Dr. John Halseth, Great Falls Qualifications (if required): public member	Governor	4/25/1995
Mr. Gary Langley, Helena Qualifications (if required): public member	Governor	4/25/1995
Dr. Andrew Vandolah, Conrad Qualifications (if required): public member	Governor	4/25/1995
Board of County Printing (Commerce) Ms. Nancy Clark, Ryegate Qualifications (if required): public member	Governor	4/1/1995
Ms. Fern Hart, Missoula Qualifications (if required): county commissioner	Governor	4/1/1995
Mr. Verle L. Rademacher, White Sulpher Springs Qualifications (if required): represents printing industry	Governor	4/1/1995
Mr. Curtis Starr, Malta Qualifications (if required): represents publisher-printer	Governor	4/1/1995
Board of Dentistry (Commerce) Dr. R.W. Rector, Havre Qualifications (if required): dentist	Governor	3/29/1995

VACANCIES ON BOARDS AND COUNCILS -- February 1, 1995 through April 30, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Hail Insurance (Agriculture) Mr. Louis Beirwagion, Big Sandy Qualifications (if required): public member	Governor	4/18/1995
Board of Livestock (Livestock) Mr. Tom Lane, Livingston Qualifications (if required): none specified	Governor	3/1/1995
Mr. Jack Salmond, Choteau Qualifications (if required): none specified	Governor	3/1/1995
Board of Optometrists (Commerce) Dr. P.L. Kathrein, Great Falls Qualifications (if required): optometrist	Governor	4/3/1995
Ms. Charliene Staffanson, Deer Lodge Qualifications (if required): public member	Governor	4/3/1995
Board of Plumbers (Commerce) Mr. Robert R. Nault, Havre Qualifications (if required): Master Plumber	Governor	4/28/1995
Board of Public Education (Education) Ms. Anita A. Johnson, Lewistown Qualifications (if required): resides in 2nd Congressional District & affiliated Republican	Governor	2/1/1995
Executive Board of MT College of Mineral Science & Technology (University System) Mr. Truxton Fisher, Butte Qualifications (if required): resides in county where unit is located	Governor	4/17/1995

VACANCIES ON BOARDS AND COUNCILS -- February 1, 1995 through April 30, 1995

<u>Board/current_position_holder</u>	<u>Appointed by</u>	<u>Text end</u>
Executive Board of Eastern Montana College (University System) Mr. Bill Tierney, Billings Qualifications (if required): resides in county where unit is located	Governor	4/17/1995
Executive Board of Montana State University (University System) Mr. Dick Roehm, Bozeman Qualifications (if required): resides in county where unit is located	Governor	4/17/1995
Executive Board of Northern Montana College (University System) Ms. Eleanor C. Wink, Bigfork Qualifications (if required): resides in county where unit is located	Governor	4/17/1995
Executive Board of Western Montana College (University System) Ms. Patricia J. Blade, Dillon Qualifications (if required): resides in county where unit is located	Governor	4/17/1995
Executive Board of the University of Montana (University System) Ms. Arlene Bream, Missoula Qualifications (if required): resides in county where unit is located	Governor	4/17/1995
Montana Arts Council (Education) Ms. Kathy Doeden, Miles City Qualifications (if required): has interest in arts	Governor	2/1/1995
Ms. Bebe Kezar, Whitefish Qualifications (if required): has interest in arts	Governor	2/1/1995
Mr. Jack W. Nickels Jr., Fort Peck Qualifications (if required): has interest in arts	Governor	2/1/1995
Mr. James Whitlock, Hamilton Qualifications (if required): has interest in arts	Governor	2/1/1995

VACANCIES ON BOARDS AND COUNCILS -- February 1, 1995 through April 30, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Arts Council (Education) cont. Mr. Larry D. Williams, Great Falls Qualifications (if required): none specified	Governor	2/1/1995
Prison Ranch Advisory Council (Corrections and Human Services) Rep. Francis Bardanoue, Harlem Qualifications (if required): none specified	Director	3/1/1995
Mr. Don Davis, Deer Lodge Qualifications (if required): none specified	Director	3/1/1995
Rep. Edward (Ed) J. Grady, Canyon Creek Qualifications (if required): none specified	Director	3/1/1995
Sen. Francis Koehnke, Townsend Qualifications (if required): none specified	Director	3/1/1995
Mr. Ray Lybeck, Kalispell Qualifications (if required): none specified	Director	3/1/1995
Rep. Bob Thoft, Stevensville Qualifications (if required): none specified	Director	3/1/1995
Public Employees' Retirement Board (Administration) Mr. Terry Teichrow, Helena Qualifications (if required): active public employee	Governor	4/1/1995

