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MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 3

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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NOTICE SECTION

BEFORE THE DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of a rule pertaining to renewal dates	)))	NOTICE OF PROPOSED AMENDMENT OF 8.2.208 RENEWAL DATES

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On March 9, 1996, the Department of Commerce proposes to amend the above-stated rule.

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

"8.2.208 RENEWAL DATES (1) through (d) will remain the same.

(e) April 1 is the renewal date for licenses and other authorities granted by the boards of physical therapy examiners, and is the renewal date for guides and professional guides (regulated by the board of outfitters);

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

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

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

REASON: This amendment is necessary to enable staff of the board of outfitters to more efficiently handle the renewals for outfitters and guides. At the present time all licensees renew at the same time. Additionally, the later renewal date allows outfitters to assess the need for guides after they have booked clients in the beginning of the year.

3. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Outfitters, 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., March 7, 1996.

4. If a person who is directly affected by the proposed amendment wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Outfitters, 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., March 7, 1996.

5. If the Board receives requests for a public hearing on the proposed amendment from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendment, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 170 based on the 1713 licensees in Montana.

DEPARTMENT OF COMMERCE

BY: _____
ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

_____
ROBERT P. VERDON, RULE REVIEWER

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

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

In the matter of the proposed adoption of a new rule pertaining to vaginal birth after cesarean delivery	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF NEW RULE I VAGINAL BIRTH AFTER CESAREAN (VBAC) DELIVERIES

TO: All Interested Persons:

1. On March 5, 1996, at 10:30 a.m., a public hearing will be held in the conference room of the Professional and Occupational Licensing Bureau, Lower Level, Arcade Building, 111 N. Jackson, Helena, Montana, to consider the proposed adoption of a new rule pertaining to vaginal birth after cesarean delivery.

2. The proposed new rule will read as follows:

"I VAGINAL BIRTH AFTER CESAREAN (VBAC) DELIVERIES

(1) A licensed direct entry midwife shall not assume primary responsibility for prenatal care and/or birth attendance for women who have had a previous cesarean section, unless ALL of the following conditions are met:

(a) An informed consent statement, on a form prescribed by the board, shall be signed by all prospective VBAC parents and the licensee, and retained in the licensee's records. The form shall include:

(i) VBAC educational information, including history of VBAC and client's own personal information;

(ii) associated risks and benefits of VBAC at home;

(iii) a workable hospital transport plan;

(iv) alternatives to VBAC at home;

(v) other information as required by the board.

(b) A workable hospital transport plan must be established for home VBAC. The plan shall include:

(i) provision for physician/hospital back-up, e.g., through the physician/hospital policy on back-up;

(ii) place of birth within 30 minutes of transport to the nearest hospital able to perform a cesarean;

(iii) readily available phone numbers for physician back-up and nearest hospital, in writing, in client's records;

(iv) phone contact with nearest hospital prior to any transport to notify that transport is in progress.

(c) Licensee shall obtain prior doctor/hospital cesarean records, in writing, prior to acceptance of the woman as a client, and shall analyze the indication for the previous cesarean, and retain the records and a written assessment of the physical and emotional considerations in licensee's files. Records which show a previous classical uterine incision are a contraindication to VBAC at home, and shall require immediate transfer of care of the client. If a licensee is unable to obtain written records, the licensee shall not retain the woman as a client.

(d) VBAC deliveries shall be performed by a fully licensed midwife (not an apprentice licensee), skilled with VBAC support, able to assess true complications and emergencies, to be present from the onset of active labor, throughout the immediate postpartum period.

(2) The board shall conduct a "sunset" review, including the necessity for and safety of the VBAC rule, on or about May, 2001, or five years from the effective date of this rule."

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

REASON: The proposed new rule will establish standards for evaluation and care of women who have had a previous cesarean birth, but wish to have a VBAC at home with a licensed direct entry midwife in attendance. VBAC birth at home is a controversial subject and will therefore be considered high risk insofar as evaluation and strict guidelines for available physician and hospital back-up, but will not require transfer of care to a physician in every case. The proposed rule will reinforce the language of 37-27-311(2)(g), MCA, which states: "a health care provider's liability in rendering care or assistance in good faith to a patient of a direct-entry midwife in an emergency situation is limited to damages caused by gross negligence or by willful or wanton acts or omissions."

3. 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., February 23, 1996, to advise us of the nature of the accommodation that you need. Please contact Cheryl Brandt, Board of Alternative Health Care, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 444-5436; 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 rule-making process should contact Cheryl Brandt.

4. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Alternative Health Care, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile, number (406) 444-1667, to be received no later than 5:00 p.m., March 7, 1996.

5. Carol Grell, attorney, has been designated to preside over and conduct this hearing.

BOARD OF ALTERNATIVE HEALTH CARE
MICHAEL BERGKAMP, N.D., CHAIRMAN

ROBERT P. VERDON
RULE REVIEWER

BY: _____
ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

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

BEFORE THE BOARD OF CLINICAL LABORATORY
SCIENCE PRACTITIONERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment and repeal of rules pertaining to the practice of clinical laboratory science	))))	NOTICE OF PROPOSED AMENDMENT AND REPEAL OF RULES PERTAINING TO THE PRACTICE OF CLINICAL LABORATORY SCIENCE

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On March 9, 1996, the Board of Clinical Laboratory Science Practitioners is proposing to amend and repeal rules pertaining to the practice of clinical laboratory science.

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

"8.13.304 RENEWAL ~~(1) All clinical laboratory science practitioners' licenses will expire on May 1 of each year, commencing in the year 1995. A renewal notice will be sent by the board to each license holder to the last address in the board's files no later than February 1 of each year. Failure to receive such notice shall not relieve the license holder of his obligation to pay renewal fees in such a manner that they are received by the department on or before the renewal date. All licensees must submit the proper renewal fee and any other forms or documents required by the board.~~

~~(2) A renewed license shall be valid for one year following the expiration date of the previously held license/certificate.~~

(3) will remain the same, but will be renumbered (1)."

Auth: Sec. 37-34-201, MCA; IMP, Sec. 37-34-305, MCA

REASON: Board renewal dates are now regulated by the Department of Commerce under ARM 8.2.208, due the implementation the Uniform Professional Licensing and Regulation Procedures Act implemented by the 1995 Legislature.

"8.13.306 CONTINUING EDUCATION REQUIREMENTS (1) and (1)(a) will remain the same.

(b) Up to 14 hours earned in excess of the 14 hours required in a ~~calendar~~ licensing year may be carried over into the succeeding year.

(c) through (3)(d) will remain the same."

Auth: Sec. 37-34-201, 37-1-319, MCA; IMP, Sec. 37-1-306, 37-34-201, MCA

REASON: This proposed amendment is necessary to make the rule consistent with the renewal cycle set forth in ARM 8.2.208, the Department of Commerce renewal rule.

"8.13.401 UNPROFESSIONAL CONDUCT For the purpose of implementing the provisions of ~~section 37-34-306~~ 37-1-307 and in addition to the provisions of 37-1-316, MCA, the board defines "unprofessional conduct" as follows:

~~(1) resorting to fraud, misrepresentation or deceit in obtaining a license;~~

~~(2) aiding, abetting, assisting or hiring an individual to violate or circumvent any of the laws relating to licensure under Title 37, chapter 34, MCA;~~

~~(3) having a clinical laboratory science or related license denied for a reason that would be a reason for disciplinary action against a licensee in this state, or suspended, revoked, placed on probation, or voluntarily surrendered in another jurisdiction;~~

~~(4) pleading guilty to or having been found guilty of a crime that relates adversely to the licensee's practice of clinical laboratory science or to the ability of the licensee to practice clinical laboratory science;~~

~~(5) pleading guilty to or having been found guilty of a crime involving fraud, deceit, theft, or other deception;~~

~~(6) violation of a disciplinary order of the board;~~

(7) will remain the same, but will be renumbered (1).

~~(8) failure to cooperate with an investigation by staff for the board;~~

(9) through (11) will remain the same, but will be renumbered (2) and through (4).

~~(12) violating the confidentiality of information or knowledge concerning a patient;~~

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

Auth: Sec. ~~37-34-201~~ 37-1-319, MCA; IMP, Sec. ~~37-34-306~~, 37-1-307, MCA

REASON: These proposed amendments are necessary to avoid repeating sections set forth at 37-1-316, MCA, of the Uniform Professional Licensing and Regulation Procedures Act, implemented by the 1995 Legislature.

3. The Board is proposing to repeal ARM 8.13.302 located at page 8-385, Administrative Rules of Montana. The authority section is 37-34-201, MCA and the implementing section is 37-34-304, MCA. The Board is repealing this rule because the substance is now set forth at section 37-1-304, MCA, of the Uniform Professional Licensing and Regulations Procedures Act, implemented by the 1995 Legislature.

4. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Clinical Laboratory Science Practitioners, 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., March 7, 1996.

5. If a person who is directly affected by the proposed action 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 Clinical Laboratory Science Practitioners, 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., March 7, 1996.

6. If the Board receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed action, 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 90 based on the 892 licensees in Montana.

BOARD OF CLINICAL LABORATORY SCIENCE PRACTITIONERS
JOANN SCHNEIDER, CHAIRMAN

BY: _____
ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

_____
ROBERT P. VERDON, RULE REVIEWER

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

BEFORE THE BOARD OF NURSING
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF PROPOSED AMENDMENT OF
of a rule pertaining to conduct) 8.32.413 CONDUCT OF NURSES
of nurses)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On March 9, 1996, the Board of Nursing proposes to amend the above-stated rule.

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

"8.32.413 CONDUCT OF NURSES (1) through (q) will remain the same.

(r) failing to comply with the contract provisions of the nurses' assistance program;

(s) failing to sign for or accept a certified mailing from the board office."

Auth: Sec. 37-1-136, 37-1-319, 37-8-202, MCA; IMP, Sec. 37-1-136, 37-1-319, 37-8-202, MCA

REASON: This amendment is being proposed to enable the board to base disciplinary actions on the stated misconduct.

3. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Nursing, 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., March 7, 1996.

4. If a person who is directly affected by the proposed amendment wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Nursing, 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., March 7, 1996.

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

Administrative Register. Ten percent of those persons directly affected has been determined to be 1500 based on the 15,000 licensees in Montana.

BOARD OF NURSING
JEAN BALLANTYNE, MN, RN,
PRESIDENT

BY: _____
ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

_____
ROBERT P. VERDON, RULE REVIEWER

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

BEFORE THE BANKING AND FINANCIAL INSTITUTIONS DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of a rule pertaining to limitations on loans	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF 8.80.108 LIMITATIONS ON LOANS

TO: All Interested Persons:

1. On March 7, 1996, at 10:30 a.m., a public hearing will be held at the office of the Commissioner of Banking and Financial Institutions, 846 Front Street, Helena, Montana, to consider the proposed amendment of the above-stated rule.

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

"8.80.108 LIMITATIONS ON LOANS ~~In the context of the following rule, the following definitions apply:~~

~~(1) "Organization" means a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.~~

~~(a) "Person" means an individual or an organization.~~

~~(b) "Control" means the ownership or beneficial control of 50% of the corporate stock, or more, but shall be construed to be a lesser percentage of ownership if control is evident to bank management. In no case would control be deemed to exist for this section when a person owns or controls less than 25 percent of the corporation's stock. The aggregation of certain loans to shareholders and their corporations shall include those where a person is deemed to control the enterprise.~~

~~(i) The department's decisions concerning control will be based on analysis of information obtained during or from bank examinations; from requests from a bank, individual or organization; from official documents of the organization or from any other reliable sources that are available.~~

~~(c) "Common enterprise" A common enterprise will exist if the expected source of repayment for each loan or extension of credit is the same for each person, where the persons are related through common control of the organization; or where separate persons borrow from a bank for the purpose of acquiring the same enterprise, which they will mutually control.~~

~~(2) For the purpose of this rule, loans and extensions of credit to separate persons will be combined for lending limit purposes when it is deemed that a common enterprise exists, or when ownership or control of an organization by those persons is apparent. Loans and extensions of credit to corporations, partnerships, joint ventures, and associations will be considered to be loans or extensions of credit to corporate~~

~~stockholders with controlling interests, general partners of a partnership, venture principals, and primary members of associations, respectively. The portion of loans or extensions of credit to a firm, partnership, or unincorporated association for which a person individually is legally responsible will be considered a loan or extension of credit to the person.~~

~~(3) All loans, extensions of credit, and commitments to lend or extend credit, including, but not limited to:~~

~~(a) direct loans;~~

~~(b) letters of credit;~~

~~(c) undisbursed portions of construction, operating, or other lines of credit, not to exceed limits establishing by written agreement, and shall be inclusive of, but not limited to, the "advanced portions" of all loans, but shall be limited to those contractually described advance limitations that occur as part of a credit granting contract.~~

~~(d) undisbursed portions of credit lines established to cover overdrafts;~~

~~(e) undisbursed portions of credit card plans;~~

~~(f) loans, extensions of credit, or participation in loans or extensions of credit sold with recourse to or guaranteed by the bank;~~

~~(g) other written commitments to lend or extend credit will be included in calculating a persons' liability to a bank for lending limit purposes. The calculation of a person's liability will exclude loans or portions of loans specifically exempted by provisions of 32-1-432, MCA.~~

~~(4) A guaranteed loan or extension of credit shall be aggregated with a guarantor's other loans and extensions of credit only if the guarantor receives a benefit as the result of the guarantee. The term "benefit" is defined as a sum of money, a financial consideration, or something of tangible value.~~

(1) In the context of this rule, the following definitions apply:

(a) "Person" means an individual; a corporation; a government, governmental subdivision or agency; a business trust; an estate; a trust; a partnership or association; a limited liability company; two or more persons having a joint or common interest; or any other legal or commercial entity.

(b) "Commitment to lend or extend credit" includes, but is not limited to:

(i) undisbursed portions of operating, construction or other lines of credit, up to limits established by a written agreement between the lender and the borrower;

(ii) undisbursed portions of credit lines established to cover overdrafts;

(iii) undisbursed portions of credit card plans;

(iv) standby letters of credit.

(c) "Common enterprise" occurs when two or more persons combine to acquire, operate or control a business enterprise or property interest. Credit to a common enterprise includes:

(i) loans or extensions of credit to two or more persons when:

(A) loans or extensions of credit are used for a common purpose; and

(B) the expected source of repayment for each loan or extension of credit is the same for two or more of the persons, and those persons lack another source of income from which the loans or extensions of credit, together with the person's other liabilities, may be fully repaid.

(ii) loans or extensions of credit made:

(A) to persons who are related directly or indirectly through common control, including where one person is directly or indirectly controlled by another person; and

(B) substantial financial interdependence exists between or among the persons. Substantial financial interdependence is deemed to exist when 50 percent or more of one person's gross receipts or gross expenditures, on an annual basis, are derived from transactions with the other person.

(d) "Control" means the following:

(i) the ownership, control or ability to vote 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 be 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 participations 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.

(2) For lending limit purposes, loans or extensions of credit will be combined as follows:

(a) Loans or extensions of credit to a person will be combined with loans or extensions of credit to one or more other persons when:

(i) proceeds of a loan or extension of credit are to be used for the direct benefit of the other person, or

(ii) a common enterprise is deemed to exist between the persons, to the extent that loan proceeds are used for the benefit of the common enterprise and repayment is dependent upon the common enterprise.

(b) A loan or extension of credit guaranteed by a person shall be aggregated with the person's other loans and extensions of credit only to the extent that the person receives direct benefit from the loan.

(c) If no direct benefit is received or no common enterprise exists, the combined loans or extensions of credit to a commonly owned or controlled group of borrowers shall not exceed three times the bank's lending limit.

(3) The following items will not be included when calculating the amount of a person's total loans and extensions of credit:

(a) Loans or extensions of credit, and participations in loans and extensions of credit that have been sold, provided:

(i) The loan, extension of credit, or the portion of the loan or extension of credit sold as a participation is sold without recourse to the selling bank, and

(ii) In the case of participation, the participation agreement provides for a pro rata sharing of credit risk proportionate to the respective interests of the originating and participating lenders.

(A) Where a participation agreement provides that repayment must be applied first to the portions sold, a pro rata sharing will be deemed to exist only if the agreement also provides that, in the event of a default or comparable event defined in the agreement, participants must share in all subsequent repayments and collections in proportion to their percentage participation at the time of the occurrence of the event.

(b) Loans, or extensions of credit, including portions thereof, that have been charged off the books of the bank in whole or in part, provided that the amounts charged off are:

(i) unenforceable by reason of discharge in bankruptcy;

(ii) no longer legally enforceable because of expiration of the statute of limitations or a judicial decision; or

(iii) no longer legally enforceable for other reasons, provided that the bank maintains sufficient records to demonstrate that the loan is unenforceable.

(c) All other loans or portions of loans specifically exempted by provisions of 32-1-432, MCA, or other applicable laws."

Auth: Sec. 32-1-432, MCA; IMP, Sec. 32-1-432, MCA

REASON: These amendments are necessary to clarify unclear areas, make the rule more comprehensive and bring the rule closer to rules in effect for national banks.

3. 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., February 26, 1996, to advise us of the nature of the accommodation that you need. Please contact Chris Leitheiser, Banking and Financial Institutions Division, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 444-2091; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-4186. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Chris Leitheiser.

4. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Banking and Financial Institutions Division, 846 Front Street, P.O. Box 200546, Helena, Montana 59620-0546, or by facsimile, number (406) 444-4186, to be received no later than 5:00 p.m., March 7, 1996.

5. Annie M. Bartos, attorney, has been designated to preside over and conduct this hearing.

BANKING AND FINANCIAL
INSTITUTIONS DIVISION
DONALD HUTCHINSON, COMMISSIONER

BY: _____
ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

_____
ROBERT P. VERDON, RULE REVIEWER

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

BEFORE THE BOARD OF INVESTMENTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment, repeal and adoption of rules pertaining to the Municipal Finance Consolidation Program and the Montana Cash Anticipation Financing Program	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT, REPEAL AND ADOPTION OF RULES ADOPTION OF RULES PERTAINING PERTAINING TO THE BOARD OF INVESTMENTS

To: All Interested Persons.

1. On February 28, 1996, at 9:00 a.m., a public hearing will be held in the Board of Investments conference room, 555 Fuller Avenue, Helena, Montana, to consider the proposed amendment, repeal and adoption of rules pertaining to the Municipal Finance Consolidation Act and the INTERCAP Program, in general.

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

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

(c) "Eligible government unit" means eligible government unit as defined in 17-5-1604(3), MCA.

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

(e) "INTERCAP EZ program" means the program described in ARM 8.97.913(2).

~~(d)~~ (f) "Loan agreement" means the agreement, including the exhibits attached thereto and the security instrument, if any, between the borrower and the board or the bond or note resolution of the eligible government unit, all as originally executed or ~~as they may~~ from time to time ~~be~~ supplemented, modified or amended in accordance with the terms of the agreement ~~and of the indenture.~~, or the resolution, respectively.

