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ADMINISTRATIVE
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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 15

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT,
amendment, repeal and adoption) REPEAL AND ADOPTION OF RULES
of rules pertaining to the) PERTAINING TO THE PRACTICE OF
practice of architecture) ARCHITECTURE

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On September 7, 1996, the Board of Architects proposes to amend ARM 8.6.405, 8.6.407, 8.6.412, 8.6.413; repeal ARM 8.6.414; and adopt new rules pertaining to the practice of architecture.

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

"8.6.405 RECIPROCITY LICENSURE OF OUT-OF-STATE APPLICANTS

(1) No license ~~An applicant who holds a valid license to practice architecture in another state or jurisdiction, and who is seeking licensure to practice architecture in Montana by reciprocity from another state shall be granted unless present~~ proof the applicant making such application for reciprocity is the holder of a certificate issued by the national council of architectural registration boards (NCARB). All such applications shall be sent to the NCARB office for processing.

(a) will remain the same.

(2) Each applicant shall provide a license verification from the states or jurisdictions in which the applicant has been licensed as to the current status of the license and whether it is in good standing.

~~(3) All out-of-state applicants for licensure by reciprocity who were licensed in their respective jurisdiction prior to January 1, 1966, shall submit evidence of having successfully completed a NCARB-approved seminar on seismic forces or have taken and passed Division E, Structural Lateral Forces of the Architectural Registration Examination. An out-of-state candidate who meets all requirements except the seismic force exam, must successfully complete only that exam to satisfy licensure requirements."~~

Auth: Sec. 37-1-131, 37-65-204, MCA; IMP, Sec. 37-1-304, 37-65-305, MCA

REASON: The proposed amendments are necessary to comply with statutory language in 37-1-304, MCA, enacted by the 1995 Legislature under House Bill 518. Subsection (3) is also being amended to state that out-of-state applicants may be required to take only the seismic force examination if all other requirements have been met.

"8.6.407 EXAMINATION (1) through (3) will remain the same.

(a) Out-of-state applicants who meet all the requirements of ARM 8.6.405 except the seismic force exam may take only that exam, and must achieve a passing score to satisfy licensure requirements.

(4) and (5) will remain the same."

Auth: Sec. ~~37-1-131, 37-65-204, 37-65-303~~, MCA; IMP, Sec. ~~37-65-303~~, MCA

REASON: The proposed amendment will clarify that out-of-state licensure applicants who have not passed section E (seismic) of the exam could sit for just this one section; and not have to re-take the entire exam with all portions. This amendment will make the rule consistent with ARM 8.6.405 on out-of-state applicants.

"8.6.412 STANDARDS OF PROFESSIONAL UNPROFESSIONAL CONDUCT

(1) For the purpose of implementing the provisions of 37-65-321(1)(d) and (3), MCA, the following standards of professional conduct are adopted. Violation of any of these standards by a licensee constitutes a violation of standards of professional conduct and misconduct unprofessional conduct and are grounds for disciplinary action:

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

(g) offering or making any payment or gift to a government official (whether elected or appointed) with the intent of influencing the official's judgment in connection with a prospective or existing project in which the architect is interested;

(h) through (n) will remain the same, but will be renumbered (g) through (m).

(o) advertising which is false, fraudulent or misleading;
(p) failure to cooperate with an investigation by the board by:

(i) not furnishing requested papers or documents;
(ii) not furnishing a full and complete explanation of matters referred to in a complaint filed with the board;
(iii) not responding to subpoenas issued by the board;
(iv) wilfully misrepresenting facts to a board investigator;

(v) using threats, harassment, extortion or bribery on potential witnesses to discourage them from cooperating with an investigation or from testifying;

(g) having had a license to practice the profession suspended, revoked or restricted by competent authority of any state, federal or foreign jurisdiction for any of the above reasons;

(r) disobeying any statute in chapter 65, Title 37, MCA, or any rule or order of the board."

Auth: Sec. ~~37-1-131, 37-1-312, 37-65-204~~, MCA; IMP, Sec. ~~37-65-321, 37-1-316~~, MCA

REASON: These amendments are proposed to remove language that currently exists in 37-1-316, MCA, dealing with unprofessional conduct, enacted by the 1995 Legislature under House Bill 518.

"8.6.413. FEE SCHEDULE

(1) ~~ARB examination and re-examination Examination fee set by NCARB (payable to testing service upon approval of application):~~

(a) Division A pre design	\$ 33
(b) Division B site design written	17
(c) Division B site design graphics	55
(d) Division C building design	88
(e) Division D/F structural technology general and long span	26
(f) Division E structural technology lateral forces	11
(g) Division G mech/plbg/elec/life safety	33
(h) Division H materials and methods	33
(i) Division I construction documents and services	33
(a) pre-design	\$ 22
(b) site planning	129
(c) building planning	155
(d) building technology	145
(e) general structures	108
(f) lateral forces	79
(g) mechanical and electrical	83
(h) material and methods	20
(i) construction documents and services	99
(j) total, all nine divisions	280
(2) Reciprocity Out-of-state application	100
(3) through (6) will remain the same.	
(7) License verification fee	10
(7) will remain the same, but will be renumbered (8)."	

Auth: Sec. ~~37-1-134, 37-65-204, 37-65-307, MCA; IMP, Sec. 37-1-134, 37-65-201, 37-65-304, 37-65-305, 37-65-306, 37-65-307, MCA~~

REASON: Subsection (1) is proposed for amendment to clarify that the examination fees are set by, and must be submitted to, NCARB. Subsection (2) is being amended to comply with 37-1-304, MCA, changing the word "reciprocity" to "out-of-state licensure." Subsection (7) is being proposed to offset the cost of copying and administrative time spent in preparing license verifications, to make the fees commensurate with program area costs.

3. The Board is proposing to repeal ARM 8.6.414, located at pages 8-212 and 8-213, Administrative Rules of Montana. The authority section is 37-1-136, 37-65-204, MCA, and the implementing section is 37-1-136, 37-65-321, MCA. The reason for the repeal is the content of this rule is currently contained in 37-1-312 and 37-1-316, MCA, enacted by the 1995 Legislature under House Bill 518.

4. The proposed new rules will read as follows:

"I SCREENING COMMITTEE (1) The board screening panel shall consist of three members of the board including the current chairman of the board, and two other board members, as chosen by the chairman. The chairman may reappoint screening panel members, or replace screening panel members as necessary at the chairman's discretion."

Auth: Sec. 37-65-204, MCA; IMP, Sec. 37-1-307, MCA

"II COMPLAINT PROCEDURE (1) A person, government or private entity may submit a written complaint to the board charging a licensee or licensee applicant with a violation of board statute or rules, and specifying the grounds for the complaint.

(2) Complaints must be in writing, and shall be filed on the proper complaint form prescribed by the board. Letters of complaint which are clearly identified as complaints may also be accepted by the board.

(3) Upon receipt of the written complaint form, the board office shall log in the complaint and assign it a complaint number. The complaint shall then be sent to the licensee complained about for a written response. Upon receipt of the licensee's written response, both complaint and response shall be considered by the screening panel of the board for appropriate action including dismissal, investigation or a finding of reasonable cause of violation of a statute or rule. The board office shall notify both complainant and licensee of the determination made by the screening panel.

(4) If a reasonable cause violation determination is made by the screening panel, the Montana Administrative Procedure Act shall be followed for all disciplinary proceedings undertaken.

(5) The screening panel shall review anonymous complaints to determine whether appropriate investigative or disciplinary action may be pursued, or whether the matter may be dismissed for lack of sufficient information."

Auth: Sec. 37-65-204, MCA; IMP, Sec. 37-1-308, 37-1-309, MCA

REASON: Proposed new rules I and II will implement changes mandated by the passage of House Bill 518 by the 1995 legislature.

"III SOLICITATION OF BUSINESS BY ARCHITECTS FROM OTHER STATES (1) A nonresident architect who holds a current, unexpired, unrestricted license to practice architecture issued by the state in which the architect's principal offices are located may, upon furnishing the board with verification of licensure from the other state licensing authority, offer architectural services in this state, but may accept no commission or otherwise engage in the practice of architecture within this state until licensed by the board."

Auth: Sec. 37-1-319, 37-65-204, MCA; IMP, Sec. 37-1-305, MCA

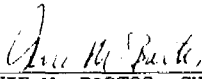
REASON: The proposed new rule will allow out-of-state architects to continue to solicit business in Montana, as has been allowed under the previous statutory section which was repealed in 1995, as a form of temporary permitting. This practice has been on-going for many years, and continues to be necessary for the practice, and to allow the public a full choice of services to choose among.

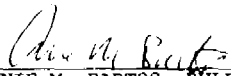
5. Interested persons may submit their data, views or arguments concerning the proposed amendments, repeal and adoptions in writing to the Board of Architects, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., September 5, 1996.

6. If a person who is directly affected by the proposed amendments, repeal and adoptions wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Architects, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., September 5, 1996.

7. If the Board receives requests for a public hearing on the proposed amendments, repeal and adoptions from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendments, repeal and adoptions, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 94 based on the 947 licensees in Montana.

BOARD OF ARCHITECTS
PAMELA HILL, CHAIRMAN

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


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, July 29, 1996.

BEFORE THE STATE ELECTRICAL BOARD
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT,
amendment, repeal and adoption) REPEAL AND ADOPTION OF RULES
of rules pertaining to the) PERTAINING TO THE ELECTRICAL
electrical industry) INDUSTRY
NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On September 7, 1996, the State Electrical Board proposes to amend, repeal and adopt rules pertaining to the electrical industry.

2. The proposed amendment of ARM 8.18.401 through 8.18.404 and 8.18.406 through 8.18.409 will read as follows: (new matter underlined, deleted matter interlined)

"8.18.401. BOARD MEETINGS (1) will remain the same.

(2) Special meetings or conference calls of the board shall be held at the call of ~~any 3 members~~ the chairman of the board, no prior notice of same required.

(3) will remain the same."

Auth: Sec. ~~37-68-201~~, MCA; IMP, Sec. ~~37-68-201~~, MCA

"8.18.402. APPLICATIONS (1) The practical experience requirement set forth in 37-68-304, ~~and 37-68-305, and 37-68-314~~, MCA, shall be of such nature as is satisfactory to the board.

(a) The board will only accept electrical experience in the construction field. For the journeyman license, a maximum of 50% of the electrical experience in the construction field may be residential in nature. The balance must be a blend of commercial, industrial, and institutional. Maintenance work which is exempt under 37-68-103, MCA, will not be accepted towards fulfillment of the practical experience requirement.

(i) Maintenance is hereby defined as ordinary and customary in-plant or on-site installations, modification, additions, or repairs which shall be limited to: relamping fixtures, replacing ballasts, trouble shooting motor controls, replacing motors, breakers, magnetic starters, in a kind for kind manner. Also included are connection of specific items of specialized equipment that can be directly connected to an existing branch circuit panel by means of factory installed leads. However, if a new circuit is required to operate the equipment, or if the size of the supply conductors need be increased, this shall be considered new work, if permitted and inspected by the appropriate building code authority.

~~(ii) The board will only accept a maximum of two years practical experience in the residential field toward fulfilling the requirements for licensure as a journeyman electrician.~~

(b) An applicant will be given one year from the date of his/her approval to take the examination for which he/she is applying. If the examination is not taken within that one year period, the applicant will be required to submit a new application, provide written verification and pay the applicable fees.

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

~~(3) Commencing with the July 15, 1994 renewal date, each master, journeyman, and residential electrician license shall be renewed for a three year period. Each original license expires on a July 1st that is not more than three years subsequent to the date of issuance, at the discretion of the board.~~

~~(4) Commencing with the July 1, 1994 renewal date, each electrical contractor license shall be renewed for a three year period. Each original license expires on a July 1st that is not more than three years subsequent to the date of issuance, at the discretion of the board.~~

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

(4) Renewal dates shall be set forth in ARM 8.2.208."

Auth: Sec. ~~37-1-131~~, 37-68-201, MCA; IMP, Sec. 37-68-103, 37-68-201, 37-68-302, 37-68-304, 37-68-305, 37-68-310, MCA

"8.18.403 GENERAL RESPONSIBILITIES (1) through (12) will remain the same.

(13) Renewal is the responsibility of the licensed individual and although the board may send out reminder notices to the last known address, the lack of receipt of such notice does not relieve the licensee of his/her responsibility for renewal."

Auth: Sec. 37-68-201, MCA; IMP, Sec. ~~37-68-301~~, 37-68-302, 37-68-310, MCA

"8.18.404 TEMPORARY PERMIT (1) An applicant for a ~~journeyman electrician license or residential electrician license~~ may act as a licensed journeyman electrician or licensed residential electrician ~~respectively~~ after making application for ~~such journeyman or residential electrician license~~, paying the appropriate fee, stating his the applicant's qualifications to the board, being approved by the board and being issued a temporary permit.

~~(2) (a) A temporary permit issued to an applicant for a journeyman electrician license or residential electrician license shall expire on the date of the next scheduled licensure examination results are received.~~

~~(3) (b) An applicant for a journeyman electrician license or residential electrician license shall not be issued more than one temporary permit.~~

(2) An applicant for a journeyman electrician license may act as a licensed journeyman electrician after making application, paying the appropriate fee, stating the applicant's qualifications to the board, being approved by the board and being issued a temporary permit.

(a) A temporary permit issued to an applicant for a journeyman electrician license shall expire on the date the next scheduled licensure examination results are received.

(b) An applicant for a journeyman electrician license shall not be issued more than one temporary permit.

(3) An applicant for a master electrician license may act as a licensed master electrician after making application, paying the appropriate fee, stating his qualifications to the board, being approved by the board and being issued a temporary permit.

(a) A temporary permit issued to an applicant for a master electrician license shall expire on the date the next scheduled licensure examination results are received.

(b) An applicant for a master electrician license shall not be issued more than one temporary permit.

(4) An applicant for a master electrician license shall not be issued a temporary permit to act as a licensed master electrician. An applicant who has been issued a temporary permit as a residential, journeyman or master electrician shall not be eligible for another temporary permit in any classification of licensure.

(5) A temporary permit does not allow a journeyman or master applicant to act as a responsible electrician for an electrical contractor, nor does it permit the applicant to obtain an electrical contractor license. A temporary permit allows an applicant only to work under a properly licensed electrical contractor.

(6) An applicant for out-of-state licensure may be issued a temporary permit under the conditions above.

(a) In the case of an out-of-state licensure applicant, the temporary permit shall expire at such time as the board approves the application and a license is issued or the board denies the application."

Auth: Sec. 37-1-319, 37-68-201, MCA; IMP, Sec. 37-68-306 37-1-305, MCA

"8.18.406 APPRENTICE REGISTRATION (1) and (2) will remain the same.

(3) Any person desiring to work as an apprentice, shall first make application to the state electrical board on forms provided by the board.

(3)(4) In order to qualify for an apprenticeship program, be recognized by the board as an apprentice, an applicant apprentice shall either:

(4) (a) through (5) will remain the same, but be renumbered (3) (a)-(4).

(5)(6) With respect to the apprenticeship programs established directly through the board, the board reserves the right to monitor said programs and to demand and receive any and all necessary progress reports.

(7) will remain the same."

Auth: Sec. 37-68-201, MCA; IMP, Sec. 37-68-303, MCA

"8.18.407 FEE SCHEDULE

- (1) will remain the same.
- (2) Application fee (non-refundable) 10.00 20
- (3) Original licenses:
 - (a) Contractor 225.00 250
 - (b) Master 75.00 100
 - (c) Journeyman 30.00 100
 - (d) Residential 30.00 100
- (4) Renewal fee (three years)
 - (a) Contractor 225.00 250
 - (b) Master 75.00 100
 - (c) Journeyman 22.50 100
 - (d) Residential 22.50 100
- (5) Reciprocity Out-of-state license applicants 25.00
- (6) Late renewal fee 25.00 50
- (7) Temporary permit 20
- (8) License list 20"
- (7) ~~Each original electrical contractor, master, journeyman, and residential electrical license issued after July 15 of the last year in the renewal cycle, will be assessed a fee, prorated by year, based on the fee schedule found in subsection (3) of this rule."~~

Auth: Sec. 37-1-131, 37-1-134, 37-68-201, MCA; IMP, Sec. 37-1-304, 37-1-305, 37-1-134, 37-68-304, 37-68-306, 37-68-307, 37-68-309, 37-68-310, 37-68-311, 37-68-312, 37-68-313, MCA

"8.18.408 EXAMINATIONS (1) A person who has failed to pass any examination for which he/she has applied, may, upon the payment of the appropriate fee, take the next subsequent examination scheduled by the state electrical board. However, if he/she fails the test a second time he/she may not take the test again within a six month period, and in addition, must:

- (a) will remain the same.
- (b) Provide a list of the books or materials studied, specifying the name, author, edition (or latest copyright year), ~~compiled with the help of a librarian, indicating when the materials were checked out.~~ The list is to be dated and signed off by the a librarian.

(c) Provide evidence of having attended at least one eight-hour electrical code seminar ~~presented by the plumbing/mechanical/electrical section of the state building codes bureau or other course approved by the board, since his/her initial failure to pass.~~

- (2) through (2)(c) will remain the same.

(d) ~~He~~ The applicant must provide a list of the books or materials studied, specifying the name, author, edition (or latest copyright year). This list to be ~~compiled with the assistance of a librarian, who is to stamp the dates the various books are checked out, (or exhibited to the librarian if acquired in some manner other than checkout)~~ and dated and signed off by the a librarian ~~when the list is completed.~~

(e) Provide evidence of having attended at least two eight-hour electrical code seminars ~~presented by the~~

~~plumbing/mechanical/electrical section of the state building codes bureau or other course approved by the board.~~

(3) will remain the same.

(4) If an applicant has passed the examination, he/she must pay the required licensure fee within 60 days from the date applicant is notified that he/she has passed the examination. Failure to pay the license fee within that period will nullify the examination and the applicant must pass another examination to obtain his/her license."

Auth: Sec. 37-1-131, 37-68-201, MCA; IMP, Sec. 37-68-201, 37-68-304, 37-68-305, MCA

"8.18.499 CONTINUING EDUCATION (1) through (2) will remain the same.

(a) Courses or seminars must have prior approval of curriculum by the state electrical board. Each course shall be assigned a course approval number by the board to be listed on the certificate of completion. Board approval of said courses and seminars expires one year from date of approval August 1 of each license renewal year.

~~(b) Instructors must be certified by the state electrical board prior to presentation of course or seminar.~~

~~Certification of instructors shall be at the discretion of the board, based on applicants for certification being The course sponsor is responsible to ensure that instructors are~~ credentialled as one or more of the following:

(i) through (vii) will remain the same.

(c) Representatives of the department or state electrical board shall be able to attend and monitor the courses of or seminars without charge.

(d) will remain the same.

(e) Curriculum of courses or seminars shall be on the national electrical code updates, or other subjects related to the electrical industry. Approval of course curriculum shall be at the discretion of the board. Board approval will contain a breakdown for the course or seminar regarding type of credit hours (code or industry). The breakdown must be included on the completion certificate.

(f) will remain the same.

~~(g) Request for approval of courses, seminars, and instructors or seminars must be made no later than the board meeting next preceding the seminar.~~

(h) and (i) will remain the same.

~~(j) Attendance lists and the hours attended by each person shall be forwarded to the state electrical board by the instructor within 30 days of the completion of the course.~~

~~(k) (i) Certificates required by (d) above shall be half sheet (8 1/2 x 5 1/4) and must contain the following:~~

(i) through (iv) will remain the same.

(v) name of sponsoring agency; and

(vi) name of person completing the course;

(vii) state electrical board approval number; and

(viii) breakdown of code and/or industry related credit hours."

Auth: Sec. 37-1-131, 37-1-319, 37-68-201, MCA; IMP, Sec. 37-1-306, 37-68-201, MCA

3. The Board is proposing to repeal ARM 8.18.405, located at page 8-549, Administrative Rules of Montana. The authority section is 37-68-201, MCA, and the implementing sections are 37-68-308 and 37-68-309, MCA.

4. The proposed new rules will read as follows:

"I. LICENSURE OF OUT-OF-STATE APPLICANTS (1) A license to practice as a master, journeyman or residential electrician in the state of Montana may be issued at the discretion of the board provided the applicant completes and files with the board an application for licensure and the required application fee. The candidate must meet the following requirements:

(a) The candidate holds a current, valid and unrestricted license to practice as a master, journeyman or residential electrician in another state or jurisdiction, which was issued under standards equivalent to or greater than current standards in this state. Official written verification of such licensure status must be received by the board directly from the other state(s) or jurisdiction(s),

(i) the out-of-state license must have been issued by the licensing authority of another state or equivalent body, and not by a city, county or other similar municipality;

(ii) the out-of-state license must have been held by the applicant for one year in the other state before application in Montana under this rule will be allowed;

(b) The candidate shall supply a copy of the laws and rules in effect at the time the license was granted, from the state or jurisdiction in which the candidate was previously licensed.

(2) Electrical contractor licenses in this state shall not be granted on the basis of licensure in another state."

Auth: Sec. 37-68-201, MCA; IMP, Sec. 37-1-304, MCA

"II. SCREENING PANEL (1) The board screening panel shall consist of at least one board member, who shall be a journeyman and/or master electrician member of the board, who shall be appointed by the board chairman. The chairman may reappoint screening panel members, or replace screening panel members as necessary at the chairman's discretion."

Auth: Sec. 37-68-201, MCA; IMP, Sec. 37-1-307, MCA

"III. COMPLAINT PROCEDURE (1) A person, government or private entity may submit a written complaint to the board charging a licensee or license applicant with a violation of board statute or rules, and specifying the grounds for the complaint.

(2) Complaints must be in writing, and shall be filed on the proper complaint form prescribed by the board.

(3) Upon receipt of the written complaint form, the board office shall log in the complaint and assign it a complaint number. The complaint shall then be sent to the licensee

complained about for a written response. Upon receipt of the licensee's written response, both complaint and response shall be considered by the screening panel of the board for appropriate action including dismissal, investigation or a finding of reasonable cause of violation of a statute or rule. The board office shall notify both complainant and licensee of the determination made by the screening panel.

(4) If a reasonable cause violation determination is made by the screening panel, the Montana Administrative Procedure Act shall be followed for all disciplinary proceedings undertaken.

(5) The screening panel shall review anonymous complaints to determine whether appropriate investigative or disciplinary action may be pursued, or whether the matter may be dismissed for lack of sufficient information."

Auth: Sec. 37-68-201, MCA; IMP, Sec. 37-1-308, 37-1-309, MCA

REASON: The proposed amendments, repeal and adoptions are necessary to implement the passage of House Bill 518 by the 1995 Legislature, which standardized much of the procedures in statute.

5. Interested persons may submit their data, views or arguments concerning the proposed amendments, repeal and adoptions in writing to the State Electrical Board, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., September 5, 1996.

6. If a person who is directly affected by the proposed amendments, repeal and adoptions wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the State Electrical Board, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., September 5, 1996.

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

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affected has been determined to be 336 based on the 3366
licensees in Montana.

STATE ELECTRICAL BOARD
CHARLES T. SWEET, CHAIRMAN

Annie M. Bartos
ANNIE M. BARTOS
RULE REVIEWER

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

Certified to the Secretary of State, July 29, 1996.

BEFORE THE BOARD OF FUNERAL SERVICE
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT,
amendment, repeal and adoption) REPEAL AND ADOPTION OF RULES
of rules pertaining to) PERTAINING TO THE FUNERAL
morticians, mortuaries,) SERVICE INDUSTRY
crematories, crematory opera-)
tors and crematory technicians)

NO PUBLIC HEARING CONTEMPLATED

1. On September 7, 1996, the Board of Funeral Service proposes to amend, repeal and adopt rules pertaining to the funeral service industry.

2. The Board is proposing to amend ARM 8.30.101, 8.30.201, 8.30.202, 8.30.404, 8.30.405, 8.30.407, 8.30.408, 8.30.501, 8.30.502, 8.30.504, 8.30.701, 8.30.807. Those amendments will read as follows: (new matter underlined, deleted matter interlined)

"8.30.101 BOARD ORGANIZATION (1) The board of ~~morticians~~ funeral service hereby adopts and incorporates the organizational rules of the department of commerce as listed in chapter 1 of this title."

Auth: Sec. 37-19-202, MCA; IMP, Sec. 2-4-201, MCA

"8.30.201 PROCEDURAL RULES (1) The board of ~~morticians~~ funeral service hereby adopts and incorporates the procedural rules of the department of commerce as listed in chapter 2 of this title."

Auth: Sec. 37-19-202, MCA; IMP, Sec. 2-4-201, MCA

"8.30.202 CITIZEN PARTICIPATION RULES (1) The board of ~~morticians~~ funeral service hereby adopts and incorporates by this reference the public participation rules of the department of commerce as listed in chapter 2 of this title."

Auth: Sec. 37-19-202, MCA; IMP, Sec. 2-3-103, MCA

REASON: The Board name was changed by the 1993 Legislature and the amendments are proposed to implement that legislation.

"8.30.404 RECIPROCITY LICENSURE OF OUT-OF-STATE APPLICANTS (1) through (5) will remain the same.

~~(6) An applicant originally licensed in another state which requires a reciprocal agreement with Montana may be licensed in Montana only if a reciprocal agreement has been entered with Montana."~~

Auth: Sec. 37-19-202, MCA; IMP, Sec. ~~37-19-305~~ 37-1-304, MCA

REASON: This amendment is necessary to comply with the Uniform Professional Licensing and Regulation Procedures Act enacted by the 1995 Legislature under House Bill 518. A reciprocal agreement is no longer required since reciprocity has been repealed and replaced by endorsement.

"8.30.405 INTERNSHIP (1) through (4)(b) will remain the same.

(5) An intern mortician may perform all the duties and functions of a licensed mortician, as allowed and directed by the supervising mortician, who remains responsible for the professional actions of the intern.

(a) "Supervision" means the extent of oversight required in the judgement of the supervisor, considering the circumstances of training, experience, judgement and professional development of the intern."

Auth: Sec. 37-19-202, MCA; IMP, Sec. 37-19-304, MCA

REASON: This amendment will clarify the duties an intern can perform and who is responsible for the intern's actions.

"8.30.407 FEE SCHEDULE

(1) through (5)(b) will remain the same.

(c) Inactive status 10.00

(c) through (g) will remain the same, but will be renumbered (d) through (h).

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

(8) Re-inspection fee 75.00

(8) through (12) will remain the same, but will be renumbered (9) through (13)."

Auth: Sec. 37-1-134, 37-19-202, 37-19-703, MCA; IMP, Sec. 37-1-134, 37-19-301, 37-19-304, 37-19-306, 37-19-402, 37-19-403, 37-19-702, 37-19-703, MCA

REASON: An inactive status fee has been added to reduce the amount a mortician has to pay for renewal when his license is on inactive status. The reinspection fee has been moved from ARM 8.30.408 so all fees are set forth in the fee schedule. This fee will be charged if the funeral home inspector is required to reinspect to verify that the funeral home or crematory has complied with board direction to correct a problem found on the annual or initial inspection.

"8.30.408 INSPECTIONS (1) will remain the same.

(2) A mortuary shall be inspected by the board or its designees in accordance with sub-chapter 6 of these rules.

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

~~(5) Inspections will be conducted by board members or by staff of the department of commerce trained and approved by the board.~~

~~(6) (5) Reinspection shall be made of a mortuary that does not meet the requirements of the board in ARM 8.30.601 through 8.30.606. A fee of \$75.00 shall be paid for each reinspection."~~

Auth: Sec. ~~37-19-202~~, 75-10-1006, MCA; ~~IMP~~, Sec. ~~37-19-403~~, 75-10-1001, 75-10-1002, 75-10-1003, 75-10-1004, 75-10-1005, 75-10-1006, MCA

REASON: The Board now has a contracted inspector and the board members and staff will no longer be conducting inspections. The fee for reinspection has been moved to ARM 8.30.407 so all fees are set forth in the fee schedule.

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

(c) "The continuing education compliance period" shall comprise the ~~24~~ 12-month period immediately prior to the licensee's renewal date.

(d) "Inactive practitioner" for purposes of these rules shall mean an individual who has applied for a ~~waiver of compliance with these rules and who has obtained and been granted a certificate of exemption~~ inactive status and has been issued an inactive certificate.

(e) will remain the same."

Auth: Sec. ~~37-1-319~~, ~~37-19-202~~, ~~37-19-316~~, MCA; ~~IMP~~, Sec. ~~37-19-316~~ ~~37-1-306~~, MCA

REASON: The proposed amendment will clarify the definition of inactive practitioner to be consistent with the new rule on inactive status.

"8.30.502 CONTINUING EDUCATION REQUIREMENTS (1) through (3)(b)(ii) will remain the same.

(iii) All licensed morticians and ~~crematory operators~~ must submit to the board, on the appropriate year's renewal, a report on a form prescribed by the board summarizing their obtained continuing education credits. The board will review these reports within six months of their receipt, and notify the licensee regarding his/her noncompliance. Licensees found to be in noncompliance with the requirement will be asked to submit to the board for approval a plan to complete the continuing education requirements for licensure. Prior to the next consecutive year's license renewal deadline, those licensees who were found to be in noncompliance will be formally reviewed to determine their eligibility for license renewal. Licensees, who at this time have not complied with continuing education requirements, will not be granted license renewal until they have fulfilled the board-approved plan to complete the requirements. Those not receiving notice from the board regarding their continuing education should assume satisfactory compliance. Notices will be considered properly mailed when addressed to the last known address on file in the board office. No continuing education used to complete delinquent continuing education plan requirements for licensure may be used to meet the continuing education requirements for the next continuing education reporting period.

(iv) through (5) will remain the same."

Auth: Sec. ~~37-1-319~~, ~~37-19-202~~, ~~37-19-316~~, MCA; ~~IMP~~, Sec. ~~37-19-316~~ ~~37-1-306~~, MCA

REASON: The proposed amendment will clarify which licensees must comply with the continuing education requirements.

"8.30.504 SPONSORS (1) The board will recognize courses, programs or other continuing education activities sponsored by Montana funeral directors association (MFDA), national selected morticians (NSM), national funeral directors association (NFDA), independent funeral directors association (IFTA), federated funeral directors of America, national foundation of funeral service, Montana coroner's association, order of golden rule, Montana department of justice coroner's training programs, Montana funeral services, inc. (MFSI) and funeral industry supplier programs. All other programs must meet the criteria established in ARM 8.30.502."

Auth: Sec. ~~37-1-319~~, ~~37-19-202~~, ~~37-19-316~~, MCA; ~~IMP~~, Sec. ~~37-19-316~~ ~~37-1-306~~, MCA

REASON: This amendment is necessary to add the Montana Funeral Services, Inc. to the list of approved sponsors for continuing education programs.

"8.30.701 UNPROFESSIONAL CONDUCT (1) will remain the same.

~~(a) misrepresentations made or fraud committed as a holder of a license for the practice of funeral service;~~

~~(b) false or misleading advertising;~~

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

~~(g) aiding or abetting an unlicensed person to practice within the funeral service profession as a funeral director or mortician;~~

(h) will remain the same, but will be renumbered (e).

~~(i) being unfit to perform because of physical or psychological impairment;~~

~~(j) using alcohol or other drugs to the point that there is interference with job performance;~~

~~(k) (f) allowing the licensee's license number to be placed on a death certificate, burial-transit permit or any other official form of any dead human body as the mortician or embalmer, if the licensee did not prepare the body or supervise the final disposition of that body;~~

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

~~(h) failure to provide merchandise that consumer selected or substitution of goods, services or merchandise without consumer's knowledge or consent;~~

(m) and (n) will remain the same, but will be renumbered (i) and (j).

~~(o) fraud or misrepresentation in obtaining or renewing a license;~~

(p) will remain the same, but will be renumbered (k).

~~(q) failure to secure permit for removal or burial of dead human body prior to interment or disposal;~~

(r) and (s) will remain the same, but will be renumbered (l) and (m).

~~(t) (n) discriminating in services because of race, creed, color, or national origin or medical condition;~~

(u) through (w) will remain the same, but will be renumbered (o) through (g).

~~(x) having been convicted of violating any state or federal narcotic law, subject to chapter 1, part 2 of this title, and~~

~~(y) having been convicted of a felony. A certified copy of the judgment of conviction is conclusive evidence of the conviction. This subsection is subject to chapter 1, part 2 of this title.~~

~~(z) (r) removing or possessing dental gold or dental silver or other personal effects, from deceased persons without specific written permission of the authorized agent,;~~

(aa) will remain the same, but will be renumbered (s)."

Auth: Sec. ~~37-1-131, 37-1-136, 37-1-319, 37-19-202, 37-19-311, 37-19-404, MCA; IMP, Sec. 37-1-136, 37-1-316, 37-19-311, 37-19-404, MCA~~

REASON: This amendment is necessary to comply with the Uniform Professional Licensing and Regulation Procedures Act enacted by the 1995 Legislature at Title 37, chapter 1, part 3, MCA.

"8.30.807 DESIGNATION AS CREMATORY OPERATOR OR TECHNICIAN

(1) A person ~~already~~ holding a current Montana mortician license in good standing may be designated as crematory operator or crematory technician ~~without upon application or but without fee for a separate crematory operator or crematory technician license. An~~ The application for crematory licensure shall note the current mortician license status and number as for designation as crematory operator responsible for operations, or crematory technician. A separate renewal fee for this designation shall not be charged.