VACANCIES ON BOARDS AND COUNCILS -- February 1, 1995 through April 30, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
State Compensation Mutual Insurance Fund (Administration) Mr. Les Hirsch, Miles City Qualifications (if required): representative of private for profit enterprise	Governor	4/28/1995
Mr. Robert Holman, Kalispell Qualifications (if required): state fund policy holder	Governor	4/28/1995
State Tax Appeal Board (Administration) Mr. John J. McNaught, Great Falls Qualifications (if required):	Governor	3/1/1995
Vocational Rehabilitation Divisions Advisory Council (Social and Rehabilitation Services) Mr. Jim Betty, Missoula Qualifications (if required): none specified	Director	4/15/1995
Mr. Mark Bowlds, Helena Qualifications (if required): none specified	Director	4/15/1995
Ms. Sally Cerny, Great Falls Qualifications (if required): none specified	Director	4/15/1995
Mr. Ken Christensen, Helena Qualifications (if required): none specified	Director	4/15/1995
Ms. Ladonna Fowler, Pablo Qualifications (if required): none specified	Director	4/15/1995
Ms. Sandra Jarvie, Helena Qualifications (if required): none specified	Director	4/15/1995
Mr. Robert LeMieux, Great Falls Qualifications (if required): none specified	Director	4/15/1995

VACANCIES ON BOARDS AND COUNCILS -- February 1, 1995 through April 30, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Vocational Rehabilitation Divisions Advisory Council (Social and Rehabilitation Services) cont.		
Mr. Ralph Martin, Bozeman Qualifications (if required): none specified	Director	4/15/1995
Ms. Kelly Moore, Helena Qualifications (if required): none specified	Director	4/15/1995
Ms. Gail Neal, Billings Qualifications (if required): none specified	Director	4/15/1995
Ms. Anita Nelson, Missoula Qualifications (if required): none specified	Director	4/15/1995
Mr. Pat Pope, Helena Qualifications (if required): none specified	Director	4/15/1995
Ms. Nancy Straigmiller, Miles City Qualifications (if required): none specified	Director	4/15/1995
Ms. Virginia Sutich, Sand Coulee Qualifications (if required): none specified	Director	4/15/1995
Ms. Raelen Williard, Helena Qualifications (if required): none specified	Director	4/15/1995
Ms. Lynn Winslow, Helena Qualifications (if required): none specified	Director	4/15/1995

VACANCIES ON BOARDS AND COUNCILS -- February 1, 1995 through April 30, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Youth Justice Advisory Council (Justice)		
Mr. Craig Anderson, Glendive Qualifications (if required): none specified	Governor	3/1/1995
Judge Diane G. Barz, Billings Qualifications (if required): none specified	Governor	3/1/1995
Mr. Randy H. Bellingham, Billings Qualifications (if required): none specified	Governor	3/1/1995
Mr. Al Davis, Helena Qualifications (if required): none specified	Governor	3/1/1995
Mr. Rick Day, Helena Qualifications (if required): none specified	Governor	3/1/1995
Ms. Gail Gray, Helena Qualifications (if required): none specified	Governor	3/1/1995
Mr. Allen Horsfall, Jr., Hamilton Qualifications (if required): none specified	Governor	3/1/1995
Mr. Hank Hudson, Ciancy Qualifications (if required): none specified	Governor	3/1/1995
Rep. Royal C. Johnson, Billings Qualifications (if required): none specified	Governor	3/1/1995
Mr. Ted O. Lympus, Kalispell Qualifications (if required): none specified	Governor	3/1/1995
Ms. Jeannette Manning, Helena Qualifications (if required): none specified	Governor	3/1/1995

VACANCIES ON BOARDS AND COUNCILS -- February 1, 1995 through April 30, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Youth Justice Advisory Council (Justice) cont. Ms. Kate Mrgudic, Missoula Qualifications (if required): none specified	Governor	3/1/1995
Mr. Steve P. Nelsen, Bozeman Qualifications (if required): none specified	Governor	3/1/1995
Mr. Kim Olson, Bozeman Qualifications (if required): none specified	Governor	3/1/1995
Mr. David Pope, Bozeman Qualifications (if required): none specified	Governor	3/1/1995
Mr. Gary Racine, Browning Qualifications (if required): none specified	Governor	3/1/1995
Ms. Sally Stansberry, Missoula Qualifications (if required): none specified	Governor	3/1/1995