~~(e) "Local government unit" means any municipal corporation or political subdivision of the state, including without limitation any city, town, county, water or sewer district, rural fire district, board of regents of the university system, county hospital district, school district, or other taxing district.~~

~~(f)~~ (g) "Obligation" means any bond, note or bond anticipation note issued by ~~a local~~ an eligible government unit and payable from taxes, funds, special assessments, revenues derived from an enterprise owned by the ~~local~~ eligible government unit, or any combination thereof.

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

~~(h)~~ (i) "Reserve fund" means the Municipal Finance Consolidation Act reserve fund created ~~in~~ by the board pursuant to 17-5-1630, MCA.

(j) "Short term obligation" means any obligation with an actual or stated term of less than 12 months."

Auth: Sec. 17-5-1605, MCA; IMP, Sec. 17-5-1606, 17-5-1611, MCA

"8.97.717 DESCRIPTION OF MUNICIPAL FINANCE CONSOLIDATION ACT PROGRAMS (1) Under the Act, the board is authorized to develop methods to provide access to capital for Montana ~~local~~ eligible government units and to find ways to reduce borrowing costs through pooling and other efficiencies.

(2) The Act authorizes the board to ~~lend its credit for up to $50 million for its programs, except for its short-term finance programs, which are excluded from this ceiling. The programs developed under the Act provide loans to local governments. The bonds which finance these programs are backed by the board through irrevocable agreements to lend monies and, if necessary, to replenish the bond reserves.~~

~~(3) The board may~~ periodically authorize, issue, and offer for sale its bonds in ~~an amount~~ amounts determined by the board to be sufficient to purchase obligations of ~~local~~ eligible government units ~~whose applications have been approved by the board pursuant to these rules,~~ to pay costs of issuance of such bonds and to fund the reserve fund, provided, however, that the total principal amount of outstanding bonds does not exceed the amount authorized by 17-5-1608, MCA.

(3) Separate series of bonds may be issued to finance the purchase of different types of obligations for various programs that may be created by the board pursuant to the Act.

~~(4) Separate bonds may be issued to finance the purchase of different types of obligations.~~ "

Auth: Sec. 17-5-1605, MCA; IMP, Sec. 17-5-1602, 17-5-1606, 17-5-1611, MCA

"8.97.718 APPLICATION PROCEDURE (1) ~~A local~~ An eligible government unit may apply for financing under ~~the Act~~ a program by submitting an application to the board on a form provided by the board. The form shall elicit sufficient information to enable the board to determine whether the eligible government unit and the proposed loan meets the requirements of 17-5-1611(8), MCA and ARM 8.97.719. ~~The application shall contain:~~

~~(a) a complete description of the purpose or purposes for which the obligations are to be issued;~~

~~(b) evidence that the local government unit has taken all steps necessary for the authorization and issuance of the obligations, including the holding of any required election or public hearings;~~

~~(c) a description of all outstanding obligations of the local government unit, if applicable;~~

~~(d) a description of the proposed issue of obligations including principal amount, proposed maturities and any interest rate limitations;~~

~~(e) a copy of the most recent audit of the enterprise, if the obligations are to be made payable from the revenues of an enterprise;~~

~~(f) a general description of the character of and value of the property to be assessed and the nature of the ownership thereof, and a map of the proposed district boundaries, if the~~

~~obligations consist of special improvement district bonds or rural special improvement district bonds;~~

~~(g) a general financial statement of the governmental unit; and~~

~~(h) any other information deemed necessary by the board to evaluate the application in accordance with these rules and the Act.~~

(2) The bond program office of the board shall review the application to determine whether the application is complete ~~under subsection (1) of this rule~~. The bond program office may request the ~~local~~ eligible government unit to provide additional information relevant to the evaluation of the application under ARM 8.97.719 ~~if applicable~~. ~~When the~~ Upon a determination by the bond program office ~~determines~~ that the application is complete, the executive director and bond program office may approve the loan, if authorized by these rules or board policy or ~~it shall~~ make a recommendation to the board for action on the application. The executive director shall have full discretion to refer any application to the board for its approval.

(3) ~~The board's bond program office may require additional information from a local government unit before acting on an application. If it approves the application, the board shall direct the board office to notify the local government unit and shall decide the nature of the agreement to be entered into with the local government unit under ARM 8.97.719, 8.97.720 and 8.97.721.~~ If the application is approved, the bond program office shall notify the eligible government unit of the terms and conditions of the loan. "

Auth: Sec. 17-5-1605, MCA; IMP, Sec. 17-5-1611, MCA

"8.97.719 CRITERIA FOR EVALUATION OF ALL PROGRAM APPLICATIONS (1) will remain the same.

(a) the lawfulness and validity of the purpose to be ~~considered~~ served by the financing;

(b) the ability of the ~~local~~ eligible government unit to secure borrowed money from other sources and the costs thereof;

(c) the ability of the ~~local~~ eligible government unit to pay principal of and interest on its obligations when due;

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

(g) compliance with the underwriting standards of the board used to determine whether the ~~local~~ eligible government unit has sufficient funds or ability to repay a program loan. A copy of the applicable underwriting standards may be obtained from the bond program office; and

(h) will remain the same.

(2) As required by ~~section~~ 2-4-305, MCA, notice is hereby given that (1)(a), (b), (c) and (d) repeat parts of 17-5-1611, MCA, and are included in this rule in order to provide the public with full disclosure of all evaluation criteria."

Auth: Sec. 17-5-1605, MCA; IMP, Sec. 17-5-1611, MCA

"8.97.720 AGREEMENTS (1) Upon approval of an application, the board ~~will enter into one of the following agreements with the local government unit:~~ may enter into a commitment agreement or may proceed to make the approved loan.

~~(a) If the board has proceeds available from the issuance of its bonds, it may enter into an agreement with the local government unit for the immediate purchase of obligations of the local government unit upon terms set by the board.~~

~~(b) If the board does not have proceeds available from the issuance of its bonds, it may enter into an agreement with the local government unit wherein the board will agree that it will purchase obligations of the local government unit, in an amount not to exceed a principal amount approved by the board, upon the issuance by the board of its obligations.~~

(2) ~~As required by this rule, a loan agreement will be entered into between the local government unit and the board for a program loan.~~ A loan agreement must be executed and delivered prior to disbursement of any loan funds. The loan agreement must ~~be fully executed prior to disbursement of loan funds~~ contain the pledges, agreements and covenants necessary and appropriate to the type of loan being made and the project being financed.

~~(a) The loan agreement will be secured by the local government unit's pledge to annually appropriate funds for the payment of principal and interest as due, and by a security interest, to the extent legally permissible.~~

(3) Prior to ~~final~~ closing of the loan, an eligible ~~a local~~ government unit may withdraw its application for a loan for any reason. If an application is withdrawn, the commitment fee will be returned to the ~~local~~ eligible government unit."

Auth: Sec. 17-5-1605, MCA; IMP, Sec. 17-5-1609, 17-5-1611, 17-5-1643, MCA

"8.97.722 GENERAL TERMS, INTEREST RATES, FEES AND CHARGES ~~(1) The terms of obligations shall be established by the board at the time of purchase, unless established at the time the agreements contemplated by ARM 8.97.721 are executed.~~

~~(2)~~ (1) The board may require ~~a local~~ an eligible government unit to pay interest on its obligations at a rate or rates sufficient to enable the board to pay debt service on any bonds or notes issued by the board, to reimburse the board for its administrative costs incurred in undertaking the program and its general operating and administrative expenses and to provide a reasonable allowance for losses that may be incurred in the program, including funding the reserve fund."

Auth: Sec. 17-5-1605, MCA; IMP, Sec. 17-5-1611, 17-5-1630, MCA

"8.97.724 CLOSING REQUIREMENTS (1) Prior to the board ~~providing funds under this Act, the local~~ funding a loan, the eligible government unit shall provide the following:

(a) a complete transcript of all proceedings, if applicable, taken by the ~~local~~ eligible government unit in connection with the authorization, issuance and sale of the ~~obligations,~~ obligations and security therefor, certified by the recording officer of the ~~local~~ eligible government unit;

(b) certificates of the ~~chief executive officer and recording officer~~ duly authorized representatives of the ~~local~~ eligible government unit as to the absence of litigation and the application to be made of the proceeds of the obligations;

~~(c) a certification evidencing compliance with section 103(c) of the Internal Revenue Code of 1954, as amended, relating to arbitrage bonds, if applicable;~~

~~(d)~~ (c) a legal opinion acceptable to the board as to the due and proper authorization and validity of the obligations and the security thereof; and

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

Auth: Sec. 17-5-1605, MCA; IMP, Sec. 17-5-1611, MCA

"8.97.910 INTERCAP PROGRAM - PURPOSE (1) The ~~purpose of the INTERCAP program is to provide~~ board hereby creates its intermediate term capital program (INTERCAP) for providing loans for periods up to ten years ~~(unless specific enabling legislation requires a shorter term) to local~~ to eligible government units that are authorized to participate in the program to finance equipment, vehicles, capital improvements and other needs, and to refinance outstanding ~~short term~~ indebtedness.

(a) There is no limitation to the total volume of participation ~~by a participating local~~ in the INTERCAP by an eligible government unit except for those limits ~~legally~~ imposed by statutory debt limitations ~~and/or imposed by~~ and underwriting standards used by the board to ensure payment of loans and viability of the INTERCAP program.

~~(2) Another purpose of the INTERCAP program is to provide short term loans for a period of one year or less.~~"

Auth: Sec. 17-5-1605, MCA; IMP, Sec. 17-5-1606, MCA

"8.97.911 INTERCAP PROGRAM - ELIGIBLE GOVERNMENT UNIT'S BORROWING AUTHORITY (1) ~~Financing received through the INTERCAP program will be through a loan agreement issued pursuant to the following: 7-5-4305, MCA, for cities and towns; 7-7-2306, MCA, for counties; 7-13-2217 and 7-13-2221, MCA, for water and sewer districts; 7-33-2109, MCA, for fire districts; 17-34-2122, MCA, for county hospital districts; and 20-9-471, MCA, for school districts; or other applicable statutory authority.~~ In order to receive financing through the INTERCAP program, an eligible government unit must be legally authorized to borrow money for the proposed project and must have complied with all constitutional and statutory requirements to borrow such money. The INTERCAP loan will be evidenced by a loan agreement consistent with the eligible government unit's enabling authority and the financial requirements of the board. The board will require the eligible government unit in the process of the application to identify the statutes under which it is proceeding.

~~(a) These obligations constitute debt of the local government unit and will be payable from any and all revenues by annual appropriation by the local government.~~"

Auth: Sec. 17-5-1605, MCA; IMP, Sec. 17-5-1606, MCA

"8.97.912 INTERCAP PROGRAM - ELIGIBILITY FOR PARTICIPATION; ~~INTERCAP EZ PROGRAM REQUIREMENTS~~ (1) The board ~~may~~ will consider applications for INTERCAP funding for any ~~local~~ eligible government unit debt or borrowing that ~~is legally authorized by statute~~ the eligible government unit is

legally authorized to incur, subject to the limitations contained in sub-chapters 7 and 9.

~~(a) Outstanding loans or leases may be refinanced through INTERCAP if economically advantageous to the applicant.~~

~~(2) In addition to the requirements of ARM 8.97.718, a local government unit must also execute and submit to the board, a commitment agreement, and a resolution, on forms provided by the board, together with a commitment acceptance fee as required in ARM 8.97.914 or ARM 8.97.916.~~

~~(a) Until an INTERCAP loan is actually made, an applicant who acts upon a commitment agreement by ordering equipment or commits funds for some other purpose, does so at its own risk.~~

~~(b) The board will refund the commitment acceptance fee to the local government unit if its application is withdrawn before closing.~~

~~(c) If a loan request is not approved by the board, or approved for an amount less than requested, the commitment acceptance fee or its pro rata share will be returned to the local government unit.~~

~~(3) In determining the local government unit's eligibility to participate in the INTERCAP program, the board will determine if the local government unit is in compliance with 17-5-1611(8), MCA.~~

~~(a) If the board determines that the local government unit has complied with 17-5-1611(8), MCA, the board will reserve funds for the local government unit in the amount indicated in the commitment agreement.~~"

Auth: Sec. 17-5-1605, MCA; IMP, Sec. 17-5-1606, MCA

"8.97.913 INTERCAP PROGRAM - ADDITIONAL PROGRAM REQUIREMENTS - INTERCAP-EZ PROGRAM (1) ~~As stated in ARM 8.97.720, the local government unit must enter into a loan agreement and provide a legal opinion stating that the loan agreement is legal and binding upon the local government unit.~~ In addition to meeting other requirements established by these rules or by the board upon the approval of a loan, the following program requirements must be met:

(a) The eligible government unit must obtain all necessary state and federal permits for the project being financed before closing.

(b) The eligible government unit must submit its most recent audited financial statement if it falls under "Montana Single Audit Act"; otherwise the eligible government unit must submit financial statements as required by the board.

(c) Notwithstanding any other provision of law, the loan term may not exceed the expected useful life of the project being financed.

(d) The board will not consider an application for a loan, if the eligible government unit is in default on any loan or other obligation, whether to the board or otherwise, unless the application is for a loan that would enable the government unit to cure such default and the loan otherwise meets the requirements of these rules, or unless the board determines that the default is being cured or is a technical default of the nature that would not affect the viability or credit worthiness of the proposed loan.

(e) If a project is dependent on other outside sources of revenue, in addition to the INTERCAP loan, the eligible government unit must demonstrate to the board that such funds have been committed to the project prior to the board's disbursal of the INTERCAP loan.

(f) The eligible government unit must demonstrate to the board that an INTERCAP loan will not cause the eligible government unit to exceed its legal indebtedness limitation.

(g) The eligible government unit must demonstrate to the board's satisfaction that it has the ability to repay the loan upon the terms and conditions set by the board.

~~(2) Other program requirements include the following:~~

~~(a) The local government unit must obtain all necessary state and federal permits before closing.~~

~~(b) The local government unit must submit its most recent audited financial statement if it falls under "Montana Single Audit Act"; otherwise the local government unit must submit financial statements as required by the board.~~

~~(c) The loan term may not exceed the expected useful life of the project.~~

~~(d) In order to be eligible for an INTERCAP loan, the local government unit must demonstrate that it is not in default on any other obligation.~~

~~(e) If a project is dependent on other outside sources of revenue, in addition to the INTERCAP loan, the local government unit must demonstrate to the board that such funds have been committed prior to the project and prior to the board's final action on the INTERCAP loan.~~

~~(f) The local government unit must demonstrate to the board that an INTERCAP loan will not cause the local government unit to exceed its legal indebtedness limitation.~~

~~(g) The local government unit must demonstrate to the board's satisfaction that it has the ability to repay the loan upon the terms and conditions set by the board.~~

(2) The board, in an effort to provide a more streamlined procedure for small, fully secured loans, hereby creates within the INTERCAP program its INTERCAP-EZ program.

(a) The EZ program shall be used to finance motor vehicles and equipment in an amount not to exceed maximum principal amounts established by board policy from time to time, for a term not to exceed 5 years.

(b) The loans made under the EZ program shall be secured by a lien on the financed vehicle or equipment.

(c) The bond program officer and the executive director may review and approve applications for the EZ program if in their collective determination the requirements of 17-5-1611(8), MCA, are met.

(3) The board will not consider applications for loans secured by the pledge of tax increment, nor will it consider loans that are private activity loans within the meaning of Section 141 of the Internal Revenue Code unless the board has determined, based on the opinion of nationally recognized bond counsel, that such loans will not affect the tax exemption on the board bonds issued to finance the program."

Auth: Sec. 17-5-1605, MCA; IMP, Sec. 17-5-1606, MCA.

"8.97.914 INTERCAP PROGRAM - ~~TERMS OF OFFER AND COMMITMENT~~ ACCEPTANCE AND ORIGINATION FEE ~~(1) The board's commitment offer to lend INTERCAP funds is valid for 30 days.~~

~~(2) If a local government unit accepts the commitment offer within the 30 day offer period and pays the required commitment acceptance fee, the local government unit has 12 months from the commitment offer date to borrow the money.~~

~~(3)~~ (1) ~~For INTERCAP loans, the local~~ Except as provided in ARM 8.97.917, at the time the board commits to lend funds and the eligible government unit accepts the commitment, the eligible government unit shall pay ~~a commitment~~ an acceptance fee to the board equal to ~~one half (½) percent~~ 0.5% of ~~its total project funding~~ the requested loan amount. ~~The commitment acceptance fee must accompany the commitment agreement.~~

~~(4)~~ (2) A loan origination fee equal to ~~of one and one half (1 ½) percent will be added to~~ 0.5% of the ~~principal~~ requested loan amount ~~of the~~ must be paid at the closing of loan and may be capitalized as part of the loan.

~~(5)~~ (3) The ~~commitment~~ acceptance fee and the loan origination fee are used to offset the board's costs in issuing the bonds."

Auth: Sec. 17-5-1605, MCA; IMP, Sec. 17-5- 1611, 17-5-1643, MCA

"8.97.915 INTERCAP PROGRAM - LOAN TERMS, INTEREST RATES, FEES AND CHARGES (1) The board's INTERCAP program is a variable rate program. On ~~March 1~~ February 15 of each successive year, the interest rate established in the loan agreement will be adjusted. By March 15 of each successive year, the ~~trustee will notify the local~~ eligible government unit will be notified of the new interest rate effective for the following 12 months and will be provided a payment schedule.

(a) The interest rate will be a function of the interest rate on the board's bonds ~~in addition~~ plus up to 1.5% ~~percent~~ per annum, as necessary to meet program operating expenses.

(2) The ~~local~~ eligible government unit will be required to make semiannual loan payments on each February 15 and August 15, except as provided in ARM 8.97.916. Prepayments will be allowed without a prepayment penalty on ~~each February 15 or August 15 with prior notice to the board as set forth in the loan agreement~~ any business day upon 30 days prior notice to the board in writing."

Auth: Sec. 17-5-1605, MCA; IMP, Sec. 17-5-1606, MCA

"8.97.916 INTERCAP PROGRAM - SHORT-TERM LOANS (1) A short-term loan ~~of less than one year may be made to a local government unit if the local government unit has the ability to repay the loan either from tax, revenue, grant or other lawfully available monies~~, as defined in 8.97.715, in the form of bond, grant or loan anticipation note, may be made to an eligible government unit in an amount not to exceed the lesser of:

(i) the actual cost of the project to be financed as evidenced by a signed construction contract; or

(ii) the principal amount of the grant or loan of which the eligible government entity has obtained a binding commitment to receive or the amount of bonds authorized to be issued to provide the source of repayment for the short-term loan.