(2) A licensed crematory shall notify the board office promptly, ~~in writing, of any change of crematory operator, and indicate whether the new crematory operator is currently licensed as a Montana mortician in good standing, and will only require a designation as crematory operator, or whether a separate full crematory operator license will be obtained."~~

Auth: Sec. ~~37-19-202, MCA; IMP, Sec. 37-19-702, MCA~~

REASON: The proposed amendment will clarify application processes and fees for persons already licensed as a mortician but needing a crematory operator designation, as there has been confusion about proper licensing for a dual designation.

3. The Board is proposing to repeal ARM 8.30.409 (authority 37-19-202, MCA and implementing 37-19-403, MCA); 8.30.514 (authority 37-19-202, 37-19-316, MCA and implementing 37-19-316, MCA); 8.30.705 (authority 37-1-136, 37-19-202, MCA

and implementing 37-1-136, 37-19-311, 37-19-404, MCA); 8.30.706 (authority 37-1-136, 37-19-202, MCA and implementing 37-1-136, 37-19-311, 37-19-404, MCA) and 8.30.707 (authority 37-1-136, 37-19-202, MCA and implementing 37-1-136, 37-19-311, 37-19-312, MCA). The text of these rules is located at pages 8-930, 8-934.1, 8-946 and 8-947, Administrative Rules of Montana. The rules are being proposed for repeal because these procedures are now set forth in the Uniform Professional Licensing and Regulation Procedures Act (Title 37, part 1, chapter 3, MCA) enacted by the 1995 Legislature.

4. The proposed new rules will read as follows:

"I SCREENING PANEL (1) The board chairman must be a member of the screening panel. The chairman will appoint the screening panel based on the individual complaint. The number of board members sitting on the panel may vary, but cannot exceed four members.

(2) The members sitting on the screening panel cannot sit on the disciplinary panel."

Auth: Sec. 37-19-202, MCA; IMP, Sec. 37-1-307, MCA

REASON: This rule is proposed to comply with the Uniform Professional Licensing and Regulation Procedures Act (Title 37, chapter 1, part 3) enacted by the 1995 Legislature.

"II INACTIVE STATUS AND REACTIVATION

(1) A licensee may place the license on inactive status by either indicating on the renewal form that inactive status is desired, or by informing the board office, in writing, that an inactive status is desired, and paying the appropriate fee. It is the sole responsibility of the inactive licensee to keep the board informed as to any change of address during the period of time the license remains on inactive status. Inactive licensees must pay the renewal fee annually to maintain license status.

(2) A licensee may not practice any mortician, funeral director, intern, crematory operator or crematory technician work in the state of Montana while the license is in an inactive status.

(3) Upon application and payment of the appropriate fee, the board may reactivate an inactive license if the applicant does each of the following:

(a) signifies to the board, in writing, that upon issuance of the active license, the applicant intends to be an active practitioner in the state of Montana,

(b) presents satisfactory evidence that the applicant has attended six hours of continuing education which comply with the continuing education rules of the board for each year or portion of a year that licensee has been inactive, not to exceed 12 hours,

(c) submits certification from the licensing body of all jurisdictions where the applicant is licensed or has practiced that the applicant is in good standing and has not had any

disciplinary actions taken against the applicant's license, or if the applicant is not in good standing by that jurisdiction, an explanation of the nature of the violation(s) resulting in that status; including the extent of the disciplinary treatment imposed, and

(d) successfully completes a Montana state rule examination, if applicant has been on inactive status for more than five years.

(4) The board may grant conditional permission, not to exceed one year, allowing the applicant to practice while obtaining the required continuing education hours set forth above. No extension of the one year conditional practice permission shall be granted.

Auth: Sec. 37-1-319, 37-19-202, MCA; IMP, Sec. 37-1-319, MCA

"III COMPLAINT FILING (1) A person, government or private entity may submit a written complaint to the board charging a licensee or license applicant with a violation of board statute or rules, and specifying the grounds for the complaint.

(2) Complaints must be in writing, and shall be filed on the proper complaint form prescribed by the board.

(3) Upon receipt of the written complaint form, the board office shall log in the complaint and assign it a complaint number. The complaint shall then be sent to the licensee complained about for a written response. Upon receipt of the licensee's written response, both complaint and response shall be considered by the screening panel of the board for appropriate action including dismissal, investigation or a finding of reasonable cause of violation of a statute or rule. The board office shall notify both complainant and licensee of the termination made by the screening panel.

(4) If a reasonable cause violation determination is made by the screening panel, the Montana Administrative Procedure Act shall be followed for all disciplinary proceedings undertaken.

(5) The screening panel shall review anonymous complaints to determine whether appropriate investigative or disciplinary action may be pursued, or whether the matter may be dismissed for lack of sufficient information."

Auth: Sec. 37-19-202, MCA; IMP, Sec. 37-1-308, 37-1-309, MCA

REASON: Proposed new rules II and III will implement changes mandated by the passage of House Bill 518, the Uniform Professional Licensing and Regulation Procedures Act, by the 1995 Legislature.

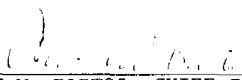
5. Interested persons may submit their data, views or arguments concerning the proposed amendments, repeals and adoptions in writing to the Board of Funeral Service, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513,

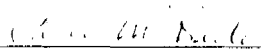
Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., September 5, 1996.

6. If a person who is directly affected by the proposed amendments, repeals and adoptions wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Funeral Service, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., September 5, 1996.

7. If the Board receives requests for a public hearing on the proposed amendments, repeals and adoptions from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed rules, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 31 based on the 309 licensees in Montana.

BOARD OF FUNERAL SERVICE
DOUGLAS D. LOWRY, CHAIRMAN

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


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, July 29, 1996.

BEFORE THE BOARD OF PLUMBERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment and adoption of rules) AND ADOPTION OF RULES PER-
pertaining to the plumbing) TAINING TO THE PLUMBING
industry) INDUSTRY

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On September 7, 1996, the Board of Plumbers proposes to amend and adopt rules pertaining to the plumbing industry.

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

"8.44.402. DEFINITIONS (1) will remain the same.

~~(2) The term secretary used herein means the secretary of the board of plumbers.~~

(3) will remain the same, but will be renumbered (2)."

Auth: Sec. 37-69-202, MCA; IMP, Sec. 37-69-202, MCA

"8.44.403 APPLICATIONS (1) through (4) will remain the same.

(5) Upon receipt and approval of an application for the journeyman or master plumber's examination, the department will send to the applicant an admittance card for the examination ~~which will allow him to work as a journeyman plumber until the next examination for which he is scheduled. A master applicant shall not work as a master until such time as he successfully passes the master's examination and a master plumber's license has been issued to him. The admittance card must be presented by the candidate at the examination.~~

(6) will remain the same."

Auth: Sec. 37-69-202, MCA; IMP, Sec. 37-69-303, MCA

"8.44.404 EXAMINATIONS (1) through (5) will remain the same.

(6) Any applicant for the journeyman or master's license who shall sit for and fail the ~~master's~~ examination two consecutive times will not be allowed to retake the examination for a period of one year commencing with the date of the last examination that he failed. After one year, the applicant shall submit a notarized statement from an individual acceptable to the board, which attests to 20 hours of additional training acceptable to the board before the applicant will be approved to again take the examination.

~~(7) All applicants for licensure as a journeyman plumber who fail the examination for the second time are reduced to apprenticeship status and shall not be allowed to apply for and take the examination until the expiration of one year from the~~

~~date of the second examination failure. After one year, the applicant shall submit a notarized statement from an individual acceptable to the board, which attests to 20 hours of additional training acceptable to the board, before the applicant will be approved to again take the examination.~~

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

Auth: Sec. ~~37-69-202~~, MCA; IMP, Sec. ~~37-69-304~~, 37-69-305, ~~37-69-306~~, 37-69-307, MCA

"8.44.405 RENEWALS (1) will remain the same.

(2) ~~All master and journeyman licenses shall expire the 31st of August of each year on the date set in ARM 8.2.208. It is unlawful for a person who refuses or fails to pay the renewal fee to practice plumbing work in this state. A lapsed license may be reinstated within one year of the default without examination on payment of the arrears, and compliance with board requirements. A lapsed license not renewed within one year following its expiration date terminates automatically.~~

Auth: Sec. ~~37-1-101~~, ~~37-69-202~~, MCA; IMP, Sec. ~~37-69-307~~, MCA

"8.44.410 INVESTIGATION (1) will remain the same.

(2) ~~In case of an investigation on motion of the board, the notice of investigation will be accompanied by an accusation made in writing and verified by the board, or such members thereof as may have knowledge of the matters therein contained.~~

(3) will remain the same, but will be renumbered (2)."

Auth: Sec. ~~37-69-202~~, MCA; IMP, Sec. ~~37-1-308~~, 37-69-304, 37-69-305, ~~37-69-321~~, ~~37-69-322~~, MCA

"8.44.412 FEE SCHEDULE

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

(8) Out-of-state licensure fee 95

(9) Temporary practice permit fee 20"

Auth: Sec. ~~37-1-134~~, ~~37-69-202~~, MCA; IMP, Sec. ~~37-1-134~~, ~~37-1-304~~, ~~37-1-305~~, 37-69-202, MCA

"8.44.415 OUT-OF-STATE APPLICANTS (1) Out-of-state applicants for a master or journeyman plumber's license may provide proof of prior licensing in another state by submitting a copy or copies of the license(s) held along with a certified letter of verification from the state or local licensing agency stating date of licensure and requirements for licensure. ~~This information will credit the applicant with only the specific time toward experience which was required by the licensing state. Any additional experience time required by the state of Montana shall be verified as per board rules on qualifications for licensure. If the qualifications from the state of original licensure are not equivalent to Montana's, the applicant will receive credit for the years required by the original state, but will need to provide the additional year's documentation as required by (2).~~

(2) will remain the same."

Auth: Sec. ~~37-69-202, 37-69-309~~, MCA; IMP, Sec. 37-1-304
~~37-69-309~~, MCA

REASON: The proposed amendments will implement statutory changes mandated by the passage of House Bill 518 (Uniform Professional Licensing and Regulation Procedures Act) by the 1995 legislature.

3. The proposed new rules will read as follows:

"I TEMPORARY PRACTICE PERMITS (1) An applicant for a master or journeyman plumbing license may act as a journeyman plumber after making application to the board for licensure, paying appropriate fees, being approved to write the examination and being issued a temporary permit.

(2) A temporary permit shall expire on the date of the next scheduled examination. If the applicant fails or does not write the next scheduled examination, a second temporary permit will not be issued.

(3) An applicant for the master plumber license may not work as a master until such time as he successfully passes the master's examination and a master plumber's license has been issued to him."

Auth: Sec. 37-1-319, MCA; IMP, Sec. 37-1-305, MCA

"II SCREENING PANEL (1) The board screening panel shall consist of at least three board members, one of whom shall be a licensed plumber member of the board, and the other two of whom shall be board members selected by the chairman. The screening panel shall be appointed by the board chairman, and the chairman shall not serve as a screening panel member during the chairman's term in office. The chairman may reappoint screening panel members, or replace screening panel members as necessary at the chairman's discretion."

Auth: Sec. 37-69-202, MCA; IMP, Sec. 37-1-307, MCA

"III COMPLAINT PROCEDURE (1) A person, government or private entity may submit a written complaint to the board charging a licensee or license applicant with a violation of board statute or rules, and specifying the grounds for the complaint.

(2) Complaints must be in writing, and shall be filed on the proper complaint form prescribed by the board.

(3) Upon receipt of the written complaint form, the board office shall log in the complaint and assign it a complaint number. The complaint shall then be sent to the licensee complained about for a written response. Upon receipt of the licensee's written response, both complaint and response shall be considered by the screening panel of the board for appropriate action including dismissal, investigation or a finding of reasonable cause of violation of a statute or rule. The board office shall notify both complainant and licensee of the determination made by the screening panel.

(4) If a reasonable cause violation determination is made by the screening panel, the Montana Administrative Procedure Act shall be followed for all disciplinary proceedings undertaken.

(5) The screening panel shall review anonymous complaints to determine whether appropriate investigative or disciplinary action may be pursued, or whether the matter may be dismissed for lack of sufficient information."

Auth: Sec. 37-69-202, MCA; IMP, Sec. 37-1-308, 37-1-309, MCA

REASON: The proposed new rules will implement changes mandated by the passage of House Bill 518 by the 1995 legislature.

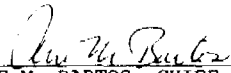
4. Interested persons may submit their data, views or arguments concerning the proposed amendments and adoptions in writing to the Board of Plumbers, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., September 5, 1996.

5. If a person who is directly affected by the proposed amendments and adoptions wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Plumbers, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., September 5, 1996.

6. If the Board receives requests for a public hearing on the proposed amendments and adoptions from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendments and adoptions, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 110 based on the 1094 licensees in Montana.

BOARD OF PLUMBERS
DICK GROVER, CHAIRMAN

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, July 29, 1996.

BEFORE THE BOARD OF PROFESSIONAL
ENGINEERS AND LAND SURVEYORS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING ON
amendment, repeal and adoption) THE PROPOSED AMENDMENT,
of rules pertaining to the) REPEAL, AND ADOPTION OF RULES
practice of professional) PERTAINING TO THE PRACTICE OF
engineers and land surveyors) PROFESSIONAL ENGINEERS AND
LAND SURVEYORS

TO: All Interested Persons:

1. On September 5, 1996, at 10:00 a.m., a public hearing will be held in the Professional and Occupational Licensing conference room, Arcade Building, 111 N. Jackson, Helena, Montana, to consider the proposed amendment, repeal and adoption of rules pertaining to the practice of professional engineers and land surveyors.

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

"8.48.401 BOARD ORGANIZATION (1) The board shall elect from its members a chairman, vice-chairman, and ~~the~~ a secretary at the ~~regular July meeting of each year annually.~~

(2) will remain the same.

~~(3) The chairman shall direct meeting notices to be prepared, distributed and published.~~

~~(4) The chairman may direct any notice or order issued by the board or required by law to be prepared, distributed and published.~~

(5) and (6) will remain the same, but will be renumbered (3) and (4).

~~(7) The secretary shall be responsible for the supervision of all correspondence, applications and financial records of the board. The secretary of the board shall oversee the publishing and distribution of a roster each biennium as required in section 37-67-318, MCA, with addendums as deemed necessary by the board."~~

Auth: Sec. ~~37-67-202~~, MCA; IMP, Sec. ~~37-67-201~~, MCA

"8.48.403 BOARD MEETINGS ~~(1) The order of business at all regular and special meetings of the board shall be as follows:~~

~~(a) roll call~~

~~(b) reading of minutes~~

~~(c) report of committees~~

~~(d) report of secretary and reading of communications~~

~~(e) unfinished business~~

~~(f) new business~~

- ~~(g) reading and consideration of applications~~
~~(h) adjournment~~
~~(2) "Roberts' Rules of Order" shall govern the proceedings of the board, except as otherwise provided herein or by statute.~~
~~(3) An annual meeting shall be held during July each year, the exact time and place to be determined by the chairman and set forth in a written notice, copy of which shall be mailed to each member at his last address of record at least 10 days in advance of the date of the meeting.~~
~~(4) A special meeting may be called at any time by order of the chairman on the written request of any three members of the board. Notice as prescribed above or telegraphic notice of not less than 72 hours in advance of the date and time of the meeting shall be given each member, said notice setting forth the exact time and place of the meeting, as determined by the person issuing the call.~~
~~(a) Notice less than 72 hours in advance of a called special meeting may be given by telephone or other means provided such member, or members of the board, as are absent from the meeting sign a statement accepting the call in lieu of notice as set out in the preceding paragraph. Attendance at the meeting will be evidence of acceptance of the call by those members present.~~
~~(5) Any board member who misses 3 or more consecutive unexcused meetings shall be proposed to the Governor for consideration for removal from office because of "neglect of duty". The board shall decide on excused and unexcused absences.~~
~~(6) Any board member may make an independent investigation of the applicants qualifications and report his findings to the board.~~
~~(1) The board shall hold at least two meetings annually, with 10 days notice, and as called by the chairman."~~

Auth: Sec. 37-67-202, MCA; IMP, Sec. 37-67-201, MCA

"8.48.501 APPROVAL OF SCHOOLS (1) Baccalaureate Engineering or engineering technology programs schools or colleges approved by the board are those which require for entrance, graduation from an accredited high school or preparatory school (or equivalent by passing of advance standing examination), which offer a minimum of a 4-year course leading to a degree of bachelor of science in recognized branches of engineering, or engineering technology, or their equivalent, and which are either approved by the accredited by the Accreditation Board for Engineering and Technology (ABET) or equivalent curricula as approved by the board shall meet the educational requirement.

(2) The board will review any questions of curricula on an individual basis, using acceptable curricula existing at the time of the individual's study as guide for evaluation.

(3) will remain the same, but will be renumbered (2)."

Auth: Sec. 37-67-202, MCA; AUTH Extension, Sec. 20, Ch. 553, L. 1985, Eff. 10/1/85; IMP, Sec. 37-67-306, MCA

"8.48.502 APPLICATIONS (1) Applications received by the department shall be examined for conformity with the rules governing applications as established by the board. Applications must be on a board approved form and accompanied by proper fees and in the form prescribed shall be entered in the records of the board. An Applications not accompanied by the proper fees or not conforming completed in its entirety entirely with all required information to the rules shall be returned to the applicant with instructions as to the correction thereof or held in abeyance until in proper form as prescribed by the board. Fees will be deposited as received.

(2) When applications accompanied by proper fees are accepted and entered in the books of the board, the references cited in the respective applications shall be contacted in the manner prescribed by the board. If replies from the references cited are not received within a reasonable time, the applicant shall be notified to that effect.

(3) When all necessary information has been brought together with regard to a given application, each board member shall be provided with a summary of the application. The application with all incidental papers shall be immediately brought to the attention of the board at the first subsequent meeting.

(4) All non resident applicants must be registered in their states of residence and original registration submitted, before their application can be considered."

Auth: Sec. 37-67-202, MCA; AUTH Extension, Sec. 20, Ch. 553, L. 1985, Eff. 10/1/85; IMP, Sec. 37-67-303, MCA

"8.48.504 APPLICATION REFERENCES (1) Upon receipt of an application, a copy of the board's uniform questionnaire and form letter shall be transmitted to 5 or more references. Three or more of the references shall be registered in the profession being applied for as professional engineers or professional land surveyors. No member of the board will be accepted as a reference. The department shall provide the applicant with copies of the board's uniform reference letter and the applicant shall submit same to 5 references, with a stamped return envelope addressed to the board office.

(2) will remain the same."

Auth: Sec. 37-67-202, MCA; IMP, Sec. 37-67-303, MCA

"8.48.505 DISPOSAL OF APPLICATIONS (1) When the board, after due consideration of an application and of information pertaining thereto, is satisfied that : (a) will find the applicant is eligible for registration under the particular classification under which the application is made, the applicant will be voted registration. If the finding of the board is that the applicant is not eligible for registration under the classification under which the application is made, the board may vote the applicant registration is such other classification as it finds that he is eligible. The applicant will be notified of the action by the department.

(2) If the board is unable to determine from the

~~information provided by the applicant whether the applicant is eligible for registration, the application shall be deferred and the applicant requested to sit for the appropriate exam; or~~

~~(b) request the applicant to furnish such additional information as may be necessary; or. If after 1 year from the date of the request for such information, no reply has been received, the application will be rejected and a new application will be required.~~

~~(3) If after 1 year from date of notification of approval, an applicant has not paid the required registration fee, he shall be notified that unless such payment is made within 30 days, a new application for registration must be made under a section of the law applicable on the date the new application is filed and accompanied by a new application fee.~~

~~(4) If an application is rejected, the department will (c) advise the applicant of the application's rejection in accordance with provisions of the law.~~

~~(2) A rejected applicant may request reconsideration under the section originally applied for, within one year of the date of notification, without additional fees. Additional evidence pertaining to the application must be furnished. However, reconsideration does not take into account experience or education subsequent to the date of application.~~

~~(3) An applicant who applies under a different section than that previously submitted shall submit a new complete application accompanied by the appropriate fee."~~

Auth: Sec. 37-67-202, MCA; IMF, Sec. 37-67-303, MCA

"8.48.507 CLASSIFICATION OF EXPERIENCE (1) Engineering experience or land surveying experience ~~"of a character satisfactory to the board"~~ shall include the following:

~~(a) Sub professional work shall be construed to cover the time spent as rodman, chainman, instrument man, inspector, recorder, draftsman, computer, lester, superintendent of construction, junior engineer, or similar work, that is, positions in which the responsibility is slight and the individual performance of a task, set and supervised by a superior, is all that is required. It shall also include full time engineering employment before the applicant graduated from an approved college or university.~~

~~(b) Each year of experience in sub professional work, as defined herein may be credited as one half year toward the requirement of experience or practice of a character satisfactory to the board. Only experience of the applicant which is classified as sub professional or pre professional work by the board will be considered.~~

~~(c) Pre professional work is work performed before registration in Montana, which is of a character worthy of the profession. Pre professional work shall include the time after the applicant has graduated from an approved college or university, during which he has been accepted in engineering work of a higher grade and responsibility than that above defined as sub professional work. Successful completion of graduate study in engineering shall be considered pre-~~

professional work, but such study will not be credited as more than 1 year of pre-professional work. The mere execution, as a contractor, of work designed by an engineer, or the mere supervision of construction of such work as foreman or superintendent shall not be deemed to be pre-professional work.

(d) Experience time may not be counted as pre-professional or sub-professional for work done during years counted for education.

(e) Land survey experience consists of work done under the supervision of a registered professional land surveyor such as section breakdowns, retracing old boundaries, establishing new boundaries, corner search and re-establishment, calculations, and preparations of certificates of surveys, deed searches, and corner recordation.

(f) Other survey experience is survey work which may or may not be done under the supervision of a registered professional land surveyor. It includes such work as construction layout of buildings and miscellaneous structures, surveys necessary to obtain data and location of highways, roads, pipelines, canals, etc., construction staking for land modification, construction staking for highways, roads, utilities, etc.

(i) Non survey experience is work not related to surveying.

(g) Pre-professional work (in charge) means: in the field, the applicant must have directed the work. The successful accomplishment of the work must have rested upon him. He must have made decisions regarding methods of execution and suitability of materials without relying upon advice or instructions from his superiors.

(i) In the office, the applicant must have had to undertake investigations, or carry out important assignments, demanding resourcefulness and originality, or to make plans, write specifications and direct drafting and computation for designs or engineering, with only rough sketches, general information and field measurements for reference and guidance.

(ii) In teaching, the applicant must have taught an engineering program of recognized standing, and must have been engaged in research, product development, or consulting as a concurrent activity.

(h) Pre-professional work (design) means: all that is given above as pre-professional in charge and in addition one qualified in design must have met the demands encountered in engineering design and fulfilled the requirements of local circumstances and conditions without violating any of the canons of engineering.

(2) The board will not deem experience to be pre-professional work, pre-professional work (in charge), or pre-professional work (design), as those terms are defined in subsection (1) of this rule, unless during the period of time in question the applicant's work products were reviewed by a licensed professional engineer or professional land surveyor as appropriate.

(3) ~~The board, in passing on each of these requirements as defined, will carefully weigh the evidence of experience submitted by the applicant and the replies received from his references.~~

(a) Sub-professional experience gained before graduation. This experience shall be credited to the required pre-professional experience at a maximum of one half the period of experience. Credible experience may include:

- (i) surveying experience, supervised;
- (ii) engineering experience, supervised;
- (iii) construction experience, supervised.

(b) Pre-professional experience is four years of total progressive experience, all of which is required to be completed at the time of application. Credible experience may include:

- (i) approved sub-professional experience;
- (ii) progressive experience on engineering/land surveying projects which indicate the experience is of increasing quality and required greater responsibility;
- (iii) experience not obtained in violation of the licensure act;

(iv) credible experience gained in the armed services, of a character equivalent to that which would have been gained in the civilian sector performing similar work;

(v) experience gained under the supervision of a licensed professional engineer/land surveyor or, if not, an explanation of why the experience should be considered acceptable;

(vi) credible sales experience demonstrating that engineering principles were required and used in gaining experience;

(vii) credible teaching experience at an advanced level, post graduate or senior graduate, in a college or university offering an engineering curriculum of four years or more that is approved by the board. Land surveying teaching experience shall also be at an advanced level on a land surveying curriculum approved by the board;

(viii) experience gained in engineering research and design projects by members of an engineering faculty, in an engineering curriculum approved by the board;

(ix) successful completion of graduate study leading to the master's degree in engineering, which has followed a baccalaureate degree in engineering, as credit for one year's experience. If the Ph.D. in engineering is completed under the same conditions, two year's total experience may be credited, including the one year credited for the master's degree, in the two year's total. If the Ph.D. is obtained without the master's degree, two year's experience may be credited. All degrees shall have been obtained from colleges or universities with board approved programs.

(2) Experience must be completed at the time of application. Experience time cannot be counted during periods counted for education.

(3) Experience as a contractor in the execution of

prepared design by a professional engineer or in employment considered as that of supervising construction of such work may not be considered as credible experience.

(4) Obtaining a Ph.D. in engineering from an approved program is considered equivalent to passing the fundamentals of engineering exam. Four years experience in addition is required to qualify to take the professional engineers examination.

(5) Upon request by the board, an applicant must demonstrate knowledge of fundamental principles of engineering design and the practical solution of engineering problems.

(6) Land surveying experience must include a substantial portion spent in charge of work related to property conveyance and/or boundary line determination.

(7) Upon request by the board, land surveyor applicants must demonstrate adequate experience in the field aspects of the profession."

Auth: Sec. 37-67-202, MCA; IMP, Sec. 37-67-306, 37-67-309, MCA

"8.48.508 EXAMINATION PROCEDURES (1) After July 1, 1975, registration as a professional engineer and/or professional land surveyor in Montana required in part, examinations. The examinations required are defined in section 37-67-311, MCA.

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

Auth: Sec. 37-67-202, MCA; IMP, Sec. 37-67-311, MCA

"8.48.601 COMITY FOR PROFESSIONAL ENGINEERS (1) The board may, upon application and payment of proper fee, issue a certificate of registration license as a professional engineer, to any person who submits evidence that he holds a National Council Records certificate issued to him by proper authority of the national engineering certification committee of the National Council of Engineering Examiners for engineering and surveying (NCEES), or of any state or territory or possession of the United States, or of any country, provided that the applicant's qualifications meet the requirements of the law and of the rules established by the board. Such applicants shall, as part of their application, complete and send to the department the standard application form. Applicants who have a current NCR certificate number council record, must complete only the following sections of the application for registration as a professional engineer:

- (a) general information,
- (b) registration licensure in other states,
- (c) affidavit,
- (d) engineering experience.

(2) When application for registration licensure by endorsement comity is made, the Montana board shall secure from the board by from which the certificate of registration involved license was issued, complete information as to the basis for the issuance of said certificate. However, if the applicant presents evidence of a certificate issued by the

~~National Engineering Certification Committee of NCEES bearing thereon as an endorsement proper authorization by the authorized official of the state board of engineering registration of the state which the holder of the certificate is a resident, such inquiry may be omitted.~~

~~(3) The board will upon application for reciprocal registration by one of its registrants in another state, certify as to his qualifications."~~

Auth: Sec. ~~37-67-202~~, MCA; ~~IMP~~, Sec. ~~37-67-312~~, MCA

"8.48.602 ENGINEER REGISTRATION BY COMITY WITHOUT EXAMINATION (1) An out-of-state ~~registrant licensee~~, whose conditions did not include examination, may be granted ~~registration licensure~~ by the board without examination, if the original ~~certificate of registration license~~ was granted under any of the following provisions:

(a) Engineers ~~registered licensed~~ under a provision of the law permitting registration to applicants who have graduated from a school or college in an engineering curriculum of 4 years or more, plus 4 years or more of experience in engineering work of a character satisfactory to the board; provided the ~~certification of registration license~~ was issued prior to July 1, 1948, for civil engineers and July 1, 1957 for others.

(b) Engineers ~~registered licensed~~ under a provision of the law permitting ~~registration licensure~~ to applicants who have a specific record of 12 years or more of lawful practice in engineering work of a character satisfactory to the board, of which at least 5 years has been in responsible charge of ~~important engineering work~~, provided such ~~registration was granted after the individual was 32 years of age, and the certificate license~~ was issued before July 1, 1975, and under requirements not ~~lower less stringent~~ than those of the Montana law, and the rules of this board at the time the ~~certificate license~~ was issued."

Auth: Sec. ~~37-67-202~~, MCA; ~~IMP~~, Sec. ~~37-67-312~~, MCA

"8.48.603 ENGINEER REGISTRATION LICENSURE BY COMITY WITHOUT EDUCATION (1) An out-of-state ~~registrant licensee~~ whose ~~registration licensure~~ conditions did not include graduation from a 4 ~~four~~ year approved curricula, may be granted ~~registration licensure~~ by the board, if the ~~registrant licensee~~ has successfully passed the 8 ~~eight~~ hour ~~EIT fundamentals of engineering and 8 eight hour PE principles and practices of engineering~~ examinations issued by NCEES, and has had 8 ~~eight~~ years of engineering work experience satisfactory to the board, and provided that the ~~certificate license~~ was issued before July 1, ~~1979~~ 1975."

Auth: Sec. ~~37-67-202~~, MCA; ~~IMP~~, Sec. ~~37-1-304~~, ~~37-67-312~~, MCA

"8.48.604 COMITY CONSIDERATION FOR PROFESSIONAL LAND SURVEYORS (1) The board may, upon application and payment of proper fees and passing a written examination, issue a

~~certificate of registration license~~ as a professional land surveyor to any person who submits evidence that he holds a ~~certificate of registration license~~ issued to him by proper authority of any state or territory or possession of the United States, based upon qualifications that were not less stringent than those of this state at the time the applicant received his or her certificate license in the other state, territory or possession."

Auth: Sec. 37-67-202, MCA; IMP, Sec. 37-1-304, 37-67-312, 37-67-313, MCA

"8.48.801 GRANT AND ISSUE LICENSES (1) At the time an applicant is voted registration licensure by the board, ~~he the~~ applicant will be assigned a registration license number and issued a ~~certificate of registration license~~ as a professional engineer and/or professional land surveyor as appropriate. These numbers will be issued consecutively in the order in which the applications are approved by the board. The applicant will be advised of ~~his registration the license~~ number in the notice sent him ~~to the applicant~~."

(2) A ~~certificate of registration license~~ authorizing the practice of professional engineering or land surveying will be granted by the board and issued by the department after approval of an application, and payment of registration the licensee fee (if required), and verification of the applicant's ~~usual written signature~~. The certificate license shall be signed by the chairman and the secretary and shall bear the registration license number of the registrant licensee."

~~(3) Applicants approved for registration as professional engineers and professional land surveyors shall receive one certificate of registration authorizing the practice of professional engineering and professional land surveying.~~

~~(4) The application of any applicant who fails to complete his registration as provided herein above within a period of 6 months after notice is mailed to him by the board that he has been voted registration, shall be rejected upon action of the board."~~

Auth: Sec. 37-67-202, MCA; AUTH Extension, Sec. 20, Ch. 553, L. 1985, Eff. 10/1/85; IMP, Sec. 37-67-306, 37-67-309, MCA

"8.48.802 REGISTRANT LICENSE SEAL (1) Upon approval of ~~his the~~ application by the board, the registrant licensee will be advised that ~~he the licensee~~ may secure an official seal, and informed of the requirements of the law with regard to the use of such seal.

~~(2) Seals for professional engineers and professional land surveyors will be furnished by the board, at a fee, upon request. Seals of two different sizes are authorized;~~

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

~~(c) The seal will bear the registrant's licensee's name, registration license number, and the legend "Registered Licensed Professional Engineer", "Registered Licensed Professional Land Surveyor", or "Registered Licensed Professional Engineer and Professional Land Surveyor".~~

(2)(3) For stamping plans, specifications, and reports, ~~registrants licensees~~ are authorized to use a facsimile made of their official seal. The title page of all sets of plans and all documents filed with public authorities must bear the seal and original signature."

Auth: Sec. 37-67-202, MCA; ~~AUTH Extension, Sec. 20, Ch. 553, L. 1985, Eff. 10/1/85; IMP, Sec. 37-67-314~~, MCA

"8.48.901 EXPIRATION OF REGISTRATION LICENSE - RENEWAL

(1) ~~Certificates of registration licenses expire on June 30th of the appropriate year every second year on the date established in ARM 8.2.208 (June 30th of each even-number year)~~ and shall be renewed as outlined in ~~section 37-67-315~~, MCA, upon receipt of the renewal fee set by the board.

(2) The department will notify every ~~registered person licensee~~ by mailing a letter to the address in the roster or to a corrected address 30 to 60 days prior to the date of expiration of ~~his certificate the license~~. The letter will specify the fees for renewal for a 2 year period. The letter will include a form for a statement by the ~~registrant licensee~~ that ~~he the licensee~~ has maintained ~~his the licensee's~~ professional competency during the preceding biennium. This statement must be signed, and returned to the board before the ~~registrant's registration license~~ will be renewed."

Auth: Sec. 37-1-101, 37-67-202, MCA; ~~IMP, Sec. 37-67-315~~, MCA

"8.48.903 LATE RENEWAL (1) The failure on the part of any ~~registrant licensee~~ to renew ~~his certificate the license~~ by June 30th as required shall not deprive such person of the right of renewal.

(2) The fee to be paid for the renewal of a certificate license after ~~June 30th the date set forth in ARM 8.2.208 (June 30th of each even-numbered year)~~ shall be increased 10% for each month or fraction of a month that payment of renewal is delayed; provided, however, that the maximum fee for delayed renewal shall not exceed 50% of the normal renewal fee."

Auth: Sec. 37-1-101, 37-67-202, MCA; ~~IMP, Sec. 37-67-315~~, MCA

"8.48.1103 CORPORATE OR MULTI PERSON FIRMS, PARTNERSHIPS AND CORPORATIONS - REQUIREMENTS (1) A firm, ~~copartnership, corporation, or joint stock association may offer and perform professional engineering or land surveying services in this state upon complying with the following: as used in 37-67-320, MCA, means any business entity authorized by the legislature of this state (i.e. sole proprietorship, corporations, partnerships, limited liability partnerships and limited liability companies).~~

(a) ~~all officers of the entity in responsible charge of engineering and/or land surveying must be registered under this law;~~

(b) ~~all resident representatives of the entity must be registered under this law;~~

~~(c) all individuals performing engineering or land surveying services within the state must be registered under this law; and~~

~~(d) the term "associates" in the name of a firm shall be construed to represent individuals who are registered in this state, who can be identified and show responsibility to the professional and operational decisions of the firm.~~

~~(2) Firms will be added to a roster of the same maintained by the board.~~

~~(3) If a firm is required to be registered with the Montana secretary of state's office, the firm must submit evidence of current registration."~~

Auth: Sec. 37-67-202, MCA; IMP, Sec. 37-67-202, MCA

"8.48.1104 DUPLICATE OR LOST WALL CERTIFICATE (1) A registrant licensee requesting a new wall certificate of registration to replace a certificate shall surrender to the board, if possible, the original certificate held by him and shall file with his a request a sworn affidavit setting out forth the reason for his the requested replacement so that the board records will reflect the reason for its issuance of a new certificate."

Auth: Sec. 37-67-202, MCA; IMP, Sec. 37-67-316, MCA

"8.48.1105 FEE SCHEDULE (1) through (4)(c) will remain the same.

(d) PE comity application 100-00 140

(e) and (f) will remain the same.

(g) LS comity and test 100-00 140

(h) ES comity and test 160-00 200

(i) will remain the same.

(j) temporary permit 100-00

(k) and (l) will remain the same, but are renumbered (j) and (k).

(l) reactivation fee, land surveyor and 40
professional engineer"

Auth: Sec. 37-1-134, 37-67-202, MCA; IMP, Sec. 37-1-319, 37-67-303, 37-67-312, 37-67-313, 37-67-315, 37-67-320, 37-67-321, MCA

"8.48.1106 COMPLAINT PROCESS (1) Anyone wishing to enter a complaint against a registered professional engineer and/or land surveyor shall do so on a form prescribed by the board and furnished by the department.

~~(2) Anyone wishing to enter a complaint against any nonregistered person practicing or offering to practice engineering and/or land surveying as defined within the registration law, may do so through their local county attorney.~~

~~(3) The board or department will, within its authority, assist any person wishing to enter any complaint against any alleged violation of the law or rules.~~

~~(4) (2) The board screening panel will employ the following complaint procedure: When an affidavit and complaint are received from an individual complaining about a registrant~~

licensee, the administrative assistant shall immediately send copies to the ~~board members~~ screening panel for review and shall provide the ~~registrant~~ licensee with a copy of the affidavit and complaint, and request a written response ~~within a time set by the board.~~ The screening panel will not act upon anonymous complaints."

Auth: Sec. ~~37-67-202~~, MCA; ~~IMP, Sec. 37-1-308, 37-1-309, 37-67-331~~, MCA

"9.48.1202 SAFETY, HEALTH AND WELFARE OF THE PUBLIC
PARAMOUNT IN THE PERFORMANCE OF PROFESSIONAL DUTIES

~~(1) Registrants shall hold paramount the safety, health and welfare of the public in the performance of their professional duties.~~

~~(a) (1) Registrants Licensees shall at all times recognize that their primary obligation is to protect the safety, health, property and welfare of the public. If their professional judgment is overruled under circumstances where the safety, health, property or welfare of the public are endangered, they shall notify their employer or client and such other authority as may be appropriate.~~

~~(b) (2) Registrants Licensees shall approve and seal only those design documents and surveys, reviewed or prepared by them, which are safe for public health, property and welfare in conformity with accepted engineering and land surveying standards.~~

~~(c) Registrants shall not reveal facts, data or information obtained in a professional capacity without the prior consent of the client, or employer except as authorized or required by law.~~

~~(d) Registrants shall not permit the use of their name or firm name nor associate in business ventures with any person or firm which they have reason to believe is engaging in fraudulent or dishonest business or professional practices.~~

~~(e) (3) Registrants Licensees having knowledge of any alleged violation of any of these rules of professional conduct shall cooperate with report to the board by furnishing such information or assistance as may be required."~~

Auth: Sec. ~~37-1-319, 37-67-202~~, MCA; ~~IMP, Sec. 37-1-316, 37-67-301~~, MCA

"8.48.1203 PERFORMANCE OF SERVICES ONLY IN AREAS OF
COMPETENCE (1) Registrants Licensees shall perform services only in the areas of their competence.

~~(a) Registrants shall undertake assignments only when qualified by education or experience in the specific technical field of engineering or land surveying involved.~~

~~(b) (2) Registrants Licensees shall not affix their signatures or seals to any plans or documents dealing with subject matter in which they lack competence, nor to any such plan or document not prepared or reviewed under their direct supervisory control.~~

~~(c) Registrants may accept an assignment outside of their fields of competence to the extent that their services are~~

~~restricted to those phases of the project in which they are qualified, and to the extent that they are satisfied that all other phases of such project will be performed by qualified associates, consultants or employees.~~

(d) (3) In the event a question arises as to the competence of a registrant licensee in a specific technical field which cannot be otherwise resolved to the board's satisfaction, the board, either upon request of the registrant licensee or on its own volition, ~~shall admit~~ may require the registrant licensee to take an appropriate examination.

Auth: Sec. 37-1-319, 37-67-202, MCA; IMP, Sec. 37-1-316, 37-67-301, MCA

"8.48.1205 CONFLICTS OF INTEREST (1) Registrants Licensees shall act in professional matters for each employer or client as faithful agents ~~or trustees~~, and shall avoid conflicts of interest.

(a) (2) Registrants Licensees shall disclose all known or potential conflicts of interest to their employers or clients by promptly informing them of any business association, interest, or other circumstances which could influence their judgement or the quality of their services.

(b) (3) Registrants Licensees shall not accept compensation, financial or otherwise, from more than one party for services on the same project, or for services pertaining to the same project, unless the circumstances are fully disclosed to, and agreed to, by all interested parties.

(c) (4) Registrants Licensees shall not solicit or accept financial or other valuable consideration, directly or indirectly, from contractors, their agents, or other parties in connection with work for their employers or clients for which the registrant licensee is responsible.

(d) (5) Registrants Licensees in public service as members, advisors, or employees of a governmental body or department shall not participate in decisions with respect to professional services solicited or provided by them or their organizations.

(e) (6) Registrants Licensees shall not solicit or accept a professional contract from a governmental body on which a principal or officer of their organization serves as a member, except upon public disclosure of all pertinent facts and circumstances and consent of the appropriate public authority."

Auth: Sec. 37-1-319, 37-67-202, MCA; IMP, Sec. 37-1-316, 37-67-301, MCA

"8.48.1206 AVOIDANCE OF IMPROPER SOLICITATION OF PROFESSIONAL EMPLOYMENT (1) ~~Registrants shall not falsify or permit misrepresentation of their, or their associates' academic or professional qualifications. They shall not misrepresent or exaggerate their degree of responsibility in or for the subject matter of prior assignments. Brochures or other presentations incidental to the solicitation of employment shall not misrepresent pertinent facts concerning employers, employees, associates, joint ventures or past~~

~~accomplishments with the intent and purpose of enhancing their qualifications and their work.~~

~~(2) Registrants shall not offer or give, either directly or indirectly, any gift or other valuable consideration to an elected, appointed or hired person in government service who has the authority, or who may be in a position to influence another official who has the authority, for the purpose of soliciting, recommending, voting upon or awarding contracts for, work of the nature that is performed by the registrant. This shall not preclude political contributions otherwise lawful.~~

~~(3) (1) Registrants Licensees shall not attempt to supplant other registrants licensees or firms from work that is in progress. This prohibition shall not preclude an engineer/surveyor from responding to a client/owner initiated solicitation for a second opinion.~~

~~(4) (2) Registrants Licensees shall not attempt to injure, maliciously or falsely, directly or indirectly, the professional reputation, prospects, practice or employment of other registrants licensees, nor indiscriminately criticize other registrants' licensees' work."~~

Auth: Sec. ~~37-1-312, 37-67-202, MCA; IMP, Sec. 37-1-316, 37-67-301, 37-67-331, MCA~~

3. The Board is proposing to repeal ARM 8.48.402 (implementing section 37-67-201, MCA), 8.48.404 (implementing section 37-67-201, MCA), 8.48.406 (implementing section 37-67-204, MCA), 8.48.503 (implementing section 37-67-303, MCA), 8.48.506 (implementing sections 37-67-306, 37-67-309, MCA), 8.48.510 (implementing section 37-67-320, MCA), 8.48.902 (implementing section 37-67-315, MCA), 8.48.1101 (implementing section 37-67-103, MCA), 8.48.1108 (implementing section 37-67-331, MCA), 8.48.1110 (implementing sections 37-1-136, 37-67-331, MCA), 8.48.1201 (implementing section 37-67-301, MCA), and 8.48.1204 (implementing section 37-67-301, MCA), in their entirety. The authority section, for all the rules proposed for repeal, is 37-67-202, MCA. Section 37-1-131, MCA, is also an authority section for ARM 8.48.902, and section 37-1-136, MCA, is an authority section for ARM 8.48.1110. The rules are located at pages 8-1295 through 8-1297, 8-1302, 8-1303, 8-1306, 8-1321, 8-1329, 8-1332, 8-1334, 8-1335 and 8-1337 through 8-1339, Administrative Rules of Montana. The reason for the proposed repeals is that the rules are obsolete with the passage of time and House Bill 518 by the 1995 Legislature, which standardized much of the procedures in statute.

4. The proposed new rules will read as follows:

"I CONTINUING PROFESSIONAL COMPETENCY - CONTINUING EDUCATION (1) Every licensee shall meet the continuing professional competency (continuing education) requirements of these regulations for professional development as a condition for licensure renewal, commencing with 1998 renewals.

(2) Terms used in this rule are defined as follows:

(a) "Professional development hour (PDH)" means a contact hour (nominal) of instruction or presentation;

(b) "Continuing education unit (CEU)" means a unit of credit customarily used for continuing education courses. One continuing education unit equals 10 hours of class in an approved continuing education course;

(c) "College/unit semester/quarter hour" means credit for courses in ABET approved programs or other related college courses approved in accordance with (5), below;

(d) "Course/activity" means any qualifying course or activity with a clear purpose and objective which will maintain, improve or expand the skills and knowledge relevant to the licensee's field of practice;

(e) "Dual licensee" means a person who is licensed as both an engineer and a land surveyor.

(3) Every licensee is required to obtain 30 PDH units during the two-year renewal period. If a licensee exceeds the annual requirement in any renewal period, a maximum of 15 PDH units may be carried forward into the subsequent renewal period. PDH units may be earned as follows:

(a) successful completion of college courses;

(b) successful completion of continuing education courses;

(c) successful completion of correspondence, televised, videotaped and other short courses/tutorials;

(d) presenting or attending qualifying seminars, in-house courses, workshops or professional or technical presentations made at meetings, conventions or conferences;

(e) teaching or instruction in (a) through (d), above;

(f) authoring published papers, articles or books;

(g) active participation in professional or technical societies;

(h) patents.

(4) The conversion of other units of credit to PDH units is as follows:

(a) one college or unit semester hour 45 PDH

(b) one college or unit quarter hour 30 PDH

(c) one continuing education unit 10 PDH

(d) one hour of professional development in course work, seminars or professional or technical presentations made at meetings, conventions or conferences 1 PDH

(e) each published paper, article or book 10 PDH

(f) active participation in professional and technical society (each organization) 2 PDH

(g) each patent 10 PDH

(h) for teaching apply multiple of two. (Teaching credit is valid for teaching a course or seminar for the first time only. Teaching credit does not apply to full-time faculty.)

(5) The board has final authority with respect to approval of courses, credit, PDH value for courses and other methods of earning credit.

(a) Credit for college or community college approved courses will be based upon course credit established by the college.

(b) Credit for qualifying seminars and workshops will be based on one PDH unit for each hour of attendance. Attendance at qualifying programs presented at professional and/or technical society meetings will earn PDH units for the actual time of each program.

(c) Credit determination for each published paper, article or book and each patent is the responsibility of the licensee (subject to review as required by the board).

(d) Credit for active participation in professional and technical societies (limited to two PDH per organization) requires that a licensee serve as an officer and/or actively participate in a committee of the organization. PDH credits are not earned until the end of each year of service is completed.

(6) The responsibility of maintaining records to be used to support credits claimed is the responsibility of the licensee. Records required include, but are not limited to:

(a) a log showing the type of activity claimed, sponsoring organization, location, duration, instructor's or speaker's name and PDH credits earned;

(b) attendance verification records in the form of completion certificates or other documents supporting evidence of attendance; or

(c) records as maintained by the professional development registry for engineers and surveyors (PDRES) or other similar repositories. These records must be maintained for a period of three years and copies may be requested by the board for audit verification purposes.

(7) A licensee may be exempt from the professional development educational requirements for one of the following reasons:

(a) New licensees by way of examination or reciprocity shall be exempt for their first renewal period;

(b) A licensee serving on temporary active duty in the armed forces of the United States for a period of time exceeding 120 consecutive days in a year shall be exempt from obtaining the professional development hours required during that year;

(c) Licensees experiencing physical disability, illness or other extenuating circumstances as reviewed and approved by the board may be exempt. Supporting documentation must be furnished to the board;

(d) Licensees who list their occupation as "retired" on the board approved renewal form and who further certify that they are no longer receiving any remuneration from providing professional engineering or land surveying services shall be exempt from the professional development hours required. In the event such a person elects to return to active practice of professional engineering or land surveying, professional development hours must be earned before returning to active practice for each year exempted not to exceed the annual requirement for two years.

(8) The number of PDH units required by dual licensees shall remain 30, at least one-third of which shall be obtained

in each profession.

(9) All renewal applications will require the completion of a continuing education form specified by the board outlining PDH credit claimed. The licensee must supply sufficient detail on the form to permit audit verification, must certify and sign the continuing education form, and submit with the renewal application and fee."

Auth: Sec. 37-1-319, MCA; IMP, Sec. 37-1-306, 37-1-319, MCA

"II INACTIVE STATUS AND REACTIVATION (1) A licensee may place the license on inactive status by either indicating on the renewal form that inactive status is desired, or by informing the board office, in writing, that an inactive status is desired. It is the sole responsibility of the inactive licensee to keep the board informed as to any change of address during the period of time the license remains on inactive status. Inactive licensees must pay the renewal fee annually to maintain license status.

(2) A licensee may not practice any professional engineering or land surveying work in the state of Montana while the license is in an inactive status.

(3) Upon application and payment of the appropriate fee, the board may reactivate an inactive license if the applicant completes each of the following:

(a) signifies to the board, in writing, that upon issuance of the active license, the applicant intends to be an active practitioner in the state of Montana;

(b) presents satisfactory evidence that the applicant has attended 30 hours of continuing education which comply with the continuing education rules of the board; and

(c) submits certification from the professional engineer and land surveying licensing body of all jurisdictions where the licensee is licensed or has practiced that the applicant is in good standing and has not had any disciplinary actions taken against the applicant's license, or if the applicant is not in good standing by that jurisdiction, an explanation of the nature of the violation(s) resulting in that status; including the extent of the disciplinary treatment imposed.

(4) In the event an inactive licensee does not maintain a current license in any jurisdiction for the three previous years prior to requesting reinstatement, the applicant may be required to take the principles and practice of engineering (PE) examination or the principles and practice of land surveying (PLS) examination."

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

"III SCREENING PANEL (1) The board screening panel shall consist of one professional engineer board member; one land surveyor board member; and one public board member, as chosen by the chairman. The chairman may reappoint screening panel members, or replace screening panel members as necessary at the chairman's discretion."

Auth: Sec. 37-67-202, MCA; IMP, Sec. 37-1-307, MCA

REASON: The proposed amendments and new rules will implement statutory changes mandated by the 1995 legislature in House Bill 518.

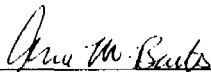
5. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you wish to request an accommodation, contact the Department no later than 5:00 p.m., August 23, 1996, to advise us of the nature of the accommodation that you need. Please contact Mary Hainlin, Board of Professional Engineers and Land Surveyors, 111 N. Jackson, P. O. Box 200513, Helena, Montana 59620-0513; telephone (406)444-4285; Montana Relay 1-800-253-4091; TDD (406)444-2978; facsimile (406)444-1667. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rulemaking process should contact Mary Hainlin.

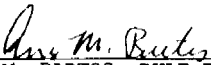
6. Interested persons may submit their data, views or arguments concerning the proposed amendments, repeals and adoptions in writing to the Board of Professional Engineers and Land Surveyors, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., September 5, 1996.

7. A staff attorney for the bureau has been designated to preside over and conduct the hearing.

BOARD OF PROFESSIONAL
ENGINEERS AND LAND SURVEYORS
J.G. SHOCKLEY, CHAIRMAN

BY: _____


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, July 29, 1996.

BEFORE THE BOARD OF SPEECH-LANGUAGE
PATHOLOGISTS AND AUDIOLOGISTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PROPOSED AMENDMENT,
amendment, repeal and adoption	)	REPEAL AND ADOPTION OF RULES
of rules pertaining to the	)	PERTAINING TO THE PRACTICE OF
practice of speech-language	)	SPEECH-LANGUAGE PATHOLOGY AND
pathology and audiology	)	AUDIOLOGY

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On September 7, 1996, the Board of Speech-Language Pathologists and Audiologists proposes to amend, repeal and adopt rules pertaining to the practice of speech-language pathology and audiology.

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

"8.62.413 FEES (1) through (10) will remain the same.

(11) A fee of \$10.00 shall be charged the licensed speech-language pathologist and/or audiologist to place his the license on inactive status; ~~provided that, prior to expiration of his license, he makes written application to the board for such status. Thereafter, he may obtain his license upon payment of the current license renewal fee and demonstration of evidence of continuing education requirements.~~

(12) will remain the same."

Auth: Sec. 37-1-134, 37-15-202, MCA; IMP, Sec. 37-15-307, 37-15-308, MCA

"8.62.418 UNPROFESSIONAL CONDUCT For the purpose of implementing the provisions of section 37-15-321, MCA, ~~the~~ board defines "unprofessional conduct" as follows:

(1) ~~Any act involving moral turpitude, dishonesty, corruption relating to the practice of speech language pathology or audiology whether the act constitutes a crime or not. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action. Upon such a conviction, however, the judgment and sentence is conclusive evidence at the ensuing disciplinary hearing of the guilt of the license holder or applicant of the crime described in the indictment or information, and of the person's violation of the statute on which it is based. For the purpose of this section, conviction includes all instances in which a plea of guilty is the basis for the conviction and all proceedings in which the sentence has been deferred or suspended.~~

(2) ~~Violation of any state or federal statute or administrative rule regulating the practice of speech language pathology or audiology, including any statute or rule defining or establishing standards of patient care or professional conduct or practice;~~

- ~~(3) Advertising which is false, fraudulent, or misleading;~~
- ~~(4) Resorting to fraud, misrepresentation or deception in the examination or treatment of a person or in billing or reporting to a person, company, institution or organization;~~
- ~~(5) Incompetence, negligence, or use of any practice or procedure in the practice of the profession which creates an unreasonable risk of physical or mental harm or serious financial loss to the client;~~
- ~~(6) Malpractice, or an act or acts below the standard of care for speech language pathologists or audiologists whether actual physical or mental injury or harm was suffered by any client;~~
- ~~(7) Suspension, revocation or restriction of the individual's license to practice the profession by competent authority in any state, federal or foreign jurisdiction for reasons that would be grounds for disciplinary sanction in this jurisdiction. A certified copy of the order or agreement being conclusive evidence of the revocation, suspension or restriction.~~
- ~~(8) Failure to cooperate with an investigation by:~~
 - ~~(a) not furnishing any relevant papers or documents, so long as this provision does not violate the privilege against self incrimination;~~
 - ~~(b) not furnishing, in writing, a full and complete explanation covering the matter contained in the complaint; or~~
 - ~~(c) not responding to subpoenas issued by the board or the department, whether or not the recipient of the subpoena is the accused in the proceedings.~~
- ~~(9) Interfering with an investigation or disciplinary proceeding by wilful misrepresentation of facts or by the use of threats or harassment against any patient, client or witness to prevent them from providing evidence in a disciplinary proceeding or any other legal action;~~
- ~~(10) Failing to make available copies of documents in the possession and under the control of the licensee, as per the appropriate health care records acts;~~
- ~~(11) Failure to comply with an order issued by the board or an assurance of discontinuance entered into with the board;~~
- ~~(12) and (13) will remain the same, but will be renumbered (1) and (2).~~
- ~~(14) The wilful betrayal of a practitioner patient privilege as provided by law;~~
- ~~(15) and (16) will remain the same, but will be renumbered (3) and (4).~~
- ~~(17) Aiding or abetting an unlicensed person to practice when a license is required;~~
- ~~(18) Practicing as a speech language pathologist or audiologist while license is suspended, revoked or not currently renewed;~~
- ~~(19) Wilful or repeated violations of rules established by any health agency or authority of the state or a political subdivision thereof."~~

Auth: Sec. 37-1-131, 37-1-312, 37-15-202, MCA; IMF, Sec. 37-15-321 37-1-316, MCA

"8.62.504 NONALLOWABLE FUNCTIONS OF AIDES (1) through (2)(f) will remain the same.

(3) Speech-language pathologist or audiologist aides who are currently enrolled in a speech-language pathology/audiology master's program may perform nonallowable functions of aides, under supervision, only if all of the following conditions have been met:

(a) completion of 100 clinical clock hours, of which at least 25 hours were diagnostic.

(b) completion of 10 semester hours of graduate credits in the professional area.

(c) additional supervision of 10% (beyond the 20% required in ARM 8.62.502) while performing diagnostic and interpretive functions in the first year of nonallowable activities. The supervision may return to the 20% requirement of ARM 8.62.502 after the first year.

(d) completion of the master's program within five years of commencement, and

(e) annual application for waiver of nonallowable functions of aides to the board for approval prior to commencement of performance as a speech-language pathologist or audiologist aide."

Auth: Sec. 37-15-202, MCA; IMP, Sec. 37-15-102, MCA

"8.62.701 POLICY (1) will remain the same."

Auth: Sec. 37-1-319, 37-15-202, MCA; IMP, Sec. 37-15-309 37-1-306, MCA

"8.62.702 DEFINITIONS (1) and (1)(a) will remain the same.

(b) "Approved sponsor program" means any continuing education activity sponsored by an organization, agency, or other entity which has been approved by the continuing education board of the American speech-language-hearing association (ASHA) documented by the confirmation sheet, or approved by the American academy of audiologists (AAA) as documented by the confirmation sheet.

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

(i) one continuing education unit received in an ASHA or AAA approved sponsor program shall be considered 10 continuing education units for purposes of this subchapter.

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

Auth: Sec. 37-1-319, 37-15-202, MCA; IMP, Sec. 37-15-309 37-1-306, MCA

"8.62.703 CONTINUING EDUCATION REQUIRED - WHEN (1) through (4) will remain the same.

(5) A licensee may apply for an exemption from the continuing education requirements of these rules by filing a statement with the board setting forth good faith reasons why the licensee is unable to comply with these rules and an exemption may be granted by the board. Each exemption application will be considered on a case-by-case basis."

Auth: Sec. 37-1-319, 37-15-202, MCA; IMP, Sec. 37-15-309 37-1-306, MCA

REASON: The proposed amendments will implement changes mandated by passage of House Bill 518, the Uniform Professional Licensing and Regulation Procedures Act, by the 1995 Legislature.

3. The Board is proposing to repeal ARM 8.62.419, located at page 8-1697, Administrative Rules of Montana. The authority section is 37-15-202 and the implementing sections are 37-15-202, 37-15-321, MCA. The rule is being repealed because the board does not discipline under ASHA standards, but under its own statutes and rules on unprofessional conduct. The passage of House Bill 518 by the 1995 legislature significantly expanded the conduct defined as unprofessional, as well as the sanctions which may be imposed for a violation.

4. The proposed new rules will read as follows:

"I. LICENSURE OF OUT-OF-STATE APPLICANTS (1) A license to practice speech-language pathology or audiology in the state of Montana may be issued at the discretion of the board provided the applicant completes and files with the board an application for licensure and the required application fee. The candidate must meet the following requirements:

(a) The candidate holds a valid and unrestricted license to practice speech-language pathology or audiology in another state or jurisdiction, which was issued under standards equivalent to or greater than current standards in this state. Official written verification of such licensure status must be received by the board directly from the other state(s) or jurisdiction(s),

(b) The candidate shall supply a copy of the certified transcript sent directly from a college, university or institution approved by the board, including those programs accredited by the American board of examiners in speech-language pathology and audiology,

(c) The candidate shall supply proof of successful completion of the national examination offered through the professional assessment for beginning teachers (PRAXIS series), educational testing services, Princeton, New Jersey. Candidate scores on the appropriate area of examination must be forwarded by PRAXIS directly to the board.

(2) A license to practice speech-language pathology or audiology in the state of Montana may be issued at the discretion of the board provided the applicant completes and files with the board an application for licensure and the required application fee, and provides proof the applicant holds the certificate of clinical competence of the American speech-language-hearing association in the area for which the candidate is applying for a license."

Auth: Sec. 37-15-202, MCA; IMP, Sec. 37-1-304, MCA

"II. TEMPORARY PRACTICE PERMITS (1) A speech-language pathologist or audiologist who holds ASHA certification or equivalent, or is licensed in another state and who has made application to the board for a license in this state may be granted a temporary permit and perform activities and services

of a speech-language pathology or audiology nature pending disposition of the application."

Auth: Sec. 37-1-319, 37-15-202, MCA; IMP, Sec. 37-1-305, MCA

"III SCREENING PANEL (1) The board screening panel shall consist of one speech-language pathologist board member who has served longest on the board; one audiologist board member who has served longest on the board; and one public member of the board. The chairman may reappoint screening panel members, or replace screening panel members as necessary at the chairman's discretion."

Auth: Sec. 37-15-202, MCA; IMP, Sec. 37-1-307, MCA

"IV COMPLAINT PROCEDURE (1) A person, government or private entity may submit a written complaint to the board charging a licensee or license applicant with a violation of board statute or rules, and specifying the grounds for the complaint.

(2) Complaints must be in writing, and shall be filed on the proper complaint form prescribed by the board.

(3) Upon receipt of the written complaint form, the board office shall log in the complaint and assign it a complaint number. The complaint shall then be sent to the licensee complained about for a written response. Upon receipt of the licensee's written response, both complaint and response shall be considered by the screening panel of the board for appropriate action including dismissal, investigation or a finding of reasonable cause of violation of a statute or rule. The board office shall notify both complainant and licensee of the determination made by the screening panel.

(4) If a reasonable cause violation determination is made by the screening panel, the Montana Administrative Procedure Act shall be followed for all disciplinary proceedings undertaken.

(5) The screening panel shall review anonymous complaints to determine whether appropriate investigative or disciplinary action may be pursued, or whether the matter may be dismissed for lack of sufficient information."

Auth: Sec. 37-15-202, MCA; IMP, Sec. 37-1-308, 37-1-309, MCA

"V INACTIVE STATUS AND REACTIVATION (1) A licensee may place the license on inactive status by either indicating on the renewal form that inactive status is desired, or by informing the board office, in writing, that an inactive status is desired, and paying the appropriate fee. It is the sole responsibility of the inactive licensee to keep the board informed as to any change of address during the period of time the license remains on inactive status.

(2) A licensee may not practice any speech-language pathology or audiology work in the state of Montana while the license is in an inactive status.

(3) Upon application and payment of the appropriate fee, the board may reactivate an inactive license if the applicant does each of the following:

(a) signifies to the board, in writing, that upon issuance of the active license, the applicant intends to be an active practitioner in the state of Montana,

(b) presents satisfactory evidence that the applicant has attended 10 hours of continuing education which comply with the continuing education rules of the board for each year or portion of a year that licensee has been inactive,

(c) submits certification from the licensing body of all jurisdictions where the licensee is licensed or has practiced that the applicant is in good standing and has not had any disciplinary actions taken against the applicant's license, or if the applicant is not in good standing by that jurisdiction, an explanation of the nature of the violation(s) resulting in that status; including the extent of the disciplinary treatment imposed, and

(d) presents satisfactory evidence the applicant has not been out of active practice for more than five years."

Auth: Sec. 37-1-319, 37-15-202, MCA; IMP, Sec. 37-1-319, MCA

REASON: The proposed new rules will implement changes mandated by the passage of House Bill 518, the Uniform Professional Licensing and Procedures Act, by the 1995 Legislature.

5. Interested persons may submit their data, views or arguments concerning the proposed amendments, repeals and adoptions in writing to the Board of Speech-Language Pathologists and Audiologists, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., September 5, 1996.

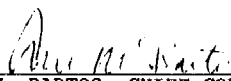
6. If a person who is directly affected by the proposed amendments, repeals and adoptions wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Speech-Language Pathologists and Audiologists, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., September 5, 1996.

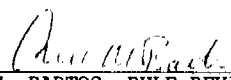
7. If the Board receives requests for a public hearing on the proposed amendments, repeals and adoptions from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed rules, from the Administrative Code Committee of the legislature, from a governmental agency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

will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 30 based on the 300 licensees in Montana.

BOARD OF SPEECH-LANGUAGE
PATHOLOGISTS AND AUDIOLOGISTS
LYNN HARRIS, CHAIRMAN

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, July 29, 1996.

BEFORE THE MONTANA LOTTERY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT,
amendment, repeal and adoption) REPEAL AND ADOPTION OF RULES
of rules pertaining to the) PERTAINING TO THE MONTANA
organizational rule, instant) STATE LOTTERY
tickets and prizes)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On September 7, 1996, the Montana Lottery proposes to amend, repeal and adopt rules pertaining to the organizational rule, instant tickets and prizes.

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

"8.127.101 ORGANIZATIONAL RULE (1) and (2) will remain the same.

(3) The commission consists of five members appointed by the governor. The commission is allocated to the department of commerce for administrative purposes as prescribed by 2-15-121, MCA. The names and addresses of the members of the commission are as follows:

Becky Erickson, 114 Lomond, Glasgow, Montana 59230
Cliff Brophy, Stillwater County Sheriff's Office,
Columbus, Montana 59019

~~Dwaine Iversen, 301 1st Street South, Shelby, Montana
59474~~

Robert Crippen, P.O. Box 3006, Butte, Montana 59702

David Kasten, SR 277, Box A-14, Brockway, Montana 59214

Larry O'Toole, 209 North Main, Plentywood, Montana 59254

(4) The director of the Montana lottery is appointed by the governor. The director is ~~Charmaine Murphy~~ Gerald J. LaChere, 2525 North Montana, Helena, Montana 59601. The assistant director for security is appointed by the lottery director. All other employees are hired by the lottery director. A chart of the organization of the lottery is attached as the following page and by this reference is herein incorporated."

Auth: Sec. 23-7-202, MCA; IMP, Sec. 23-7-202, MCA

REASON: These amendments are being proposed to update the organizational rule to reflect the new commission member and the newly appointed director. The organizational chart has been updated to reflect current lines of authority and remove references to individuals' names which will alleviate having to amend the rule when employees leave the employ of the Lottery.

"8.127.1004 INSTANT TICKETS - PROPERTY OF RETAILER

(1) ~~All tickets for the instant game become the property of the retailer upon acceptance from the lottery.~~ The retailer is responsible for all tickets after acceptance and bears the burden of any loss, including theft or damage."

Auth: Sec. 23-7-202, MCA; ~~IMP~~, Sec. 23-7-202, 23-7-301, MCA

REASON: This proposed amendment is necessary because of the use of the new Instant Ticket Validation and Accounting System (ITVAS), in that ownership of the tickets does not transfer to the retailer immediately upon receipt.

"8.127.1005 NOTIFICATION OF LOST, DAMAGED, OR STOLEN TICKETS OR EQUIPMENT (1) ~~Licensees~~ Retailers shall immediately report the theft, loss, or damage of any lottery tickets or equipment to the director and local law enforcement authorities. The ~~licensee~~ retailer shall cooperate in any investigation conducted by the lottery, its employees, the attorney general, legislative auditor, or local law enforcement authorities."

Auth: Sec. 23-7-202, MCA; ~~IMP~~, Sec. 23-7-212, 23-7-411, MCA

REASON: This amendment is being proposed to delete the reference to "licensee" and substitute "retailer," as the word "retailer" is more appropriate.

"8.127.1201 PRIZES (1) ~~Winning tickets that are within the guaranteed low end prize structure (GLEPS) may be redeemed only at the location marked on the back of the ticket or at lottery headquarters.~~ Winning tickets ~~of more than the GLEPS amount may~~ will be redeemed by any retailer up to an amount and in a manner determined by the commission or by presenting a claim form provided by the director to the lottery either by mail or in person.