(2) A short-term ~~INTERCAP~~ loan, as defined in ARM 8.97.715, in the form of a tax and revenue anticipation note, may be made to an eligible government unit authorized to issue such an obligation. Such loan will not be made if the granting of such a loan will exacerbate a current deficit situation.

(3) The board ~~will set the payment date of the loan to the particular needs of the local government unit and is not bound to set those dates on~~ may establish payment dates for short-term loans on dates other than February 15 and August 15 ~~as required by ARM 8.97.915 for other INTERCAP loans~~.

(4) The loan rate for short-term ~~INTERCAP~~ loans will be set at the current INTERCAP loan rate and will adjust as ~~per ARM 8.97.915.~~ provided in ARM 8.97.915.

(5) ~~The board may waive the commitment acceptance and origination fees for short term loans.~~ No acceptance or origination fee shall be charged for short-term loans, provided, however, if the actual term of the short-term loan is extended beyond 12 months through default or a negotiated extension, the board may require payment of the acceptance or origination fee."

Auth: Sec. 17-5-1605, MCA; IMP, Sec. 17-5-1606, MCA

"8.97.917 INTERCAP PROGRAM - GENERAL OBLIGATION BONDED DEBT - DESCRIPTION - REQUIREMENTS (1) The following requirements apply to all general obligation bonded debt secured by the full faith and credit and taxing power of the issuer:

(a) will remain the same.

(b) The loan limit may not exceed $1,000,000~~;~~.

~~(c) an attorney general's certification will be required.~~"

Auth: Sec. 17-5-1605, MCA; IMP, Sec. 17-5-1606, MCA

"8.97.918 INTERCAP PROGRAM - REVENUE OBLIGATION ~~DEBT OF WATER AND SEWER DISTRICTS~~ - TAX BACKED REVENUE OBLIGATIONS - DESCRIPTION - REQUIREMENTS (1) ~~If the local government unit intends to finance equipment and improvements to a water or sewer district, and intends to use revenues of the system to repay the loan, the board will require a pledge of the revenues and certain covenants customary to revenue backed financing.~~ The following requirements shall apply to all debt obligations payable solely or principally from revenues derived from the undertaking being financed:

(a) The obligation will be secured by a first lien on the net revenues (gross revenues less operations and maintenance costs) of the undertaking.

(b) The issuer must have in effect at the time the loan is closed a covenant to establish and maintain a system of rates and charges in an amount sufficient to produce net revenues not less than 125% of maximum annual debt service on obligations payable from such revenues. The board may require

a higher coverage if the financial statements of the revenue producing facility indicate that 125% coverage may not adequately protect the board.

(c) A debt service reserve shall be established in an amount equal to maximum annual debt service.

(d) The board may require a security interest in the project being financed where the eligible government unit is authorized to grant a security interest.

(e) The loan term may not exceed 10 years.

(f) The loan amount may not exceed $500,000, provided, however, that the principal amount of a loan to water and sewer district which has not been authorized by the voters shall not exceed $50,000.

(g) The board may allow a pledge of gross revenues in lieu of net revenues, debt service coverage less than 125%, no debt service reserve or a debt service reserve less than maximum annual debt service and the pledge of revenues on a subordinate basis if it determines that:

(i) such terms are appropriate under the circumstances, and

(ii) the pledged revenues will be adequate to provide for the timely payment of the INTERCAP loan.

(h) The board may require such other additional covenants, terms and conditions customary for municipal revenues finances that it deems necessary and appropriate to secure the loan, including a requirement that the issuer may not incur additional debt payable from the same source of revenues, without obtaining approval of the board.

~~(2) The following requirements apply to these revenue backed financing:~~

~~(a) the board will require parity obligation where possible and reasonable;~~

~~(b) the term limit may not exceed 10 years;~~

~~(c) the loan limit may not exceed $500,000;~~

~~(d) the water or sewer district must submit an audited financial statement or certificate to the board prepared by an outside expert regarding the adequacy and accuracy of the rate base and project cost;~~

~~(e) the water or sewer district must covenant to maintain rates and charges sufficient to produce new revenues (gross revenue less operation and maintenance) on an annual basis equal to outstanding debt;~~

~~(f) the water or sewer district must submit documentation and proof of the rates and charges currently in effect;~~

~~(g) all project costs must be identified and certified;~~

~~(h) all sources of funds must be identified and committed; and~~

~~(i) the debt may be subordinated if (b) through (h) above are met, and no additional debt is incurred without board consent.~~

(2) The following requirements shall apply to revenue obligations that are further secured by a deficiency tax levy:

(a) The obligation will be secured by a first lien on the net or gross revenues of the undertaking.

(b) The issuer must have in effect at the time the loan is closed a covenant to establish and maintain a system of

rates and charges in an amount sufficient to produce net revenues not less than 110% of maximum annual debt service on obligations payable from such revenues. The board may require a higher coverage if the financial statements of the revenue producing facility indicate that 110% coverage may not adequately protect the board.

(c) A debt service reserve may or may not be required depending on time requirements for certifying and levying the deficiency.

(d) The board may require a security interest in the project being financed where the eligible government unit is authorized to grant a security interest.

(e) The loan term may not exceed 10 years.

(f) The loan amount may not exceed $500,000.

(g) The board may allow a pledge of gross revenues in lieu of net revenues, a debt service coverage less than 125% and the pledge of revenues on a subordinate basis if it determines that:

(i) such terms are appropriate, and

(ii) revenues will be adequate to provide for the timely payment of the INTERCAP loan.

(h) The board may require such other additional covenants, terms and conditions customary for municipal revenues finances that it deems necessary and appropriate to secure the loan, including a requirement that the issuer may not incur additional debt payable from the same source of revenues, without obtaining approval of the board."

Auth: Sec. 17-5-1605, MCA; IMP, Sec. 17-5-1606, MCA

"8.97.919 INTERCAP PROGRAM - SPECIAL ~~ASSESSMENT~~ IMPROVEMENT BOND DEBT - DESCRIPTION - REQUIREMENTS (1) The board will purchase ~~S~~special improvement district bonds ~~(SID) are payable from special assessments levied against the real property in the district benefitted by the improvements financed by the bonds. Special assessments are a lien on the property in the principal amount of the assessment. They are prepayable in full on any payment date and may~~ created and issued under Title 7, chapter 12, parts 21, 41 and 42, MCA, (the special improvement district statute) subject to the following conditions:

(a) Such bonds must be secured by the issuer's revolving fund~~. The issuer's annual liability to levy for~~ and the issuer covenants to levy for and maintain the revolving fund to the maximum amount permitted by law; ~~is limited to 5% of the~~

(b) The board determines, taking into consideration the factors set forth in 7-12-2185 and 7-12-4225(4)(c), MCA, that the amount of special assessments to be placed against the property in the district is sufficiently less than the market value of the property against which the assessments will be levied and the condition of the issuer's revolving fund, taking into consideration the issuer's other outstanding bonds secured by the revolving fund, will provide adequate security to provide for timely payment of principal and interest on the special improvement district bonds.

(2) ~~The following requirements apply to SIDs:~~ In order to provide additional security, the board may:

(a) ~~No loans will be made for raw land projects, and 80% of the property in the district must contain real property improvements and be occupied;~~ require the issuer to create a district reserve fund and fund it in an amount up to 5% of the principal amount of the bonds.

(b) ~~The city or county revolving fund must secure the SID with a pledge to levy for and maintain the revolving fund to the maximum amount permitted by law;~~ require that the interest rate on the unpaid principal assessments be an additional 0.5% over the rate borne by the bonds.

(c) The principal amount of any special improvement district bond issue may not exceed $300,000.

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

~~(d) The loan amount may not exceed $100,000; and~~

~~(e) A loan covenant requiring that the local government unit will not create an additional SID unless it meets the "improvements" test as set forth in (a) above.~~"

Auth: Sec. 17-5-1605, MCA; IMP, Sec. 17-5-1606, MCA

REASON: The purpose of the proposed amendments is to (i) eliminate statutory provisions from the rules, (ii) to modify the rules to implement changes made to the enabling legislation by the 1995 Legislature, and (iii) to make the rules better reflect the program that has evolved and to establish rules that are broad enough to encompass all eligible borrowers and projects, subject to the limitations established in the rule.

3. The Board is proposing to repeal 8.97.721, located at page 8-3513, Administrative Rules of Montana (ARM), authority section 17-5-1605, MCA, implementing section 17-5-1611, MCA; 8.97.723, located at page 8-3514, ARM, authority section 17-5-1605, MCA, implementing section 17-5-1611, 17-5-1630, MCA; 8.97.920, located at pages 8-3531 through 8-3533, ARM, authority section 17-5-1605, MCA, implementing section 17-5-1606, MCA. The reason for the proposed repeals is to eliminate statutory provisions and to substitute new program parameters in the rules.

4. The proposed new rule will read as follows:

"I INTERCAP PROGRAM - OTHER LOANS; LIMITS (1) The board may make loans of a nature other than those described in ARM 8.97.916, 8.97.917 and 8.97.918, to eligible government units, provided that the eligible government entity is authorized to borrow such money for the purpose and subject to the following conditions:

(a) The maximum principal amount of any loan shall not exceed $500,000 except for loans to the state university system, in which case the principal amount of any single loan shall not exceed $1,000,000.

(b) The board determines that the source or sources from which the loan will be paid is and will be legally available to repay the obligation and will be adequate, taking into consideration other outstanding debt and the limitations (including I-105) on the eligible government unit's ability to levy taxes for the repayment of the loan."

Auth: Sec. 17-5-1605, MCA; IMP, Sec. 17-5-1606, 17-5-1611, MCA

REASON: The proposed new rule is necessary to provide maximum program availability to eligible government units.

5. The Department of Commerce 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., February 16, 1996, to advise us of the nature of the accommodation that you need. Please contact Julie Endner, Board of Investments, 555 Fuller Avenue, P.O. Box 200126, Helena, Montana 59620-0126; telephone (406) 444-0001, Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 449-6579. Persons with disabilities who need an alternative accessible format to this document in order to participate in this rule-making process should contact Julie Endner.

6. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Investments, 555 Fuller Avenue, P.O. Box 200126, Helena, Montana 59620-0126, or by facsimile number (406) 449-6579, to be received no later than 5:00 p.m. March 7, 1996.

7. David Ewer, Senior Bond Program Officer, has been designated to preside over and conduct this hearing.

BOARD OF INVESTMENTS
WARREN VAUGHN, CHAIRMAN

BY: _____
ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

_____
ROBERT P. VERDON, RULE REVIEWER

Certified to the Secretary of State, January 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 criteria for a scientific collectors permit	))))	NOTICE OF PROPOSED ADOPTION No Public Hearing Contemplated

TO: All Interested Persons.

1. On March 18, 1996, the Montana Department of Fish, Wildlife and Parks proposes to adopt a new rule to read as follows:

RULE I APPLICATION PROCESS AND CRITERIA FOR A SCIENTIFIC COLLECTORS PERMIT (1) The application for a scientific collectors permit must contain the following:

(a) name, address, phone number, affiliation and qualifications of the applicant as well as any associates who will be involved in making collections;

(b) description of supervision provided by the applicant to any associates included on the application;

(c) description of why the collection is necessary, including why collection by angling is not possible within the creel limits by licensed anglers during the regular angling season;

(d) description of the study plan;

(e) description of the collection gear and method or methods of collection;

(f) anticipated species collected, approximate number, location and time frame for collection, and disposition of collected specimens (return to waterbody, preserve for scientific purposes, dispose of in a sanitary manner);

(g) special precautions taken to protect threatened and endangered species and species of special concern; and

(h) fifty dollar application fee, except for those exempt under 87-2-806(5), MCA.

(2) The following are conditions of permits issued:

(a) permits are not transferable;

(b) permits must be in the permittee's possession during collection;

(c) any violation of the conditions of a collectors permit may result in revocation of the permit and repeated violations may result in denial of future permit applications;

(d) all permits issued within a calendar year will expire on December 31;

(e) an annual report describing the results must be submitted to the department no later than March 1 of the following year. The report shall include copies of fish and related habitat field data. A new permit will not be issued until the report from the previous year's work has been submitted and accepted;

(f) data collected during the term of the permit must be compatible with the data fields and structures used in the Montana Rivers Information System (MRIS). The MRIS Environmental Protection Agency River Reach Numbering System will be used as the stream reach identifier and stream reach breaks will be made in adherence to this system unless variations are approved prior to data collection. The permittee will be provided with all support documents by MRIS staff necessary to maintain this standardization. Training in the MRIS edit/entry will be provided by MRIS staff. This requirement may be waived under certain circumstances;

(g) the regional fish manager must be notified prior to the sampling of any waters in that region. The permittee and associates may be subject to spot checks to determine suitability of collection methods and gear;

(h) permittee shall follow the department's electrofishing guidelines; and

(i) the permittee is required to furnish their own electrofishing or other collection gear.

(3) Applications must be received 45 days prior to scheduled start of sampling.

(4) Under 87-2-806(3), MCA, the department may deny a permit if:

(a) the applicant is not qualified to make the scientific investigation;

(b) the proposed collecting is not necessary for the proposed scientific investigation;

(c) the method of collecting is not appropriate;

(d) the proposed collecting may threaten the viability of the species; or

(e) there is no valid reason or need for the proposed scientific investigation.

(5) The department may place special authorizations or special requirements and limitations on any permit as necessary to protect the species to be collected, other species that may be affected, and their habitats, or to preserve the integrity of the scientific collection methods.

(6) Minimum qualifications are as follows:

(a) principal investigator or permittee must have a B.A. or B.S. plus five years experience or a M.S. in fish, wildlife or a related field. Specific training in electrofishing methods is required if it is one of the collection methods proposed in the application; and

(b) students or associates under the supervision of the principal investigator must have specific training in the collection methods proposed in the application.

(7) All of the above provisions apply equally to all applicants whether they are governmental, university or private.

AUTH: 87-1-201, MCA IMP: 87-2-806, MCA

2. Rationale for proposed new rule: The 1995 legislature revised 87-2-806, MCA, regarding taking of fish or game for scientific purposes. Chapter 154 (SB 304). The principal

changes include allowing a private individual to be eligible to receive a permit and increasing the permit fee.

87-2-806, MCA, as amended states that the department may set qualifications for persons to whom permits are issued and may place special authorizations or special requirements and limitations on any permit. The department shall also approve the qualifications of a student or an associate and the level of supervision required. An applicant is to submit a plan of operations that includes the purpose for the collection and collection methodology to be employed.

The proposed rule is intended to implement 87-2-806, MCA, as amended by Chapter 154.

3. Interested parties may submit their data, views or arguments, either orally or in writing, to Chris Hunter, Department of Fish, Wildlife & Parks, P.O. Box 200701, Helena, Montana 59620-0701, no later than March 11, 1996.

4. If a person who is directly affected by the proposed adoption 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 to Chris Hunter, Department of Fish, Wildlife & Parks, P.O. Box 200701, Helena, Montana 59620-0701, no later than March 11, 1996.

5. If the agency receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the administrative code committee of the legislature, from a governmental agency or subdivision or from any 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 and mailed to all interested persons. The department has determined that 10% of the number of persons affected is greater than 25 based on the total number of biological consultants and entities who potentially may employ biological consultants in Montana.

MONTANA DEPARTMENT OF FISH, WILDLIFE AND PARKS

Robert N. Lane
Rule Reviewer

Patrick J. Graham, Director

Certified to the Secretary of State on January 29, 1996.

BEFORE THE BOARD OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of proposed repeal of rules related to the department of livestock.	)	NOTICE OF PROPOSED REPEAL
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: ALL INTERESTED PERSONS:

1. On March 9, 1996, the Board of Livestock, acting through the department of livestock, proposes to repeal rules related to the department of livestock in Title 32, chapters 3, 6, 8, 9, 15, and 18, Administrative Rules of Montana.

2. The rules proposed in chapter 3 for repeal are 32.3.121, 32.3.208, 32.3.222, 32.3.407C, 32.3.407D, 32.3.407E, 32.3.410, 32.3.417, 32.3.425, 32.3.426A, 32.3.431, 32.3.432, 32.3.441, 32.3.442, 32.3.445, 32.3.446, 32.3.447, 32.3.450, 32.3.603, 32.3.604, 32.3.605, 32.3.612, 32.3.613, 32.3.614, 32.3.615, 32.3.616, 32.3.617, 32.3.618, 32.3.801, 32.3.802, 32.3.803, 32.3.804, 32.3.1508, 32.3.2302, 32.3.2304. These rules are located respectively on pages 32-73, 32-90, 32-101, 32-118, 32-119, 32-121, 32-125, 32-129, 32-130, 32-133, 32-134, 32-137, 32-139, 32-141, 32-153, 32-154, 32-156, 32-157, 32-167, 32-198, 32-232, and 32-233, Administrative Rules of Montana.

AUTH: 81-2-101, 102, and 103, MCA
IMP: 81-2-101, 102, and 103, MCA

3. The rule proposed in chapter 6 for repeal is 32.6.601, located on page 32-291, Administrative Rules of Montana.

AUTH: 81-2-102, MCA
IMP: 81-2-102, MCA

4. The rule proposed in chapter 8 for repeal is 32.8.104 located on page 32-350, Administrative Rules of Montana.

AUTH: 81-2-102, MCA
IMP: 81-2-102, MCA

5. The rules proposed in chapter 9 for repeal are 32.9.102, 32.9.202, 32.9.203, 32.9.205, and 32.9.207. These rules are located respectively on pages 32-381, 32-387 through 32-391, Administrative Rules of Montana.

AUTH: 81-2-102, and 81-22-102, MCA
IMP: 81-2-102, and 81-22-102, MCA

6. The rules proposed in chapter 15 for repeal are 32.15.801, 32.15.802, 32.15.803, and 32.15.804. These rules are located on page 32-645, Administrative Rules of Montana.

AUTH: 81-8-803, MCA
IMP: 81-8-804, MCA

7. The rules proposed in chapter 18 for repeal are 32.18.301, 32.18,302, 32.18.303, and 32.18.304. These rules are located on pages 32-707 through 32-709, Administrative Rules of Montana.

AUTH: 81-3-202, MCA
IMP: 81-3-211, and 81-3-212, MCA

8. The proposed repealed rules are not necessary for the functioning of the department of livestock and are to be deleted pursuant to HJR-5 (1995).

9. Interested parties may submit their data, views, or arguments concerning the proposed repeals in writing to Marc Bridges, Temporary Executive Secretary to the Board of Livestock, 301 N. Roberts St., PO Box 202001, Helena, MT 59620-2001. Any comments must be received no later than March 7, 1996.

10. If a person who is directly affected by the proposed repeals wishes to express their data, views, and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Marc Bridges, Temporary Executive Secretary to the Board of Livestock, 301 N. Roberts St., PO Box 202001, Helena, MT 59620-2001. A written request for hearing must be received no later than March 7, 1996.

11. If the Board receives requests for a public hearing on the proposed repeals from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the administrative code committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons

directly affected has been determined to be 5 persons based on an estimate of licensed dairies, or farmers and ranchers in Montana, or other interested persons.

MONTANA BOARD OF LIVESTOCK
JAMES HAGENBARTH, Chairman

By: _____
Marc Bridges, Temporary Exec. Secretary, Board of Livestock

By: _____
Lon Mitchell, Rule Reviewer
Livestock Chief Legal Counsel

Certified to the Secretary of State January 29, 1996.

BEFORE THE BOARD OF LAND COMMISSIONERS
OF THE STATE OF MONTANA

In the matter of the repeal of Rule 36.11.102, pertaining to Christmas tree cutting, Rules 36.11.201 through 36.11.203, and 36.11.211, pertaining to control of timber slash and debris, and Rule 36.11.301, pertaining to streamside management	))))))	CORRECTED NOTICE OF PROPOSED REPEAL

To: All Interested Persons

1. On December 21, 1995, the agency published a notice of proposed repeal at page 2758 of the Montana Administrative Register, Issue No. 24, for the repeal of rule 26.6.402, pertaining to Christmas tree cutting, rules 26.6.501 through 26.6.504, and 26.6.511, pertaining to control of timber slash and debris, and rule 26.6.601, pertaining to fire management and forest management. The agency again published a notice of proposed repeal at pages 59-60 of the Montana Administrative Register, Issue No. 1, for the repeal of rule 36.11.102, pertaining to Christmas tree cutting, rules 36.11.201 through 36.11.204, and 36.11.211, pertaining to control of timber slash and debris.

2. The reason for the correction is that the first notice of proposed repeal incorrectly listed the rules as being from Title 26. The rules in Title 26, chapter 6, have been transferred to Title 36, chapter 11, effective July 1, 1995. Rule 26.6.504 was listed to be repealed in the first notice, and again in the second notice (as 36.11.204), when in fact it was repealed on September 26, 1980, before the transfer. Rule 26.6.601 was listed as pertaining to fire management and forest management when it actually pertains to streamside management. The notice of proposed repeal needs to be approved and adopted by the Board of Land Commissioners. With the exception of rule 26.6.601 (36.11.301), the wrong citation was used for the rules in both publications. The corrected citations should be as follows:

36.11.102 (26.6.402) CHRISTMAS TREE CUTTING RULES ON STATE FOREST LANDS

AUTH: ~~2-4-201~~ 76-13-109, MCA
IMP: ~~2-4-201~~ 76-13-104, MCA

36.11.201 (26.6.501) PURPOSE OF FIRE HAZARD REDUCTION OR MANAGEMENT LAW AND THIS SUB-CHAPTER

AUTH: ~~2-4-201~~ 76-13-403, MCA
IMP: ~~2-4-201~~ 76-13-403, MCA

36.11.202 (26.6.502) DEFINITIONS

AUTH: ~~2-4-201~~ 76-13-403, MCA
IMP: ~~2-4-201~~ 76-13-403, MCA

36.11.203 (26.6.503) CONTROL OF TIMBER SLASH AND DEBRIS
AUTH: ~~2-4-201~~ 76-13-403, MCA
IMP: ~~2-4-201~~ 76-13-408, 76-13-410, and 76-13-411, MCA

36.11.211 (26.6.511) FORMS
AUTH: ~~2-4-201~~ 76-13-403, MCA
IMP: ~~2-4-201~~ 76-13-403, MCA

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 January 29, 1996.

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

In the matter of the proposed amendment of rules 36.20.102 through 36.20.308, and the repeal of rule 36.20.101A, pertaining to weather modification	)))))	NOTICE OF PROPOSED AMENDMENT AND REPEAL NO PUBLIC HEARING CONTEMPLATED

To: All Interested Persons.

1. On March 9, 1996, the Department of Natural Resources and Conservation proposes to amend rules 36.20.102 through 36.20.308, and repeal rule 36.20.101A, pertaining to weather modification.

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

36.20.102 DEFINITIONS In addition to the definitions found at 85-3-101, MCA, and unless ~~Unless~~ the context requires otherwise, in these rules:

Subsection (1) remains the same.

(2) "Applicant" means any ~~natural~~ person, political subdivision, public or private corporation, partnership, or other entity that wishes to obtain a weather modification license or permit, or a license or permit exemption.

~~(3) "Board" means the board of natural resources and conservation as provided in section 2-15-3302, MCA.~~

~~(4) "Department" means the department of natural resources and conservation as provided in section 2-15-3301, MCA.~~

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

~~(6) "Operation" means a program of weather modification and control, including research and development projects, entered into for the purpose of producing or attempting to produce a certain modifying effect on weather conditions within a specified target area over a continuing time interval not exceeding 1 year.~~

Subsections (7) and (8) remain the same but will be renumbered (4) and (5).

~~(9) "Research and development" means theoretical analysis, exploration and experimentation, and the extension of investigative findings and theories of a scientific and technical nature into practical application for experimental and demonstration purposes, including the development and testing of equipment, materials, and processes that are intended to produce a seeding effect.~~

~~(10)~~(6) "Seeding" means the intentional introduction of artificial agents into the atmosphere for the purpose of ~~affecting precipitation forms or atmospheric cloud forms that occur~~ changing or controlling or attempting to change or control the natural development of cloud forms or precipitation forms that occur in the troposphere.

Subsection (11) remains the same but will be renumbered (7).

~~(12) "Weather modification" or "weather modification and control" means changing or controlling or attempting to change or control, by artificial methods, the natural development of precipitation forms or atmospheric cloud forms including fog, that occur in the troposphere.~~

AUTH: 85-3-102, MCA
IMP: 85-3-102, MCA

36.20.103 LICENSES AND PERMITS - FORMS (1) The necessary forms for the administration of these rules are available from the water resources division of the department, ~~1520 East Sixth Avenue~~ 48 Last Chance Gulch, Helena, Montana 59620-~~2301~~. The following forms shall be used in the administration of these rules:

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

AUTH: 85-3-102, 202, 203, and 206, MCA
IMP: 85-3-102, 202, 203, 206, 208, 301, and 302, MCA

36.20.104 LICENSES AND PERMITS - EXEMPTIONS Subsection (1) remains the same.

(a) state and federal agencies, colleges, and bona fide non-profit research organizations:

~~(a)~~(b) laboratory research and experiments;

~~(b)~~(c) ~~short-term activities of an emergency character~~ activities for ~~immediate~~ protection against an imminent threat to life or property caused by fire, frost, sleet, or fog~~;~~ ~~Such activities do not include planned operations for the seasonal suppression of hail, fire, fog, frost, or tornadoes or operations to end drought;~~ and

Subsection (c) remains the same but will be relettered (d).

~~(2) The board may exempt research and development operations conducted by state and federal agencies, institutions of higher learning, and bona fide nonprofit research organizations and their agents from some or all of the license and permit requirements of the act and these rules. Applicants requesting an exemption from any of the license or permit requirements shall complete and submit Form 669-N-278 to the department. The applicant must explain the nature of the requested exemption and justify why such an exemption should be granted. Permit and license requirements may be exempted only if, in the discretion of the board, the benefits of granting an exemption significantly outweigh any threat to health, safety, welfare, or property that would otherwise be identified and minimized through the full application of these rules.~~

AUTH: 85-3-102 and 202, MCA
IMP: 85-3-202, MCA

36.20.201 LICENSE APPLICATIONS Subsections (1), (a), and (i) remain the same.

~~(ii) the names, addresses, and telephone numbers of three persons who will attest to the character, knowledge, and experience of the individual who will be responsible for the~~

~~conduct of any operations of the applicant; and~~

~~(iii)~~(ii) a statement indicating if a weather modification license or a permit application, or a license or permit issued to the applicant by any jurisdiction has been denied or revoked, or if the renewal of any license or permit has been refused. ~~If the answer is yes, the~~The circumstances for any denial, revocation, or refusal must be described in detail;

Subsection (b) remains the same.

~~(2) The department or board may, in their discretion, request clarification and elaboration of the information provided by the applicant in any of the application materials described in (1).~~

AUTH: 85-3-203, MCA
IMP: 85-3-203, MCA

36.20.202 LICENSE APPROVAL CRITERIA (1) The ~~board~~ department ~~shall~~ must issue a license to applicants ~~that~~ who demonstrate competence in the field of weather modification and meteorology. ~~If an applicant is an organization, such competence must be demonstrated by the person who will be responsible for the conduct of any operation of the applicant.~~

Subsections (2)(a) through (e) remain the same.

(f) an equivalent combination of education and experience as determined by the ~~board~~ department.

(3) The ~~board~~ department may also consider the applicant's history of performance and references in determining competency in the field of weather modification and meteorology.

AUTH: 85-3-203, MCA
IMP: 85-3-203, MCA

36.20.203 LICENSE TERM AND RENEWAL (1) ~~A license shall be valid for a period to expire at the end of the calendar year in which it is issued.~~

~~(2)~~ A licensee may apply to have its license renewed by submitting to the department a properly completed Form 671-N-278 and payment of a the $100 license fee. An application for license renewal should be submitted to the department at least two months before the license expiration date.

~~(3) The board shall renew a license if the applicant continues to demonstrate competency in the field of weather modification and meteorology as provided in ARM 36.20.202.~~

AUTH: 85-3-203, MCA
IMP: 85-3-204, MCA

36.20.204 LICENSE AND PERMIT TERMINATION ~~(1) After notice to the licensee and a reasonable opportunity for a hearing, the board may suspend, revoke, or refuse to renew any license if a licensee:~~

~~(a) no longer possesses the qualifications necessary to demonstrate competency in the field of weather modification and meteorology;~~

~~(b) violates the provisions of the act, these rules, the provisions of a license, or the conditions of a weather modification permit;~~

~~(c) fails to demonstrate competence in the management and control of an operation;~~

~~(d) is found to have used deceitful practices in promoting or conducting a weather modification operation; or~~

~~(e) used fraud, misrepresentation, or deceit in obtaining a license or permit.~~

~~(2) Any suspension, revocation, or refusal to renew a license must be preceded by a hearing.~~ The ~~board~~ department may conduct ~~such~~ a hearing to modify, suspend, or revoke a license or permit, at any time, or may refuse to renew any license or permit, except the licensee or permittee shall be notified of the hearing by certified mail at least two weeks in advance of the hearing date.

AUTH: 85-3-203, MCA
IMP: 85-3-214, MCA

36.20.301 PERMIT APPLICATIONS - GENERAL Subsections (1) and (a) remain the same.

~~(i) a detailed operating plan as required by ARM 36.20.304;~~

~~(ii) proof of financial responsibility as required by ARM 36.20.303;~~

~~(iii) the estimated cost of the operation for which the permit is being requested;~~

~~(iv)~~(i) a statement with detailed explanation indicating what if a any weather modification permits or similar authorizations issued to the applicant by any jurisdiction ~~has~~ have been revoked or suspended~~;~~ ~~If the answer is yes, the circumstances must be explained in detail;~~ and

~~(v)~~(ii) ~~a copy of~~ informational material used by the applicant ~~during the past year~~ to promote its capabilities and activities in the field of weather modification as they relate to the proposed operation;

(b) a Notice of Intention to modify weather using Form 673-N-278. ~~required by ARM 36.20.302.~~

~~(2) An applicant for a permit must submit a fee amounting to 1 percent of the total estimated cost of the intended operation. The total fee shall be due and payable to the department no later than the date on which the permit is granted, unless the applicant:~~

~~(a) submits a payment amounting to at least 50 percent of the required fee; and~~

~~(b) provides the board with adequate security for the balance of the required fee. Such balance must be submitted to the department no later than 3 months following the termination date for the operation as authorized by the board.~~

~~(3)~~(2) ~~Applications shall be submitted to the department at least ninety days preceding the date on which the intended operation is to commence.~~ Applications shall be submitted to the department at least 180 days prior to the date on which the intended operation is to commence in order to provide sufficient time for review and preparation of the environmental impact statement. To better assure that a permit application can be processed prior to the intended date of commencement, the

applicant should consult with the department prior to permit application submittal, ~~regarding the probable need for an environmental impact statement pursuant to Title 75, chapter 1, MCA. If an environmental impact statement is likely to be required, the application should be submitted at least 180 days prior to the date on which the intended operation is to commence. All costs to the department of preparing an environmental impact statement are to be paid by the permit applicant in accordance with ARM 36.2.601 through 608.~~

~~(4) The department may, in its discretion, request clarification and elaboration of information provided by the applicant in any of the application materials described in (1).~~

AUTH: 85-3-206, MCA
IMP: 85-3-206, 208, 209, 211, and 212, MCA

36.20.302 PERMIT APPLICATIONS - NOTICE OF INTENTION (1) A permit applicant shall file Form 673-N-278, Notice of Intention to Modify Weather, with the department, ~~at least ninety days prior to the intended commencement of the operation.~~ A completed Form 673-N-278 shall contain the following information:

Subsection (a) remains the same.

(b) the sponsor, objective, and a highlighted description of the intended operation;

~~(c) the name and address of the sponsor of the intended operation;~~

~~(d)~~(c) a general description of the target area and operational area;

~~(e)~~(d) the starting date and expected duration of the intended operation;

Subsections (f) through (h) remain the same but will be relettered (e) through (g).

(2) Upon receipt of Form 673-N-278, the department shall publish the notice of intention at least once a week for two consecutive weeks on a newspaper published within any county wholly or partially within the operational area or having a general circulation in those counties. ~~The department, in its discretion, may also issue a general news release regarding the permit application.~~

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

AUTH: 85-3-206, MCA
IMP: 85-3-208 and 209, MCA

36.20.303 PERMIT APPLICATIONS - PROOF OF FINANCIAL RESPONSIBILITY (1) Proof of financial responsibility shall be made by the applicant by showing to the satisfaction of the ~~board~~ department that the applicant has the ability to respond in damages for liability which might result as a consequence of the intended operation. Such damages include, but are not limited to, losses from flood, lightning-induced fire, hail, or erosion, including those losses that develop after the operation is concluded. Such proof may be shown by:

(a) presenting to the ~~board~~ department a prepaid insurance policy or a corporate surety bond, or proof of purchase thereof,

in the amount of ~~$1,000,000~~ $10,000,000 and issued by a company against whom service of legal process may be made in Montana for liabilities resulting as a consequence of weather modification operations. This amount may be increased or decreased at the discretion of the ~~board~~ department if greater or lesser liability could reasonably be attached to or result from the operation; or

(b) depositing cash or negotiable securities with the ~~board~~ department in the amount of ~~$1,000,000~~ $10,000,000. This amount may be increased or decreased at the discretion of the ~~board~~ department if greater or lesser liability could reasonably be attached to or result from the operation; or

(c) any other reasonable manner approved by the ~~board~~ department.

(2) Cancellation of an insurance policy or corporate bond used to prove financial responsibility must be reported to the department immediately.~~—~~ and ~~The~~ the permit is automatically suspended upon the expiration of such insurance or bond. The permittee may request a hearing before the ~~board~~ department or a designated hearings officer at any time before or after the suspension to ~~show that the insurance policy or corporate bond is still in effect or to~~ prove that financial responsibility can be maintained by ~~other~~ means in accordance with this rule. If the hearing is conducted by a designated hearings officer, the ~~board shall~~ department may ~~meet to~~ make a final decision ~~as soon as possible. Such meeting may be held~~ by telephone conference call.

AUTH: 85-3-206, MCA
IMP: 85-3-211, MCA

36.20.304 PERMIT APPLICATIONS - OPERATING PLANS Subsections (1) and (a) remain the same.

(b) a discussion of the technical and scientific basis for the operation, including a reasonable and generally accepted ~~the~~ physical ~~hypotheses~~ hypothesis underlying the specific seeding methodology to be used;

(c) ~~a legal description by township, range, and section, and~~ a map of the target area and the operational area. The map shall ~~also~~ specify in detail the intended location of ground-based seeding equipment, airborne seeding activity, and major monitoring devices for the operation;

Subsection (d) remains the same.

(e) a description of ~~how~~ the target area and operational area boundaries and how they were determined;

(f) seeding agent(s), rate(s) of use, and method(s) of delivery;

(g) intended starting date and expected duration of the operation;

Subsections (h) through (p) remain the same.

(q) the estimated cost of the operation for which the permit is being requested; and

(r) proof of financial responsibility.

AUTH: 85-3-206, MCA
IMP: 85-3-206(1)(e), MCA

36.20.305 PERMIT APPLICATIONS - HEARINGS (1) ~~If there appears to be considerable public interest in a proposed operation, as evidenced by news articles, letters, phone calls or other means, the department and the board may consult on hearing the need for a hearing on the permit application involved. If the board determines a hearing is needed to receive public comment on a proposed operation, the department shall conduct such hearing at a location in or near the operational area.~~ Permit applicants shall be notified of ~~the~~ any hearing at least two weeks prior to the hearing date.

(2) The date, time, and place of the hearing will be included in the Notice of Intention required by ARM 36.20.302, as well as in any general news release the department may issue regarding the proposed operation. ~~If the decision to conduct a hearing is made after the notice of intention is published, public notice of the hearing will be made by means of a general news release.~~

~~(3) As provided in section 85-3-206, MCA, the department may assess the applicant for all or a portion of the costs incurred by the department in conducting a hearing.~~

~~(4) If the board determines that a hearing is not necessary, the department may conduct a public informational meeting in or near the operational area if deemed worthwhile. Notice of such a meeting may be included in the notice of intention or made by means of a general news release.~~

AUTH: 85-3-206, MCA
IMP: 85-3-206(2), MCA

36.20.306 PROCESSING APPLICATIONS - DEPARTMENT RESPONSIBILITIES Subsections (1) and (2) remain the same.

(a) review the application ~~as required by~~ and prepare a report and environmental impact statement pursuant to Title 75, chapter 1, part 2, MCA~~, and ARM 36.2.501 through 519~~;

Subsection (b) remains the same.

(c) publish the notice of intention ~~as required by ARM 36.20.305~~;

(d) hold required hearings or meetings ~~as provided by ARM 36.20.305~~.