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

Auth: Sec. 23-7-202, MCA; ~~IMP~~, Sec. 23-7-202, 23-7-311, MCA

REASON: This amendment is being proposed to reflect that with ITVAS, tickets do not have to be returned to the place of purchase to be validated. The automated system allows ticket validations to occur at any retailer. Also with ITVAS, a guaranteed low end prize structure (GLEPS) system will not be utilized.

3. The Lottery is proposing to repeal ARM 8.127.1003, which is located at page 8-4893, Administrative Rules of Montana. The authority and implementing section is 23-5-1007, MCA. This rule is being repealed because the Lottery is in the process of implementing an Instant Ticket Validation and Accounting System (ITVAS) which will automate the validation

and accounting for instant tickets. Because of this automation, stamping the back of every ticket with the retailer name and identification number will not be necessary.

4. The proposed new rule will read as follows:

"1. INSTANT TICKET WINNER REDEMPTIONS (1) Retailers are responsible for the security of all winning tickets they redeem. Retailers will bear the burden of any loss incurred as a result of:

- (a) multiple redemptions of winning tickets;
- (b) non-winning tickets redeemed in error as winning tickets; or
- (c) failure to redeem winning tickets in the manner determined by the director."

Auth: Sec. 23-7-202, MCA; IMP, Sec. 23-7-202

REASON: This rule is being proposed to reflect the retailers' responsibility to properly utilize ITVAS. If not utilized, any losses caused by multiple validations, etc. are the retailers' responsibility.

5. Interested persons may submit their data, views or arguments concerning the proposed amendments, repeal and adoption in writing to the Montana State Lottery, 2525 North Montana, P.O. Box 200544 Helena, Montana 59620-0544, or by facsimile to (406) 444-5830, to be received no later than 5:00 p.m., September 5, 1996.

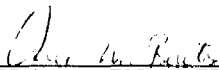
6. If a person who is directly affected by the proposed amendments, repeal and adoption wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Montana State Lottery, 2525 North Montana, P.O. Box 200544, Helena, Montana 59620-0544, or by facsimile to (406) 444-5830, to be received no later than 5:00 p.m., September 5, 1996.

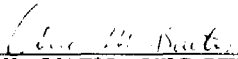
7. If the Board receives requests for a public hearing on the proposed amendments, repeal and adoption from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendments, repeal and adoption, from the Administrative Code Committee of the legislature,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

Administrative Register. Ten percent of those persons directly affected has been determined to be more than 25 based on the number of licensed retailers and estimated number of lottery players in the state.

MONTANA STATE LOTTERY
GERALD J. LaCHERE, DIRECTOR

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, July 29, 1996.

BEFORE THE BOARD OF MILK CONTROL
OF THE STATE OF MONTANA

In the matter of adoption of) NOTICE OF PUBLIC HEARING
new rules as they relate to) ON PROPOSED ADOPTION
milk utilization and marketing) AND AMENDMENT
of class III milk.)
) DOCKET #3-96

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

1. On August 29, 1996, at 9:00 a.m., or as soon
thereafter as possible, a public hearing will be held in the
Dept. of Transportation auditorium, 2701 Prospect Avenue,
Helena, Montana, to consider adoption of new rules.

2. The hearing will be in response to a petition
submitted by Jock O. Anderson, attorney for Meadow Gold
Dairies Inc., Michael D. Cok, attorney for Country Classic
Dairies, Inc., James T. Harrison, attorney for the Montana
Dairymen's Association, and Neil Ugrin, attorney for the
Montana Milk Producers Association.

3. The proposed new rules provide as follows:

"RULE I DEFINITIONS

The following definitions apply to RULE II, RULE
III, and RULE IV unless the context otherwise requires:

(1) "Producer committee" is that committee defined in
ARM 32.24.506.

(2) "Pool plant" has the same meaning as in ARM
32.24.511.

(3) "Pool handler" has the same meaning as in ARM
32.24.511.

(4) "Pool milk" has the same meaning as in ARM
32.24.511.

(5) "Pool settlement reserve" has the same meaning as in
ARM 32.24.511.

(6) "Quota price" has the same meaning as in ARM
32.24.511.

(7) "Pool dairyman" has the same meaning as in ARM
32.24.511.

(8) "Surplus milk" is all raw milk under contract to a
pool handler that is over and above the pool handler's class I
and II needs but excludes cream and fat products which are
derived from processing."

AUTH: 81-23-104, MCA

IMP: 81-23-103, MCA

"RULE II REQUIRED UTILIZATION OF SURPLUS MILK

(1) Any pool handlers with surplus milk shall first make that milk available to other pool handlers under the terms and conditions hereinafter provided before disposing of that surplus milk to any non-pool handler.

(2) Any pool handlers without raw milk sufficient to satisfy their Montana class I and II market needs shall first utilize surplus milk available from other pool handlers under the terms and conditions hereinafter provided before purchasing milk from other sources."

AUTH: 81-23-104, MCA

IMP: 81-23-103, MCA

"RULE III PROCEDURES, PURCHASE PRICE AND TERMS

(1) The milk control bureau shall have full authority to direct the transfer of surplus milk as necessary to implement RULE II. Any pool handler shall be deemed in compliance with the requirements of RULE II if it calls for surplus milk or makes surplus milk available in the following manner:

(a) On Wednesday of the preceding week, a pool handler in need of milk may telephone or fax its milk needs for the coming week to a pool handler reasonably believed to have surplus milk and that pool handler shall fax its confirmation or rejection of the order back by Friday of that same week.

(b) Unless otherwise agreed, delivery to the purchasing pool handler shall be the responsibility of the selling pool handler.

(c) The milk control bureau shall have the authority to issue alternative or additional procedures as necessary to implement this provision.

(2) The purchase price at which a pool handler must make surplus milk available and at which a pool handler must purchase surplus milk shall be as follows:

(a) The price per hundredweight of the raw Montana milk shall be the quota price as determined by the milk control bureau on a monthly basis as defined in ARM 32.24.511 which means the weighted average price for all quota milk testing 3.5% butterfat as computed for the month by the milk control bureau in accordance with the procedures specified in ARM 32.24.513.

(b) Since the monthly Montana blended quota price isn't known until the next month after the applicable sale has taken place, an estimated quota price will be used which will be the quota price for the previous month. Once the official announcement of quota price is published by the milk control bureau, it will adjust the raw milk pricing computations from the previous months to reflect the proper quota price by either debiting or crediting the purchaser's accounts through the settlement fund process.

(c) No premiums, hauling, or handling fees will be charged to the purchasing pool handler.

(3) Pool handlers are free to agree on a method and manner of payment between them for these purchases. In the event they cannot make such agreement, the milk control bureau will require payment to be made as follows:

(a) A pool handler who purchases milk pursuant to this paragraph agrees to pay in cash the purchase price for all milk delivered on a weekly basis. All milk purchased each weekly period shall be paid for in full on the Friday of the following week by depositing payment in the United States mail. Payment shall be made to the pool settlement reserve if the pool handlers have not agreed on a method and manner of payment directly between them for these purchases.

(b) Payments will be made based on invoices received by the milk control bureau from the selling handler. Said invoices will be based on weights and butterfat tests supplied by the selling handler and those weights and butterfat tests will be deemed accurate unless contested.

(4) All surplus milk purchased and sold hereunder must, at the time of delivery, meet all applicable local, state, and federal laws and regulations and any tendered surplus milk which does not meet such standards may be rejected.

(5) The weight and butterfat tests shall be determined on the basis of producer ticket weights and tests. If the purchasing pool handler contests the reported weights it shall notify the milk control bureau which shall reconcile any discrepancies.

(6) Nothing herein shall preclude pool handlers from voluntarily selling and purchasing surplus milk directly between themselves under any terms and conditions on which they agree provided the transaction serves the purpose of applying surplus milk to class I or II usage.

(7) No pool handler shall be obligated to make surplus milk available to any other pool handler who is then default on payment for any previous purchases of surplus milk. Any pool handler who makes surplus milk available and who has not been paid for that milk because of default in payment by the purchasing pool handler shall retain a direct right of action against the defaulting pool handler for the monies owed together with interest at the rate of 1.5% per month plus attorney's fees and costs."

AUTH: 81-23-104, MCA

IMP: 81-23-103, MCA

"RULE IV. MARKETING OF SURPLUS MILK TO NON-POOL HANDLERS"

(1) All surplus milk not directed to other pool handlers for use in class I and II as required by this subchapter shall be marketed and sold in an economically advantageous manner and any gain or loss shall be exclusively shared by all Montana pool dairymen.

(2) The pool dairymen, acting through the producer committee, shall retain the right to control and direct the marketing of the surplus milk.

(3) Unless directed otherwise by the producer committee or until a pool handler declines to perform the service, all surplus milk will be marketed and sold directly by the pool handlers in possession of that surplus milk under such direction, supervision, and approval as the producer committee in its discretion may elect to employ.

(a) In the event the producer committee markets the milk directly, it shall have the authority to hire such agents and

incur such other expenses as necessary to fulfill that function.

(4) All proceeds received from the sale of surplus milk shall be deposited in the pool settlement reserve less the following deductions which shall be retained by the pool handler:

(a) the amount for which the pool handler is obligated to account to the pool settlement reserve based on the Montana class III minimum producer price;

(b) an administrative fee not exceeding \$.12/CWT; and

(c) reasonable transportation expenses actually incurred by the pool handler. No farm pickup charges will be included as deductions. Farm pickup charges are the usual charges to the producer for transporting milk to the pool plant.

(5) The amounts paid into the pool settlement reserve account shall include all valuable consideration paid in any form and shall be accompanied by such reporting forms, invoices, contracts, and other documentation as may be requested by the milk control bureau."

AUTH: 81-23-104, MCA

IMP: 81-23-103, MCA

4. The petitioner proposes the adoption of these rules for the purpose of accomplishing the following beneficial changes in the Montana milk industry:

a. To ensure that milk produced in Montana is put to its highest and best possible use at a minimum cost so that Montana producers may obtain the maximum economic reward for their production.

b. To require that any Montana pool handler with pool milk over and above its own class I and II needs will make that pool milk available for purchase by other pool handlers as may be necessary to fulfill their own class I and II needs; and conversely to require that any Montana pool handler requiring additional milk to fulfill its class I and II needs purchase pool milk to the extent it is available. At the same time it is the intent of these proposed rules to leave pool handlers the freedom to contract directly with each other so long as it is mutually agreeable and accomplishes these objectives.

c. To insure that the pool milk to be purchased pursuant to subpart (b) be available to the pool handlers at monthly announced Montana minimum producer prices.

d. To provide that any pool producer milk that is in excess of what can be utilized as class I or II product in Montana by Montana pool handlers will be marketed efficiently under the control and direction of Montana producers with the gain or loss shared by all pool handlers.

5. The rule proposed to be amended by the board of milk control provides as follows: (text of present rule with matter to be stricken interlined and new matter added, then underlined)

"32.24.301 PRICING RULES

(1)-(3)(a)(vii) Remains the same.

(b) The class I butterfat differential will be calculated by multiplying the average Chicago area butterfat price (grade A 92 score) by or most recently reported by the United States department of agriculture, by .118 and the resulting answer from this calculation shall be rounded to nearest half cent. When milk does not test 3.5 percent butterfat, the price per CWT will be adjusted by the above resulting calculation for each .1 percent the butterfat test moves up or down.

~~The butterfat differential will be recalculated each time the producer price is adjusted up or down by at least \$0.23 per hundredweight.~~

(c)-(8) Remains the same."

AUTH: 81-23-302, MCA

IMP: 81-23-302, MCA

6. The amendment of ARM 32.24.301 is to insure that prices for raw milk follow more closely with those in other market areas.

7. Persons known to have an interest in this proposal are all Montana licensed milk producers and all dairy product processors operating in Montana.

8. In its consideration on the merits of the proposed action, the board takes official notice as facts within its own knowledge of the following items:

a. Current and prospective supplies of milk in relation to current and prospective demands for milk for all purposes;

b. the alternative opportunities, both farm and nonfarm, open to milk producers, which must include among other things prices received by farmers for all products other than milk, prices received by farmers for beef cattle, and the percentage of unemployment in the state and nation as determined by appropriate state and federal agencies;

c. the prices of butter, nonfat dairy milk and cheese; and

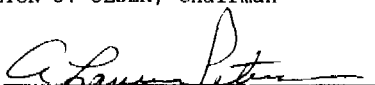
d. the need, if any, for freight or transportation charges to be deducted by distributors from producer prices for bulk milk.

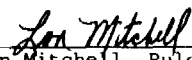
9. Interested parties may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted concerning the proposed rules in writing to the Milk

Control Bureau, 301 N. Roberts St. - RM 236, PO Box 202001, Helena, MT 59620-2001. Any comments must be received no later than September 6, 1996.

10. Mr. Clyde Petersen, 215 N. Sanders St., PO Box 1401, Helena, MT 59620-1401, (406)444-2026, has been appointed to preside over and conduct the hearing.

MONTANA BOARD OF MILK CONTROL
MILTON J. OLSEN, Chairman

By: 
A. Laurence Petersen, Exec.
Officer, Board of Livestock

By: 
Lon Mitchell, Rule Reviewer
Livestock Chief Legal Counsel

Certified to the Secretary of State July 29, 1996.

STATE OF MONTANA
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
BEFORE THE BOARD OF WATER WELL CONTRACTORS

In the matter of proposed)
amendment and repeal of)
certain rules pertaining) NOTICE OF PUBLIC HEARING
to water and monitoring well)
licensing and construction)
standards)

TO: All Interested Persons.

1. On September 27, 1996, at 1:00 p.m. a public hearing will be held in the Auditorium of the PHHS Building, the Department of Public Health and Human Services, 111 Sanders Street, Helena, MT 59620, to consider the amendment of rules 36.21.410, 36.21.415, 36.21.634, 36.21.635, 36.21.637, 36.21.638, 36.21.641A, 36.21.645, 36.21.647, 36.21.650, 36.21.653, 36.21.654, 36.21.655, 36.21.656, 36.21.657, 36.21.658, 36.21.659, 36.21.660, 36.21.661, 36.21.664, 36.21.669A, 36.21.670, 36.21.677, 36.21.702, 36.21.801, 36.21.805, 36.21.810 and the repeal of rules 36.21.401A, 36.21.501, 36.21.502, 36.21.503, 36.21.504, 36.21.505, 36.21.506.

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

36.21.410 EXAMINATION (1) The examination is given by appointment in the board office in Helena, Montana, on any work day, Monday through Friday. The examination must be started prior to 2:00 p.m.

(2) Examinations may also be given at the department of natural resources and conservation water resources regional field offices in Billings, Bozeman, Glasgow, Kalispell, Lewistown, Miles City, Havre, and Missoula. Applications must be approved by the board office prior to setting for the exam at a field regional office.

Subsections (3) through (7) remain the same.

AUTH: 37-43-202, MCA

IMP: 37-43-305 and 37-43-308, MCA

36.21.415 FEE SCHEDULE Subsections (1) through (8) remain the same.

(9) Exemption permits - a fee may be charged for travel expenses incurred in reviewing an application for an exemption permit. The fee shall be estimated and based on current state travel and per diem reimbursement schedules.

AUTH: 37-43-202, MCA

IMP: 37-43-302, 37-43-303, 37-43-305, and 37-43-307, MCA

36.21.634 DEFINITIONS For purposes of this chapter, the following terms shall apply:

Subsections (1) through (27) remain the same.

(28) "Public water supply system" means a system for the provision of water for human consumption from any community well, water hauler for cisterns, water bottling plant, water dispenser or other water that is designed to serve ~~ten~~ fifteen or more ~~service connections living units for at least 60 days out of the calendar year~~ or 25 or more persons at least 60 days out of the calendar year.

Subsections (29) through (39) remain the same.

AUTH: 37-43-202(3), MCA

IMP: 37-43-202(3), MCA

36.21.635 PUBLIC, COMMUNITY, NON-COMMUNITY PUBLIC, AND MULTI-FAMILY WATER SUPPLY WELLS (1) All wells for public, community, non-community public and multi-family water supply system use are governed by those construction standards set forth in the ~~department of health and environmental sciences department of environmental quality~~ rules (Title ~~16~~ 17, chapters ~~16 and 20~~ 30, 36 and 38, Administrative Rules of Montana). Copies of the rules may be obtained by contacting that department.

Subsection (2) remains the same.

AUTH: 37-43-202(3), MCA

IMP: 37-43-202(3), MCA

36.21.637 PROTECTION OF SITE Subsection (1) remains the same.

(2) Cleanup and restoration of site ~~shall~~ should be covered by the a drilling agreement.

Subsection (3) remains the same.

AUTH: 37-43-202(3), MCA

IMP: 37-43-202(3), MCA

36.21.638 LOCATION OF WELLS (1) Water wells ~~should~~ shall not be located within:

(a) ~~10 feet of property lines unless properly protected by easement or agreement; 50 feet of septic tanks, and underground storage tanks and associated lines; or~~

(b) ~~50 feet of septic tanks; 100 feet of drainfields, seepage pits or cesspools, or other site treatment systems.~~

(c) ~~100 feet of drain fields, seepage pits or cesspools, or other site treatment systems;~~

(d) ~~10 feet of sewer lines with permanent watertight joints; or~~

(e) ~~50 feet of other sewer lines.~~

(2) Water wells should not be located within:

(a) 10 feet of property lines unless properly protected by easement or agreement;

(b) 10 feet of sewer lines with permanent watertight joints; or

(c) 50 feet of other sewer lines.

Subsection (2) remains the same but will be renumbered (3).

AUTH: 37-43-202(3), MCA

IMP: 37-43-202(3), MCA

36.21.641A CASING DEPTH (1) All wells shall be completely cased to the bottom of the usable drill hole and sealed in accordance with ARM 36.21.654, ~~through 36.21.660, whichever is applicable.~~

AUTH: 37-43-202(3), MCA

IMP: 37-43-202(3), MCA

36.21.645 PLASTIC CASING Subsection (1) remains the same.

(a) by installing a larger size steel casing on the outside of the plastic casing with a minimum of 4 feet of overlap (Figure 6-A); or

Subsections (1)(b) through (5) remain the same.

AUTH: 37-43-202(3), MCA

IMP: 37-43-202(3), MCA

36.21.647 TOP TERMINAL HEIGHT (1) The casing head or pitless unit of any water well shall extend not less than 18 inches above the finished ground surface or pump house floor, and not less than 18 inches above the local surface runoff level. No casing shall be cut off below land surface except to ~~install a basement offset or a pitless unit, or during permanent abandonment of a well.~~ The ground surface immediately surrounding the top of the well casing or pitless unit shall be graded so as to drain surface water away from the well. The watertight casing of any water well shall extend not less than 3 18 inches feet above the established 100 year floodplain elevation or be capped with a watertight seal and vented above flood level. ~~regional flood level of record.~~

AUTH: 37-43-202(3), MCA

IMP: 37-43-202(3), MCA

36.21.650 CASING PERFORATIONS Subsections (1) through (1)(b) remain the same.

(2) Casing perforations that allow the well casing to act as a conduit for deleterious interflow between aquifers shall not be permitted. (That is, interflow where waters of different heads, temperatures, or quality mix causing deleterious effects.)

(3) Perforations shall not be placed to allow cascading water within the well casing during static conditions.

(4) Perforations shall not be placed to allow upward artesian flow from one aquifer to another.

AUTH: 37-43-202(3), MCA

IMP: 37-43-202(3), MCA

36.21.653 WELL DEVELOPMENT PROCEDURES (1) Upon completion of the well and before conducting the yield and drawdown tests, the contractor shall surge and develop the well to remove all fines, drill cuttings, mud, drilling fluids, and additives. The method of developing and length of time of development shall be determined by the contractor and well owner dependent on the type of water bearing formation encountered.

~~(2) The development work shall be started slowly and gently and increased in vigor as the well is developed.~~

AUTH: 37-43-202(3), MCA

IMP: 37-43-202(3), MCA

36.21.654 SEALING OF CASING - GENERAL Subsections (1) and (1)(a) remain the same.

(2) When casing diameter is reduced, a minimum of 4 feet of overlap shall be required, ~~except when a deleterious case may occur, and the bottom of the annular space between the casings shall be sealed with a suitable packer; the remainder of the annular space will be pressure sealed with an appropriate sealing material.~~

Subsections (3) and (4) remain the same.

(5) For wells drilled through formations that need special sealing techniques to protect aquifers, ARM 36.21.655 through 36.21.660 suggest alternative procedures that may be required and are intended as examples that can be modified to protect the aquifer.

AUTH: 37-43-202(3), MCA

IMP: 37-43-202(3), MCA

36.21.655 DESIGN AND CONSTRUCTION - SEALING OF CONSOLIDATED FORMATIONS (1) The following special sealing methods may be required in situations where different techniques are necessary to protect aquifers.

(2) In drilled wells that penetrate an aquifer either within or overlain by a consolidated formation, sealing of the casing shall conform with one of the following procedures:

~~(1)(a) An upper drill hole at least 4 1/2 inches greater in diameter than the nominal size of the permanent well casing shall extend from land surface to at least 5 1/2 feet into a sound, unreviced, consolidated rock formation, but in no instance shall said upper drill hole extend less than 18 feet below land surface.~~

~~(a)(i) Unperforated permanent casing shall be installed to extend to this same depth and the lower part of the casing shall be sealed into the rock formation with cement grout. The remainder of the annular space to land surface shall be filled with an appropriate sealing material. (see Figure 2A at the end of this chapter)~~

~~(b) If cement grout is placed by pumping to seal the entire annulus from the bottom up to land surface, the upper drill hole need only be a minimum of 3 inches larger than the outside diameter of the permanent casing.~~

~~(2) An upper drill hole at least 4 inches greater in diameter than the nominal size of the permanent casing shall extend from land surface to a depth of at least 18 feet. An unperforated permanent casing shall be installed so that it extends at least 5 feet into sound, unreviced, rock formation.~~

~~(a) Throughout the driving of the well casing to the rock formation, the annular space between the upper drill hole and the permanent casing shall be kept at least one-half full with bentonite slurry.~~

~~(b) The annular space between the rock formation and the permanent casing shall be tightly sealed with cement grout. The~~

~~remainder of the annular space to land surface shall then be filled with an appropriate sealing material (see figure 2B at the end of this chapter).~~

(3) If temporary surface casing is used in either of the above procedures ~~(1) or (2)~~, this casing shall be of sufficient diameter to conform to the upper drill hole specifications. Withdrawal of the temporary casing shall take place simultaneously with proper sealing of the annular space to land surface.

AUTH: 37-43-202(3), MCA

IMP: 37-43-202(3), MCA

36.21.656 SEALING OF UNCONSOLIDATED FORMATIONS WITHOUT SIGNIFICANT CLAY BEDS (1) The following special sealing methods may be required in situations where different techniques are necessary to protect aquifers.

Subsection (1) remains the same but will be renumbered (2).

~~(1)(2)~~ The annular space between the upper drill hole and the well casing shall be kept at least one-half full with bentonite slurry throughout the driving of the permanent casing into the aquifer. After the permanent casing is set in its final position, the remaining annular space shall be filled to land surface with appropriate sealing material ~~(see figure 3A at the end of this chapter).~~

~~(1)(3)~~ If the oversized drill hole is extended to the same depth as the permanent casing, a suitable bridge shall be installed between the casing and the drill hole at a position directly above the production aquifer. The remaining annular space shall be completely filled and sealed to land surface with appropriate sealing material ~~(see figure 3B at the end of this chapter).~~

Subsection (3)(a) remains the same but will be renumbered (5).

Subsections (4) and (5) remain the same but will be renumbered (6) and (7).

AUTH: 37-43-202(3), MCA

IMP: 37-43-202(3), MCA

36.21.657 SEALING OF UNCONSOLIDATED FORMATIONS WITH CLAY BEDS (1) The following special sealing methods may be required in situations where different techniques are necessary to protect aquifers.

~~(2)(1)~~ In drilled wells that penetrate an aquifer overlain by clay or other unconsolidated deposits such as sand and gravel in which significant (at least 6 feet thick) interbeds of clay are present, the well casing may be terminated in such clay strata, provided that the casing be sealed in substantially the same manner as is required in the case of consolidated formations (see ARM 36.21.655 and ~~figure 3C at the end of this chapter~~).

AUTH: 37-43-202(3), MCA

IMP: 37-43-202(3), MCA

36.21.658 SPECIAL SEALING STANDARDS FOR ARTESIAN FLOWING WELLS (1) When artesian flowing water is encountered in the well, an unperforated well casing shall extend into the confining stratum overlying the artesian zone. The casing shall be adequately sealed into the confining stratum so as to prevent surface and subsurface leakage from the artesian zone.

Subsection (2) remains the same.

(3) The well shall be completed with seals, packers, and neat cement or suitable grout that will eliminate leakage around the well casing.

~~(4) The driller shall not move his drilling rig from the well site until the leakage has been completely stopped unless authority for temporary removal is granted by the board. The driller is responsible to use all reasonable methods and care to prevent leakage around the well casing within a reasonable time frame or until the board is satisfied that the leakage is controlled.~~

AUTH: 37-43-202(3), MCA

IMP: 37-43-202(3), MCA

36.21.659 SEALING OF ARTIFICIAL GRAVEL PACKED WELLS. PERMANENT SURFACE CASING NOT INSTALLED (1) ~~The following special sealing methods may be required in situations where different techniques are necessary to protect aquifers.~~

~~(2)(1) An upper drill hole having a diameter of at least 4 3/4 inches greater than the outside diameter of the production casing shall be drilled to extend from land surface into a clay or other formation of low permeability overlying the water-bearing zone. The annular space to this depth shall be filled with sealing material. If the clay or other impermeable formation is at or near land surface, the upper drill hole and unperforated production casing shall extend to a minimum depth of 18 feet below land surface, provided that the casing does not pass through the impermeable zone. A suitable bridge shall be installed in the annular space between the gravel pack and the sealing material. A gravel fill pipe may be installed for injecting gravel prior to sealing the top of the gravel pack. (see ARM 36.21.656(3)(a) for definition of a suitable bridge). Special care shall be taken to insure that the seal is watertight around the injection pipe. The injection pipe shall be capped with a watertight seal or plug (see figure 4A at the end of this chapter).~~

AUTH: 37-43-202(3), MCA

IMP: 37-43-202(3), MCA

36.21.660 SEALING OF ARTIFICIAL GRAVEL PACKED WELLS. PERMANENT SURFACE CASING INSTALLED (1) ~~The following special sealing methods may be required in situations where different techniques are necessary to protect aquifers.~~

~~(2)(1) When permanent surface casing is installed, the well bore shall have a diameter of at least 4 3/4 inches greater than the surface casing for the introduction of sealing materials. A watertight seal shall be installed at the top of the gravel pack between the permanent surface and production casing.~~

Sealing procedures and installation of gravel fill pipes are substantially the same as in ARM 36.21.659 above. If a temporary casing is used to maintain the oversized drill hole, the annular space to be sealed under conditions of ARM 36.21.659 and 36.21.660 shall be kept full with cement grout or bentonite clay grout as the temporary casing is withdrawn ~~(see figure 4B at the end of this chapter).~~

Subsection (2) remains the same but will be renumbered (3).

AUTH: 37-43-202(3), MCA

IMP: 37-43-202(3), MCA

36.21.661 TEMPORARY CAPPING Subsections (1) and (2) remain the same.

(3) Temporarily abandoned wells shall be grouted and sealed to comply with ARM 36.21.654, ~~through 36.21.660, whichever is applicable,~~ before the drill rig is removed from the site.

Subsection (4) remains the same.

AUTH: 37-43-202(3), MCA

IMP: 37-43-202(3), MCA

36.21.664 TESTS FOR YIELD AND DRAWDOWN (1) Every well shall be tested for yield and drawdown for a period of not less than one hour either by bailing, pumping, or air testing. During testing, discharge rate shall be as uniform as possible. The minimum data to be entered on the well log report form shall be:

(a) static water level immediately before testing begins;

(b) pump rate and means of discharge (i.e., bailing, airlift, pumping);

(c) pumping level after 1 hour;

(d) recovery level and time of recovery; and

~~(e) For individual wells in subdivisions,~~ public community, non-community public and multi-family water supply wells, the testing requirements set out in the department of health and environmental quality sciences rules shall apply (Title 16 17, chapters ~~16 and 20~~ 30, 36 and 38, Administrative Rules of Montana). Copies may be obtained by contacting that department.

(2) Pump Test test data to be recorded on the well log report form shall be:

Subsections (2)(a) and (2)(b) remain the same.

(c) the pumping rate; and means of discharge (i.e., bailing, airlift, pumping)

Subsections (2)(d) through (4) remain the same.

AUTH: 37-43-202(3), MCA

IMP: 37-43-202(3), MCA

36.21.669A TYPES OF WELLS REQUIRING ABANDONMENT Subsections (1) and (a) remain the same.

(b) ~~which is~~ in such disrepair that its continued use for the purpose of obtaining groundwater is impractical or may be a health hazard, or

(c) whose existence allows intermixing of waters which cause deleterious effects upon have different temperatures,

qualities, or hydrostatic pressures, which contributes to significant degradation and loss of the water source, or Subsection (d) remains the same.

~~(1) The responsibility for abandoning this type of well belongs to the contractor or driller drilling the well.~~

~~(2) The well owner is responsible for abandonment of wells described in (1)(a), (b), and (c).~~

~~(3) The well driller is responsible for abandonment of wells described in (1)(d). These types of wells shall be permanently abandoned by the driller within 60 days after drilling is discontinued.~~

~~(4) The driller should advise well owner of this requirement that abandoned wells must be permanently abandoned.~~

~~(5) The board may order the driller to permanently abandon an unusable well that may be a danger to the aquifer.~~

AUTH: 37-43-202(3), MCA

IMP: 37-43-202(3), MCA

36.21.670 PERMANENT ABANDONMENT Subsection (1) remains the same.

(2) Abandoned wells must be completely filled with concrete or other sealing material to within the last 6 3 feet of the surface. ~~Six feet to 3 feet from the surface will be filled in with bentonite. The last 3 feet shall be filled in with naturally occurring soils. Any remaining hole shall be filled with naturally occurring soils.~~

(3) ~~The A-properly abandoned well will~~ shall not produce water nor serve as a channel for movement of groundwater.

Subsections (4) and (5) remain the same.

~~(6) Where possible, all casings or liners shall be removed. In the event that the casing cannot be removed, it shall be cut off or driven downward so that the top of the casing is at least 3 feet below the ground surface.~~

AUTH: 37-43-202(3), MCA

IMP: 37-43-202(3), MCA

36.21.677 METHOD OF PLACEMENT OF CONCRETE OR CEMENT GROUT

(1) ~~Concrete or cement grout used as a sealing material in abandonment operations shall be introduced at the bottom of the well or required sealing interval and placed progressively to 6 feet from the top of the well. From 6 feet to 3 feet bentonite shall be added. The upper 3 feet shall be restored to its natural state. All such cement sealing materials shall be placed by the use of a grout pipe, tremie, or by dump bailer in order to avoid segregation or dilution of the sealing materials.~~

AUTH: 37-43-202(3), MCA

IMP: 37-43-202(3), MCA

36.21.702 APPLICATION APPROVAL AND EXAMINATION Subsection (1) remains the same.

(2) After approval, applicants may take the examinations at the board office in Helena or the department of natural resources and conservation water resources division regional

field offices in Billings, Bozeman, Glasgow, Havre, Kalispell, Lewistown, Miles City, or Missoula.

(3) A grade of 80% is necessary to pass the examination. ~~Grading will be completed by the National Water Well Association.~~

Subsection (4) remains the same.

AUTH: 37-43-202, MCA

IMP: 37-43-303 and 37-43-305, MCA

36.21.801 DEFINITIONS The following definitions shall apply for monitoring well construction:

Subsections (1) through (33) remain the same.

(34) "Piezometer" is a well device designed or instrument designed to measure the hydraulic potential (water level elevation) at a specific point in the subsurface.

Subsections (35) through (49) remain the same.

AUTH: 37-43-202, MCA

IMP: 37-43-202, MCA

36.21.805 SEAL/MATERIALS Subsections (1) through (3) remain the same.

(4) ~~Jettted or other installation methods are not recommended allowed for monitoring well use and will be considered only on an application basis without board approval.~~

AUTH: 37-43-202, MCA

IMP: 37-43-202, MCA

36.21.810 ABANDONMENT Subsections (1) through (3) remain the same.

(4) A properly abandoned well ~~will~~ shall not produce water nor serve as a channel for movement of water.

AUTH: 37-43-202, MCA

IMP: 37-43-202, MCA

3. The proposed amendment of Rule 36.21.410 is necessary to allow the board to schedule examinations by appointment and to delete the reference to the DNRC field office in Miles City as there is no longer a DNRC field office located there. The proposed amendment of Rule 36.21.415 is because the board is authorized to be reimbursed for travel expenses incurred when reviewing applications for exemption permits and has set a reimbursement of estimated travel and per diem. The proposed amendment of Rule 36.21.634 is to comply with the current department of environmental quality definition. The proposed amendment of Rule 36.21.635 is because the department of health and environmental sciences has changed to the department of environmental quality. The proposed amendment of Rule 36.21.637 is to make a drilling agreement optional because the board has no authority to require a drilling agreement. The proposed amendment of Rule 36.21.638 is to clarify the distances and makes the well location a requirement rather than a recommendation. Rule 36.21.641A is proposed to be amended to delete unnecessary wording. The proposed amendment of Rule 36.21.645 is to change the 8 feet overlap to 4 feet to make the rule

consistent with ARM 36.21.654, sealing of casing-general. The proposed amendment of Rule 36.21.647 is to clarify when a casing may be cut-off, removes unnecessary wording, and adds a requirement to establish watertight seals and venting above 100 year floodplain elevations. The proposed amendment of Rule 36.21.650 is to clarify "interflow" and makes the rule consistent with ARM 36.21.669A(1)(c) in defining deleterious mixing of waters and to eliminate dual completion permission only with board approval because it is not necessary, it is redundant with the clarification in amended rule 36.21.650(2). The proposed amendment of Rule 36.21.653 is because the well owner has no expertise in well construction and well development. The proposed amendment of Rule 36.21.654 is to clarify the rule to mean the space between casings which overlap can be sealed in any manner that prevents interflow rather than specifically using a packer or pressure grouting that is not practical in all cases, and that special sealing techniques are examples of alternate procedures and may be required as necessary by the board. Section 37-43-313, MCA, disciplinary authority, passed by the 1993 legislature gave the board authority to repair wells to the board's standards and is not limited to special sealing requirements. The board decided to leave these special sealing rules as examples of sealing methods that may be required. The proposed amendment of Rule 36.21.655 is to specify a sealing method that may be required in consolidated formations, clarifies that technique, and removes redundant wording. The proposed amendment of Rule 36.21.656 is to specify a sealing method that may be required in unconsolidated formations and removes unnecessary wording. The proposed amendment of Rule 36.21.657 is to specify a sealing method that may be required in unconsolidated formations with clay beds and removes unnecessary wording. The proposed amendment of Rule 36.21.658 is to clarify the proper sealing of flowing wells and to remove the requirement that the driller shall not remove his rig from the site without approval of the board because of impracticability and specifies that the driller must control the flow to the board's satisfaction. The proposed amendment of Rule 36.21.659 is to specify a sealing method which may be required in these wells, clarifies and removes unnecessary wording. The proposed amendment of Rule 36.21.660 is to specify a sealing method that may be required in these wells, clarifies and removes unnecessary wording. The proposed amendment of Rule 36.21.661 is to remove unnecessary wording. The proposed amendment of Rule 36.21.664 is to separate well testing into discharge rates by either bailing and airlift, or by pumping with test pumps and clarifies that only one hour of testing is required for every well, but if testing by pump installation is done, further data must be recorded. The proposed amendment of Rule 36.21.669A is to clarify the intermixing of waters and makes the requirement uniform with ARM 36.21.650(2), clarifies the responsibility of the driller and the well owner in well abandonment and adds a time frame. Furthermore it requires the driller to advise well owners of abandonment and requires a driller to abandon an unusable well which may be a danger to the aquifer if so ordered by the board

and clarifies the wording. The proposed amendment of Rule 36.21.670 is to clarify the abandonment procedure to specify using a sealing material to within three feet of the surface rather than 6 feet for concrete and 6 to 3 feet with bentonite, then filling to the surface with natural soils and that the rule is a requirement by substituting the word "shall" and to require a procedure for handling casing during permanent abandonment. The proposed amendment of Rule 36.21.677 is to remove the requirement that the grout be placed by tremie or grout pipe in abandonment procedures because effective cement grout is routinely accomplished by simply pouring the product in the hole. The proposed amendment of Rule 36.21.702 is to remove Miles City from the list of regional offices and to remove the exam grading from the National Water Well Association because testing and grading is now done by the board. The proposed amendment of Rule 36.21.801 is to clarify the wording. Rule 36.21.805 is proposed to be amended to clarify the rule and requires board approval for jetted methods. The proposed amendment of Rule 36.21.810 is to clarify the wording.

4. Rules 36.21.401A, 36.21.501, 36.21.502, 36.21.503, 36.21.504, 36.21.505, and 36.21.506 which can be found on pages 36-4545, 36-4571, 36-4572, and 36-4573 of the Administrative Rules of Montana, are proposed to be repealed because new legislation passed in 1993 makes these rules unnecessary.

AUTH: 37-43-202, MCA

IMP: 37-43-305, 37-43-306, 37-43-310, 37-43-311, and
37-43-313, MCA

5. Interested parties may present their data, views, and arguments, either orally or in writing, at the hearing. Written data, comments, or arguments may also be submitted to Robert Rudio, Program Manager, Department of Natural Resources and Conservation, 48 Last Chance Gulch, P.O. Box 201601, Helena, Montana, 59620-1601, and must be received no later than September 23, 1996.

6. Persons with disabilities who need an alternative accessible format of this information, or who require some other reasonable accommodation in order to participate in the hearing, should contact the Department of Natural Resources and Conservation, Attn: Robert Rudio 48 Last Chance Gulch, P.O. Box 201601, Helena, Montana 59620-1601. Telephone (406) 444-6643, FAX (406) 444-0533.

7. The Board will preside over and conduct the hearing.

BOARD OF WATER WELL CONTRACTORS

By: Wesley Lindsay
Wesley Lindsay, Chairman

Donald B. MacIntyre
Donald B. MacIntyre
Rule Reviewer

Certified to the Secretary of State on July 29, 1996

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

In the matter of the	)	NOTICE OF PUBLIC HEARING ON
adoption of Rules I through	)	THE PROPOSED ADOPTION OF
IV pertaining to Medicaid	)	RULES
coverage and reimbursement)	
of home infusion therapy)	
services)	

TO: All Interested Persons

1. On August 29, 1996, at 9:30 a.m. a public hearing will be held in the auditorium of the Department of Public Health & Human Services Building, 111 Sanders, Helena, Montana to consider the proposed adoption of Rules I through IV pertaining to Medicaid coverage and reimbursement of home infusion therapy services.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the department no later than 5:00 p.m. on August 19, 1996 to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970.

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

[RULE I] HOME INFUSION THERAPY SERVICES. DEFINITIONS In [Rules I through IV], the following definitions apply:

(1) "Agency staff services" means all services provided by the home infusion therapy agency's staff, including all professional and non-professional employed and contracted individuals. Agency staff services include preparation and revision of the plan of care, treatment coordination, client or care giver training, monitoring, reporting, delivery, pick up and disposal of equipment, supplies or drugs, 24-hour on call status and any other services of the agency staff related to the recipient's home infusion therapy services.

(2) "Home infusion therapy services" means a comprehensive treatment program for the preparation and administration of parenteral medications or parenteral or enteral nutritional services to a recipient who is not a hospital inpatient or outpatient. Home infusion therapy services include all pharmacist professional services, all agency staff services and all associated medical equipment and supplies. Home infusion therapy services do not include professional nursing services, professional physician services or drugs.

(3) "Pharmacist professional services" include preparation and revision of the plan of care, preparation and compounding of drugs, monitoring, laboratory testing, reporting, delivery, pick up and disposal of equipment, supplies or drugs, 24-hour on call status and any other services of the pharmacist related to the recipient's home infusion therapy services. Pharmacist professional services do not include costs, fees or charges for the drugs that are compounded or administered.

AUTH: 53-2-201 and 53-6-113, MCA

IMP: 53-6-101 and 53-6-113, MCA

[RULE II] HOME INFUSION THERAPY SERVICES. PROVIDER REQUIREMENTS (1) These requirements are in addition to those contained in rule provisions generally applicable to medicaid providers.

(2) Home infusion therapy service providers, as a condition of participation in the Montana medicaid program, must:

(a) maintain a current home infusion therapy agency license issued by the department's quality assurance division, or, if the provider is serving recipients outside the state of Montana, maintain a current license in the equivalent category under the laws of the state in which the services are provided; and

(b) enter into and maintain a current provider enrollment form under the provisions of ARM 46.12.302 with the department's fiscal agent to provide home infusion therapy services.

AUTH: 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-111 and 53-6-113, MCA

[RULE III] HOME INFUSION THERAPY SERVICES. REQUIREMENTS (1) The requirements and restrictions in these rules apply for purposes of coverage and reimbursement of home infusion therapy services under the Montana medicaid program.

(2) Medicaid coverage and reimbursement of home infusion therapy services is available, subject to applicable requirements, for services provided to recipients that are residing in their own home, a nursing facility or any setting other than a hospital. Medicaid coverage and reimbursement of home infusion therapy services is not available for services provided to hospital inpatients or outpatients.

(3) Except as otherwise provided by these rules, home infusion therapy services must be provided within the scope of practice permitted by applicable state law.

(4) For those services subject to prior authorization, the Montana medicaid program will not cover or reimburse home infusion therapy services unless the department or its designated agent has approved a prior authorization request. The department will determine the specific home infusion therapy services that require prior authorization in consultation with the department's drug use review board established pursuant to 42 USCA 1396r-8(g). A list of the specific services subject to

prior authorization will be provided upon request made to the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(5) The Montana medicaid program will not cover or reimburse home infusion therapy services for the following:

- (a) intramuscularly administered drugs;
- (b) anti-ulcer therapy;
- (c) aerosol pentamidine;
- (d) blood products;
- (e) growth hormones;
- (f) subcutaneous injections, including but not limited to erythropoietin, growth hormones, and filgrastim; and
- (g) biotechnology, including but not limited to human insulin products.

AUTH: 53-2-201 and 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-111 and 53-6-113, MCA

[RULE IV] HOME INFUSION THERAPY SERVICES, REIMBURSEMENT

(1) Subject to the requirements of these rules, the Montana medicaid program will pay for home infusion therapy services on a fee basis, as specified in the department's home infusion therapy services fee schedule. The department hereby adopts and incorporates herein by reference the home infusion therapy services fee schedule (July 1996). A copy of the home infusion therapy services fee schedule may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951. The specified fees are on a per day or a per dose basis as specified in the fee schedule. The fees are bundled fees which cover all home infusion therapy services as defined in [Rule I].

(2) For home infusion therapy services also reimbursed for the recipient by the medicare program, medicare payments will be considered to be third party payments and, if the medicare payment is less than the medicaid fee schedule amount, medicaid will pay the difference between the medicare payment and the medicaid fee specified in the home infusion therapy fee schedule described in (1).

(3) Covered drugs prepared and administered as part of a recipient's home infusion therapy program are separately billable under the Montana medicaid outpatient drug program as specified in ARM 46.12.702 and 46.12.703.

(4) Professional nursing services provided as part of a recipient's home infusion therapy program are separately billable under home health service program as provided in ARM 46.12.550 through 46.12.552.

AUTH: 53-2-201 and 53-6-113, MCA

IMP: 53-6-101 and 53-6-113, MCA

3. The proposed rules establish in the medicaid program a distinct home infusion therapy service category. The proposed rules are necessary to specify provider requirements, service requirements, the scope of the service, and the reimbursement that medicaid will pay for the service. The rapid growth of home administration of intravenous drugs has resulted in the emergence of a new specialty practice in this area. The 1995 legislature, in House Bill 301, added home infusion therapy agencies to the list of health care facilities in section 50-5-101(17), MCA which are required to be licensed by the department of public health and human services. Home infusion therapy services currently are reimbursed in a piecemeal fashion under several medicaid service categories. The proposed rules establish a distinct service category for the service, eliminating the need to enroll and submit separate bills in several service categories. The proposed rules also establish a consistent payment approach replacing potentially overlapping and duplicate reimbursement methodologies with a single all-inclusive rate per day or unit of service.

The proposed home infusion therapy service is a comprehensive treatment program for the preparation and administration of parenteral medications or parenteral or enteral nutritional services. The service combines pharmacist professional services, medical equipment and supplies, and the services related to planning, coordinating, delivering and monitoring the treatment program. Professional physician and nursing services, and drugs will continue to be reimbursed under the outpatient drug, physician and home health programs. The proposed rules specify the scope and components of the service, and certain specific services that are not covered.

Service providers must maintain a current home infusion therapy agency license issued by the department under Title 50, chapter 5, MCA. This requirement is necessary to assure that quality services are provided to medicaid recipients. Agencies that wish to participate must enroll in the medicaid program in the home infusion therapy service category. Licensed and enrolled providers may provide the service to recipients residing in their own home, in a nursing facility or in any setting other than a hospital. The service is not covered under the home infusion therapy category when provided to hospital inpatients or outpatients, because the service is covered and reimbursed in those settings under the rules applicable to hospital services.

The rapid pace of change and development in this area requires that the department consult frequently with qualified specialists to monitor what services are being provided and covered under the medicaid program. The department will consult with the drug use review board established under federal law to identify and monitor new therapies and existing therapies that

require prior authorization. It is anticipated that frequent changes and adjustments will be needed in this area. The department will maintain a list of services that require prior authorization and this list will be provided to all providers and will also be available upon request from the department.

The department has worked with providers to establish appropriate fees to be paid for home infusion therapy services. These fees are specified in a home infusion therapy services fee schedule that will be incorporated into the proposed rule. The fees will be bundled fees, which means that the fees will cover and include the entire home infusion therapy service. Use of a bundled fee is necessary to maintain a cost effective reimbursement system, by avoiding the potential increased program costs that occur when providers are able to split services into separate components and bill them separately. The bundled fee approach also reduces the number of claims that must be submitted by providers and eases administration of the program.

The department estimates that the proposed changes will decrease annual aggregate expenditures with savings as follows:

Fund	FY96	FY97	Biennium
Federal Fund	\$ 63,330	\$ 94,124	\$ 157,454
State General Fund	<u>\$ 27,479</u>	<u>\$ 42,090</u>	<u>\$ 69,569</u>
Total	\$ 90,809	\$ 136,214	\$ 227,023

4. The proposed changes will apply to home infusion therapy services provided on or after October 1, 1996.

5. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604, no later than September 5, 1996.

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


Rule Reviewer


Director, Public Health and
Human Services

Certified to the Secretary of State July 29, 1996.

In the matter of the) NOTICE OF PUBLIC
amendment of rules) HEARING ON THE PROPOSED
46.13.302, 46.13.303,) AMENDMENT OF RULES
46.13.304, 46.13.401 and)
46.13.502 pertaining to the)
low income energy assistance)
program (LIEAP))

1. On August 29, 1996 at 10:30 a.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 Sanders Building, Helena, Montana to consider the proposed amendment of rules 46.13.302, 46.13.303, 46.13.304, 46.13.401 and 46.13.502 pertaining to the low income energy assistance program (LIEAP).

2. The rule(s) as proposed to be amended provide(s) as follows:

(6) Residents of publicly subsidized housing whose heating costs are included as a portion of their rent and whose rent is a fixed portion of their income are not eligible for low income energy assistance benefits provided for in ARM 46.13.401 but are eligible for weatherization assistance as provided for in ARM 46.14.101 through 46.14.402.

AUTH: Sec. 53-2-201, MCA
IMP: Sec. 53-2-201, MCA

15-8/8/96

(a) Households with annual gross income at or below 125% of the 1995 1996 poverty level are financially eligible for low income energy assistance. Households with an annual gross income above 125% of the 1995 1996 poverty level are ineligible for low income energy assistance.

(2) Annual income standards for all households:

Family Size	Poverty Guideline	125 Percent	150 Percent
One	\$ 7,470	\$ 9,338	\$11,205
Two	10,030	12,538	15,045
Three	12,590	15,738	18,885
Four	15,150	18,938	22,725
Five	17,710	22,138	26,565
Six	20,270	25,338	30,405
Additional member add	2,560	3,200	3,840

Family Size	Poverty Guideline	125 Percent	150 Percent
One	\$ 7,740	\$ 9,675	\$ 11,610
Two	10,360	12,950	15,540
Three	12,980	16,225	19,470
Four	15,600	19,500	23,400
Five	18,220	22,775	27,330
Six	20,840	26,050	31,260
Additional member add	2,620	3,275	3,930

AUTH: Sec. 53-2-201, MCA

IMP: Sec. 53-2-201, MCA

46.13.304 CALCULATING INCOME (1) through (1)(s) remain the same.

(2) Out-of-pocket dependent care expenses as defined in ARM 46.13.301(9) may be deducted from income only if:

(a) the household's annual gross income is between 125% and 150% of the 1995 1996 U.S. government office of management and budget poverty level for the particular household size;

(2)(b) through (3)(c)(x) remain the same.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

46.13.401 BENEFIT AWARD MATRICES (1) through (2) (a) remain the same.

(b) A household whose gross annual income is above 125% of the ~~1993~~ 1996 poverty level but is eligible for benefits because of dependent care deductions and/or medical and dental deductions provided in ARM 46.13.304(3) and (4) will receive a benefit which is 40% of the maximum benefit.

(2)(c) remains the same.

(d) The following table of base benefit levels takes into account the number of bedrooms in a house, the type of dwelling structure, and the type of fuel used as a primary source of heating:

TABLE OF BENEFIT LEVELS

~~(i) SINGLE FAMILY~~

# BEDROOMS	NATURAL					
	GAS	ELECTRIC	PROPANE	FUEL OIL	WOOD	COAL
ONE	\$215	\$294	\$297	\$239	\$192	\$176
TWO	313	428	432	348	280	255
THREE	427	583	589	474	381	348
FOUR	587	802	810	652	524	479

~~(ii) MULTI FAMILY~~

# BEDROOMS	NATURAL					
	GAS	ELECTRIC	PROPANE	FUEL OIL	WOOD	COAL
ONE	\$182	\$249	\$251	\$254	\$162	\$148
TWO	274	375	379	383	245	223
THREE	402	558	556	562	359	328
FOUR	470	642	649	657	419	383

~~(iii) MOBILE HOME~~

# BEDROOMS	NATURAL					
	GAS	ELECTRIC	PROPANE	FUEL OIL	WOOD	COAL
ONE	\$181	\$248	\$251	\$211	\$162	\$148
TWO	265	362	366	389	237	216
THREE	352	488	486	410	314	287
FOUR	393	536	542	457	351	320

(i) SINGLE FAMILY

# BEDROOMS	NATURAL					
	GAS	ELECTRIC	PROPANE	FUEL OIL	WOOD	COAL
ONE	\$190	\$260	\$263	\$212	\$170	\$155

<u>TWO</u>	<u>277</u>	<u>378</u>	<u>382</u>	<u>308</u>	<u>247</u>	<u>226</u>
<u>THREE</u>	<u>377</u>	<u>515</u>	<u>521</u>	<u>419</u>	<u>337</u>	<u>308</u>
<u>FOUR</u>	<u>519</u>	<u>709</u>	<u>717</u>	<u>577</u>	<u>464</u>	<u>423</u>

(ii) MULTI-FAMILY

# BEDROOMS	<u>NATURAL</u>					
	<u>GAS</u>	<u>ELECTRIC</u>	<u>PROPANE</u>	<u>FUEL OIL</u>	<u>WOOD</u>	<u>COAL</u>
<u>ONE</u>	<u>\$161</u>	<u>\$220</u>	<u>\$222</u>	<u>\$225</u>	<u>\$144</u>	<u>\$131</u>
<u>TWO</u>	<u>243</u>	<u>331</u>	<u>335</u>	<u>339</u>	<u>216</u>	<u>198</u>
<u>THREE</u>	<u>356</u>	<u>486</u>	<u>491</u>	<u>497</u>	<u>318</u>	<u>290</u>
<u>FOUR</u>	<u>416</u>	<u>568</u>	<u>574</u>	<u>581</u>	<u>371</u>	<u>339</u>

(iii) MOBILE HOME

# BEDROOMS	<u>NATURAL</u>					
	<u>GAS</u>	<u>ELECTRIC</u>	<u>PROPANE</u>	<u>FUEL OIL</u>	<u>WOOD</u>	<u>COAL</u>
<u>ONE</u>	<u>\$160</u>	<u>\$219</u>	<u>\$222</u>	<u>\$187</u>	<u>\$143</u>	<u>\$131</u>
<u>TWO</u>	<u>235</u>	<u>320</u>	<u>324</u>	<u>273</u>	<u>210</u>	<u>191</u>
<u>THREE</u>	<u>311</u>	<u>425</u>	<u>430</u>	<u>362</u>	<u>278</u>	<u>254</u>
<u>FOUR</u>	<u>347</u>	<u>474</u>	<u>479</u>	<u>404</u>	<u>310</u>	<u>283</u>

(2) (e) remains the same.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

46.13.502 SUPPLEMENTAL ASSISTANCE (1) To the extent funds are available, one-time supplemental assistance for the amount of the outstanding heat bill for costs incurred between October 1 and April 30 of the current heating season, not to exceed \$150.00 is available to LIEAP households ~~at or below 100% of office of management and budget (OMB) poverty standards, as listed in ARM 46.13.303,~~ who have paid at least 5% of their income, as defined in ARM 46.13.304, toward their home heating costs for the 12 months previous to the date supplemental assistance is requested by the LIEAP client or fuel vendor. Requests for supplemental assistance and documentation of the amount of an outstanding fuel bill must be submitted by June 15.

(1) (a) through (2) (c) remain the same.

AUTH: Sec. 53-2-201, MCA

IMP: Sec. 53-2-201, MCA

3. RATIONALE: ARM 46.13.303 and 46.13.304 are being amended to provide that the 1996 U.S. Office of Management and Budget (OMB) poverty levels are to be used rather than the 1995 poverty levels to determine eligibility for the Low Income Energy Assistance Program (LIEAP) so that the current OMB poverty levels can be used to determine eligibility. In ARM 46.13.401 the figures in the benefit award matrices are being amended in order to reflect Department of Energy fuel cost projections for 1996-97 and to ensure that benefit amounts are consistent with the Department's LIEAP budget for 1996-97.

ARM 46.13.302 is being amended to specify that residents of public housing whose heating costs are included in their rent and whose rent is a fixed percentage of their income are not eligible for LIEAP benefits but are eligible for weatherization assistance as provided in title 46, chapter 14. This change is necessary to ensure that limited funds for LIEAP benefits are used to assist households with the highest energy bills in relation to their income, as required by the LIEAP statute at 42 U.S.C. 8624(b)(5). The group of persons who will no longer be eligible for LIEAP under this amendment are not affected by increases in fuel costs because their heating costs are included in their rent which is a fixed percentage of their income, and they do not experience difficulty in paying heating costs when their income decreases because their rent decreases when their income declines.


Thus this group has less need for energy assistance than low-income individuals who do not live in subsidized housing, who live in subsidized housing but pay their own heating expenses in addition to rent, or who live in subsidized housing and whose energy costs are included in their rent but pay rent which is not limited to a fixed percentage of their income. It is estimated that eliminating eligibility for this group will reduce by approximately 1,002 the number of households receiving LIEAP benefits during the 1996-97 heating season. This will in turn increase by approximately \$200,000 the LIEAP funding available for distribution to other low income individuals who have greater need for energy assistance.

ARM 46.13.502 currently provides that supplemental assistance to pay outstanding heating bills is available for LIEAP households which have paid at least 5% of their income for home heating costs during the previous 12-month period, but only if the household's income is at or below 100% of the poverty standard. The rule is being amended to allow LIEAP households whose income exceeds 100% of poverty to be eligible for supplemental assistance. The provision of supplemental assistance to households which pay at least 5% of their annual income for heating costs (as opposed to incurring large heating bills and not paying the bill in full) encourages households to shoulder responsibility and budget for annual heating costs. This

amendment is being made to encourage LIEAP households whose income is over 100% of poverty to take responsibility for their own heating costs and budget for such costs.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604, no later than September 5, 1996.

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


Rule Reviewer


Director, Public Health and
Human Services

Certified to the Secretary of State July 29, 1996.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT) NOTICE OF PROPOSED AMENDMENTS
of ARM 42.15.101, 42.15.301,) and ADOPTION OF NEW RULES
42.15.303, 42.15.305, 42.15.) relating to Chapter 15 and
309, 42.15.311, 42.15.312,) Composite Returns
42.15.313, 42.15.314, 42.15.)
315, 42.15.322, and 42.15.324)
and ADOPTION of RULES I)
through VI relating to the)
Biennial Review of Chapter 15)
and Composite Returns) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On September 20, 1996, the Department of Revenue proposes to amend ARM 42.15.101, 42.15.301, 42.15.303, 42.15.305, 42.15.309, 42.15.311, 42.15.312, 42.15.313, 42.15.314, 42.15.315, 42.15.322, and 42.15.324, and adopt New Rules I through VI relating to composite returns.

2. The Department published a notice of proposed action regarding these rules on page 78 of the 1996 Montana Administrative Register, issue no. 1, with the intent of adopting the rules within the six-month time period prescribed by law. However, the comments were extensive and additional amendments were proposed. Therefore, the six-month deadline was not met. The Department is republishing these rules with additional amendments as suggested in the comments to the first rulemaking action.

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

42.15.101 DOMICILE-DEFINED DEFINITIONS (1) For purposes of this chapter the following definitions apply:

(a) "Domiciled" means A a person who is domiciled in the a resident of the state of Montana if, applying 1-1-215, MCA, Montana is the individual's residence.

(b) The term "nonresident" means any individual, estate, trust, partnership, or other organization, excluding corporations, not a resident of Montana.

AUTH: Secs. 1-1-215 and 15-30-305 MCA; IMP, Sec. 15-30-101 and 15-30-105, MCA

42.15.301 WHO MUST FILE RETURNS (1) Every single person and every married person not filing a joint return with ~~his or her~~ a spouse must file a return if ~~his or her~~ the person's gross income for the taxable year is more than ~~\$1000~~ \$1,500, adjusted as provided in ~~subsection~~ (3), plus the value of the exemptions ~~he or she~~ the person is entitled to for age 65 and for blindness. Married persons not electing to file separate

returns must file a return if the combined gross income of the spouses for the taxable year exceeds ~~\$2,000~~ \$3,000, adjusted as provided in ~~subsection~~ (3), plus the value of the exemptions they are entitled to for age 65 or blindness.

(2) and (3) remain the same.

AUTH: Sec. 15-30-305 MCA; IMP, Sec. 15-30-142 and 15-30-143 MCA

42.15.303 RETURNS FOR THOSE UNABLE TO MAKE OWN RETURN

(1) Any taxpayer who for any reason is unable to make ~~his own~~ a return may have ~~his the~~ return made by a designated agent. In the case of a minor, the return may be made by the minor ~~himself~~ or by ~~his~~ a guardian or other person charged with the minor's care or property. In the case of a taxpayer who is mentally or physically incapable of making ~~his a own~~ return, the return for such person shall be made by the guardian or other person charged with the care of the taxpayer's person or property.

(2) A return must be filed for a decedent covering the period from the beginning of the taxable year to the date of death. If the deceased taxpayer was married, a joint return ~~maybe may be~~ filed to include the income of the decedent for the period ~~he or she~~ the decedent was alive and the income of the surviving spouse for the entire taxable year. The executor or administrator of the decedent is responsible for making the decedent's return.

AUTH: Sec. 15-30-305 MCA; IMP, Sec. 15-30-142 MCA

42.15.305 TRUST AND ESTATE RETURNS (1) If an estate or trust has gross income for its taxable year in excess of ~~the its~~ allowable exemption credit amount for that taxable year, the fiduciary of the estate or trust shall make and file a return. However, estates or trusts held exclusively for charitable, educational, or religious purposes are not subject to tax and a return is not required thereof.

(2) and (3) remain the same.

AUTH: Sec. 15-30-305 MCA; IMP, Sec. 15-30-135 MCA

42.15.309 MONTANA MODIFIED ADJUSTED GROSS INCOME (1) through (3) remain the same.

(4) Montana modified adjusted gross income does not include the following:

- (a) ~~Montana~~ state refunds;
- (b) exempt Montana retirement income;
- ~~(c) part year resident income not earned in Montana;~~
- ~~(d) (c)~~ any tier one and tier two railroad retirement benefits;
- ~~(e) (d)~~ the Montana capital gain exclusion; and
- ~~(f) (e)~~ any other income not taxable under 15-30-111~~(2)~~, MCA, except for interest received from U.S. and Montana obligations.

~~(5) Part year resident's social security benefits will be~~

~~taxable only for the time they are Montana residents.~~

~~(6) The part-year resident's base amount must be prorated according to the percentage of Montana income to the federal income before addition of any taxable social security benefits.~~

~~(7) (5) A married person filing separately on the same form must claim \$16,000, one-half of the base amount as allowed a married individual by under section 86 of the internal revenue code.~~

~~(8) Nonresident's social security benefits are not taxable.~~

AUTH: Sec. 15-30-305 MCA; IMP, Sec. 15-30-111 MCA

42.15.311 INFORMATION RETURN (1) Information returns are to be made on a copy of the appropriate federal information return (form 1099 series, etc.). Upon approval from the department, computer generated tapes and diskettes may be substituted for the forms may be filed on paper documents, electronically, or on magnetic media. They are due on or before the 15th day of April following the close of the calendar year with respect to which the payments made are being reported. The returns are to be filed with the Montana Department of Revenue, Income and Miscellaneous Tax Division, Compliance Section, P.O. Box 202701, Helena, Montana 59620 2701.

(2) Information returns are due on or before the 15th day of April following the close of the calendar year with respect to which payments made are being reported. The returns are to be filed with the department of Revenue, Mitchell Building, Helena, Montana 59620 Paper documents are to be prepared on the appropriate federal information return and a copy filed with the department. Returns filed on paper forms are to be accompanied by a copy of federal form 1096 summarizing the information being reported to the department. Information returns filed via magnetic media are to be accompanied by a copy of federal form 4804/4802 summarizing the information submitted to the department.

(3) Information returns filed electronically or on magnetic media are to conform to the specifications outlined in federal publication 1220 for the applicable year. A copy of federal form 4804/4802 must be used to transmit the magnetic files.

~~(4) (4) Distributions to recipients with a Montana address from pension, profit sharing, stock bonus, or annuity plans, deferred compensation plans, an IRA or commercial annuity program must be reported to the department on a federal form 1099 paper document or magnetic media.~~

(5) Only information returns reporting payments that are taxable under Title 15, chapter 30, MCA, are to be reported to the department on paper document, electronic or magnetic media.

AUTH: Sec. 15-30-305 MCA; IMP, Sec. 15-30-301 MCA

42.15.312 REPRODUCTION OF RETURN FORMS (1) Subject to the following conditions, the department will accept reproduction of the official return forms:

~~(1)~~ (a) Reproductions must be facsimiles of the official form.

~~(2)~~ (b) They must duplicate the color of paper and the color of ink or be on white paper with black ink.

~~(3)~~ (c) They must be clearly legible.

~~(4)~~ (d) They must be on paper the quality and weight of the official form.

~~(5)~~ (e) They must be made on paper which may readily and permanently be written upon and stamped with ink.

~~(6)~~ (f) They must be of the same size as the official form.

(g) Only electronically transmitted returns using department approved software will be accepted.

AUTH: Sec. 15-30-305 MCA; IMP: Sec. 15-30-144 MCA.

42.15.313 FEDERAL RETURNS (1) The law requires every taxpayer to furnish the department, upon its request, with a true copy of ~~his~~ the taxpayer's federal income tax return filed for a specified taxable year.

(2) Failure by the taxpayer to furnish copies of requested federal returns within a reasonable time will make ~~him~~ the taxpayer liable for the penalties provided for under 15-30-321~~(3)~~, MCA.

AUTH: Sec. 15-30-305 MCA; IMP: Sec. 15-30-304 MCA.

42.15.314 CHANGES IN FEDERAL RETURNS OR TAXES (1) If a taxpayer fails to file within 90 days, a required report of changes or corrections in ~~his~~ the taxpayer's federal taxable income or an amended Montana return reflecting changes in federal taxable income as reported on an amended federal return, the period within which a deficiency in tax may be assessed is extended.

(2) In addition, the taxpayer will be liable for the penalties provided for under 15-30-321 ~~(2) & (3)~~, MCA.

AUTH: Sec. 15-30-305 MCA; IMP: Sec. 15-30-304 MCA.

42.15.315 ORIGINAL RETURN DEFINED (1) through (7) remains the same.

(8) An extension of time to file does not extend the time to pay. When a return is filed before the extension date and payment is not made, the return is subject to late pay penalties.

(9) remains the same.

AUTH: Sec. 15-30-305 MCA; IMP: Secs. 15-30-321 and 15-30-149 MCA

42.15.322 SEPARATE RETURNS FOR MARRIED TAXPAYERS (1) If husband and wife file separate returns, each must report ~~his or her~~ their own adjusted gross income. Under no circumstances may income be arbitrarily assigned from one spouse to the other.

(2)(a) Income from salaries, wages, bonuses, and commissions and other income derived from personal services

rendered either as an employee or as an independent contractor must be reported by the spouse who earned it.

(b) Income such as rents, royalties, dividends, and interest must be reported by the spouse who owns the property from which the income is derived. If such income is derived from property which is jointly owned by the spouses, ~~it must be allocated between them according to their legal interest in the property and their legal rights to the income derived therefrom the income must be split equally unless the taxpayers show a different proportional ownership.~~

(c) The net income from any business conducted as a proprietorship must be reported in full by the spouse who is the individual proprietor. However, in the event the proprietor's spouse regularly and systematically renders substantive personal services in the operation of the business and with respect to which services he or she is not paid a salary or wages, the proprietor and the spouse may, at their option, agree that the spouse earned an amount equivalent to reasonable compensation for the services rendered, and such amount shall be deemed income taxable to that spouse as compensation for services rendered and such amount shall reduce the proprietorship income taxable to the spouse who is the actual proprietor. Income deemed earned by the spouse for services rendered cannot be justified solely by a legal property-holding arrangement, but must be justified by showing a substantial contribution of personal services. The allocated amount cannot exceed the gross income derived from a sole proprietorship.

(3) and (4) remain the same.

AUTH: Sec. 15-30-305 MCA; IMP, Sec. 15-30-142 MCA

42.15.324. HANDLING OF ELDERLY HOMEOWNER CREDIT RETURNS

(1) Filing date for elderly credit returns:

~~(1)~~ (a) Returns claiming the elderly homeowner credit, when filed apart from the income tax return, must be submitted on or before April 15 of the year following the year for which credit is sought. When such a claim is filed late, a letter which states the reason for being late must be attached. If there is good reason for the late filing, the return will be accepted by the department. Claims filed more than 5 years late will not be accepted.