~~(3) Using the information provided in the application, the department's analysis of the application, the environmental review, and testimony from any hearing or meeting, the department shall present its recommendations to the board regarding:~~

~~(a) the adequacy and reliability of the meteorological information and scientific basis upon which the operation is founded;~~

~~(b) the impacts and benefits that would be expected to result from the intended operation;~~

~~(c) the adequacy of the seeding suspension criteria proposed by the applicant as a safeguard against adverse impacts from the proposed operation;~~

~~(d) the demonstrated capability of the applicant to respond to damages that might result from the operation; and~~

~~(e) the need to develop and implement a plan for~~

~~monitoring the operation.~~

AUTH: 85-3-206, MCA
IMP: 85-3-202, 206, and 210, MCA

36.20.307 ACTION ON PERMIT APPLICATIONS - ~~BOARD~~ DEPARTMENT DECISION CRITERIA (1) ~~In making a decision on a permit application, the board shall consider all information available to it, including but not limited to, the permit application, any hearing or meeting transcript, any environmental impact assessment, and the department's recommendations.~~

~~(2) The board shall approve a permit if it finds that:~~

~~(a) the individual who will be responsible for the conduct of the proposed operation is, or will be, licensed as required by ARM 36.201 through 36.20.204;~~

~~(b) the notice of intention as required by ARM 36.20.302 has been published;~~

~~(c) proof of financial responsibility as required by ARM 36.20.303 has been given;~~

~~(d) the fee for the permit has been paid or will be paid in accordance with ARM 36.20.301(2); and~~

~~(e) the operation is determined to be for the general welfare and the public good because it meets each of the following criteria:~~

~~(i) the operating plan for the proposed operation adequately presents the scientific basis for the weather modification activity and demonstrates that the conduct of the operation and its effects would be effectively monitored and controlled;~~

~~(ii) the operation has the potential of producing benefits;~~

~~(iii) the operation is not expected to result in serious adverse impacts; and~~

~~(iv) the anticipated benefits of the operation outweigh the potential adverse impacts.~~

~~(3) In order to make the findings described in (2),~~ the The ~~board~~ department may:

issue a permit if the statutory requirements are met subject to terms, conditions, restrictions, and limitations it considers necessary to assure that the operation would be for the general welfare and public good.

AUTH: 85-3-206, MCA
IMP: 85-3-202, 206, and 212, MCA

36.20.308 PERMIT SUSPENSION AND REVOCATION (1) ~~The board may suspend or revoke a permit for the following reasons:~~

~~(a) failure to meet the terms and conditions of a permit;~~

~~(b) violating any of the provisions of the act or these rules;~~

~~(c) failure to demonstrate competency in the management and control of an operation;~~

~~(d) use of deceitful practices in promoting or conducting~~

~~a weather modification operation;~~

~~(e) use of fraud, misrepresentation, or deceit in obtaining a license or permit; or~~

~~(f) if the continued conduct of the operation threatens life or property.~~

~~(2) Except in the cases of (1)(f) above or ARM 36.20.303(2), the department shall notify a permittee by certified mail of an opportunity for a hearing before the suspension or revocation of its permit becomes effective. Such notification must be received at least two weeks in advance of the hearing date.~~

~~(3)~~ If, ~~in the case of (1)(f),~~ for the protection of the health or the property of any person, it is necessary to suspend a permit ~~to protect against an imminent threat to life or property,~~ the ~~board chairman~~ department director, or ~~in~~ the ~~chairman's~~ director's ~~absence~~ designee, may authorize an immediate permit suspension by telephone. A hearing to determine if the suspension should be lifted or the permit modified or revoked must be held within two weeks of the effective date of the suspension. The ~~board~~ department may appoint a hearings officer to conduct hearings in which testimony is received on the suspension or revocation of a weather modification permit. Upon reviewing the report of the hearings officer, the board department shall meet to make a decision as soon as possible. ~~Such meetings may be held by telephone conference call.~~

AUTH: 85-3-206, MCA
IMP: 85-3-214, MCA

3. Rule 36.20.101A, the rule proposed to be repealed, is on page 36-4221 of the Administrative Rules of Montana.

AUTH: 85-3-102, MCA
IMP: 85-3-201, MCA

4. Except where otherwise noted, the purpose of the proposed amendments is to comply with House Joint Resolution No. 5 (1995), which requested each executive branch agency delete unnecessary rules. Rule 36.20.301(3) is being amended because since an Environmental Impact Statement (EIS) is now required, an application needs to be submitted more than the present 90 days in advance of the time of intended operation. It is contemplated that requiring an application 180 days prior to the date of intended operation will provide sufficient time for review of the application and preparation of the EIS. Rule 36.20.303(1)(a) is being amended because a prepaid insurance policy or corporate surety bond of $1,000,000 no longer seems adequate to cover possible damages from floods, lightning-induced fire, hail or erosion resulting as a consequence of weather modification. Therefore, the amount has been raised to $10,000,000. Rule 36.20.307 is being amended because the Department wants to make clear to applicants that now that an EIS is required, an application can be denied if the applicant fails to pay the required fees or reimbursements. Rule

36.20.101A is being repealed because it is duplicative of the statute and is therefore unnecessary.

5. Interested parties may submit their data, views or arguments concerning the proposed actions in writing to Larry Holman, Department of Natural Resources and Conservation, 1520 E. Sixth Avenue, Helena, MT 59620, on or before March 7, 1996.

6. If a person who is directly affected by the proposed actions wishes to express their data, views and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Larry Holman, Department of Natural Resources and Conservation, 1520 E. Sixth Avenue, Helena, MT 59620. The request must be received on or before March 7, 1996.

7. If the agency receives requests for a public hearing on the proposed actions from 25 or more persons who are directly affected by the proposed actions from the administrative code committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be greater than 25 based on an estimate of 2,550 people who could potentially be affected by weather modification activities in a typical seeding area of 1,500 square miles.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

ARTHUR R. CLINCH, DIRECTOR

DONALD D. MacINTYRE, RULE REVIEWER

Certified to the Secretary of State on January 29th, 1996.

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

In the matter of the adoption of rules I through V and the amendment of rules 20.3.501, 20.3.502, 20.3.503 and 20.3.504 pertaining to chemical dependency educational courses	))))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT AND ADOPTION OF RULES

TO: All Interested Persons

1. On February 28, 1996 at 3:00 p.m., a public hearing will be held in Room 306 of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed adoption of rules I through V and the amendment of rules 20.3.501, 20.3.502, 20.3.503 and 20.3.504 pertaining to chemical dependency educational courses.

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 February 16, 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 amended provide as follows:

20.3.501 CHEMICAL DEPENDENCY EDUCATIONAL COURSES; COST OF TREATMENT (1) through (3) remain the same.

(a) Educational courses and 1 year monitoring will be self supporting and fees charged will be based on actual ~~course~~ costs.

(3)(b) remains the same.

(c) Offenders referred to treatment via the ~~referral~~ assessment process are responsible for the costs of treatment.

AUTH: Sec. 53-24-204, 53-24-208 and 53-24-209, MCA
IMP: Sec. 61-8-714 and 61-8-722, MCA

20.3.502 CHEMICAL DEPENDENCY EDUCATIONAL COURSES; DEFINITIONS ~~(1)~~ In addition to terms defined in 53-24-103, MCA and ARM 20.3.202, the following are defined:

(1) "Abuser" means the offender meets the DSM-IV diagnostic criteria for substance abuse.

~~(a)~~(2) "ACT (Assessment, Course, Treatment) program" means an assessment, educational course and/or referral to treatment

~~program which~~. This is a three ~~level~~ part process designed to assess, educate and~~/or treat persons convicted of driving~~ to recommend treatment placement as appropriate for persons convicted of driving under the influence of intoxicating substances.

~~(b)~~(3) "ACT curriculum manual" means a manual developed by department of ~~justice, highway~~ transportation, traffic safety ~~division~~ bureau which specifically defines the course curriculum for the ACT program.

(4) "Aftercare" is defined in ARM 20.3.202.

(5) "Assessment/evaluation instruments" are those diagnostic and screening tools utilized primarily to provide information for the counselor to assist in making a determination of the severity of an offender's chemical use. A list of suggested assessment/evaluation instruments may be obtained from the Department of Public Health and Human Services, Alcohol and Drug Abuse Program, P.O. Box 4210, Helena, MT 59604-4210.

(6) "Certified Chemical Dependency Counselor" means an individual meeting standards pursuant to 53-24-204, MCA, and corresponding rules and regulations described in ARM 20.3.401 through 20.3.406.

(7) "Chemically Dependent" means the offender meets the DSM-IV criteria for substance dependence.

(8) "Cross-referencing" is a method used to determine if similar questions are answered in the same manner on different assessment instruments. The purpose is to discover consistencies and inconsistencies in an offender's answers to questions.

(9) "Continuing care" refers to the aftercare recommendations of the treatment provider.

~~(c)~~(10) "Driver ~~improvement~~ control" means ~~driver improvement~~ the records and driver control bureau ~~function~~ of the department of justice.

(d) remains the same but is renumbered (11).

(12) "Inpatient treatment" is defined in ARM 20.3.202 and the requirements are found in ARM 20.3.213 and 20.3.214.

(13) "Intensive outpatient" is defined in ARM 20.3.202 and the requirements are found in ARM 20.3.218.

(14) "MDD" means a misdemeanor dangerous drug offense under 45-2-101, MCA for which completion of a dangerous drug information course is mandatory.

(15) "MDD program" means an assessment, educational course and/or referral to treatment. This is a three part process designed to assess, educate and to recommend treatment placement as appropriate for persons convicted of misdemeanor dangerous drug offense. Compliance with treatment recommendations will be at the discretion of the sentencing judge.

(16) "MDD curriculum" means the 8 hour course provided to those convicted of an MDD offense. The course may utilize the

ACT curriculum manual and must include specific review of the misdemeanor drug laws and the harmful effects of dangerous drug use.

~~(e)~~(17) "MIP (Minors In Possession)" means minors convicted of possession of an intoxicating substance, unlawful attempt to purchase an intoxicating substance under 45-5-624, MCA; or operation of a vehicle by a person under 21 years of age with an alcohol concentration of 0.02 or more under 61-8-410, MCA. ~~MIP means minors convicted of unlawful possession of intoxicating substances.~~

~~(f)~~(18) "MIP Curriculum Manual" means a manual developed by the department of public health and human services which defines the MIP course curriculum and the requirements for performing chemical dependency evaluations and referral to treatment. ~~MIP curriculum manual means a manual developed by the department which specifically defines the course curriculum for MIP program.~~

~~(g) MIP program means a process designed to educate minors who have been convicted of unlawful possession of intoxicating substances.~~

(19) "MIP Education Course" means the community-based substance abuse information course for minors under 18 years of age convicted of an MIP under 45-5-624, MCA or 61-8-410, MCA.

(20) "Misuser/no patterns" means the offender does not meet the DSM-IV diagnostic criteria for either substance abuse or dependence.

(21) "Monitoring" is a process to ensure compliance with continuing care recommendations for second or subsequent offenders.

~~(h)~~(22) "Offender" means a person convicted of DUI, per se, ~~or~~ MIP, or a dangerous drug misdemeanor and sentenced to complete a chemical dependency educational course provided by a state approved program and/or treatment provided by a ~~state-approved treatment program~~ certified chemical dependency counselor.

(23) "Outpatient" is defined in ARM 20.3.202 and the requirements are found in ARM 20.3.218.

(24) "Per Se" means for the purpose of this sub-chapter, driving with an excessive alcohol concentration and includes committing an offense under 61-8-406, MCA.

(25) "Unidentified" means the offender did not complete the assessment or exhibited a level of denial that made diagnosis impossible.

AUTH: Sec. 53-24-204 and 53-24-208, MCA
IMP: Sec. 53-24-204 and 53-24-208, MCA

20.3.503 ~~EDUCATIONAL COURSE REQUIREMENTS FOR DUI OFFENDERS (ACT PROGRAM)~~ CHEMICAL DEPENDENCY EDUCATION COURSES: GENERAL EDUCATIONAL COURSE REQUIREMENTS

(1) This program is for persons convicted of a DUI, per se or misdemeanor dangerous drug offense and sentenced under 61-8-714, ~~MCA or~~ 61-8-722, ~~MCA~~ or Title 45, Chapter 9 or 10, MCA to complete an alcohol ~~educational~~ or other dangerous drugs information course ~~and/or treatment provided by a state approved treatment program.~~ provided by a state approved program and which may include alcohol or drug treatment or both in accordance with state approved placement criteria and provided by a certified chemical dependency counselor.

(2) The ACT program is a three ~~level~~ part process which includes:

(a) ~~Level I - is the process used to screen, assess and evaluate the offender to determine the extent of chemical use or dependency for recommendation to levels II and/or III.~~ Assessment, which is the evaluation component utilized to identify chemical use patterns of DUI/per se offenders and to make appropriate recommendations for education and/or treatment. Misdemeanor dangerous drug offenders may complete the assessment with the ACT program or a state approved treatment program which offers an MDD education program.

(b) ~~Level II -~~ Course, which is an educational component based on the curriculum contained and explained in ~~ARM 20.3.503(4)(b)~~ Rule II ~~of this rule~~ and further defined in the ACT course curriculum manual. The manual may be obtained from the Department of Transportation, Traffic Safety Bureau, 2701 Prospect Avenue, P.O. Box 201001, Helena, MT 59620-1001. Misdemeanor dangerous drug offenders must complete a specific drug education course equivalent in hours to the ACT curriculum. The course will be based on the ACT curriculum but must contain specific information on misdemeanor drug laws. The MDD course must be offered separately from the DUI course at the program's central office. The MDD and DUI educational courses may be combined at the program's satellite offices.

(c) ~~Level III -~~ Treatment, which is defined in 53-24-103, MCA, ~~and s~~Standards for treatment are required by 53-24-208, MCA and ARM 20.3.201~~-216~~ through 20.3.216. The need for treatment services must be documented and verified ~~by level I and~~ through assessment and state approved patient placement procedures. Treatment may be provided by the ~~treatment~~ program conducting the ACT program or through a referral to another treatment program.

(i) First DUI/per se offenders assessed as chemically dependent, all second and subsequent DUI/per se offenders and MDD offenders ordered by the court must complete all three components of the ACT program. The treatment provided must be at a level appropriate to the offender's alcohol/drug problem, based upon patient placement criteria as defined in ARM 20.3.208.

(3) ~~The ACT program will notify the sentencing court if the offender does not enroll with the program within ten days or~~

~~start the course process within thirty days of the program's receipt of the court referral notice. Level I and II of the ACT program will take~~ To complete the ACT program, the offender:

(a) must enroll by the date specified by the sentencing court or within ten days of the ACT program receiving of the court referral notice;

(b) must start the course process within 30 days of the program's receipt of the court referral notice; and

(c) must complete the program in a minimum of 30 days, but no longer than 90 days. ~~not less than thirty days and not longer than ninety days to complete.~~ An exception to the 30-day minimum may be granted by the department based only on justified geographical considerations. The ACT program will notify the sentencing courts in all cases of failure to comply and the sentencing court ~~will~~ may notify ~~drivers improvement~~ the driver control bureau. ~~Length of stay for level III (treatment) will be based on the recommendation of the certified chemical dependency counselor as approved or modified by the order of the sentencing court. The approved chemical dependency program accepting the treatment referral must notify the sentencing court upon completion of Level III for second and subsequent offenders.~~

~~(4) Required services for the ACT program shall include:~~

~~(a) Screening, assessment and evaluation (level 1),~~

~~(i) a minimum of three assessment/evaluation instruments must be utilized and cross referenced to assess the DUI offender. The department will maintain a list of suggested~~

~~(ii) a minimum of two individual counseling sessions with a certified chemical dependency counselor must be documented in the assessment and evaluation process.~~

~~(iii) based on the results of the assessment/evaluation process, the offender will be classified as one of the following: misuser/no patterns, abuser, chemically dependent or unidentified. The results of the assessment must be documented in the offender's file.~~

~~(iv) evaluations and recommendations must be submitted by a certified chemical dependency counselor to the sentencing court in the following instances: an initial offender is recommended for treatment (level III) or the offender has a second or subsequent offense. The report must include the following: assessment/evaluation instruments utilized, results of testing, problem indicators, assignment to one of the four assessment categories (i.e., misuser/no patterns, abuser, chemically dependent or unidentified), recommendation for treatment and corresponding rationale, which demonstrates appropriateness.~~

~~(v) All offenders will receive information regarding laws on drinking and driving.~~

~~(b) Course curriculum (level II) shall include the following:~~

~~(i) The DUI educational component must include a minimum of four educational sessions totaling at least eight hours.~~

~~(ii) The DUI curriculum will include five major topic areas: expectations and attitudes, consequences of drinking and driving, physiological effects of drinking, social and psychological effects of drinking, and self assessment. Specific content of the above topic areas will be explained in the ACT curriculum manual and revised as necessary.~~

~~(c) The process for recommendation for both initial and repeat offenders shall be as follows:~~

~~(i) First time offenders will participate in levels I and II. If the offender is assessed as chemically dependent, recommendations for treatment (level III) must be submitted to the sentencing court. Treatment for initial offenders is at the sentencing court's discretion. Copies of the evaluations and recommendation report must be documented in the offender's file and a copy given to the offender.~~

~~(ii) Repeat offenders must participate in all three (3) levels. The treatment provided must be at a level appropriate to the offender's alcohol problem. Following level I (assessment) the certified chemical dependency counselor will submit an evaluation/recommendation report to the sentencing court which contains a rationale for the treatment recommendation. Treatment recommendations may include: in-patient with aftercare, intensive out-patient with aftercare or out-patient scheduled at least once per week. (The sentencing court will determine the most appropriate level). The offender may also attend the approved chemical dependency treatment program of his/her choice. The approved program providing treatment must notify the sentencing court of the offender's failure to complete. Copies of the evaluation and recommendation report must be documented in the offender's file and a copy given to the offender.~~

~~(5) Staff requirements shall include:~~

~~(a) Individual counseling sessions included in the course assessment and evaluation process must be provided by a certified counselor.~~

~~(b) Results of assessments and evaluations which recommend treatment (level III) must be approved, signed and dated by a certified counselor.~~

~~(c) Staff conducting the educational course component (level II), must receive a DUI specific training course within six months from the date of hire and also be certified or eligible as a chemical dependency counselor as defined in ARM 20.3.401 - 416.~~

~~(6) Programs shall develop policies and procedures which address the ACT program required by these rules and shall include:~~

~~(a) Services and staff requirements.~~

~~(b) Procedures for determining cost and fees charged for the ACT program.~~

~~(c) Goals and objectives which address required effectiveness indicators shall include, but not be limited to: ACT caseload, completion ratios, numbers of offenders recommended for treatment, and number of repeat offenders.~~

~~(7) Record keeping and reporting requirements specific to the ACT program shall include:~~

~~(a) ADIC Admission/Discharge DUI report.~~

~~(b) Assessment/evaluation instruments used (with explanation of results).~~

~~(c) A progress note documenting the initial and exit interview, which validates the classification.~~

~~(d) Documentation of: educational sessions, offender entrance and exit interviews/tracking summary, and counselors' observations and conclusions.~~

~~(e) Evaluation and recommendation report.~~

~~(f) Court sentencing orders or referral forms.~~

~~(g) A signed release of confidential information forms to the sentencing court and driver improvement upon admission, and others as required.~~

~~(h) Referral to or from another ACT program (when applicable).~~

~~(i) Fee charges and documentation of ability to pay (if required).~~

~~(j) Documentation of non compliance (where applicable).~~

AUTH: Sec. 53-24-204, 53-24-208 and 53-24-209, MCA
IMP: Sec. 45-9-208, 45-10-108, 61-8-714 and 61-8-722, MCA

20.3.504 EDUCATION COURSE REQUIREMENTS FOR MIP OFFENDERS (MIP PROGRAM) (1) This program is for minors convicted of unlawful possession of intoxicating substance and sentenced under 45-5-624, MCA. The requirements for the MIP education course are contained in the MIP curriculum manual. The manual may be obtained from the department of public health and human services, alcohol and drug abuse program, P.O. Box 4210, Helena, MT 59604-4210.