~~(2)~~ (b) Returns claiming the elderly homeowner credit, when filed with or when amending an income tax return, are considered a part of the income tax return and are subject to the same statute of limitations that applies to income tax returns.

AUTH: Sec. 15-30-305 MCA; IMP, Sec. 15-30-174 MCA.

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

RULE 1 DEFINITIONS (1) As used in this sub-chapter the following definitions apply:

(a) The term "entity" shall mean any such business organization as defined in (b).

(b) The term "multi-jurisdictional entity" means any business organization which is classified as a partnership, S corporation, limited liability partnership or a limited liability company for tax purposes by Montana and has nonresident partners, members or shareholders.

(c) An "eligible nonresident partner or shareholder" means an individual who does not reside in Montana and whose only Montana source income is derived from the entity.

AUTH: Sec. 15-30-305 MCA; IMP: Sec. 15-30-105 MCA.

RULE II COMPOSITE RETURN (1) A multi-jurisdictional entity, may elect to file a composite tax return and remit a composite tax payment on behalf of all eligible nonresident partners, shareholders, and members of a limited liability company who consent to be included in the filing. The tax is based on the aggregate amount of each eligible partner's, shareholder's and member's distributive share of the entity's taxable income earned in Montana for a taxable year.

(2) The composite tax payment shall be remitted by the entity to Montana for the eligible nonresident partners, members or shareholders covering the aggregate tax on the total of the net distributive Montana income from the entity of those individuals included in the composite return.

(3) A nonresident partner's, member's or shareholder's share of entity's federal income is the aggregate of such partner's, member's or shareholder's share of each item of the entity's income, gain, deduction, loss and credit.

(4) The entity, when filing a composite return, is acting on behalf of the individual partners, members or shareholders.

AUTH: Sec. 15-30-305 MCA; IMP: Sec. 15-30-105 MCA.

RULE III ELIGIBILITY (1) Any eligible entity required to file a return under Montana's income tax law may elect to file a composite income tax return for two or more eligible consenting nonresident partners, members or shareholders who derive Montana income from such a source. Eligible nonresident partners, members, or shareholders included in a composite return shall not file separate income tax returns.

(2) The entity must obtain prior written permission from the department to file a composite tax return.

(3) The entity shall maintain a file of powers of attorney executed by each partner, member, or shareholder, included in the composite return, authorizing the entity to file the composite return and act on each partner's, member's, or shareholder's behalf.

(4) Income from the entity must be the only source of

Montana income for each eligible nonresident partner, member, or shareholder shown on the return. The only exception to this requirement is income which may be reported from another entity also reporting pursuant to this rule.

(5) A nonresident partner, member, or shareholder who derives income from Montana in addition to that realized from the entity is ineligible for inclusion in a composite return. The individual shall file a Montana individual income tax return for any year such other income is earned.

AUTH: Sec. 15-30-305 MCA; IMP: Sec. 15-30-105 MCA.

RULE IV FILING REQUIREMENT (1) The due date for filing a composite tax return is the same due date as the Montana individual income tax return.

(2) The name of each eligible nonresident partner, member, or shareholder shall be stated on a supporting schedule included with the return, along with each eligible partner's, member's, or shareholder's address, social security or employer identification number, respective interest in the entity, distributive share of the entity's taxable income, income earned in Montana and such other information as the department may require.

(3) The minimum filing threshold for each eligible nonresident partner or shareholder of a composite return is the same as the filing requirement for a single nonresident individual.

(4) A composite return will be filed on forms prescribed by the department.

(5) An entity intending to file a composite return may request an extension of time to file under the same laws that are applicable to an individual.

AUTH: Sec. 15-30-305 MCA; IMP: Sec. 15-30-105 MCA.

RULE V COMPUTATION OF TAX (1) The entity's Montana income shall be computed taking into account all items of income, gain, deductions, losses and credits or other expenses of the entity which are deductible only by the entity and which are attributable to Montana.

(2) An eligible nonresident partner's, member's, or shareholder's share of taxable income earned in Montana is the aggregate of each item of the entity's income, gain, deduction, loss and credits in Montana. If this cannot be easily attained, the entity should use the formula set out in ARM 42.16.1117 to apportion income to Montana.

(3) The Montana taxable income for each eligible nonresident partner, member, or shareholder is found by deducting the allowable standard deduction for a single individual and one exemption allowance from the participant's

share of their federal income from the entity.

(4) The tax for each eligible nonresident partner, member, or shareholder is found by calculating the tax on the participant's taxable income using the rates specified in 15-30-103, MCA. The tax due and payable is then determined by taking the ratio of each nonresident partner's, member's, or shareholder's income earned in Montana from the entity to the partner's, member's, or shareholder's total federal income from the entity times the total tax on the partner's or shareholder's Montana taxable income.

(5) The entity may be required to make quarterly estimated tax payments as prescribed by 15-30-241, MCA.

(6) The entity is subject to the old fund liability tax. The old fund liability tax is equal to 0.2% of the Montana income of each eligible nonresident partner, member, or shareholder. The income subject to the old fund liability tax is the nonresident partner's or shareholder's share of the entity's ordinary income derived from Montana sources. However, income from a publicly traded limited liability partnership is not subject to the old fund liability tax.

(7) The old fund liability tax is subject to the estimated tax provisions and must be included with the four installments when filing estimated taxes.

(8) The total tax due of the composite return consists of the total of all the eligible nonresident partners' or shareholders' Montana income tax and old fund liability tax.

AUTH: Sec. 15-30-305 MCA; IMP: Sec. 15-30-105 MCA.

RULE VI RESPONSIBILITY OF ENTITY (1) Any assessments of additional tax, penalties and interest shall be the responsibility of the entity filing the return. Any additional assessment will be based on the total liability of the composite return.

(2) The entity or its representative shall represent the eligible nonresident partners or shareholders in any appeals, claims for refunds, hearings, or court proceedings in any matter relating to the filing of the composite return.

(3) Failure to comply with the terms and conditions to file a composite return shall be grounds for cancellation of the privilege to file a composite return for that period. Should that occur, normal filing procedures will be required of each nonresident partner or shareholder.

AUTH: Sec. 15-30-305 MCA; IMP: Sec. 15-30-105 MCA.

4. Amendments to ARM 42.15.101, 42.15.301, 42.15.303, 42.15.305, 42.15.309, 42.15.311, 42.15.312, 42.15.313, 42.15.314, 42.15.315, 42.15.322, and 42.15.324 are housekeeping in compliance with 2-4-314, MCA which requires

agencies to complete a biennial review of the rules.

Rules I through VI are proposed to define what a composite return is, who is eligible to file, the filing requirement, and how to compute the tax of a composite return. Montana income tax laws require compliance by those nonresidents whose only income is from those entities doing business in Montana. The rules provide for consistent taxation of these entities.

5. Interested parties may submit their data, views, or arguments concerning the proposed action in writing to:

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


no later than September 5, 1996.

6. If a person who is directly affected by the proposed action wishes to express his data, views and 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 Cleo Anderson at the above address no later than September 5, 1996.

7. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the Administrative Code Committee of the Legislature; from a governmental subdivision, or agency; or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be greater than 25.



CLEO ANDERSON
Rule Reviewer



MICK ROBINSON
Director of Revenue

Certified to Secretary of State July 29, 1996

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT) NOTICE OF PROPOSED AMENDMENT
OF ARM 42.25.1810 relating to)
Oil & Gas Rules)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On September 20, 1996, the Department of Revenue proposes to amend ARM 42.25.1810 relating to oil and gas rules.
2. The rule as proposed to be amended provides as follows:

42.25.1810 DISTRIBUTION (1)(a) through (c) remain the same.

(d) The department may enter into revenue sharing agreements with Indian tribes which may change the distribution described in this rule for production within an Indian reservation.

Table I TYPE	Local Govt Share	State Govt Share	General Fund	Board of Oil and Gas	Distrib- uted to RIGWAT
OIL PRODUCTION					
Working Interest					
Stripper					
Pre-1985 and Post 1985 Wells					
First 3 Barrels	86.20%	13.280%	0.00%	37.50%	62.50%

The remainder of Table I remains the same.

(2) through (6) remain the same.

AUTH: 15-36-322, MCA; IMP: 15-36-324, MCA;

3. ARM 42.25.1810 is proposed to be amended because the local and state government's share columns in Table I of ARM 42.25.1810 must add up to 100%. Working interest for pre-1985 and post-1985 wells for the state government share needs to be amended from 13.20% to 13.80%.

4. Interested parties may submit their data, views, or arguments concerning the proposed action in writing to:

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

no later than September 5, 1996.

5. If a person who is directly affected by the proposed amendments wishes to express his data, views and 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 Cleo Anderson at the above address no later than September 5, 1996.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 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 no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be greater than 25.


CLEO ANDERSON
Rule Reviewer


MICK ROBINSON
Director of Revenue

Certified to Secretary of State July 29, 1996.

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES
OF THE STATE OF MONTANA

In the matter of the repeal of	) NOTICE OF PUBLIC
ARM 44.10.411, INCIDENTAL	) HEARING ON PROPOSED
POLITICAL COMMITTEE, FILING	) AMENDMENT TO ARM 44.10.327
SCHEDULE, REPORTS	) AND 44.10.411

TO: All Interested Persons.

On April 25, 1996 the Commissioner of Political Practices published a notice at page 1126 of the Montana Administrative Register, Issue No. 8, of the proposed repeal with no public hearing of the above-captioned rule. The notice of the proposed action by the commissioner is amended as follows because Common Cause of Montana, the Montana Environmental Information Center, Montanans for Clean Water, and the Montana Public Interest Research Group (MontPIRG) have submitted written requests for a public hearing. The commissioner, therefore, proposed amendments to rules 44.10.327 and 44.10.411 and scheduled a public hearing.

1. On August 29, 1996 at 10:00 a.m., a public hearing will be held in Room 437 of the State Capitol Building, Helena, Montana, to consider the proposed amendments to rules 44.10.327 and 44.10.411.

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

44.10.327 POLITICAL COMMITTEE, TYPES (1) For purposes of Title 13, chapters 35 and 37, MCA, and these rules, political committees shall be of three types:

- (a) ~~Principal~~ principal campaign committee;
- (b) ~~independent independent~~ committee; and
- (c) ~~incidental incidental~~ committee.

(2) These types of political committees are defined as follows:

(a) A principal campaign committee is a committee which is specifically organized to support or oppose a particular candidate or issue.

(b) An independent committee is a committee which is not specifically organized to support or oppose any particular candidate or issue but one which is organized for the primary purpose of supporting or opposing various candidates and/or issues over ~~a continuing~~ an extended period of time. For example, political party committees and political action committees (PACs) are independent committees.

(c) An incidental committee is a ~~an independent~~ committee which is not organized or maintained for the primary purpose of influencing elections but which may incidentally become a political committee by reason of making a contribution or expenditure to support or oppose a candidate and/or issue. For

example, a business firm or a partnership which makes an expenditure to support or oppose an issue is an incidental committee.

(3) "Primary purpose" shall be determined upon such criteria as allocation of budget, staff or members' activity, and the statement of purpose or goals of the individuals or person.

AUTH: 13-37-114, MCA

IMP: 13-37-226(6), MCA

44.10.411 INCIDENTAL POLITICAL COMMITTEE, FILING SCHEDULE, REPORTS REPORTING REQUIREMENTS (1) An incidental political committee shall file reports according to the schedule set forth in section 13-37-226(4)(a) and (b), MCA, except that it shall only file reports for the reporting periods in which it makes contributions or expenditures for the purpose of directly or indirectly influencing the result of an election. Incidental committees are required to report all contributions and expenditures made to or on behalf of a candidate or issue to the commissioner of political practices and to the appropriate county election administrator if the committee is based in Montana.

(2) If an incidental committee makes a contribution or expenditure in connection with an election after the closing date of books for the post-election report, it shall file a report within 20 days after the date of that contribution or expenditure. But if the election was a primary election and the committee will participate in the general, it shall, instead, file the pre-general report. The commissioner, upon verification that a contribution or expenditure to or on behalf of a candidate or issue has been made by an incidental committee, shall immediately notify the committee of its reporting requirements and provide the necessary reporting forms. The incidental committee shall file the reporting form with the commissioner and, if the committee is based in Montana, shall also file a reporting form with the appropriate county election administrator within five working days upon receipt of the forms. The incidental committee is required to file a reporting form for each contribution or expenditure made to or on behalf of a candidate or issue.

(3) An incidental political committee shall report contributions made to or on behalf of a candidate, issue, or political committee or to influence the results of an election in accordance with the requirements of ARM 44.10.511 and 44.10.531, with the following differences:

(a) If the incidental political committee is a firm, partnership, or other business entity, it need not report the original sources of the contributions so long as they were received in the normal course of business and were not gained, expressly or implicitly, for the purpose of being used, directly or indirectly, to influence an election.

(b) If the incidental political committee is an organization which has as its principal source of income the collection of dues, fees, subscriptions, or other sources of

~~funds of a uniform amount from every member, it need not report the individual sources of the funds, unless the result of the following calculation equals more than \$25 per person: Multiply the amount of the individual dues gained in a year, or whatever the period of membership paid for covers, whichever is greater, by the percentage of the total resources of the committee for the same period allocated to the influencing of elections, or~~

~~(c) If the incidental political committee is an organization which has as its principal source of income the collection of dues, fees, subscriptions, or other sources of funds of varying amounts from members, it must report the sources of the income of \$25 or more from each person or the committee may utilize the formula set forth in subsection (3)(b) of this rule.~~

~~(d) The terms "contribution" and "expenditure" do not include non-partisan activity of an incidental political committee which is designed to educate or to encourage individuals to register to vote, or to vote, and which does not favor any particular candidate, party, issue, or political committee.~~

AUTH: 13-37-114, MCA

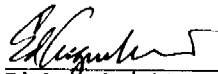
IMP: 13-37-226(6), MCA

The amendments are necessary to reflect the current practice and procedure. An adequate process is in place that requires reporting which is consistent with the statutes.

3. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Commissioner of Political Practices, 1205 8th Ave., P. O. Box 202401, Helena, MT 59620-2401, no later than September 6, 1996.

4. Kimberly Chladek, attorney, has been designated to preside over and conduct this hearing.

COMMISSIONER OF POLITICAL PRACTICES



Ed Argenbright, Ed.D.
Commissioner


Kimberly Chladek
Rule Reviewer

Certified to the Secretary of State, July 29, 1996.

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

In the matter of the	)	CORRECTED NOTICE OF AMENDMENT
amendment of Rules 6.6.503,)	
6.6.507, 6.6.507A, 6.6.508,)	
6.6.508A, 6.6.509, 6.6.510,)	
6.6.511, 6.6.515, 6.6.517,)	
6.6.519 and 6.6.521)	
pertaining to medicare)	
supplement insurance)	
)	
)	

TO: All Interested Persons

1. On April 25, 1996, the Department published a notice of public hearing at page 947 of the Montana Administrative Register, Issue No. 8, on the proposed amendment of Rules 6.6.503, 6.6.507, 6.6.507A, 6.6.508, 6.6.508A, 6.6.509, 6.6.510, 6.6.511, 6.6.515, 6.6.517, 6.6.519 and 6.6.521 pertaining to medicare supplement insurance. On June 20, 1996, the Department published the notice of amendment at page 1637 of the Montana Administrative Register, Issue No. 12.

2. Due to clerical error, ARM 6.6.521 was worded incorrectly in the notice of public hearing. The corrected rule amendment reads as follows:

6.6.521 REPORTING OF MULTIPLE POLICIES (1) On or before March 1 of each year, every issuer shall report ~~the following information, on the form~~ contained in Appendix B of the NAIC Model Regulation To Implement The NAIC Medicare Supplement Insurance Minimum Standards Model Act, April 1995, information for every individual resident of this state for which the issuer has in force more than one medicare supplement insurance policy or certificate. This form is hereby adopted and incorporated by reference. This form may be obtained by writing to the Montana Insurance Commissioner, P.O. Box 4009, Helena, Montana 59604-4009. The following information must be reported:

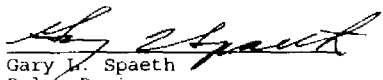
(1)(a) through (2) remain the same.

3. Replacement pages for this sub-chapter were submitted to the Secretary of State on June 30, 1996.

MARK O'KEEFE
STATE AUDITOR AND
COMMISSIONER OF INSURANCE

BY:


Frank G. Cote
Deputy Insurance Commissioner


Gary L. Spaeth
Rules Reviewer

Submitted to the Secretary of State on this 29th day of July, 1996.

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

In the matter of the amendment of)
Rules 6.6.1101 through 6.6.1104) CORRECTED NOTICE OF
and 6.6.1110 pertaining to Credit) AMENDMENT
Life and Disability Insurance)

TO: All Interested Persons

1. On April 25, 1996, the Department published a notice of public hearing at page 955 of the Montana Administrative Register, Issue No. 8, on the proposed amendment of Rules 6.6.1101 through 6.6.1104 and 6.6.1110 pertaining to Credit Life and Disability Insurance. On June 20, 1996, the Department published the notice of amendment at page 1646 of the Montana Administrative Register, Issue No. 12.

2. Due to a typographical error, the definition of "dis", following the formulas in rule 6.6.1101(1)(b), listed a discount rate of 4% for mortality, instead of .4%. The corrected rule amendment reads as follows:

6.6.1101 CREDIT LIFE INSURANCE--ACCEPTABLE RATES

(1) through definition of I_1 in (1)(b) remain the same as amended in the Notice of Amendment.

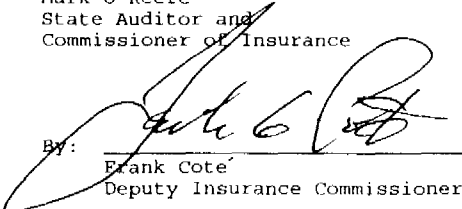
dis = .0036, representing an annual discount rate of 4% for interest plus .4% for mortality.

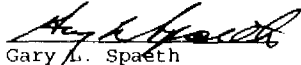
The remainder of (1)(b) through (3) remain the same as amended in the Notice of Amendment.

AUTH: 33-21-111, MCA
IMP: 33-21-205, MCA

3. Replacement pages for the corrected notice of amendment were submitted to the Secretary of State on June 30, 1996.

Mark O'Keefe
State Auditor and
Commissioner of Insurance

By: 
Frank Cote
Deputy Insurance Commissioner


Gary L. Spaeth
Rules Reviewer

Certified to the Secretary of State this 26th day of July, 1996.

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

In the matter of the repeal of) CORRECTED NOTICE
Title 6, Chapter 6, Sub-Chapter 20) OF REPEAL
pertaining to unfair trade)
practices on cancellations,)
non-renewals, or premium increases)
of casualty or property insurance.)

TO: All Interested Persons.

1. On December 21, 1995, the Department published notice of proposed repeal at page 2720 of the Montana Administrative Register, Issue No. 24, on the proposed repeal of Title 6, Chapter 6, Sub-Chapter 20 pertaining to unfair trade practices on cancellations, non-renewals, or premium increases of casualty or property insurance. On February 8, 1996, the Department published the notice of repeal at page 414, of the Montana Administrative Register, Issue No. 3.

2. The citations of sections implemented by ARM 6.6.2001 through 6.6.2006 were incorrectly typed in the notice of proposed repeal and the notice of repeal. The correct implementing citation for each of the repealed rules reads as follows:

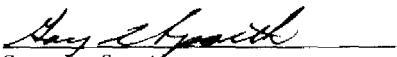
IMP: ~~2-4-305 and 2-4-314~~ 23-18-1003, MCA

3. Replacement pages for the corrected notice of adoption were submitted to the Secretary of State on June 30, 1996.

Mark O'Keefe
State Auditor and
Commissioner of Insurance

By: 

Frank Cote
Deputy Insurance Commissioner


Gary L. Spaeth
Rules Reviewer

Certified to the Secretary of State this 26th day of July,
1996.

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

In the matter of the repeal of	)	CORRECTED NOTICE OF
Rules 6.6.2007 through 6.6.2010	)	REPEAL
pertaining to unfair trade)	
practices on cancellations, non-)	
renewals, or premium increases of)	
casualty or property insurance.)	

TO: All Interested Persons

1. On April 4, 1996, the Department published a notice of public hearing at page 869 of the Montana Administrative Register, Issue No. 7, on the proposed repeal of Rules 6.6.2007 through 6.6.2010 pertaining to unfair trade practices on cancellations, non-renewals, or premium increases of casualty or property insurance. On May 23, 1996, the Department published the notice of repeal at page 1370 of the Montana Administrative Register, Issue No. 10.

2. The citations of sections implemented by ARM 6.6.2007 through 6.6.2010 were incorrectly typed in the notice of proposed repeal and the notice of repeal. The correct implementing citation for each of the repealed rules reads as follows:


IMP: 33-18-1003 ~~and 2-4-314~~, MCA

3. Replacement pages for the corrected notice of adoption were submitted to the Secretary of State on June 30, 1996.

Mark O'Keefe
State Auditor and
Commissioner of Insurance

By: 

Frank Cote
Deputy Insurance Commissioner


Gary L. Spaeth
Rules Reviewer

Certified to the Secretary of State this 26th day of July,
1996.

15-8/8/96

Montana Administrative Register

BEFORE THE BUILDING CODES BUREAU
DEPARTMENT OF COMMERCE
STATE OF MONTANA

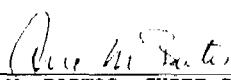
In the matter of the amendment	)	NOTICE OF AMENDMENT OF
of rules pertaining to the	)	8.70.108 INCORPORATION BY
incorporation by reference of	)	REFERENCE OF CABO ONE & TWO
CABO one & two family dwelling	)	FAMILY DWELLING CODE, 8.70.
code, funding of code enforce-	)	208 FUNDING OF CODE ENFORCE-
ment programs, extension of	)	MENT, 8.70.211 EXTENSION OF
municipal jurisdictional area	)	MUNICIPAL JURISDICTIONAL
and the incorporation by refer-	)	AREA, 8.70.601 INCORPORATION
ence of safety code for	)	BY REFERENCE OF SAFETY CODE
elevators and escalators	)	FOR ELEVATORS AND ESCALATORS
	)	ASME A17.1 - 1993, ASME
	)	A17.1a - 1994 ADDENDA AND
	)	A17.1b - 1995 ADDENDA

TO: All Interested Persons:

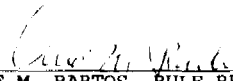
1. On June 6, 1996, the Building Codes Bureau published a notice of proposed amendment of the above-stated rules at page 1475, 1996 Montana Administrative Register, issue number 11.
2. The Bureau has amended the rules exactly as proposed.
3. No comments or testimony were received.

BUILDING CODES BUREAU
JAMES BROWN, BUREAU CHIEF

BY:



ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE



ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, July 29, 1996.

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

In the matter of the amendment) NOTICE OF AMENDMENT OF
of a rule pertaining to) 8.80.108 LIMITATIONS ON
limitations on loans) LOANS

TO: All Interested Persons:

1. On February 8, 1996, the Banking and Financial Institution Division published a notice of public hearing on the proposed amendment of rules pertaining to limitations on loans, at page 355, 1996 Montana Administrative Register, issue number 3.

2. The Division has amended ARM 8.80.108 as proposed with the following changes:

"8.80.108 LIMITATIONS ON LOANS (1) through (c)(ii)(B) will remain the same as proposed.

(d) "Control" means the following:

(i) the ownership, control or ability to vote 25% 50% or more of a corporation's outstanding voting stock. ~~but shall be construed to be a lesser percentage if control of the corporation is evident. The department's decisions concerning control will be based on analysis of information obtained from bank examinations; from requests by a bank, individual or organization; from official documents of the corporation or from any other reliable sources that are available. In no case will control be deemed to exist when a person owns, controls or has the ability to vote less than 25% of a corporation's outstanding voting stock.~~

(ii) the ability to control, in any manner, the election of a majority of a corporation's directors;

(iii) the power to exercise a controlling influence over the management or policies of a corporation. ~~The existence of such power may be acknowledged by the controlling person, the controlled corporation, or by the bank. It may also be inferred by a reasonable person.~~

(e) The proceeds of a loan or extension of credit to a person will be deemed to be used for the "direct benefit" of another person and the amount of the loan will be attributed to the other person when the proceeds, or assets purchased with the proceeds, are transferred to the other person. For the purpose of this definition, when the proceeds are used to acquire property, goods or services through a bona fide arm's length transaction, a direct benefit will not have occurred with regard to the seller of the property, goods or services.

(i) "Bona fide arm's length transaction" means an actual transaction, performed in good faith, between two or

more parties, with each party acting in his or her own self-interest, ~~and motivated by ordinary fair-market considerations. If the parties involved in the transaction are related, whether through family membership, business connections, or other close affiliation, the existence of a bona fide arm's-length transaction will determined by comparing the terms of the transaction with what would have occurred had unrelated third parties been involved.~~

(f) "Loan or extension of credit" includes, but is not limited to:

(i) direct loans, whether on the bank's books or charged off the bank's books, subject to the exclusions in (3) (a) below,

(ii) loans, extensions of credit, or participation in loans or extensions of credit sold with recourse to or guaranteed by the bank,

(iii) letters of credit, other than standby letters of credit,

(iv) overdrafts, excluding intra-day overdrafts for which the bank receives payment prior to its close of business.

(2) through (3)(c) will remain the same as proposed."

3. A public hearing was held on March 7, 1996, and oral and written testimony was received. Written comments were also accepted until 5:00 p.m., March 7, 1996. The Division has thoroughly considered all comments received. Those comments, and the Division's responses thereto, are as follows:

COMMENT NO. 1: One of the individuals stated that additional clarification to section (1)(d) is necessary to more firmly define "control".

RESPONSE: The Division agrees. The Division will amend section (1)(d)(i) of the proposed amendment to read as follows:

(i) the ownership, control or ability to vote 25% or more of a corporation's outstanding voting stock. The Division also will amend section (1)(d)(iii) by deleting the last two sentences of the proposed section (1)(d)(iii).

COMMENT NO. 2: One written comment recommended the inclusion of overdrafts in the definition of loans or extensions of credit, section (1)(f).

RESPONSE: The Division agrees that, in order to avoid any possibility of confusion, overdrafts should be included as a type of loan or extension of credit. Section (1)(f) will be amended to include a new subsection (iv) as follows:

(iv) overdrafts, excluding intra-day overdrafts for which the bank receives payment prior to its close of business.

COMMENT NO. 3: One written comment stated that the

definition of a common enterprise (section (1)(c)) creates the potential for unnecessarily complicated and judgmental determinations when analyzing the relationships of borrowers. The writer recommends that the Division instead adopt the procedure used by the Office of the Comptroller of the Currency (OCC) in determining whether a common enterprise exists.

RESPONSE: The Division reviewed the OCC's lending limit regulations (12 CFR, Chapter 1, Part 32) while the proposed amendment was being drafted. The definition of common enterprise as used by the OCC was transferred, with little modification, to the proposed amendment. The Division has again reviewed the most recent source available (June, 1996) of OCC's definition of common enterprise and found no change from the regulation used when the proposed amendment was drafted. The Division does not recognize a substantive difference between the approach used by the OCC and that contained in the proposal.

COMMENT NO. 4: The same writer opposes the proposed concept of a "direct benefit" (section (1)(e)), particularly the proposed definition of "bona fide arm's length transaction", as that concept related to a direct benefit.

RESPONSE: The Division agrees that the proposed definition of "bona fide arm's length transaction" could be applied in a restrictive manner. The Division will change the proposed definition of "bona fide arm's length transaction" by shortening the definition. The new definition will read as follows:

- (i) "Bona fide arm's length transaction" means an actual transaction, performed in good faith, between two or more parties, with each party acting in his or her own self-interest.

The Division believes that this change will limit a bank's need to become involved in the areas the writer is concerned about. It will allow good faith transactions between friends or family members or related parties. The proposed definition of "direct benefit" excluding the definition of "bona fide arm's length transaction" is substantially the same as that used by the OCC.

COMMENT NO. 5: One writer stated general opposition to the definitions of common enterprises and direct benefits, believing that the definitions will serve to restrict lending to related groups of borrowers beyond what is currently allowed.

RESPONSE: The Division believes that the proposed amendment will provide expanded lending opportunities for most related groups of borrowers. While there may be isolated instances where related groups of borrowers will have less borrowing ability, those instances should be rare.

-2164-

BANKING AND FINANCIAL
INSTITUTIONS DIVISION

BY:

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

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, July 29, 1996.

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

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

TO: All Interested Persons:

1. On April 25, 1996, the Banking and Financial Institutions Division published a notice of proposed amendment of the above-stated rule at page 986, 1996 Montana Administrative Register, issue number 8.
2. The Division has amended the rule exactly as proposed.
3. No comments or testimony were received.

BANKING AND FINANCIAL
INSTITUTIONS DIVISION
DONALD HUTCHINSON, COMMISSIONER
OF BANKING AND FINANCIAL
INSTITUTIONS

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

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, July 29, 1996.

BEFORE THE ECONOMIC DEVELOPMENT DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT OF
of rules pertaining) 8.99.401, 8.99.404, 8.99.405,
to the Microbusiness Advisory) 8.99.504, 8.99.505 AND
Council) 8.99.511

TO: All Interested Persons:

1. On March 7, 1996, the Department of Commerce published a notice of proposed amendment of the above-stated rules at page 636, 1996 Montana Administrative Register, issue number 5.

2. The Division has amended the rules exactly as proposed.

3. Comments and testimony were received. Those comments and responses are as follows:

COMMENT NO. 1: Written comments submitted by Nancy Bond of the Region I Microbusiness Development Corporation (MDBC), Northwest Montana Human Resources, Inc. and Rosalie Sheehy Cates of the Region II MDBC, Montana Western Region Economic Development Group, Inc., and testimony by Mr. Jim Plum and Ms. Kelly Flaherty of the Region V MDBC, the Women's Capital Fund, Inc., supported the proposed rules.

RESPONSE: The Department acknowledges these comments.

COMMENT NO. 2: Written comments submitted by Nancy Bond of the Region I MDBC, and Rosalie Sheehy Cates of the Region II MDBC and verbal testimony offered by Mr. Jim Plum and Ms. Kelly Flaherty supported all changes as satisfactory.

RESPONSE: The Department acknowledges these comments.

COMMENT NO. 3: Nancy Bond of the Region I MDBC through written comment and Kelly Flaherty of the Region V MDBC in public comment asked if performance of the MDBC is defined in ARM.

RESPONSE: Performance of the MDBC is not defined in the ARM but in the statute and the agreement.

COMMENT NO. 4: Mr. Jim Plum of Region V MDBC asked if interest rate notices will be sent by the Department to the MDBC's.

RESPONSE: The Department will send New York Prime interest to the MDBC's.

COMMENT NO. 5: Kelly Flaherty of Region V MDBC asked if it is the Department's position that the "standards of

practice" are no longer beneficial to the microbusiness program.

RESPONSE: The standards of practice have been repealed.

COMMENT NO. 6: Kelly Flaherty of Region V MDBC asked in public comment if the Department is eliminating the language "standards of evaluation based on the standard of practice."

RESPONSE: The standards of practice have been repealed.

COMMENT NO. 7: Kelly Flaherty of Region V MDBC asked in public comment if performance is only defined as non-payment of interest to the state.

RESPONSE: Performance is defined in the contract and includes non-payment of interest to the state and other performance criteria.

COMMENT NO. 8: Kelly Flaherty of Region V MDBC asked if an MDBC could apply to the Department for the twelve month extension referenced in the changes as a term for contract.

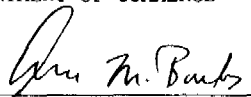
RESPONSE: The Department does not preclude an MDBC from requesting a one year extension. Contract extension of the one year period may be approved by the Department in lieu of repayment for non-performing loan funds at the Department's discretion.

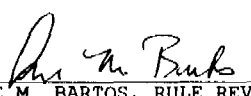
COMMENT NO. 9: Jim Plum of Region V MDBC asked if the Department has determined estimated cost savings by no longer having to produce a "standards of practice."

RESPONSE: The Department has not determined the cost savings of not producing a "standards of practice." Since a "standards of practice" has not been published there will be no cost savings.

ECONOMIC DEVELOPMENT DIVISION
DEPARTMENT OF COMMERCE

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, July 29, 1996.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the repeal,	)	NOTICE OF REPEAL,
amendment, transfer and	)	AMENDMENT, TRANSFER
adoption of rules relating	)	AND ADOPTION OF RULES
to school finance, budgeting	)	RELATING TO SCHOOL FINANCE,
and funding.	)	BUDGETING AND FUNDING

TO: All interested persons.

1. On May 9, 1996, the Superintendent of Public Instruction (OPI) published notice of public hearing on the proposed repeal, amendment, transfer and adoption of the rules referenced above at pages 1230 through 1259 of the 1996 Montana Administrative Register, Issue No. 9.

2. A public hearing was held on May 30, 1996, and one comment was received. In addition, one written comment was received prior to the closing of the comment period.

3. After consideration of the comments received, the following rules are being repealed as proposed: 10.20.201, 10.20.202, 10.21.105, 10.22.202, 10.22.206 and 10.23.106.

4. After consideration of the comments received, the following rules are being amended as proposed: 10.10.301, 10.10.301B, 10.10.301C, 10.10.301D, 10.10.302, 10.10.312, 10.10.503, 10.15.101, 10.20.103, 10.20.104, 10.21.101B, 10.21.101C, 10.21.101D, 10.21.101G, 10.21.101I, 10.21.102B, 10.21.104, 10.22.102, 10.22.103, 10.22.104, 10.22.105, 10.22.204, 10.22.205, 10.23.102, 10.30.402, 10.30.403 and 10.30.406.

5. After consideration of the comments received, the following rule is being amended, and transferred to Chapter 10, sub-chapter 20 as proposed: 10.23.101A renumbered 10.20.102A.

6. After consideration of the comments received, the following rules are being adopted as proposed and codified as follows: RULE I (10.20.105), RULE II (10.10.315), RULE III (10.30.415).

7. After consideration of the comments received, the following rules are being amended with the changes given below, new material underlined, deleted material interlined.

10.20.102 CALCULATION OF AVERAGE NUMBER BELONGING (ANB)
(1) - (10) remain the same as proposed.

(11) The time designated as PIR days must not overlap with the time designated as PI days.

(12) A minimum of three of the PIR days must be planned for the entire staff for instructional and professional development meetings or appropriate inservice training.

(11) - (13) remain the same as proposed, renumbered (13) - (15).

COMMENT: The MEA commented that the repeal of ARM 10.20.102(14) and (15) may cause additional controversy between school districts and their employees.

RESPONSE: The scheduling of PI and PIR days is a matter of local control. These subsections were proposed for repeal because the subject matter was covered in ARM 10.65.101-103. To avoid confusion, the deleted text is restored.

10.22.107 PETITION TO APPROPRIATE REVENUE TO FUND A PRIOR YEAR BUDGET AMENDMENT (1) In accordance with 20-9-168, MCA, a district may petition the superintendent of public instruction for approval to appropriate revenue in the ensuing school year to fund a current year general fund budget amendment adopted under 20-9-161(2), MCA, if expenditures authorized by the budget amendment resulted in a negative ending fund balance. The petition is necessary only when the district wishes to appropriate revenue in excess of the limitations in 20-9-308, MCA. The amount appropriated under this subsection may not exceed the unfunded amount of expenditures made for the current year budget amendment.

OPI COMMENT: In its proposed notice, OPI inadvertently deleted the word "subsection" from this rule.

RESPONSE: The correction is made.

10.22.201 AUTHORIZATION FOR BUDGET AMENDMENT ADOPTION


(1) - (6) remain the same.

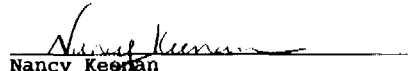
(7) A budget amendment may be adopted under the provisions of 20-9-161(5)(d) ~~(e)~~, MCA, to expend all or a portion of the taxes received in a prior year that have been identified as excess reserves under the provisions of 20-9-104(5), MCA, and ARM 10.22.103(3) and (4).

COMMENT: The Lewis and Clark County Superintendent commented that there was a referencing error in ARM 10.22.201, as proposed.

RESPONSE: OPI agrees and has changed the reference from 20-9-161(5)(d) to 20-9-161(5)(e).

8. Based on the foregoing, the Superintendent of Public Instruction hereby repeals, amends, transfers and adopts the rules as proposed with the changes noted above.


Kathleen F. Holden
Rule Reviewer
Office of Public Instruction


Nancy Keenan
Superintendent
Office of Public Instruction

Certified to the Secretary of State July 29, 1996.

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

In the matter of the adoption)
of a rule describing the)
application process and) CORRECTED NOTICE
criteria for a scientific) OF ADOPTION
collectors permit)

TO: All Interested Persons.

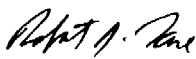
1. On April 25, 1996, the Montana Department of Fish, Wildlife and Parks published a notice of adoption of the above-captioned rule at page 1148 of the Montana Administrative Register, Issue No. 8.

2. The notice of adoption incorrectly identified new Rule I as ARM 12.7.1201. The correct rule number is ARM 12.7.1301.

3. Replacement pages for the corrected notice of adoption were submitted to the Secretary of State on June 30, 1996.

RULE REVIEWER

MONTANA DEPARTMENT OF FISH,
WILDLIFE AND PARKS



Robert N. Lane
Rule Reviewer



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

Certified to the Secretary of State on July 29, 1996.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the)	
adoption of rules)	
pertaining to the handling,	)	NOTICE OF ADOPTION
collection, transportation,)	
sampling and storage of blood)	
samples for DNA Indexing)	

TO: All Interested Persons

1. On June 20, 1996, the Department of Justice published notice of new rules I through III concerning the handling, collection, transportation, sampling, and storage of blood samples for DNA indexing. This notice was published at pages 1605 through 1608 of the 1996 Montana Administrative Register, issue number 12.

2. The department has adopted the rules with the following changes (matter stricken is interlined; matter added is underlined):

RULE I (23.4.501) DEFINITIONS Unless the context requires otherwise, the following definitions apply to this subchapter:

(1) "Blood" means whole blood which contains the cellular components and the serum or plasma of blood.

(2) "CODIS" means the FBI's national DNA identification index system that allows the storage and exchange of DNA records submitted by state and local forensic DNA laboratories. The term "CODIS" is derived from combined DNA index system.

(3) "Collection card" means the DNA database collection card prepared by the ~~department division~~ and provided furnished with the ~~blood DNA~~ sample collection kit.

(4) "Department" means the Montana department of justice.

~~(5) "DNA" means deoxyribonucleic acid.~~

(5) "Division" means the forensic science division of the Montana department of justice.

(6) "DNA databank" means the repository of DNA samples collected under the provisions of 44-6-101 through 44-6-110, MCA, and this subchapter.

(7) "DNA identification index" means the computerized identification record system adopted by the department for the storage and retrieval of an individual's DNA record.

(8) "DNA record" means DNA identification information stored in the department's DNA database or CODIS.

(9) "DNA sample" means a blood sample or ~~biological specimen tissue sample.~~

(10) "DNA sample collection kit" means a packet of materials issued by the division for use in collecting, storing and transporting DNA samples.

~~(10)~~ (11) "EDTA" means the preservative ethylenediaminetetraacetic acid.

- ~~(11) "FBI" means the federal bureau of investigation.~~
~~(12) "Laboratory" means the state crime laboratory of the division of forensic science, of the Montana department of justice, or any laboratory that performs forensic DNA analysis on samples or specimens derived from a human body or crime scene.~~
~~(13) (12) "Marker" means a genetic trait found in DNA including, but not limited to, the DNA marker D1S80 and the STR loci CSF1PO, TH01, TPOX, vWA (formerly vWF).~~
~~(14) "Preservative" means any chemical which inhibits the development of bacterial growth in a collected DNA sample.~~
~~(15) (13) "STR" means short tandem repeat.~~
~~(16) "Sexual offense" means the offense contained in the definition of that term in 46-23-502, MCA.~~
~~(17) "Violent offense" means an offense contained in 45-5-102, 45-5-103, 45-5-202, 45-5-302, 45-5-303, 45-5-401, or 45-6-103, MCA, or an equivalent offense under federal law or the law of another state.~~

AUTH: 44-6-110, MCA

IMP: 44-6-101, MCA

RULE II (23-4-502) COLLECTION OF BLOOD BIOLOGICAL SAMPLES FOR DNA ANALYSIS

~~(1) Following entry of a judgment in district court, or a disposition in youth court, a person convicted of a sexual or violent offense, or a youth found under 41-5-521, MCA, to have committed an act which, if committed by an adult, would constitute a violent or sexual offense, shall provide a blood sample for DNA analysis to a person or entity designated by the county attorney.~~

~~(2) (1) A blood DNA sample shall be collected in a medically approved manner by a physician, registered nurse, licensed practical or vocational nurse, licensed clinical laboratory technologist, or any other health care worker who is trained to properly collect blood samples or other biological specimens.~~

~~(3) (2) The laboratory division shall provide a reasonable quantity of blood DNA sample collection kits to criminal justice or law enforcement agencies in this state at no cost to that agency. A blood DNA sample collection kit shall consist of a sterile specimen vial, mailing tube and label, fiberboard shipping container bearing an international biohazard symbol, a specimen vial containing EDTA, a secondary mailing tube and absorbent material, a DNA database collection card, instructions for collection of blood DNA samples, and other items which may be designated as appropriate by the department division.~~

~~(4) Failure to use a blood sample collection kit provided by the department will not require the sample to be rejected so long as the collection and submission of the blood sample substantially conforms with the collection and submission of other specimens for diagnostic purposes. Specifically, the blood sample must be deposited in a sterile specimen vial which contains the preservative EDTA (the lavender topped tube), and labeled with the contributor's name and social security number.~~

(3) When collecting a DNA sample, a submitting agency shall use a DNA sample collection kit provided by the division, or any other method which is generally considered acceptable for the collection, storage and transportation of biological specimens. Any collected DNA sample, however, must be deposited in a sterile vacutainer which contains the preservative EDTA (known commonly by medical professionals as the purple- or lavender-topped tube). The submitting agency must not return the used needle, holder, or used pre pad to the division.

(4) If the DNA sample collection kit provided by the division is not utilized, the submitting agency shall package the sample for shipment to the division in compliance with United States postal service regulations (Domestic Mail Manual § C023.10.4) for mailing biological specimens. The sample shall be enclosed in a primary container and a secondary container, with sufficient absorbent material to prevent, in the case of leakage of the primary container, any materials from escaping the outside shipping container. The outside shipping container should be plainly marked "Biological Specimen - Handle With Care" and should bear the international biohazard symbol. The outside container shall also be secured with a tamper-proof seal.

(5) The person who draws the blood specimen must collect the DNA sample shall seal either the specimen vial or the plastic pouch the material and mark the container with the contributor's name and social security number before returning it to the representative of the submitting agency.

(6) To the extent possible, the submitting agency shall also provide the following information to the department when submitting a blood DNA sample:

- (a) subject's name and signature;
- (b) subject's social security number;
- (c) subject's date of birth;
- (d) subject's gender;
- (e) subject's race;
- (f) subject's SID, FBI and/or juvenile offender number;
- (g) subject's qualifying offense or offenses;
- (h) subject's left and right thumb prints;
- (i) date and time sample was collected;
- (j) name and signature of the individual drawing the blood

DNA sample;

- (k) name of the submitting agency and phone number;
- (l) name of the person preparing the information herein requested; and
- (m) record of the chain of custody of the specimen.

(7) A representative of the submitting agency shall witness the collection of the sample in order that he or she may attest to the sample's authenticity.

(8) Unless the record already exists in the DNA identification system index, any person may voluntarily submit a blood DNA sample or other biological specimen to the department division for the purpose of creating a DNA record under this subchapter.

AUTH: 44-6-110, MCA IMP: 44-6-103, MCA

RULE III (23.4.503) STORAGE OF DNA SAMPLES (1) Before submission to the ~~crime laboratory division~~, the DNA sample should be kept refrigerated and in a secure location. Within seven days after ~~collecting the specimen~~ its collection, the DNA sample should be sent to the ~~crime laboratory division~~.

AUTH: 44-6-110, MCA IMP: 44-6-103, MCA

3. No comments or testimony were received at the public hearing held July 10, 1996. A written comment was received from the Administrative Code Committee of the Montana Legislature. The committee's comments and the department's responses follow.

COMMENT: The first comment pointed out the statutory requirement that the department adopt these rules "with the advice of the department of public health and human services," and noted there was no mention of such advice contained in the proposed rules.

RESPONSE: Since the rules were only to be adopted with the advice of the department of public health and human services, the fact of such consultation is not necessary for inclusion within the rules themselves. The department did in fact consult the department of public health and human services. That department concluded that the proposed rules were satisfactory under the statutory requirements, and suggested no substantive changes. Correspondence reflecting this consultation is on file with the department.

COMMENT: The comments pointed out that a number of the definitions contained in rule I were unnecessary as they either repeated language in the statute or were simply self-evident and did not need to be defined. Additionally, the commentator noted that the proposed rule definition of "laboratory" may have created confusion with the statutory definition.

RESPONSE: The Department agrees with the commentator's remarks. These definitions were unnecessary and have been deleted.

COMMENT: Paragraph 1 of rule II, which describes who is to provide a blood sample for DNA indexing, is an unnecessary repetition of the statutory language.

RESPONSE: The Department concurs with this observation, and has deleted the entire paragraph.

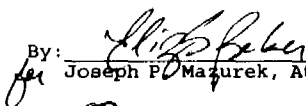
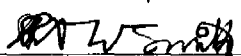
COMMENT: Paragraph one of rule II describes a person who has had a judgment entered "in district court." The statute merely refers to entry of a judgment, and it is possible that the legislature might, in the future, make some of the triggering offenses triable in justice court.

RESPONSE: Given that paragraph 1 of rule II has been deleted, the point is moot.

COMMENT: Provisions in the rules for collection of the blood samples in a medically-approved manner by health care workers trained to properly collect blood samples or other biological specimens may not be sufficient, under the statute, to ensure protection of the health of persons who may come into contact with the samples.

RESPONSE: The sample collection kits which will be provided by the department at no cost to agencies collecting the DNA samples have certain integrated design features which are aimed at protecting the health of persons who could come into contact with the samples. The department recognizes, however, that some agencies may not utilize the sample collection kits provided by the department. Consequently, the rules have been changed to describe these design features and require the submitting agency to comply with postal regulations for the transmittal of biological specimens, including the use of primary and secondary containers, absorbent material in case of leakage, an exterior container with warnings that the material is a biohazard and is to be handled with care. Further, the rules now also direct that neither the used needle, holder, or used prepad should be returned to the lab, and that the outside container must be secured with a tamper-proof seal. There have also been minor stylistic changes.

DEPARTMENT OF JUSTICE

By: 
for Joseph P. Mazurek, Attorney General

Rule Reviewer

Certified to the Secretary of State July 29, 1996.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the emergency	)	NOTICE OF EMERGENCY
amendment of a rule concerning	)	AMENDMENT TO
hours-of-service requirements	)	ARM 23.5.102
for certain industries to conform)	
with changes in federal law)	
presently incorporated by)	
reference in rule 23.5.102)	
pertaining to motor carrier)	
and commercial motor vehicle)	
safety standard regulations.)	

TO: All Interested Persons

1. Section 345 of the National Highway Systems Designation Act of 1995, Pub. L. 104-59, created specific exemptions from the hours-of-service regulations of the Federal Motor Carrier Safety Regulations (FMCSRs) for employers engaged in the transportation of agricultural commodities and farm supplies, the transportation of ground water drilling rigs, the transportation of construction materials and equipment, and the operation of utility service vehicles. The Federal Highway Administration of the Department of Transportation has since amended the FMCSRs to conform to these statutory exemptions. These amendments took effect on April 3, 1996, with the exception of the amendments to 49 CFR § 395.1(n) and (o), pertaining to transportation of construction materials and equipment and utility service vehicles, which did not take effect until May 26, 1996.

Department rules concerning the appropriate safety standards of motor carriers and other commercial motor vehicles subject to regulation under 44-1-1005, MCA, currently incorporate by reference the FMCSRs, subject to specified exemptions and exclusions. Under current department regulations, commercial motor vehicle drivers engaged in the transportation of agricultural commodities and farm supplies, ground water drilling rigs, or construction materials and equipment, or who operate utility service vehicles or snow or ice removal equipment for eligible units of local government are limited under 49 CFR § 395.3, as incorporated in department regulations, to driving no more than 10 hours following 8 consecutive hours off duty; being on duty no more than 15 hours following 8 consecutive hours off duty and being on duty no more than 60 hours in any 7 consecutive day period if the employing motor carrier operates less than 7 days a week or 70 hours in any 8 consecutive day period if the employing carrier operates 7 days a week. At the conclusion of each 7- or 8-day period respectively, the hours-of-service clock starts anew.

Under the new federal exemptions, drivers transporting agricultural commodities or farm supplies during planting and

harvesting seasons within a 100 air-mile radius of the course of the commodities or the distribution point for the farm supplies are exempt from maximum driving and on-duty time regulations of the FMCSRs. Drivers who are transporting ground water drilling rigs, construction materials and equipment or driving utility service vehicles, all as defined in the regulations, any 7 or 8 consecutive day period for purpose of the 60 or 70 hour on duty count may be reset with the beginning of any off-duty period of 24 or more successive hours.

In order to bring the state regulations into compliance with these amendments to Part 395 of the FMCSRs, an amendment to ARM 23.5.102 is required pursuant to 2-4-307(3), MCA. The current rule only incorporates amendments to the FMCSRs through December 22, 1995, the effective date of the most recent department amendment.

If nonemergency rulemaking procedures were utilized, the earliest an incorporation of the relevant amendment to part 395 could be effective is September 7, 1996. Considering how short Montana's construction season is, particularly with respect to highway construction, that agricultural harvesting has already commenced for certain crops in the state and that seasonal commercial driver licenses are only valid through September 11 of each year, delay in adoption of the federal exemptions to hours-of-service rules for the specified industries would create an imminent peril to the public welfare. Additionally, delay would unnecessarily perpetuate an "uneven playing field" between affected interstate and intrastate motor carriers, where only intrastate carriers would be subject to the more strict 60 hour/7 day and 70 hour/8 day hours-of-service requirements. Immediate adoption of the federal exemptions would allow affected carriers to maximize their operations, within constraints of current daily driving and on-duty hour restrictions, and potentially benefit taxpayers, individual producers and consumers, and the travelling public by increasing the probability that work will be completed in a timely fashion and decreasing traffic delays and inconveniences.

For affected nonagricultural motor carriers working less than 7 days per week, this exemption would give motor carriers and drivers the ability to work, at a maximum, four days at 15 hours on duty, take 24 or more consecutive hours off duty, and return to work on the sixth day, with the 60 hour/7 day clock starting anew. Under current department rules, after four 15 hour on duty days, the same driver would have to be off duty for three consecutive days.

Similarly, for those operations on a 7-day workweek, drivers would have the ability to work 5 consecutive days at 14-hours on duty each day, take 24 or more consecutive hours off (essentially the 6th day) and restart the 70 hour/8 day clock as soon as the 24 hour off duty requirement has been met, most likely on the 7th day. Under current rules, the same driver

would not be able to return to duty until the beginning of the 9th day, after being off duty for three consecutive days.

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

23.5.102 FEDERAL MOTOR CARRIER SAFETY RULES AND STATE MODIFICATIONS (1) All commercial motor vehicles, as defined in 61-1-134, MCA, and motor carriers that are subject to regulation by the department under 44-1-1005, MCA, shall comply with and the department does hereby adopt, by reference, the following portions of the federal motor carrier safety regulations of the department of transportation, subject to the provisions of (2) below. The regulations adopted are 49 CFR Part 385, 49 CFR Part 387, 49 CFR Parts 390 through 399 (excluding subpart H of Part 391) and Appendices B and G to subchapter B of chapter III, Title 49 of the Code of Federal Regulations, updated through the effective date of this rule December 22, 1995, except for 49 CFR Part 395, updated through May 26, 1996. Copies of the regulations may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) The federal regulations incorporated herein by reference are subject to the following modifications:

(a) For purposes of intrastate motor carriers, subsection (a) of the definition of "commercial motor vehicle" in 49 CFR 390.5 shall be restricted to those vehicles with a gross vehicle weight or manufacturer's rated capacity of 26,001 pounds or more.

(b) For purposes of part 385 and parts 390 through 399, the definition of "commercial motor vehicles" in section 390.5, shall include vehicles used in either interstate commerce or intrastate commerce.

(c) For purposes of part 385 as applied to intrastate carriers, the "compliance review," as defined in section 390.3, will be referred to as a "safety fitness review."

(d) With respect to 49 CFR 385.21, a "Motor Vehicle Inspection Application" prescribed by the department shall be used by all intrastate carriers instead of a "Motor Carrier Identification Report, Form MCS-150"; this report may be obtained from the Montana Highway Patrol/Motor Vehicle Inspection Bureau, 303 North Roberts 2550 Prospect, Helena, MT 59620-1412.

(e) Part 391 is subject to the age and physical qualification provisions of ARM 23.3.505 and 23.3.506, for those individuals operating under a type 2 commercial vehicle operator's endorsement and not engaged in "interstate commerce", as defined in 49 CFR, part 391.

(f) 49 CFR 392.10 and 49 CFR 393.42 apply only to vehicles that are engaged in interstate commerce as defined in 49 CFR 390.5.

(g) Any reference to the Federal Highway Administration, Administrator or FHWA staff or special agents shall be considered to be a reference to the department as applied to

commercial motor vehicles operating intrastate, and where appropriate to the context, to commercial motor vehicles and motor carriers operating interstate.

(h) The planting and harvest seasons for purpose of 49 CFR 395.1(l) shall run from March 15 through September 11 of each year, concurrent with seasonal commercial driver's license regulations set forth in ARM 23.3.523.

AUTH: 44-1-1005(1), MCA IMP: 44-1-1005(1), MCA


3. A standard rulemaking procedure will be undertaken prior to the expiration of the emergency rule.

4. Interested persons are encouraged to submit their comments during the upcoming standard rulemaking process.

5. This emergency rule adoption will be effective July 29, 1996. The department also will mail copies of this emergency rule to associations whose membership may be affected by this adoption.

DEPARTMENT OF JUSTICE

By:


JOSEPH P. MAZUREK, Attorney General


Rule Reviewer

Certified to the Secretary of State, July 29, 1996.

BEFORE THE BOARD OF MILK CONTROL
OF THE STATE OF MONTANA

In the matter of proposed) NOTICE OF AMENDMENT
amendments to rule 8.86.301)
(32.24.301) as it relates to)
wholesale prices for class)
I, II and III milk.) DOCKET #2-96

TO: ALL INTERESTED PERSONS:

1. On March 7, 1996, the Montana board of milk control published notice of proposed amendments of ARM 32.24.301 as it related to the producer prices for class I, II and III milk. Notice was published at page 641 of the 1996 Administrative Register, issue no. 5, as MAR NOTICE 32-2-132.

2. The board has amended the rule with the following change: (text of rule with matter stricken interlined and new matter added, then underlined)

"32.24.301 PRICING RULES

(1)-(2) remains the same.

(3) Formula for fixing class I price at the producer level.

(a) The minimum prices which shall be paid to producers by distributors in the state of Montana shall be calculated by either applying the flexible economic formula described below or the basic formula price plus ~~two dollars and twenty cents~~ ~~(\$2.20)~~ two dollars and fifty-five cents whichever price is lower. The flexible economic formula utilizes a November 1969 base equalling 100, an interval of 4.5 and consists of seven factors. The factors and their assigned weights are as follows:

(i)-(9)(c) Were not amended. The board chose not to amend them.

AUTH: 81-23-302, MCA

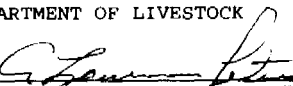
IMP: 81-23-302, MCA

3. There were no comments received, however, there was testimony on the record concerning adoption as originally proposed. The board did not consider the other aspects of the proposal, sections (3)(i) through (9)(c), because they were withdrawn by the proponent in a "Motion for Decision", which was filed with the board along with a settlement agreement. This became part of the decision in this matter.


4. This amendment will become effective October 1, 1996.

DEPARTMENT OF LIVESTOCK

By: _____


A. Laurence Petersen, Exec.
Officer, Board of Livestock
Department of Livestock

By: _____


Lon Mitchell, Rule Reviewer
Livestock Chief Legal Counsel

Certified to the Secretary of State July 29, 1996.

BEFORE THE BOARD OF LAND COMMISSIONERS
OF THE STATE OF MONTANA

In the matter of the adoption of new)
rules I through X pertaining to all)
activities on classified forest lands)
within Montana during the legal fire)
season, the amendment of rule 36.10.122,)
pertaining to debris disposal, and the)
repeal of rules 36.10.109 through)
36.10.115, and 36.10.118, pertaining to)
fire prevention on forest lands)

CORRECTED NOTICE
OF ADOPTION

To: All Interested Persons

1. On June 6, 1996, the agency published a notice at page 1502 of the 1996 Montana Administrative Register, Issue No. 7, on the proposed adoption, amendment, and repeal of the above-captioned rules which pertain to activities and fire prevention on classified forest lands.

2. In the notice of proposed adoption, amendment, and repeal, proposed new rule IV, subsection (2), incorrectly referenced tool requirements being found in proposed new rule VIII(4). The referenced rule should have been VIII(5). The corrected proposed new rule should read as follows:

RULE IV (36.10.126) EQUIPMENT Subsection (1) same as original proposal.

(2) Equipment used for commercial, ranching, or industrial activities must meet the fire extinguisher and tool requirements listed in Rule VIII (36.10.130)(4)(5).


AUTH: 76-13-109, MCA

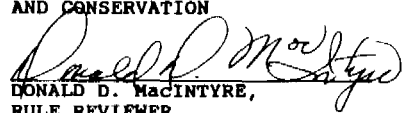
IMP: 76-13-125, MCA

3. Replacement pages for the corrected notice of adoption, amendment, and repeal were submitted to the Secretary of State on June 30, 1996.

BOARD OF LAND COMMISSIONERS

BY:


ARTHUR R. CLINCH, DIRECTOR
DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION


DONALD D. MACINTYRE,
RULE REVIEWER

Certified to the Secretary of State

July 29, 1996

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

In the matter of the	)	NOTICE OF THE ADOPTION
adoption of a rule setting	)	OF A RULE
conditions for contracts)	
funded with federal maternal)	
and child health block grant)	
funds)	

TO: All Interested Persons

1. On February 22, 1996, the Department of Public Health and Human Services published notice of the proposed adoption of Rule I setting conditions for contracts funded with federal maternal and child health block grant funds at page 525 of the 1996 Montana Administrative Register, issue number 4.

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

[RULE I] 16.24.1001 MATERNAL AND CHILD HEALTH BLOCK GRANT - STANDARDS FOR RECEIPT OF FUNDS (1) In order for any county or other local entity to receive federal maternal and child health (MCH) block grant funding from the department, that entity must contractually agree to the following:

(a) through (e) remain as proposed.

(f) No more than 10% of the funds available under the contract may be used for administration of the contract, i.e., for services that do not directly contribute to the delivery of direct services to clients; examples of administrative costs are those for bookkeeping, legal aid, and supervision by persons who are not health professionals.

(g) remains as proposed.

(h) Any grant-related income (for example, income from fees charged or donations) accruing to the contractor from activities funded, in whole or in part, under the contract will be used only to pay for the allowable costs of providing the services described in the contract, during the term of the contract or within one year thereafter. Careful documentation of the use of grant-related income must be maintained.

(2) through (6) remain as proposed.

AUTH: Sec. 50-1-202, MCA

IMP: Sec. 50-1-202, MCA, Ch. 593, 1995 Session Laws

3. The Department has thoroughly considered all commentary received:

COMMENT #1: A health department representative asked why the last legislature required these rules to be adopted, since the department already has oversight responsibility for contracts with counties providing maternal and child health (MCH)

services, and requires plans from the counties to achieve the Healthy People 2000, as well as county matching funds and a count of the target population.

RESPONSE: While the department cannot speak for the legislature, it assumes that the legislature was at least partially motivated to require the standards for allocating MCH Block funds to be set out in binding rules in order to ensure that the department was consistent in distributing those funds.

COMMENT #2: A local health department representative requested that Rule I (1)(h) ARM 16.24.1001 be amended to allow grant related income to be carried over from one fiscal year to the next.

RESPONSE: There appears to be no federal prohibition against such a carry-over, and it seems logical that such income may be spent on MCH Block services without time restrictions, especially since grant-related income must be spent on MCH Block services and it may not be possible to use all of the funding for the specified purpose during the term of the contract during which it is generated. Therefore, the department added a phrase allowing use of grant-related income during the year following the contract term during which it was generated, but requiring that careful accounting of use of the money had to be maintained.

COMMENT #3: A local health department representative also requested that, in granting MCH Block funding to counties, priority be given to those counties that have levied the full 5 mills allowed for health programs, on grounds that they have tapped their own resources to the extent possible and shown good faith; she also would like the cost of providing services within a given county (e.g. a county for which substantial travel expense is required) to be considered as a need factor.

RESPONSE: According to state law, only first and second-class counties with city-county health boards can levy up to five mills for health services, while third-class counties can levy for the purposes no more than 1 mill in addition to available general fund support. In addition, counties vary in the solidity of their tax base. Therefore, while the department will consider the effort a county is making on its own behalf, it cannot fairly base its assessment strictly upon whether the full number of mills available has been levied. As for taking into account special circumstances contributing to the cost to a county of providing MCH Block services, such facts, if proved, might reasonably be considered when determining whether a given county's resources would cover the need for MCH services within it. However, since many different types of circumstances may place a special burden on a county's resources and it is impossible to foresee and set out all of them in the rules, none were expressly added to the rules, although each can be taken

into account when the comparative need among counties is being determined.

COMMENT #4: A county commissioner questioned the 10% restriction for administrative expenses, since the county's administrative cost allocation to MCH Block activities was historically substantially more than that.

RESPONSE: The 10% restriction for administrative costs is contained in the federal Omnibus Reconciliation Act of 1989 and is not negotiable. However, the likely cause of the county's problem with high administrative costs is an overbroad definition of "administrative" expenses. Therefore, the department added language indicating the type of expenses that will be considered "administrative expenses".


Rule Reviewer


Director, Public Health and
Human Services

Certified to the Secretary of State July 29, 1996.

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

In the matter of the	)	NOTICE OF THE ADOPTION
adoption of Rule I	)	OF A RULE
pertaining to the release of)	
confidential records for)	
state mental health)	
facilities)	

TO: All Interested Persons

1. On May 9, 1996, the Department of Public Health and Human Services published notice of the proposed adoption of Rule I pertaining to the release of confidential records for state mental health facilities at page 1264 of the 1996 Montana Administrative Register, issue number 9.

2. The Department has adopted [Rule I] 20.14.309 RELEASE OF CONFIDENTIAL RECORDS as proposed.

3. The Department has thoroughly considered all commentary received:

COMMENT #1: A comment was received stating the rationale did not include a complete enough statement of necessity.

RESPONSE: In response, the Department provides the following rationale in which the statement of necessity is more clearly and completely stated: Section 53-21-166, MCA, provides that disclosure of information and records is only possible if the department has promulgated rules for the conduct of research. The department has determined that the number of requests for research information from the records of state mental health facilities, particularly those archived with the Montana State Archives, necessitates such rules.


Rule Reviewer


Director, Public Health and
Human Services

Certified to the Secretary of State July 29, 1996.

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

In the matter of the	)	NOTICE OF THE AMENDMENT
amendment of rules 46.8.109,	)	OF RULES
46.8.202, 46.8.203,)	
46.8.206, 46.8.207,)	
46.8.211, 46.8.212,)	
46.8.705, 46.8.706, 46.8.710)	
through 46.8.713, 46.8.717,)	
46.8.720 through 46.8.724,)	
46.8.1301, 46.8.1302,)	
46.8.1304, 46.8.1305,)	
46.8.1307 through 46.8.1309)	
pertaining to developmental)	
disabilities)	

TO: All Interested Persons

1. On June 20, 1996, the Department of Public Health and Human Services published notice of the proposed amendment of rules 46.8.109, 46.8.202, 46.8.203, 46.8.206, 46.8.207, 46.8.211, 46.8.212, 46.8.705, 46.8.706, 46.8.710 through 46.8.713, 46.8.717, 46.8.720 through 46.8.724, 46.8.1301, 46.8.1302, 46.8.1304, 46.8.1305, 46.8.1307 through 46.8.1309 pertaining to developmental disabilities at page 1614 of the 1996 Montana Administrative Register, issue number 12.

2. The Department has amended rules 46.8.202, 46.8.203, 46.8.206, 46.8.207, 46.8.211, 46.8.212, 46.8.705, 46.8.706, 46.8.710 through 46.8.713, 46.8.717, 46.8.720 through 46.8.724, 46.8.1301, 46.8.1302, 46.8.1304, 46.8.1305, 46.8.1307 through 46.8.1309 as proposed.

3. The Department has amended the following rule as proposed with the following changes:

46.8.109 CERTIFICATION OF PERSONS ASSISTING IN THE ADMINISTRATION OF MEDICATION (1) through (9) remain as proposed.

~~(10) A contractor must provide to the developmental disability program of the disabilities services division of the department a current list of employees and agents certified to supervise and administer medication.~~

(10) Every contractor shall maintain a current list of contractor employees and agents certified to supervise and assist in the administration of medication.

(11) through (17) remain as proposed.

AUTH: Sec. 53-20-204, MCA

IMP: Sec. 53-20-204, MCA

4. The Department has thoroughly considered all commentary received:

Comment #1: Commentor questioned the Certification of Persons Assisting in the Administration of Medications Rule regarding the requirement that a physician must prescribe that the person receiving the medication requires supervision and assistance in taking the medication. Commentor states that everyone has to work around this rule because physicians are reluctant to prescribe assistance in taking medication. Physicians are concerned about their liability for doing so. Some physicians refuse to do it at all. Some nurses end up having physicians sign blank forms and take them with them in case the nurse feels assistance in medicating is needed. Commentor feels this provision shouldn't be in the rule at all if everyone has to find ways to get around it. The Commentor did describe a procedure used by the corporation the commentor works for which involves having a statement included in the annual physical examination document which asks the physician to state that the individual will need assistance or supervision in taking prescription medication.

Response: The requirement that the physician who prescribes the medication must also prescribe the supervision and/or assistance is taken directly from the statute that enables community services employees to assist or supervise individuals to take their medication under this rule (53-20-204(2), MCA). So, this provision of the rule must remain as written. Because the requirement comes directly from state statute, contractors must find methods to meet this requirement. Certainly, the method described by the Commentor, which involves having a statement included in the annual physical examination document which asks the physician to state that the individual will need assistance or supervision in taking prescription medication, will meet this requirement, if the physician signs the document.