(2) A person 18 to 20 years of age, who is convicted of a third offense possession of an intoxicating substance under 45-5-624 MCA, and ordered to complete an alcohol information course at a state approved program shall attend and complete the ACT program, with all of its requirements.

~~(2) MIP educational course shall educate minors on the legal and personal consequences of chemical use and information to increase their awareness of chemical use and chemical dependency as a disease.~~

~~(3) Required services for MIP program shall include:~~

~~(a) A curriculum which requires a minimum of six (6) educational sessions.~~

~~(b) The MIP curriculum will include six (6) topic areas: expectations and attitudes, physiological effects of chemical use, social and psychological effects of chemical use, self awareness and feelings, values and decision making, and self assessment.~~

~~(c) Specific content of the above topic areas will be explained in the MIP curriculum manual and revised and updated as necessary.~~

~~(4) Staff requirements shall include:~~

~~(a) Staff responsible for providing the MIP course must be certified or eligible in chemical dependency counseling as defined in ARM 20.3.401 - 416.~~

~~(5) Programs shall develop policies and procedures which address the MIP course required by this rule and shall include:~~

~~(a) Services and staff requirements.~~

~~(b) Procedures for determining course costs and fees charged for the MIP course.~~

~~(c) Procedure for recording monthly MIP caseload.~~

~~(d) Goals and objectives which address required effectiveness indicators and include: MIP caseload and completion ratios.~~

~~(6) Record keeping and reporting requirements specific to the MIP program shall include:~~

~~(a) Documentation of educational services via an offender tracking summary form.~~

~~(b) Court sentencing orders or referral forms.~~

~~(c) Fees charged and documentation of ability to pay (if required).~~

~~(d) Documentation of non compliance (where applicable).~~

AUTH: Sec. 53-24-204 and 53-24-208, MCA
IMP: Sec. 53-24-208 and 45-5-624, MCA

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

[RULE I] CHEMICAL DEPENDENCY EDUCATIONAL COURSES; REQUIRED SERVICES (1) The process for assessment shall be as follows:

(a) a minimum of three assessment/evaluation instruments must be utilized and cross-referenced as part of the assessment process. Assessment instruments are as defined in ARM 20.3.502;

(b) a minimum of two individual assessment interview sessions with a certified chemical dependency counselor must be documented in the assessment process;

(c) based on the results of the assessment process, the offender will be classified as misuser/no patterns, abuser, chemically dependent or unidentified. The results of the assessment must be documented in the offender's file; and

(d) an evaluation and recommendation report must be submitted by a certified chemical dependency counselor to the sentencing court if a first DUI/per se offender is diagnosed as

chemically dependent and recommended for treatment or the DUI/per se offender has a second or subsequent offense.

(i) The report must include the assessment instruments utilized, results of the testing, problem indicators, assignment to one of the four assessment categories (i.e., misuser/no patterns, abuser, chemically dependent or unidentified), and recommendation for treatment and corresponding rationale based on patient placement criteria as defined in ARM 20.3.208 which determines appropriate level of care.

(ii) An MDD offender diagnosed as chemically dependent will be referred back to the court with a treatment recommendation. Compliance with treatment is contingent upon the court's approval of the treatment recommendation.

(2) The process for recommending treatment shall be as follows:

(a) If a DUI/per se/MDD offender is assessed as chemically dependent or is a repeat DUI/per se offender, recommendations for treatment must be developed by the program counselor in accordance with state-approved patient placement rules. The offender may disagree with the program recommendations and seek an independent assessment from a certified chemical dependency counselor. The determination from this assessment must be based on diagnosis and patient placement rules adopted by the department of public health and human services. Offenders must be advised of this right by the program.

(b) Following completion of the assessment, the certified chemical dependency counselor will submit an evaluation/recommendation report to the sentencing court which includes a determination of the appropriate model of treatment based upon state-approved placement criteria. Treatment recommendations may include inpatient with aftercare, intensive outpatient with aftercare or outpatient scheduled at least once per week.

(c) Pursuant to 61-8-714, MCA, the sentencing court must order compliance with treatment recommendations in the case of first DUI/per se offenders assessed as chemically dependent or repeat DUI/per se offenders. When the offender has disagreed with recommendations and obtained a second opinion, the sentencing court shall order the appropriate level of treatment as determined by one of the counselors.

(d) The offender may attend the approved assessment/education and/or treatment program of the offender's choice. The approved program or certified chemical dependency counselor accepting an ACT program referral to treatment must notify the sentencing court upon completion of treatment, or upon an offender's failure to complete.

(e) Copies of the evaluation and recommendation report must be documented in the offender's file and given to the offender.

(f) A sentencing court or counselor may not require attendance at a self-help program unless the meeting is defined as "open" by the self-help program.

AUTH: Sec. 53-24-204, 53-24-208 and 53-24-209, MCA
IMP: Sec. 45-9-208, 45-10-108, 61-8-714 and 61-8-722, MCA

[RULE II] CHEMICAL DEPENDENCY EDUCATIONAL COURSES: COURSE CURRICULUM (1) Course curriculum shall include the following (Specific content of the topic areas below may be found in the ACT curriculum manual):

(a) The DUI and/or MDD educational component must include a minimum of four educational sessions totaling at least 8 hours.

(b) The curriculum will include four major topic areas:

(i) review of the laws and consequences of violating them;

(ii) physiological/neurophysiological effects of alcohol and other drugs;

(iii) social and psychological implications of alcohol and other drug use; and

(iv) self assessment.

(c) The MDD curriculum must contain a specific review of MDD laws.

AUTH: Sec. 53-24-204, 53-24-208 and 53-24-209, MCA
IMP: Sec. 45-9-208, 45-10-108, 61-8-714 and 61-8-722, MCA

[RULE III] CHEMICAL DEPENDENCY EDUCATIONAL COURSES: MONITORING REQUIREMENTS (1) One year monthly monitoring requirements are as follows:

(a) Those offenders with a second or subsequent conviction must be monitored for compliance with continuing care recommendations;

(b) Monitoring will consist of at least one face to face individual and/or group contact per month, conducted by a certified or eligible as a chemical dependency counselor, for a period of 1 year from the date of admission to the treatment program; and

(c) The treatment provider, providing the monitoring services, will notify the sentencing court within 10 days if the offender fails to comply with the continuing care recommendations.

AUTH: Sec. 53-24-204, 53-24-208 and 53-24-209, MCA
IMP: Sec. 45-9-208, 45-10-108, 61-8-714 and 61-8-722, MCA

[RULE IV] CHEMICAL DEPENDENCY EDUCATIONAL COURSES: ACT PROGRAM PROVIDER REQUIREMENTS (1) Program staff requirements are as follows:

(a) Individual assessment sessions must be provided by a certified chemical dependency counselor;

(b) Assessments which recommend treatment must be performed, signed and dated by a certified chemical dependency counselor; and

(c) Staff conducting the educational course component must receive an ACT program specific training course sponsored by the traffic safety bureau within 6 months from the date of hire and also be certified or eligible as a chemical dependency counselor as defined in ARM 20.3.401 through 20.3.416.

(2) Programs shall develop policies and procedures which address the ACT program requirements of these rules and shall include:

(a) Services and staff requirements;

(b) Procedures for determining cost and fees charged for the ACT program; and

(c) Goals and objectives which address required effectiveness indicators shall include, but not be limited to ACT caseload, completion ratios, numbers of offenders recommended for treatment, and number of repeat offenders.

AUTH: Sec. 53-24-204, 53-24-208 and 53-24-209, MCA
IMP: Sec. 45-9-208, 45-10-108, 61-8-714 and 61-8-722, MCA

[RULE VI] CHEMICAL DEPENDENCY EDUCATIONAL COURSES: RECORD KEEPING AND REPORTING REQUIREMENTS (1) Record keeping and reporting requirements specific to the ACT program shall include:

(a) ADIS Admission/Discharge ACT program report;

(b) assessment instruments utilized;

(c) progress notes documenting the assessment interviews, which includes data to validate the assessment findings and treatment placement recommendations when appropriate and includes the counselor's observations and conclusions;

(d) documentation of educational sessions attended, dates of assessment interviews, and tracking summaries;

(e) evaluation and recommendation reports;

(f) court sentencing orders or referral forms;

(g) release of confidential information forms to the sentencing court and driver control bureau signed upon admission, and other forms as required;

(h) documentation of referral to or from another ACT program when applicable;

(i) fee charges and documentation of ability to pay if required;

(j) documentation of non-compliance where applicable; and

(k) biopsychosocial and patient placement documentation.

AUTH: Sec. 53-24-204, 53-24-208 and 53-24-209, MCA
IMP: Sec. 45-9-208, 45-10-108, 61-8-714 and 61-8-722, MCA

4. The proposed rule changes are necessary to implement SB 333 (codified at 61-8-714, 61-8-722, MCA) which has made changes in penalties for driving under influence of alcohol or drugs and driving with excessive alcohol concentration, and HB 108 (codified at 45-9-208 and 45-10-108, MCA) which mandates a dangerous drug information course as part of sentencing for misdemeanor drug and drug paraphernalia offenses. Changes have also been made to the Minors in Possession (MIP) program found in 45-5-624, MCA.

The proposed changes and additions to ARM 20.3.501, 20.3.502 and 20.3.503 are necessary to clearly explain the requirements that chemical dependency (CD) programs must follow in order to effectively serve those driving under the influence (DUI) and misdemeanor dangerous drug offenders. There are specific reporting and educational requirements that need to be defined, as well as protocol for diagnosing and referring offenders to treatment if appropriate. Descriptions of one year monitoring are included to meet a new requirement for the repeat offender. SB 333 also requires first time offenders be referred for mandatory treatment and it is necessary to delineate this process in the rules. There are also minor changes made in order to facilitate the implementation of these new rules, i.e. grammar, syntax, etc. The material that is being removed from ARM 20.3.503 has been placed in new rules I through V to improve readability of the material.

The MIP rules are removed and the requirements for MIP will now be found in the revised MIP manual as noted in ARM 20.3.504. This will be more efficient for those programs that offer MIP as a community based substance abuse program not in a state approved program. Those state approved programs offering the MIP program can use the MIP manual for a reference for requirements. The MIP offenders age 18 to 21 are required to attend the assessment, course, treatment (ACT) program because the new MIP laws require a third time or subsequent offender to attend a state approved educational course. The ACT program meets this requirement while not all of the community based MIP programs do.

Several of these rules implement 45-9-208 and 45-10-108, MCA. These sections incorrectly designate the department of corrections rather than the department of public health and human services. This will be corrected by executive order.

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 59604-4210, no later than March 7, 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 January 29, 1996.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 2.21.1711 and 2.21.1713 related to overtime and nonexempt compensatory time	)))))	NOTICE OF AMENDMENT OF ARM 2.21.1711 AND 2.21.1713 RELATED TO OVERTIME AND NONEXEMPT COMPENSATORY TIME

TO: All Interested Persons.

1. On December 7, 1995, the department of administration published notice of the proposed amendment to ARM 2.21.1711 and 2.21.1713 concerning overtime and nonexempt compensatory time at page 2544 of the Montana Administrative Register, issue number 23.

2. The department has amended the rules as proposed.

3. No comments or testimony were received.

Dal Smilie
Rule Reviewer

Lois Menzies
Director

Certified to the Secretary of State January 29, 1996

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 2.21.1802, 2.21.1811 and 2.21.1812 related to exempt compensatory time	))))	NOTICE OF AMENDMENT OF ARM 2.21.1802, 2.21.1811 AND 2.21.1812 RELATED TO EXEMPT COMPENSATORY TIME

TO: All Interested Persons.

1. On December 7, 1995, the department of administration published notice of the proposed amendment to ARM 2.21.1802, 2.21.1811 and 2.21.1812 concerning exempt compensatory time at page 2546 of the Montana Administrative Register, issue number 23.

2. The department has amended the rules as proposed.

3. No comments or testimony were received.

Dal Smilie
Rule Reviewer

Lois Menzies
Director

Certified to the Secretary of State January 29, 1996

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 2.21.3703 and 2.21.3704 and the repeal of ARM 2.21.3713 related to recruitment and selection	))))	NOTICE OF AMENDMENT OF ARM 2.21.3703 AND 2.21.3704 AND THE REPEAL OF ARM 2.21.3713 RELATED TO RECRUITMENT AND SELECTION

TO: All Interested Persons.

1. On December 7, 1995, the department of administration published notice of the proposed amendment to ARM 2.21.3703 and 2.21.3704 and the repeal of ARM 2.21.3713 concerning recruitment and selection at page 2553 of the Montana Administrative Register, issue number 23.

2. The department has repealed the rule as proposed and amended the rules with the following change:

2.21.3704 JOB REGISTRY PROGRAM AND REEMPLOYMENT FOLLOWING LAYOFF (1) - (15) Same as proposed rule.

(16) Pay for an employee laid off ~~from the legislative branch~~ from a non-classified position, as described in pay plan rules 1802 and 1803, who accepts a classified position shall be determined using pay plan rule 1818, change from non-classified to classified ~~position~~.

(17)- (19) Same as proposed rule.

3. The following comment was received:

COMMENT: The department was asked to clarify the method of setting pay when employees laid off from non-classified positions are reemployed in classified positions.

RESPONSE: The department has made the change.

Dal Smilie
Rule Reviewer

Lois Menzies
Director

Certified to the Secretary of State January 29, 1996

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 2.21.5006, 2.21.5007 and 2.21.5008 and the repeal of ARM 2.21.5007A, 2.21.5007B and 2.21.5009 related to reduction in force	))))))	NOTICE OF AMENDMENT OF ARM 2.21.5006, 2.21.5007 AND 2.21.5008 AND THE REPEAL OF ARM 2.21.5007A, 2.21.5007B AND 2.21.5009 RELATED TO REDUCTION IN FORCE

TO: All Interested Persons.

1. On December 7, 1995, the department of administration published notice of the proposed amendment to ARM 2.21.5006, 2.21.5007 and 2.21.5008 and the repeal of ARM 2.21.5007A, 2.21.5007B and 2.21.5009 concerning reduction in force at page 2548 of the Montana Administrative Register, issue number 23.

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

3. No comments or testimony were received.

Dal Smilie
Rule Reviewer

Lois Menzies
Director

Certified to the Secretary of State January 29, 1996

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

In the matter of the repeal of ARM 2.43.411, 2.43.412, 2.43.413, 2.43.414, and 2.43.415 pertaining to service in the National Guard; 2.43.419 pertaining to job sharing; and 2.43.439, 2.43.450, and 2.43.453 pertaining to the RIP program.	NOTICE OF REPEAL

TO: All Interested Persons.

1. On November 9, 1995, the Public Employees' Retirement Board published notice of proposed repeal of ARM 2.43.411, 2.43.412, 2.43.413, 2.43.414, and 2.43.415 pertaining to service in the National Guard; 2.43.419 pertaining to job sharing; and 2.43.439, 2.43.450, and 2.43.453 pertaining to the RIP program at page 2323 of the 1995 Montana Administrative Register, Issue No. 21.

2. The Board has repealed the rules as follows:

ARM 2.43.411 and 2.43.414 found on pages 2-3134 and 2-3135 of the Administrative Rules of Montana.
AUTH: 19-2-403, MCA
IMP: 19-3-402, MCA

ARM 2.43.412 and 2.43.413 found on pages 2-3134 and 2-3135 of the Administrative Rules of Montana.
AUTH: 19-2-403, MCA
IMP: 19-3-402 and Title 19, Ch. 3, part 5, MCA

ARM 2.43.415 found on page 2-3135 of the Administrative Rules of Montana.
AUTH: 19-2-403, MCA
IMP: 19-3-402, 19-3-406, 19-3-703, and 19-3-901, MCA

ARM 2.43.419 found on page 2-3137 of the Administrative Rules of Montana.
AUTH: 19-2-403, MCA
IMP: Title 19, Chs. 3, 6, 7, and 8, part 3, and Chs. 9 and 13, part 4, MCA

ARM 2.43.439, 2.43.450, and 2.43.453 found on pages 2-3148, 2-3149, and 2-3152, respectively, of the Administrative Rules of Montana.
AUTH: 19-2-403 and 19-3-908, MCA
IMP: 19-3-908, MCA

3. No comments or testimony were received.

Terry Teichrow, President
Public Employees' Retirement Board

Dal Smilie, Chief Legal Counsel and
Rule Reviewer

Certified to the Secretary of State on January 29, 1996.

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

In the matter of the amendment of rules 2.55.321, 2.55.322, 2.55.323, 2.55.324, 2.55.325, 2.55.327, 2.55.401, 2.55.403, 2.55.405, 2.55.406, 2.55.407 and 2.55.408, pertaining to premium rate setting.	NOTICE OF AMENDMENT

TO: All Interested Persons:

1. On December 7, 1995, the State Compensation Insurance Fund published notice of the proposed amendment of rules 2.55.321, 2.55.322, 2.55.323, 2.55.324, 2.55.325, 2.55.327, 2.55.401, 2.55.403, 2.55.405, 2.55.406, 2.55.407 and 2.55.408 at pages 2558-2572 of the 1995 Montana Administrative Register, Issue No. 23.

2. The Board has amended the following rules as proposed:

2.55.321 CALCULATION OF EXPERIENCE RATES
AUTH: Sec. 39-71-2315, and 39-71-2316, MCA;
IMP: Sec. 39-71-2311, 39-71-2316, and 39-71-2330, MCA.

2.55.322 CALCULATION OF CREDIBILITY WEIGHTED RATE
AUTH: Sec. 39-71-2315, and 39-71-2316 MCA;
IMP: Sec. 39-71-2311, 39-71-2316, and 39-71-2330, MCA.

2.55.323 OVERALL RATE LEVEL ADJUSTMENT
AUTH: Sec. 39-71-2315 and 39-71-2316 MCA;
IMP: Sec. 39-71-2311, 39-71-2316 and 39-71-2330 MCA.

2.55.324 PREMIUM RATE SETTING
AUTH: Sec. 39-71-2315, and 39-71-2316, ~~and 39-71-2330~~ MCA;
IMP: Sec. 39-71-2211, 39-71-2311, 39-71-2316, and 39-71-2330, MCA.