Comment #2: Commentor notes that under the medications rule that the maximum time from the notification of intent to take the medications test to the notification of certification takes 40 days. Commentor would like to see the certification occur sooner as the delay could cause a problem in providing services.

Response: The times that are listed are intended to be maximum time limits for each of those steps, and not a typical time frame for testing and notification of test results. The Department feels that in situations where circumstances are less than ideal, the Department needs that amount of time and they will remain as written.

Comment #3: Commentor is concerned about the requirement in ARM 46.8.109(3) that providers must keep a list of personnel who are certified for medications assistance. Commentor wants to know

why a provider has to keep a list when the Department already has a list of all certified people. The rule isn't clear as to why or how often it must be updated. The rule says the provider has to submit the list, but does not say whom to submit it to, when, or how often. If the provision is a part of the annual review, then it should not be in the rule it was placed in and should be in one on the annual review.

Response: The language the Commentor is concerned about is a proposed change made to better clarify the section. It read: "A contractor must provide to the developmental disabilities program ... a current list of employees and agents certified to supervise and administer medication." The original rule language read as follows: "Every provider shall maintain a current list of provider employees and agents certified to administer medication on file with the division." The current practices described by the Commentor comport with the existing requirement. A list maintained by the contractor allows the contractor to track staff who are due for recertification and notify those staff to take the test before their certification expires. The Department maintains its own records for the purpose of recording who takes the test, whether or not the person passed the test and notifying an employing contractor.

The Department agrees that the language needs clarification. The language has been changed to remove the requirement that the contractor provide the list to the Department.


Comment #4: Regarding the submission of an Incident Report (IR) the day after an incident, Commentor states that no one actually does this. In practice, Commentor sends IR's twice a week instead. Major incidents are always reported by telephone the following working day. Commentor stated that it is not always possible to meet this requirement and the Department should consider modifying this rule.


Response: The Commentor stated that their time lines are necessary so that they can route the IR through the review process of their agency and determine action to take, if necessary. Our intent is not to preclude any review or to hinder any efforts to take action. There are a number of providers who submit IR's on the first working day following the incident, one of whom the Commentor spoke to at the hearing. He described the methods used by his corporation, the most common of which was putting a copy of the IR in the mail to the developmental disabilities program on the following working day. The original is routed through the agency for their review and follow-up, if necessary. They have even FAX-ed an IR where they have felt that the timely sharing of the details is necessary. In fact, the timely sharing of information is the intent behind this requirement.

The term "submitted" should not be confused with "received." An IR mailed the first working day following the incident would probably not be received that same day, but it meets the requirement of the rule in that it was submitted within the time frame specified in the rule. The requirement remains as written.

Comment #5: ARM 46.8.1307 could potentially mean that 3 people could end up investigating the same incident and it could get confusing. Commentor feels this rule needs to be clarified as to under what circumstances the Department would be investigating.

Response: The language the Commentor is concerned about is existing language that the rule notice did not propose to change in substance. The proposed amendments were for the removal of the references to the Department of Family Services which has ceased to exist. ARM 46.8.1307 states the Department's authority to investigate incidents involving individuals who receive services funded by the Department. The rule provides that the developmental disabilities program of the Department will work cooperatively with the protective services programs of the Department. It is not intended to provide for a developmental disabilities program investigation that is separate from a protective services investigation.


Rule Reviewer


Director, Public Health and
Human Services

Certified to the Secretary of State July 29, 1996.


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

In the matter of the	)	NOTICE OF THE
amendment of rule 46.10.403	)	AMENDMENT OF RULE
pertaining to AFDC)	
assistance standards)	

TO: All Interested Persons

1. On May 9, 1996, the Department of Public Health and Human Services published notice of the proposed amendment of rule 46.10.403 pertaining to AFDC assistance standards at page 1290 of the 1996 Montana Administrative Register, issue number 9.
2. The Department has amended rule 46.10.403 as proposed.
3. No written comments or testimony were received.


Rule Reviewer


Director, Public Health and
Human Services

Certified to the Secretary of State July 29, 1996.

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

In the matter of the	)	NOTICE OF THE
amendment of rules	)	AMENDMENT OF RULES
46.12.5002 through)	
46.12.5004, 46.12.5007,)	
46.12.5011 and 46.12.5014)	
pertaining to the passport)	
to health program)	

TO: All Interested Persons

1. On June 6, 1996, the Department of Public Health and Human Services published notice of the proposed amendment of rules 46.12.5002 through 46.12.5004, 46.12.5007, 46.12.5011 and 46.12.5014 pertaining to the passport to health program at page 1484 of the 1996 Montana Administrative Register, issue number 11.

2. The Department has amended rules 46.12.5002 through 46.12.5004, 46.12.5007, 46.12.5011 and 46.12.5014 as proposed.

3. No written comments or testimony were received.


Rule Reviewer


Director, Public Health and
Human Services

Certified to the Secretary of State July 29, 1996.

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


In the matter of the	)	NOTICE OF THE ADOPTION
adoption of 46.18.122	)	OF A RULE
pertaining to families)	
achieving independence in)	
Montana (FAIM))	


TO: All Interested Persons

1. On May 23, 1996, the Department of Public Health and Human Services published notice of the proposed adoption of Rule I pertaining to families achieving independence in Montana (FAIM) at page 1357 of the 1996 Montana Administrative Register, issue number 10.

2. The Department has adopted 46.18.122 FAIM: AFDC Assistance Standards; Tables; Methods of Computing Amount of Cash Assistance pertaining to families achieving independence in Montana (FAIM) as proposed.

3. No written comments or testimony were received.


Rule Reviewer


Director, Public Health and
Human Services

Certified to the Secretary of State July 29, 1996.

BEFORE THE COMMISSIONER
OF POLITICAL PRACTICES
OF THE
STATE OF MONTANA

In the matter of the amendment	)	NOTICE OF AMENDMENT
and transfer of Rule 44.12.109,	)	AND TRANSFER
Personal Financial Disclosure by)	
Elected Officials)	


TO: All Interested Persons

1. On April 25, 1996, the Commissioner of Political Practices published a notice of proposed amendment and transfer of ARM 44.12.109 pertaining to personal financial disclosure by elected officials at page 1128 of the 1996 Montana Administrative Register, Issue No. 8.

2. The Commissioner has amended and transferred the rule exactly as proposed. Rule 44.12.109 Personal Financial Disclosure by Elected Officials is now amended and transferred as Rule 44.10.621 Business Disclosure.

3. No comments or testimony were received.

Commissioner of Political Practices



Ed Argenbright, Ed.D.



Kimberly Chladek, Rule Reviewer

Certified to the Secretary of State, July 11, 1996.

VOLUME NO. 46

OPINION NO. 22

COUNTIES - Scope of protest rights afforded freeholders subject to proposed zoning districts and amendments of zoning regulations;

FREEHOLDERS - Protest rights to zoning districts and amendment of zoning regulations proposed by county governments;

LAND USE - Scope of protest rights afforded freeholders subject to proposed zoning districts and amendments of zoning regulations;

MONTANA CODE ANNOTATED - Sections 76-2-205(6), -305;

MONTANA LAWS OF 1995 - Chapter 591;

OPINIONS OF THE ATTORNEY GENERAL - 37 Op. Att'y Gen. No. 47 (1977).

- HELD: 1. Mont. Code Ann. § 76-2-205(6) enlarges "protest rights" for freeholders whose property is classified for real property tax purposes as agricultural or forest land, where their combined title ownership represents 50 percent of the total property ownership within the proposed or revised zoning district. These enlarged protest rights supplement the protest rights provided to 40 percent of freeholders within the district whose names appear on the last-completed assessment roll.
2. The phrase "freeholders representing 50 percent of the titled property ownership" within Mont. Code Ann. § 76-2-205(6) requires that all owners of property held in joint or common ownership join in the protest for the area of the parcel to be included in the calculation of the protest area. Condominium owners or purchasers are entitled to have their proportionate share of the freehold interest in the land area of the particular development included in the calculation of the protest area.

July 22, 1996

Mr. Thomas J. Esch
Flathead County Attorney
P.O. Box 1516
Kalispell, MT 59903-1516

Dear Mr. Esch:

You have requested my opinion upon the following questions:

1. Does Mont. Code Ann. § 76-2-205(6) provide an enlarged right of protest to: (a) both the freeholders owning 50 percent of the land taxed for agricultural purposes in the proposed

Montana Administrative Register

15-8/8/96

district and the freeholders owning 50 percent of the land taxed for forest purposes in the proposed district; or (b) freeholders taxed for agricultural or forest purposes who own 50 percent of all property in the proposed zoning district?

2. Does the phrase "freeholders representing 50 percent of the titled property ownership" within Mont. Code Ann. § 76-2-205(6) require that all owners of property held in joint or common ownership join in the protest for the area of the parcel to be included in the protest?

These questions arise from a proposed 3761.67-acre Southeast Rural Whitefish Zoning District within Flathead County (hereinafter "zoning district"). The proposed zoning district includes 262 freeholders and is a mixture of land in residential and agricultural use. Classified for taxation purposes as agricultural or timber land are 2993.49 acres. Twenty-eight freeholders of land taxed for agricultural or forest use have submitted protests to the creation of the zoning district. These 28 landowners represent 1708.58 acres or 45 percent of the titled land ownership in the zoning district. The protesting agricultural and timber landowners represent 57 percent of the total acreage within the district classified as either agricultural or timber.¹

Your opinion request requires construction of Mont. Code Ann. § 76-2-205(6). The statute provides:

¹ The Board of County Commissioners has not yet adopted a resolution of intent to create the district. This action has been stayed pending resolution of your opinion request. Consequently, a formal protest period has not begun and the county has not formally accepted letters of protest. However, letters of protest and intent to protest have been received and the Flathead County Clerk and Recorder was asked to provide the information set forth above for purposes of responding to the opinion request. The Flathead County Clerk and Recorder's office has indicated that only 13 of the 28 protests reviewed would be "valid." These 13 protests, preliminarily determined to be valid, represent 1381.51 acres of the land within the proposed district or 37 percent of the total land area in the district and 46 percent of the lands taxed as either agricultural or timber. Agricultural and timber protests have not been separated and individually tabulated, thus permitting the determination of the percentage of the total land taxed as agriculture land within the district represented by agriculture protests received by the county.

Within 30 days after the expiration of the protest period, the board of county commissioners may in its discretion adopt the resolution creating the zoning district or establishing the zoning regulations for the district. However, if 40% of the freeholders within the district whose names appear on the last-completed assessment roll or if freeholders representing 50% of the titled property ownership whose property is taxed for agricultural purposes under 15-7-202 or whose property is taxed as forest land under Title 15, chapter 44, part 1, have protested the establishment of the district or adoption of the regulations, the board of county commissioners may not adopt the resolution and a further zoning resolution may not be proposed for the district for a period of 1 year.

The constitutionality of the "protest provision" in question has not been challenged. The zoning statute is presumed to be constitutionally valid, and this opinion does not address the constitutionality of the statute.

There is no controlling decisional law in Montana pertaining to the questions you have presented and the law of other jurisdictions has limited application given the unusual nature of the Montana statute. Opinions of other jurisdictions are premised on the recognition that the protest provisions of those jurisdictions pertain to the amendment of an existing zoning regulation.² The courts recognize that those protest provisions are a form of protection afforded property owners in the stability and continuity of preexisting zoning regulations. Such reasoning is not applicable to the Montana statute, which operates as a form of extraordinary protection afforded property owners to prevent the legislative body from adopting zoning

² Protest provisions allow qualified property owners to formally protest the enactment of a proposed zoning amendment. Protest provisions are generally limited to proposed zoning ~~amendments~~ and do not apply to the initial zoning of property. 7 Patrick J. Rohan, Zoning and Land Use Controls § 50.04[4][a] (1995); 3 Rathkopf's The Law of Zoning and Planning § 29.02[1] (1995). Furthermore, protest provisions generally work to increase the number of votes required by a local governing body to pass a zoning amendment--typically an extraordinary majority or unanimous vote of the legislative body. See, e.g., Mont. Code Ann. § 76-2-305. The power of final decision with protest provisions rests with the legislative body to overrule a protest by marshaling the necessary votes. 1 Anderson's American Law of Zoning § 4.37 (4th ed. 1996).

regulations in the first instance.³ As such, the statute operates more like a "consent provision" than a protest provision.⁴ Consistent with these observations, the statute's "protest" rights discussed within this opinion are so identified only for purposes of consistency with the actual language of the statute.

I. The 50 Percent Requirement

Prior to 1995, Montana law provided a statutory right of protest to "40% of the freeholders within the district whose names appear on the last-completed assessment roll." Mont. Code Ann. § 76-2-205(6) (1993). In 37 Op. Att'y Gen. No. 47 (1977) Attorney General Greely found that this language allowed each freeholder in the district one protest vote without regard to the number of parcels the freeholder owned within the district. The proposed Whitefish zoning district, comprised of approximately 262 freeholders, thus could be defeated if 40 percent or approximately 105 freeholders submitted timely protests.

Mont. Code Ann. § 76-2-205(6) was amended by HB 358 of the 1995 legislature to enlarge the statutory protest provision described above. 1995 Mont. Laws ch. 591, § 2. The statute, set forth above, was amended by the addition of the language emphasized below:

However, if 40% of the freeholders within the district whose names appear on the last-completed assessment roll or if **freeholders representing 50% of the titled property ownership whose property is taxed for agricultural purposes under 15-7-202 or whose property is taxed as forest land under Title 15, chapter 44, part 1**, have protested the establishment of the district or adoption of the regulations, the board of

³ Mont. Code Ann. § 76-2-205(6) provides property owners a veto power over the county legislative body with respect to proposals for the initial zoning of property and rezoning proposals. It does not provide for subsequent legislative action; the statute prohibits such action for a period of one year.

⁴ Consent provisions require either that the consent of a certain number or percentage of affected landowners be obtained before a zoning amendment is adopted or that an amendment will not take effect until such consent has been given. 1 Anderson's American Law of Zoning § 4.37 (4th ed. 1996). The only other state statute I reviewed that contains provisions similar to Mont. Code Ann. § 76-2-205(6) is a South Dakota statute, S.D. Codified Laws Ann. § 11-4-5, which has been interpreted by the South Dakota Supreme Court as a consent provision. State Theatre Co. v. Smith, 276 N.W.2d 259 (S.D. 1979).

county commissioners may not adopt the resolution and a further zoning resolution may not be proposed for the district for a period of 1 year.

In construing and interpreting statutes, my function is to effectuate the legislature's intent; the plain meaning of the words used in the statute should be first considered. Gulbrandson v. Carey, 272 Mont. 494, 500, 901 P.2d 573, 577 (1995). The intent of the 1995 amendments is difficult to ascertain by reference to the plain meaning of the words used because the language is subject to at least two interpretations, depending on the effect given the modifying phrase "whose property is taxed." The language may be construed as follows:

If freeholders who represent 50 percent of the titled property ownership within the district protest, and if the property counted as meeting the 50 percent limit consists exclusively of property taxed for either agricultural or forest purposes, the establishment of the zoning district fails.

On the other hand, the amendment may be construed to mean:

If freeholders who represent 50 percent of the titled property ownership of land taxed for agricultural purposes within the district protest, or if freeholders who represent 50 percent of the titled property ownership of land taxed for forest purposes within the district protest, the district fails.

A statute is ambiguous when it is capable of being understood by reasonably well-informed persons in either of two or more different senses. 2A Sutherland Statutory Construction § 45.02, at 6 (5th ed. 1992). Without question, the 1995 amendment of Mont. Code Ann. § 76-2-205(6) is ambiguous on its face.

If the plain words of a statute are ambiguous, the next step in statutory interpretation is to determine the intent of the legislature by examining the legislative history of the statute. Eisenmenger v. Ethicon, Inc., 264 Mont. 393, 398, 871 P.2d 1313, 1316 (1994). House Bill 358 was introduced in order to grant large landowners relief from zoning district proposals that included their property. The bill was entitled: "An Act Changing the Protest Requirement for Zoning Adoption; and Amending Section 76-2-205, MCA." The sponsor of the bill stated that the legislation would add a method by which a zoning district could be protested. Representatives of agricultural and forestry interests supporting the bill noted that the bill would grant protest rights to large landowners not recognized by the current law; large landowners would be treated on an equitable basis with small landowners. See Mins., House Local Gov't Comm., Feb. 9, 1995. In its original form, HB 358 proposed the following amendment to Mont. Code Ann. § 76-2-205(6):

However, if 40% of the freeholders within the district whose names appear on the last-completed assessment roll **or if freeholders representing 50% of the titled property ownership** have protested the establishment of the district or adoption of the regulations, the board of county commissioners may not adopt the resolution and a further zoning resolution may not be proposed for the district for a period of 1 year.

The House passed HB 358 in this form.

On March 29, 1995, after the bill had passed the Senate Local Government Committee, an amendment was offered and adopted on the Senate floor. This amendment added language, emphasized below, which created the ambiguity at issue:

However, if 40% of the freeholders within the district whose names appear on the last-completed assessment roll or if freeholders representing 50% of the titled property ownership **whose property is taxed for agricultural purposes under 15-7-202(2)(a) or whose property is taxed as forest land under Title 15, chapter 44, part 1,** have protested the establishment of the district or adoption of the regulations, the board of county commissioners may not adopt the resolution and a further zoning resolution may not be proposed for the district for a period of 1 year.

The legislative intent behind this amendment is determinative of the first question you have presented regarding interpretation of Mont. Code Ann. § 76-2-205(6). The amendment was discussed by the Conference Committee that considered HB 358 on April 7, 1995. Minutes of the meeting reflect the following exchange between conference committee members concerning the amendment's intent:

REP. SHIELL ANDERSON asked why it was inserted "who's [sic] property is taxed for agricultural purposes"?

CHAIRMAN BECK said that SEN. LYNCH was concerned about major companies saying if they had a big parcel of land and they could control zoning regulations with that purpose. SEN. LYNCH wanted to specify that it could not be a major company.

SEN. HARGROVE asked if they had seen the concerns about Ashgrove and that was what SEN. LYNCH was concerned about.

REP. BILL RYAN said that SEN. LYNCH [was] referring to the Anaconda Company, they would have controlled everything and no zoning would have taken place.

SEN. DOROTHY ECK said the amendment was looking at company towns.

CHAIRMAN BECK said if the land was classified for agriculture purposes there would not be a problem.

The dialogue suggests an intent to limit the type of large freeholders who would be entitled to invoke the protest right: Freeholders taxed for agricultural and forest use would be given a new protest right; freeholders engaged in industrial or commercial use would not be entitled to a new protest right under the proposed statute. The amendment was thus intended to limit application of the bill's expansion of protest rights.

Returning to the two possible interpretations of Mont. Code Ann. § 76-2-205(6) set forth above, the first interpretation achieves a result that is consistent with the legislative intent established by the Senate floor amendment of March 29, 1995. This interpretation limits the expansion of protest rights of large landowners by simply clarifying what types of freeholders may receive the expanded rights--those whose property is taxed for agricultural or forest purposes.

The second interpretation effects a reading of HB 358 that also clarifies that only agricultural and forestry freeholders may receive the enlarged protest rights. However, this interpretation greatly expands the protest rights of these types of freeholders. Under the second interpretation, agricultural and forestry freeholders may effectively block implementation of zoning districts when they represent less than 50 percent of the titled land ownership within a district, a result that substantively changes the plain meaning of the bill as introduced, considered by the House Local Government Committee, passed by the House, and considered by the Senate Local Government Committee.

If such an interpretation were adopted, one agricultural or forestry freeholder representing a small percentage of the total titled ownership of a proposed zoning district composed of one or two isolated agricultural or forested tracts could effectively block zoning implementation due to that freeholder's ownership of 50 percent of the few such tracts included within the proposed district. This result undermines the basic intent of HB 358 (to create additional protest rights for large landowners controlling 50 percent of the titled property ownership within the district), the legislative intent of the Senate floor amendment (to limit application of the bill's expansion of protest rights), and the ability of county governments to implement zoning districts that include a small number of agricultural or forestry freeholders.

In summary, HB 358 enlarged the protest rights of agricultural and forestry freeholders by amending Mont. Code Ann. § 76-2-205(6). The plain language of the statute is ambiguous because

it is capable of two interpretations. Legislative history supports the conclusion that the enlarged protest rights are available to freeholders taxed for agricultural or forest purposes, where their combined title ownership represents at least 50 percent of the total property ownership within the proposed zoning district.

II. Representation of Property Held in Joint and Common Ownership

Your second question frequently has been litigated in other jurisdictions: In the absence of a controlling statute, who may properly sign a protest and represent property held in joint and common ownership? The question arises during judicial scrutiny of zoning protest petitions and petitions concerning improvement districts that contain the signature of one spouse who holds property in some form of cotenancy. The question has also arisen in the context of condominium and partnership ownerships. Resolution of this question is relevant because the burden is upon government "to affirmatively prove that the requisite percentage of the protesting landowners fit within the class of landowners outlined in the statute." See 7 Patrick J. Rohan, Zoning and Land Use Controls § 50.04[4][b], at 140-41 (1995), and cases cited therein; 1 Anderson's American Law of Zoning § 4.34 (4th ed. 1996), and cases cited therein.

These questions have not been resolved by Montana decisional law and the courts of other jurisdictions are split in their conclusions.⁵ Several jurisdictions have reasoned that a joint tenant has the duty to protect the common title; protest provisions typically allow landowners to protect their property from poorly conceived zoning amendments or petitions for improvement. These courts have concluded that the policy of allowing one joint tenant to lodge a valid protest to a proposed change facilitates the duty to protect the common title; finding otherwise would allow a joint tenant to reduce the existing protection of zoning regulation to the commonly-held land by inaction on his or her part.⁶ See, e.g., Disco v. Board of

⁵ In Buckley v. Wordal, 262 Mont. 306, 865 P.2d 241 (1993), the Montana Supreme Court considered the joint ownership issue in connection with a protest petition for a rural improvement district. Mont. Code Ann. § 7-12-2109 requires that this form of protest petition "be signed by all owners of the property." The Court found that all the owners listed on the assessment roll for property held jointly must sign in order for their property to be included in the protest. Furthermore, one joint owner may not sign for another without a written power of attorney.

⁶ As previously discussed, Mont. Code Ann. § 76-2-205(6) applies to the initial zoning of property. The Flathead County situation does not involve the policy consideration whereby a

Selectmen of Amherst, 347 A.2d 451 (N.H. 1975); Chapman v. County of Will, 304 N.E.2d 287 (Ill. 1973); Bonner v. City of Imperial, 32 N.W.2d 267 (Neb. 1948) (where one joint tenant files objection and another does not a presumption arises that the objecting tenant did so as the representative of the joint tenancy; this presumption prevails unless the contrary is made to appear).

The other line of cases holds that all owners must sign a protest to allow property held jointly or in common to be included as part of a calculated protest area. The reasoning of these cases varies; several courts have recognized that one cotenant is not the "owner" of the property for purposes of these statutes. See Woldan v. City of Stamford, 164 A.2d 306 (Conn. C.P. 1960); Warren v. Borawski, 37 A.2d 364 (Conn. 1944); Marks v. Bettendorf's, Inc., 337 S.W.2d 585, 595 (Mo. Ct. App. 1960); Newton v. Borough of Emporium, 73 A. 984, 985 (Pa. 1909).

Mont. Code Ann. § 76-2-205(6) refers specifically to the "freeholders representing 50% of the titled property ownership." The general rule is that one freeholder holding a joint or common interest in property may not bind or represent the other joint or common owner without proof of consent or authority. 20 Am. Jur. 2d Cotenancy and Joint Ownership §§ 2, 103 (1995). In the absence of such proof, I conclude that the single signature of a husband or wife or other joint property owner on a protest filed under Mont. Code Ann. § 76-2-205(6) is insufficient to include commonly or jointly held property in the area of the calculated protest. Where both husband and wife, or several partners, are listed on the assessment rolls for a particular tract of land, all owners must be present on the protest before the land may be included within the area of the calculated protest. To find otherwise presumes that one protesting co-owner or partner represents the interests and better judgment of the silent co-owner or partner; such an undocumented presumption may be misleading and erroneous.

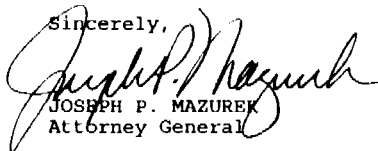
With regard to condominium ownership, courts agree that a condominium owner or purchaser has the right to have the proportionate share of the freehold interest in the land within the particular development included in the protest calculation. See Gentry v. City of Norwalk, 494 A.2d 1206 (Conn. 1985); Upper Keys Citizens Ass'n, Inc. v. Schloesser, 407 So. 2d 1051 (Fla. Dist. Ct. App. 1981). I find this reasoning persuasive. To require all condominium owners to file protests in order to allow inclusion of their undivided interest in the freehold estate would essentially disenfranchise these property owners from operation of Mont. Code Ann. § 76-2-205(6).

joint or common owner is exercising a duty to protect the stability and continuity of existing zoning regulation of land held in joint or common ownership.

THEREFORE, IT IS MY OPINION:

1. Mont. Code Ann. § 76-2-205(6) enlarges "protest rights" for freeholders whose property is classified for real property tax purposes as agricultural or forest land, where their combined title ownership represents 50 percent of the total property ownership within the proposed or revised zoning district. These enlarged protest rights supplement the protest rights provided to 40 percent of freeholders within the district whose names appear on the last-completed assessment roll.
2. The phrase "freeholders representing 50 percent of the titled property ownership" within Mont. Code Ann. § 76-2-205(6) requires that all owners of property held in joint or common ownership join in the protest for the area of the parcel to be included in the calculation of the protest area. Condominium owners or purchasers are entitled to have their proportionate share of the freehold interest in the land area of the particular development included in the calculation of the protest area.

Sincerely,



JOSEPH P. MAZUREK
Attorney General

jpm/gs/dm

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE Petition of)
Henry Matthies Regarding Section) Docket No. DO-95-18
15-30-103, MCA) DECLARATORY RULING
)
TO: All Interested Persons)

INTRODUCTION

1. On September 19, 1995, the Montana Department of Revenue, (Department), received a Petition for Declaratory Ruling from Henry Matthies, (Petitioner). The mailing address of the Petitioner is 1603 Valley Drive, Laurel, Montana 59044.

2. The facts upon which a ruling will be made are as follows:

3. Petitioner seeks declaratory ruling raising the issue of how 15-30-103, MCA, would apply to him. The petition states Petitioner is a citizen of the state of Montana and Petitioner earns a living within Montana. Petitioner's basic argument is that Petitioner's income is a form of property. As a result, an income tax is a form of property tax. The petition is unclear on this point but presumably the Petitioner argues that an income tax is invalid as it violates the basic rules of uniformity required of property taxes. Further, the income tax interferes with the right of a person to receive and own property.

ISSUE

4. Whether the tax imposed by 15-30-103, MCA, is imposed on individuals, property, acts and events, or rights and privileges.

SHORT ANSWER

5. The legislature is free from constitutional limitations as to the form of taxation it may choose to enact for the support of state government. Section 15-30-102, MCA, is clear expression of the legislative intent that the state income tax is not to be construed as a tax on property.

DISCUSSION

6. Pursuant to 2-4-501, MCA, any person may seek a declaratory ruling from an administrative agency concerning the applicability of a statutory provision. The Petitioner in this proceeding presents a Gordian knot issue concerning the applicability of 15-30-103, MCA to the Petitioner. Rather than

attempt to undue the tangled verbiage of the Petitioner's argument the Department following the example of Alexander will cut through it.

The issues of whether income is property and whether this state's income tax is in effect a property tax were resolved 60 years ago and at the time when the income tax was first enacted. The issue presented by the Petitioner's request for Declaratory Ruling was first addressed in an original proceeding commenced in the Montana Supreme Court in June of 1933. O'Connell v. State Bd. of Equalization, 95 Mont. 91, 25 P.2d 114 (1933). In this original proceeding before the Montana Supreme Court, Brian O'Connell challenged Chapter 181, Law of 1933. Chapter 181, approved March 16, 1933, adopted the Montana Income tax. The Supreme Court in its opinion takes great pains to point out that Chapter 181 "very closely approximates" the Idaho Act adopting Idaho's state income tax. The Court further points out that the Idaho Supreme Court upheld the constitutionality of the Act in the case of Diefendorf v. Gallet, 51 Idaho 619, 10 P.2d 307, and since the Montana Act and the Idaho Act are virtually identical, the Montana Supreme Court would rely on the Idaho Court's decision.

In addressing the issue of whether the income tax was a property tax the Montana Court held:

It is not necessary for us to declare the exact nature of the income tax under consideration. It is apparent that the legislature of the state of Montana intended to enact an income tax and did not intend that it should be considered as a property tax law. It is also apparent that the legislature, by the adoption of the statute from the state of Idaho, took the statute with the Idaho Construction, which was to the effect that it was an excise tax.

O'Connell, p. 113. The Supreme Court pointed out that the Legislature had taken the extra step of "independently expressing legislative intent" that for purposes of the income tax the taxpayer's income was not to be considered property. Section 15-30-102, MCA, provides that:

Construction of net income. For the purpose of raising revenue, the net income required to be shown on returns under this chapter and taken as the basis for determining the tax hereunder shall not be classified or held or construed to be property. All income except what has been expressly exempted under the provisions of this chapter and income not permitted to be taxed under the constitution of this state or the constitution or laws of the United States shall be included and considered in determining the net income of taxpayers within the provisions of this chapter.

In conclusion the Supreme Court in O'Connell, held that the Montana Constitution did not place any limitation upon the Legislature in either choice to enact an income tax or to legislatively determine that the income to be taxed was not to be considered property.

It is important to note that, if section 17, supra, [Art. XII, section 17, Mont. Cont. 1889.] does not limit the legislature in the particular under consideration, then the general power of the legislature to enact legislation, as discussed earlier in this opinion, comes into effect, and the legislature, in the absence of the restriction, was just as free in that particular as was the Idaho legislature under its permissive constitutional authority. In that event the legislature was free to enact Chapter 181, and it follows that the provisions of section 1 and section 17 of Article XII are not prohibitive, because the same degree of uniformity is not required in the case of an excise tax or in the case of an income tax state that is required in one providing for a levy upon "property."

O'Connell, p. 113. The holding in O'Connell, that the income tax is not a tax on property was followed by the Supreme Court in Poorman v. St. Bd. of Equalization, 99 Mont. 543, 45 P.2d 307 (1935); Mills v. St. Bd. of Equalization, 97 Mont. 13, 33 P.2d 563 (1934) and cited with approval in St. v. Toomey, 135 Mont. 335 P.2d 1051 (1958).

While the O'Connell, case was decided in 1933 under the 1889 constitution there has been no change in the constitutional and legislative framework under the current Montana Constitution which would have the effect of changing the Supreme Court's O'Connell decision. In considering the issue of whether the legislature could adopt a statewide property tax for support of the public schools the Montana Supreme Court held the Montana constitution was document of limitation rather than a grant of authority just as the Supreme Court held in 1933 in O'Connell. State ex rel. Woodahl v. Straud, et al., 164 Mont. 141, 147, 520 P.2d 776 (1974). Further, just as in O'Connell, the Supreme Court held that the constitution imposes no restrictions upon the legislature as to its choice of taxation. On the constitutional issue the Court held:

Here, it should be recalled that a state constitution, such as Montana's, is a document of limitation rather than of grant and accordingly a statute must contravene some express or implied limitation of that constitution to be invalid.

Woodahl, p. 147. On the issue of constitutional limitations on the legislature the Court held:


The only mandate contained in Art. X, Sec. 1(3), Montana Constitution 1972, is that the legislature fully fund the state's share of the cost of basic education. It is silent as to the means the legislature may employ for this purpose. By enacting Chapter 355, the legislature elected to employ a statewide property tax. While the wisdom of that legislative choice may be questioned, its constitutional validity may not. That other sources of revenue may be available, such as severance, excise, and sales taxes as suggested, is true. But the legislature has chosen property taxes to the dismay of many property owners. As our foregoing discussion indicates, the legislature could adopt a property tax and having done so it is free to use the proceeds realized by the tax for any public purpose, including fulfillment of the duty to fund public education.

Woodahl, p. 149.

DECLARATORY RULING

7. Therefore, it is just as true today as it was in 1933, the Montana Constitution does not limit the legislature's choice as to the form of taxation it may enact. As a result, the Supreme Court's decision in O'Connell, remains as viable today as when it was decided in 1933. The legislature has chosen through the enactment of 15-30-102, MCA, to specifically provide that for purposes of applying the income tax a resident's income shall not be construed as property. Since there is no constitutional limitation on that choice the legislature's construction of income must be upheld. Therefore, it is the declaratory ruling of the Department of Revenue that Petitioner, as a resident of the state of Montana, is subject to tax upon the Petitioner's income regardless of the source of character of that income pursuant to 15-30-103, MCA.

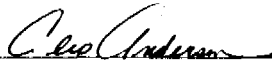
DATED this 15th day of July, 1996.


MICK ROBINSON
Director

CERTIFICATE OF MAILING

I hereby certify that on the 15th day of July, 1996, a true and correct copy of the foregoing has been served by placing same in the United States Mail, postage prepaid, addressed as follows:

Henry Matthies
1603 Valley Drive
Laurel, Montana 59044



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 March 31, 1996. This table includes those rules adopted during the period April 1, 1996 through June 30, 1996 and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 1996, 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 1995 and 1996 Montana Administrative Registers.

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

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