2.55.325 VARIABLE PRICING WITHIN A CLASSIFICATION
AUTH: Sec. 39-71-2315, and 39-71-2316, MCA;
IMP: Sec. 39-71-2311, 39-71-2316, 39-71-2330, and 39-71-2341, MCA.

2.55.327 CONSTRUCTION INDUSTRY PREMIUM CREDIT PROGRAM
AUTH: Sec. 39-71-2315, and 39-71-2316, MCA;
IMP: Sec. 39-71-2211, 39-71-2311, 39-71-2316, and 39-71-2330, MCA.

2.55.401 EXPERIENCE MODIFICATION FACTOR
AUTH: Sec. 39-71-2315, and 39-71-2316, MCA;
IMP: Sec. 39-71-2311, 39-71-2316, and 39-71-2330, MCA.

2.55.403 VOLUME DISCOUNT
AUTH: Sec. 39-71-2315, and 39-71-2316, MCA;
IMP: Sec. 39-71-433, 39-71-2311, 39-71-2316, and 39-71-2330, MCA.

2.55.405 SCHEDULED RATING-LOSS CONTROL NONCOMPLIANCE
AUTH: Sec. 39-71-2315, and 39-71-2316, MCA;
IMP: Sec. 39-71-2316, 39-71-2330, and 39-71-2341 MCA.

2.55.406 SCHEDULED RATING-UNIQUE RISK CHARACTERISTICS MODIFIER
AUTH: Sec. 39-71-2315, and 39-71-2316, MCA;
IMP: Sec. 39-71-2316, and 39-71-2330, MCA.

2.55.407 OPTIONAL DEDUCTIBLE PLANS
AUTH: Sec. 39-71-2315, and 39-71-2316, MCA;
IMP: Sec. 39-71-2316, 39-71-435, and 39-71-2330, MCA.

2.55.408 RETROSPECTIVE RATING PLANS
AUTH: Sec. 39-71-2315, and 39-71-2316, MCA;
IMP: Sec. 39-71-2316, 39-71-2330, and 39-71-2341, MCA.

3. The Board thoroughly considered the following comments:

COMMENT: 2.55.321. Mr. Bob Carlson, Liberty Northwest Insurance Corporation testified at the public hearing that Liberty Northwest would like the State Fund to adopt the expected loss rates of the National Council on Compensation Insurance for experience modification calculation purposes.

RESPONSE: The Board appreciates and acknowledges the comment. However, the comment does not relate to proposed amendment of 2.55.321 regarding experience rate calculation. In addition, the comment is not related to proposed amendment of 2.55.401 contained in the Notice of Public Hearing.

COMMENT: Mr. Don Allen, Coalition For Work Comp System Improvement, submitted written comments. Rule 2.55.321(1) should require Board approval of the number of years used to review total incurred losses and total payroll in each classification.

RESPONSE: The proposed amendment does not affect the authority of the Board to establish the number of selected liability and payroll years and the weight to be applied respectively. The Board appreciates and acknowledges the comment.

COMMENT: Rules 2.55.322 and 2.55.325. Calculation of the experience modification factor is not well understood by employers, especially when an employer with a good safety record experiences a rate increase because of the modification factor calculation. It is hoped the changes in the Rules will help clarify how weighted rates are calculated and variable pricing is implemented.

RESPONSE: The Board appreciates and acknowledges the comment regarding the interest of the public in understanding how weighted rates are calculated and implementation of variable pricing. The comment is not an objection to the proposed amendments.

COMMENT: Rule 2.55.405(b). Deletion of "on-site" and addition of "or has failed to comply with safety consultant recommendations" gives the impression that the State Fund may require more than the minimum requirements of the Montana Safety Culture Act. In addition, it is questionable how compliance or non-compliance cannot be verified without on-site visits. The proposed amendment may not be in keeping with positive education and training.

RESPONSE: The Board appreciates and acknowledges the comment. On-site visitation is an integral part of loss control services. However, the Rule must be flexible enough to permit imposition of the modifier in circumstances where on-site visitation is prevented or unnecessary due to the existence of multiple work-sites for a single employer. Section 39-71-2341(1)(b), MCA which is implemented by this Rule requires the State Fund to provide or attempt to provide on-site safety consultation services. In response to the second part of this comment, the Board intends that the non-compliance modifier will not be applied if the insured is complying with the Safety Culture Act.

COMMENT: The hearing should not have been scheduled two days after Christmas when many customers and public are on Holiday.

RESPONSE: The Board appreciates and acknowledges the comment. The need for timely consideration of the proposed amendments unfortunately caused public hearing during the Holidays. However, the public hearing was conducted on a regular business day.

Dal Smilie, Chief Legal Counsel
Rule Reviewer

Rick Hill
Chairman of the Board

Nancy Butler, General Counsel
Rule Reviewer

Certified to the Secretary of State January 29, 1996.

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

In the matter of the amendment of Rule 6.6.1506 pertaining to premium deferral and cash discounts.	))))	NOTICE OF AMENDMENT

TO: All Interested Persons.

1. On December 21, 1995 the state auditor and commissioner of insurance of the state of Montana published notice of proposed amendment of rule 6.6.1506. The notice was published at page 2722 of the 1995 Montana Administrative Register, issue number 24.

2. The agency has amended rule 6.6.1506 as proposed.

3. No comments were received.

Mark O'Keefe
State Auditor and
Commissioner of Insurance

By: _____
Frank Coté
Deputy Insurance Commissioner

_____
Elizabeth A. O'Halloran
Rules Reviewer

Certified to the Secretary of State this 29th day of January, 1996.

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

In the matter of the 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.	NOTICE OF REPEAL

TO: All Interested Persons.

1. On December 21, 1995, the state auditor and commissioner of insurance of the state of Montana published notice of proposed repeal of Title 6, Chapter 6, Sub-Chapter 6 pertaining to unfair trade practices on cancellations, non-renewals, or premium increases of casualty or property insurance. The notice was published at page 2720 of the 1995 Montana Administrative Register, issue number 24.

2. The agency has repealed rules 6.6.2001 through 6.6.2006, found on pages 6-213 through 6-215.1 of the Administrative Rules of Montana.

AUTH: 33-1-313, MCA
IMP: 2-4-305 and 2-4-314, MCA

3. No comments were received.

Mark O'Keefe
State Auditor and
Commissioner of Insurance

By: _____
Frank Coté
Deputy Insurance Commissioner

_____
Elizabeth A. O'Halloran
Rules Reviewer

Certified to the Secretary of State this 29th day of January, 1996.

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

In the matter of the amendment of Rule 6.6.3802 pertaining to trust agreement conditions and Rule 6.6.3803 pertaining to conditions applicable to reinsurance agreements.	NOTICE OF AMENDMENT

TO: All Interested Persons.

1. On December 21, 1995 the state auditor and commissioner of insurance of the state of Montana published notice of proposed amendment of rules 6.6.3802 and 6.6.3803. The notice was published at page 2718 of the 1995 Montana Administrative Register, issue number 24.

2. The agency has amended rules 6.6.3802 and 6.6.3803 as proposed.

3. No comments were received.

Mark O'Keefe
State Auditor and
Commissioner of Insurance

By: _____
Frank Coté
Deputy Insurance Commissioner

_____
Elizabeth A. O'Halloran
Rules Reviewer

Certified to the Secretary of State this 29th day of January, 1996.

BEFORE THE BOARD OF COSMETOLOGISTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the emergency amendment of a rule pertaining to license examinations) NOTICE OF EMERGENCY AMENDMENT

TO: All Interested Persons:

1. On October 29, 1995 the Board of Cosmetologists at its regular scheduled meeting voted to adopt the National practical examination offered by National Interstate Council of State Boards of Cosmetology (NIC) and continue with the NIC written examination, but delete the requirement for the Cosmetology law and rule exam. The written examination score was a combined score of the national written 80% and the law and rule 20%. The practical and written scores will be only those reported to the board by NIC within three to four weeks. The national practical and written examinations will be graded by NIC on a scaled score rather than a percentile. The strength and weakness reports will be prepared by NIC for the candidates. This will prevent the Board from making administrative grading errors.

2. These amendments will become effective January 29, 1996.

3. The text of the emergency amendment will read as follows: (new matter underlined, deleted matter interlined)

"8.14.802 LICENSE EXAMINATIONS (1) through (1)(a) will remain the same.

(2) Written examinations shall ~~include~~ consist of a national examination covering each of the branches of cosmetology or manicuring ~~and cosmetology law and rules~~.

~~(3) The board may, from time to time, modify the written and practical exam.~~

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

~~(5)~~ (4) Any applicants who have failed any part of the practical or written examination and wish to retake the examination, must notify the board office of their desire to be re-examined by the examination deadline ~~at least 20 days~~ before the next examination and pay the required re-examination fee.

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

~~(7)~~ (6) In order to pass the examination given by the board to practice cosmetology or manicuring, an applicant must obtain ~~a grade~~ scale score of not less than 75% in the practical examination and a scale score of not less than 75% on the written examination.

~~(a) The written examination consists of a national theory examination and an examination over Montana laws and rules relating to cosmetology.~~

~~(b) The written score is obtained by taking 80% of one national theory examination and 20% of the laws and rules examination and adding the two scores together.~~

~~(8)~~ (7) Applicants will be notified of their examination results in writing only. Upon request, unsuccessful applicants will be advised of those practical areas in which they were found deficient by requesting a strength and weakness report with the appropriate fee from the board office. ~~Appointment must be made with the board office to review examinations.~~"

Auth: Sec. 37-1-131, 37-31-203, MCA; IMP, Sec. 37-31-303, 37-31-307, 37-31-308, 37-31-321, MCA

4. The rationale for the emergency rule is set forth as paragraph 1.

5. A standard rulemaking procedure will be undertaken prior to the expiration of this emergency rule.

6. Interested persons are encouraged to submit their comments during the upcoming standard rulemaking process. If interested persons wish to be personally notified of that rulemaking process, they should submit their names and addresses to the Board of Cosmetologists, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513 or by facsimile to (406) 444-1667.

BOARD OF COSMETOLOGISTS
MARY BROWN, CHAIRMAN

BY: _____
JON NOEL, DIRECTOR
DEPARTMENT OF COMMERCE

_____
ROBERT P. VERDON, RULE REVIEWER

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

BEFORE THE BOARD OF NURSING
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of rules pertaining to advanced practice registered nursing; licensure by examination, re-examination, licensure by endorsement, foreign nurses, temporary permits, inactive status, conduct of nurses, fees, duties of the president, approval of schools, annual report	)))))))))	NOTICE OF AMENDMENT OF RULES PERTAINING TO THE PRACTICE OF NURSING

TO: All Interested Persons:

1. On October 26, 1995, the Board of Nursing published a notice of public hearing on the proposed amendment of rules pertaining to the practice of nursing at page 2181, 1995 Montana Administrative Register, issue number 20. The hearing was held on November 30, 1995, in Helena, Montana.

2. The Board has amended ARM 8.32.304, 8.32.305, 8.32.402, 8.32.403, 8.32.404, 8.32.405, 8.32.406, 8.32.408, 8.32.412, 8.32.413, 8.32.425, 8.32.605, 8.32.802, 8.32.806 exactly as proposed.

3. No comments or testimony were received.

BOARD OF NURSING
JEAN BALLANTYNE, MN, RN,
PRESIDENT

BY: _____
ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

_____
ROBERT P. VERDON, RULE REVIEWER

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

BEFORE THE BOARD OF NURSING
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the adoption of a new rule pertaining to temporary practice permits for advanced practice registered nurses	))))	NOTICE OF ADOPTION OF NEW RULE I (8.32.308) TEMPORARY PERMITS FOR GRADUATE ADVANCED PRACTICE REGISTERED NURSES

TO: All Interested Persons:

1. On November 22, 1995, the Board of Nursing published a notice of proposed adoption of the above-stated rule at page 2450, 1995 Montana Administrative Register, issue number 22.

2. The Board has amended the rule exactly as proposed.

3. No comments or testimony were received.

BOARD OF NURSING
JEAN BALLANTYNE, MN, RN,
PRESIDENT

BY: _____
ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

_____
ROBERT P. VERDON, RULE REVIEWER

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

BEFORE THE BUILDING CODES BUREAU
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment, repeal and adoption of rules pertaining to building codes	NOTICE OF AMENDMENT, REPEAL AND ADOPTION OF RULES PERTAINING TO BUILDING CODES

TO: All Interested Persons:

1. On November 9, 1995, the Building Codes Bureau published a notice of public hearing on the proposed amendment, repeal and adoption of rules pertaining to building codes at page 2342, 1995 Montana Administrative Register, issue number 21. The hearing was held on December 1, 1995, in Helena, Montana.

2. The Bureau has amended ARM 8.70.101 through 8.70.103, 8.70.108, 8.70.110, 8.70.405, 8.70.406, 8.70.505, 8.70.506, 8.70.513, 8.70.557, 8.70.563, 8.70.601, repealed ARM 8.70.701 through 8.70.703 and 8.70.801 through 8.70.849 and adopted new rules I (8.70.901) through XIII (8.70.913) and XV (8.70.915) and XVI (8.70.916) exactly as proposed. The Bureau has adopted new rule XIV (8.70.914) as proposed, but is deleting 50-60-209, MCA, as an implementing section. The Building Codes Bureau is not adopting the proposed amendments of ARM 8.70.302, but is instead adopting the amendments shown below, in response to comments received at the hearing. The Bureau has amended ARM 8.70.104, 8.70.105, 8.70.208, 8.70.211, 8.70.303, 8.70.502, as proposed, but with the following changes: (the authority and implementing sections remain the same)

"8.70.104 INCORPORATION BY REFERENCE OF THE MODEL ENERGY CODE (1) through (1)(b) will remain the same as proposed.

(c) Section 502.1.1, is amended to read as follows: "The stated U_o, U or R value of an assembly may be increased or the stated U_o, U or R value of an assembly may be decreased provided the total heat gain or loss for the entire building does not exceed the total resulting from conformance to the values specified in Tables Nos. 502.2.1 and 502.3.1. For Group R buildings regulated by section 502.2, Figure No. ~~13~~ 7 of Chapter ~~7~~ 8 may be used to determine a lower U_o value for the roof-ceiling assembly when the U_o value of the wall does not conform to the U_o value specified in table No. 502.2.1." The following building component R values represent minimum levels of insulation to be provided in group R buildings in Montana.

Component	Equivalent Path	Prescriptive Path*
ceiling	R-38	R-42
walls	R-19**	R-21**
floors over unheated space	R-19	R-19
basement walls	R-10	R-11
foundation	R-19	R-19
door	R-2	R-5
windows	U-0.4***	U-0.5***

*Example alternative prescriptive paths are available from the bureau.
**Lesser R value may be allowed for log building walls.
***U values as defined by subsection (d)(iii).
(d) through (3) will remain the same as proposed."

"8.70.105 INCORPORATION BY REFERENCE OF UNIFORM MECHANICAL CODE (1) will remain the same as proposed.
(a) The fees contained in section 115 and Table 1-A shall be deleted and replaced with the following:
--requested inspection fee - $30, provided that such service is not in excess of 1 hour in duration, and then $15 for each 30 minutes or fractional part thereof in excess of 1 hour. Travel and per diem will be charged as per the state of Montana's existing rates for these items.

MECHANICAL PERMIT FEES

The mechanical cost shall be the cost to the owner of all labor charges and all mechanical materials and equipment installed as part of the mechanical system. The cost of the plumbing system, which is covered by the Uniform ~~International~~ Plumbing Code, is not to be included.

Cost of Mechanical System	Mechanical Permit Fee
0 - $1,000	$30
$1,001 - $10,000	$30 for first $1,000 plus $10 for each additional $1,000 or fraction thereof, to and including $10,000
$10,001 - $50,000	$120 for first $10,000 plus $5 for each additional $1,000 or fraction thereof, to and including $50,000~~.~~
$50,001	$320 for first $50,000 plus $3 for each additional $1,000 or fraction thereof

(b) and (c) will remain the same as proposed.
(d) The following will be added to section 304.6 LPG Appliances. LPG appliances may be installed in single family dwellings not withstanding the prohibition on the installation of such appliances by the UMC and the UPC provided:
(i) through (7) will remain the same as proposed."

"8.70.208 FUNDING OF CODE ENFORCEMENT PROGRAM (1) The establishment of permit fees shall be left to local governments. A list of current permit fees must be submitted to the bureau. ~~In addition, all permit fees collected must be~~

~~deposited in a separate account used for funding code enforcement and all payments from the account for the costs of code enforcement in the jurisdiction shall be accounted for separately and there shall be an audit route for expenditures charged against the account~~.

(2) Permit fees must only be used for those costs related to building code enforcement activities, with building codes being only those codes adopted by the bureau in subchapters 1, 3 and 4 of Title 8, chapter 70, Administrative Rules of Montana. It is not intended that permit fees be used to support fire departments, planning, zoning or other activities, except to the extent that employees in those programs provide direct plan review, inspection or other building code enforcement services for the building code enforcement program.

(3) Costs related to building code enforcement activities include:

(a) those necessary and reasonable costs directly related and specifically identifiable to the enforcement of codes adopted by the local government as provided by 50-60-302; and

(b) a proportionate share of the local government's indirect costs, which are those costs incurred for common or joint purposes that benefit more than one program or activity. These include, but are not necessarily limited to, legislative services, executive services, administrative services, financial services, data processing services, purchasing services, personnel services, legal services and facilities administration.

(4) The local government must maintain a system and adequate records to:

(a) document that permit fees are only used for those costs related to building code enforcement activities, as defined in (2) and (3) above;

(b) document the amount by which revenues from permit fees differs from the costs related to building code enforcement activities each year;

(c) document the amount maintained as a reserve and the percentage of the costs of building code enforcement activities that the reserve represents;

(d) document that any reserve is utilized only for the cost of building code enforcement activities; and

(e) document that permit fees were reduced as required in (5) in the event the reserve exceeds the maximum reserve allowed in (5).

(5) Permit fees collected in a given year in excess of the costs of administering the building code enforcement program may be placed in reserve to be used in subsequent years, provided that the reserve amount not exceed the amount needed to support the building code enforcement program for six months. Fees must be reduced if necessary to avoid creation of excess reserve."

"8.70.211 EXTENSION OF MUNICIPAL JURISDICTIONAL AREA

(1) Section 50-60-101, MCA, provides that municipalities may extend their inspection jurisdiction up to 4½ miles from

their corporate limits upon written request and upon approval by the bureau. The written request must include a statement as to how the additional work-load will be handled, discussion of why the municipality wants an extended jurisdictional area and why approval would be in the best interest of affected land owners and/or the municipality, evidence that the municipality has made a reasonable effort to notify all landowners in the affected area, in writing, of the ramifications of approval and that interested persons may comment to the bureau on the proposed extension. Once the municipality is granted authority to inspect within the 4½ mile jurisdictional area, the county may not inspect in that area unless the municipality relinquishes its right or as otherwise provided in (4) of this rule.

(2) through (4) will remain the same as proposed."

"8.70.302 INCORPORATION BY REFERENCE OF UNIFORM ~~INTERNATIONAL~~ PLUMBING CODE (1) and (a) will remain the same.

(i) Delete sections 20.3, 30.1, 30.2, 30.3, 30.4, 30.5 and 30.6. These sections are replaced with provisions of Title 50, chapter 60, MCA. "No permit is required for any minor replacement or repair work, the performance of which does not have a significant potential for creating a condition hazardous to public health and safety. No permit is required where the installation is exempt under the provisions of 50-60-503 or 50-60-506, MCA. The provisions of this act do not apply to regularly employed maintenance personnel doing maintenance work on the business premises of their employer unless work is subject to the permit provisions of this part. Factory-built buildings covered by an insignia issued by the ~~building standards section~~ bureau need not have a plumbing permit for the construction of the unit; however, a permit will still be required for on site work, as provided for in these rules."

(ii) through (ix) will remain the same.

(x) Sec. 613, Vertical Wet Venting. Delete the word "vertical" from the section title and from line 1 in subsections (a) and (b).

(x) will remain the same, but will be renumbered (xi).

(xii) Add the following to Sec. 1003(k): "Heat exchangers, in single family dwellings on their own private well, which utilize a nontoxic transfer fluid, may be of single wall construction."

(xiii) Add the following to Sec. 1003(g): "Boiler feed lines, in single family dwellings on their own private well, may be protected with a dual check valve with intermediate atmospheric vent when a nontoxic transfer fluid is utilized in the boiler."

~~(xi)~~ (xiv) Sec. 1004 (a), Materials, amend to read as follows: "Sec. 1004 - Materials (a) Water pipe and fittings shall be of brass, copper, cast iron, galvanized malleable iron, galvanized wrought iron, galvanized steel, or other approved materials. Asbestos-cement, PB, CPVC, PE, PEX, PEX-AL-PEX or PVC water pipe manufactured to recognized standards may be used for cold water distribution systems outside a

building; provided however, that this same material may extend to a point immediately inside the building when a sleeve for all pipe passing through or under concrete construction and valve are provided at the point of entrance. PB, CPVC, PEX or PEX-AL-PEX water pipe and tubing may be used for hot and cold water distribution systems within a building. All materials used in the water supply system, except valves and similar devices shall be of a like material, except where otherwise approved by the Administrative Authority."

(xii) through (xix) will remain the same, but will be renumbered (xv) through (xxii)."

"8.70.303 MINIMUM REQUIRED PLUMBING FIXTURES (1) the following table will be used to determine the minimum number of plumbing fixtures to be installed in new buildings:

MINIMUM NUMBER OF PLUMBING FACILITIES
Fixtures (Number of fixtures per number of occupants)
~~**(see Sections 404.2 and 404.3)**~~

	Occupancy	Water Closets ~~(Urinals see Section 420.2)~~		Lavatories	Bathtubs/ showers	Drinking fountains ~~(see Section 411.1)~~
		Male	Female			
ASSEMBLY	Theaters	1 per 125	1 per 65	USE SECTION 2902, UBC		1 per 1,000
	Nightclubs[g,h]	1 per 40	1 per 40			1 per 500
	Restaurants[g,h]	1 per 75	1 per 75			1 per 500
	Halls, museums, Coliseums, arenas, Stadiums, pools, etc.	1 per 125	1 per 65			1 per 1,000
	Churches[b]	1 per 150	1 per 75			1 per 1,000
	Business[i,j,l] ~~(see Sec. 404.2, 404.4 & 404.5)~~	1 per 25				1 per 100
	Educational	SEE SECTION 2902.4, UBC				
	Factory and industrial	1 per 100		1 per 100	~~(see Sec. 412.0)~~	1 per 400
	High hazard ~~(see Sec. 404.2 & 404.4)~~	1 per 100		1 per 100	~~(see Sec. 412.0)~~	1 per 1,000
	Residential care	1 per 10		1 per 10	1 per 8	1 per 100
INSTITUTIONAL	Hospitals, ambulatory nursing home patients[c]	1 per room[e]		1 per room[e]	1 per 15	1 per 100
	Day nurseries[k], sanitariums nonambulatory nursing home patients, etc.[c]	1 per 15		1 per 15	1 per 15[f]	1 per 100
	Employees, other than residential care[d]	1 per 25		1 per 35		1 per 100
	Visitors, other than residential care	1 per 75		1 per 100		1 per 500
	Prisons[c]	1 per cell		1 per cell	1 per 15	1 per 100
	Asylums, reformatories, etc.[c]	1 per 15		1 per 15	1 per 15	1 per 100
	Mercantile (see Sec. 404.2, 404.4 & 404.5)	1 per 500		1 per 750		1 per 1,000
RESIDENTIAL	Hotels, motels	1 per guestroom		1 per guestroom	1 per guestroom	
	Lodges	1 per 10		1 per 10	1 per 8	1 per 100
	Multiple family	1 per dwelling unit		1 per dwelling unit	1 per dwelling unit	
	Dormitories	1 per 10		1 per 10	1 per 8	1 per 100
	One and two-family dwelling[d]	1 per dwelling unit		1 per dwelling unit	1 per dwelling unit	

The chart footnotes will remain the same as proposed."

"8.70.502 APPLICABILITY OF STATE STATUTES AND ADOPTED ADMINISTRATIVE RULES (1) through (2)(b) will remain the same as proposed.

(c) the latest adopted edition of the Uniform ~~International~~ Plumbing Code and Uniform Mechanical Code as drafted by the international conference of building officials.

(3) through (5) will remain the same as proposed."

3. The Bureau has thoroughly considered all comments and testimony received. Those comments, in summary form, and the Bureau's responses thereto are as follows:

GENERAL COMMENTS:

As a preliminary matter, two minor clerical amendments, shown above, were inadvertently omitted from ARM 8.70.104 in the original notice. Those amendments were noted at the hearing but received no public comment.

Comment No. 1: Four post-hearing opposition letters were received relative to 8.70.105, incorporation by reference of the 1994 edition of the Uniform Mechanical Code (UMC). No opposition comment regarding 8.70.105 was received before or during the hearing. The opposition letters urged against adoption of the 1994 UMC authored by the International Conference of Building Officials (ICBO) because the code was included in the International Association of Plumbing and Mechanical Officials' (IAPMO) copyright infringement suit against ICBO.

Response: Having researched this matter, the Bureau has learned that the 1994 edition of the UMC, authored by the ICBO, is no longer the subject of the lawsuit referenced by commentors. Further, even if the subject code was included in the lawsuit, the issue would not be resolved for several years and should not be a reason for not adopting the UMC. Accordingly, the 1994 edition of the UMC is adopted.

Comment No. 2: Opposition was received from the Montana Manufactured Housing and Recreational Vehicle Association regarding proposed amendments to 8.70.502 (prohibiting the taking or delivery of RVs or factory-built buildings (FBBs) out of state in order to avoid Montana's rules) and 8.70.563 (prohibiting the sale of units not bearing Montana insignia) essentially on the grounds that such measures are unnecessary and duplicative.

Response: The Bureau believes that neither amendment is duplicative and both are necessary in order to properly enforce the State's statutes, rules and codes pertaining to RVs and FBBs. As such, both amendments are adopted.

Comment No. 3: One "neutral" comment and two opposition comments were received relative to 8.70.901 - 8.70.916

(adoption of new boiler safety and inspection program rules). Neutral suggestions, proffered by Exxon Corporation of Billings, Montana, were specific. One opposition comment, received from the Montana Steam Engine Owners Association, was directed toward Section XVI (Traction Engines), paragraph 3. In substance, the Association believes that paragraph 3 does not belong in the administrative rules; that paragraph 3 has no relation to the operation of the boiler proper; and that it should be deleted from the rules. The second opposition comment, received from a Helena public relations firm on behalf of the Montana Wood Products Association, stated that relative to Rule XI, assigning a State I.D. number to boilers is unnecessary, as two I.D. numbers are already provided by the National Board of Pressure Vessel Inspectors. The organization also asserted that, relative to Rule XIV(2), companies should not be required to "provide additional paperwork with another report" as authorized inspectors from insurance companies assure that paperwork, testing and credentials is proper and the State already has access to a company's files.

Response: After thorough review and careful consideration of each boiler safety/inspection-related comment, the Bureau believes its proposed language is necessary in light of statutory and American Society of Mechanical Engineers (ASME) requirements. As such, the new boiler safety and inspection program rules are adopted as proposed.

Comment No. 4: Several Cities and the League of Cities and Towns opposed the Bureau's proposed amendment to 8.70.208 (funding of local code enforcement programs). Opposition testimony focused on four arguments: 1) The proposed rule change would require nearly all local governments to revamp their accounting procedures and this could only be done at great expense and through a greatly increased workload; 2) Many costs associated with building programs are not easily identifiable and are not charged directly against building inspection accounts (i.e. - accounting, payroll, legal fees, employee retirement costs, health insurance costs, liability insurance, administrative costs, building maintenance, office space, utilities, etc.); 3) the rule does not take into account cyclical revenue shortfalls in the building program which are absorbed by cities' general funds; and 4) this proposal is unrelated to the subjects for which the Department is authorized to adopt rules and amount to an unfunded mandate. The Department's Local Government Assistance Division (LGAD) suggested alternative language to the Bureau's proposal intended to clarify the requirements, minimize impacts on local governments, and assure that the requirements were realistic and reasonable. The opponents admitted that the alternative language was an improvement to the Bureau's language, but all still opposed placing of any restrictions on how cities spend fee revenues.

Response: It appears that local governments will likely always oppose any State efforts to impose restrictions on how cities spend fee revenues, for obvious reasons. The

Department's LGAD possesses extensive auditing, accounting and funding experience and -- at the Bureau's request -- the LGAD has studied the matter in great detail. After additional consultation with finance officers of the major cities regarding suitable rule language, the LGAD and the Bureau developed further revised language to that previously proposed which is reasonable and with which compliance can be obtained without creating an unreasonable burden. As such, the further revised amendment is hereby adopted.

Comment No. 5: The Bureau's proposed amendment to 8.70.211 (Extension of Municipal Jurisdictional Areas) was opposed by several cities and the League of Cities and Towns and was supported by one proponent. Opposition comments focused on the following topics: 1) vagaries in the amendment (e.g. - what are "reasonable effort" and "ramifications of approval"); 2) the State should not impose hardships on local governments (i.e. - the requirement to notify all landowners in the affected area); and 3) the State should encourage, rather than discourage, local governments to take on extended jurisdictional areas and enforce minimum building standards.

Response: The Bureau believes that, although the proposal will require cities which want to extend jurisdictional areas to expend considerably more effort than they have in the past, the requirements are not unreasonable. As such, the Bureau adopts the rule as proposed with the addition of the words "in writing" inserted following the words ". . . notify all landowners in the affected area", thus incorporating the proponent's suggestion and eliminating one of the "vagaries" as identified by opponents.

Comment No. 6: The most controversial proposal related to 8.70.302, the Bureau's proposed adoption of the International Plumbing Code (IPC) rather than the historically used Uniform Plumbing Code (UPC). Oral and written opposition comments were concentrated in six major areas (A-F). These areas of objection and the Bureau's responses are set forth below:

A. The IPC allows for the use of unacceptable/ inferior materials and methods and the IPC is a performance-based, rather than specification-based code.

Response: The IPC is a blending of the plumbing codes presently used in the Building Officials and Code Administrators International, Inc.(BOCA) area (northeastern and eastern U.S.), the Southern Building Code Congress International, Inc.(SBCCI) area (southeastern and southern U.S.) and a plumbing code previously used by ICBO. The Bureau is convinced that the requirements of the IPC would adequately protect public health and safety of Montanans. The requirements of the IPC have been tested for years through the BOCA, SBCCI and ICBO plumbing codes and have served over one-half of the nation's population very well for many years.

Further, although the IPC is billed as a performance-based code, it is in actuality no more performance-based than is the UPC. One point of focus by objectors is that the IPC allows use of PB and PEX pipe, which they feel are inferior materials and are not allowed by the UPC. However, the nearby states of Washington, Oregon, Idaho, North Dakota and South Dakota all allow the use of PB pipe.

B. Litigation over the IPC between IAPMO and ICBO may be won by IAPMO, resulting in the use of the IPC being enjoined.

Response: The litigation is related to copyright infringement allegations and will not be settled for several years. In the Bureau's estimation, this amounts to a non-issue. The Bureau notes that IAPMO testimony at the public hearing implied that the IPC is an inferior code; however, IAPMO is suing ICBO over the IPC and claims that ICBO took its copyrighted code requirements.

C. The IPC is not yet adopted by any other States and Montana should not be first.

Response: Many states do not have statewide plumbing codes nor have they adopted any plumbing codes. In addition, the IPC has not been out long and adopting a new or even an updated code takes some time. The Bureau expects that most Building Officials in the BOCA and SBCCI states, and many ICBO states, will adopt the IPC in 1996.

D. Adoption of the IPC would result in extensive retraining and retesting of plumbers and plumbing inspectors at considerable cost and will adversely affect reciprocal licensure with other states.

Response: The Bureau believes that so few differences exist between the UPC and the IPC that essentially no retraining would be required of plumbers and/or inspectors, certainly no more than would be required by an edition update of the UPC. The Bureau sternly disputes fiscal estimates of one IPC opponent who claimed the price tag for retraining, etc. would exceed $11 million. While it is true that some costs would be incurred for the purchase of IPC books, costs would also be incurred for purchase of 1994 UPC books.

E. The IPC is not supported by the plumbing industry, Board of Plumbers or Building Codes Advisory Council.

Response: The Bureau felt that the proposed adoption of the IPC had not received a complete hearing from affected parties at the Building Codes Advisory Council meeting or before the Board of Plumbers and that an open public hearing on the issue was the only way that pro and con comments regarding

the IPC could be obtained. The Bureau believes that the people of Montana should have the same options to choose materials and methods of construction as are utilized in neighboring states and across the bulk of the nation. It does appear that as many as 200 licensed plumbers in Montana have at least signed petitions opposing adoption of the IPC, but very few, if any, substantive reasons are given for the opposition, leading the Bureau to suspect that the opposition is mostly opposition to change.

F. The IPC was developed by building officials rather than plumbing/mechanical experts and, therefore, the IPC is deficient.

Response: The Bureau disagrees. The IPC is based on the BOCA, SBCCI and ICBO plumbing codes, all developed by plumbing/mechanical experts and all having served the public well for many years. Also, when plumbing/mechanical issues are addressed at the ICBO code conference, most, if not all, jurisdictions bring plumbing/mechanical personnel to vote on plumbing/mechanical issues.

In spite of the fact that the Bureau remains convinced that the IPC is a very good, reasonable and realistic plumbing code that would adequately protect the public health and safety of Montanans, the Bureau recognizes that the proposal to adopt the IPC has developed into an emotional issue with many of the State's plumbers. The Bureau believes it is best to give more time for plumbers to become familiar with the IPC before it is adopted for use in Montana. Therefore, the Department will not adopt the IPC at this time. The Bureau notes that Section 50-60-201, MCA, entitled "Purpose of State Building Code," provides in pertinent part that:

> [t]he State building code shall be designed to effectuate . . . the following specific objectives and standards . . .
> (2) permit to the fullest extent feasible the use of modern technical methods, devices, and improvements which tend to reduce the cost of construction consistent with reasonable requirements for the health and safety of the occupants or users of buildings . . .
> (3) eliminate restrictive, obsolete, conflicting, and unnecessary building regulations and requirements which tend to increase unnecessarily construction costs, retard unnecessarily the use of proven new materials which have been found adequate through experience or testing, or provide unwarranted preferential treatment to types or classes of materials, products, or methods of construction; ...

In accordance with the stated objectives of the State building code, the Bureau believes it is important that Montanans be allowed the same choice of plumbing materials and

methods that citizens of neighboring states enjoy. For example, the Bureau notes that minimal opposition was expressed regarding polybutylene (poly) products, while several pro-poly comments were received:

-- An IPC-neutral Idaho plumbing contractor testified that his company has used poly pipe extensively and had no problems in the 15 years and 3000 installations they have performed except one failure, which was installer error. He urged the Bureau to consider the advantages of poly pipe. For example, poly pipe eliminates noise problems and he has never seen poly pipe, which can expand, crack or explode from expanding ice, which can occur to copper in especially cold temperatures.

-- An IPC-neutral Colorado contractor testified that his company has performed 10,000 poly pipe installations and he has only seen four failures. He stated that he hopes IAPMO will open its eyes to poly pipe.

-- A Vanguard Plastics representative testified that Washington, Oregon and Idaho have amended their codes to allow poly pipe because it is a good and proven material. The representative rebuffed critics of a nationwide poly pipe lawsuit, explaining that the lawsuit resulted from a fitting which did not perform as expected by even the poly industry and that the poly industry brought the action on behalf of potentially affected homeowners. He stated that homeowners with poly problems are protected until the year 2012 unless they "opt out" of the lawsuit. He also submitted a report entitled: "Polybutylene (PB) Plumbing Pipe and Polybutylene (PB) Plumbing Systems -- REALITY vs. Perception 11/11/94," which espouses the virtues of poly pipe and systems.

-- An second IPC-neutral representative from Vanguard Plastics testified that his company is committed to proper installations; that poly pipe is proven; and that homeowners deserve the choice.

-- One Montana contractor expressed support for the use of Maniblock (a poly pipe tubing system).

To allow more flexibility in plumbing installations, and in accordance with the flexibility displayed by other area states, the Bureau retains the 1991 edition of the UPC and amends it as follows:

1. Allow use of polybutylene, PEX, PEX-AL-PEX pipe for potable water both inside and outside of buildings.

2. Allow horizontal wet venting.
3. Allow use of single wall heat exchangers in single family dwellings on their own private well, when nontoxic transfer fluid is used.
4. Allow use of dual check valves with an intermediate atmospheric vent on boiler feed lines in single family dwellings on their own private well, when nontoxic transfer fluid is used in the boiler.

4. No further comments or testimony were received.

BUILDING CODES BUREAU
JAMES BROWN, BUREAU CHIEF

BY: _____
ANDY POOLE, DEPUTY DIRECTOR

_____
ROBERT P. VERDON, RULE REVIEWER

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

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the transfer of rules 16.40.101 through 16.40.1103, pertaining to radiation control, and 16.42.101 through 16.42.405 pertaining to occupational health, with the exception of any repealed rules.	NOTICE OF TRANSFER (Occupational Health)

To: All Interested Persons

1. Pursuant to Chapter 418, Laws of Montana 1995, effective July 1, 1995, the occupational and radiological health program was transferred from the Department of Health and Environmental Sciences to the Department of Environmental Quality. In order to implement that legislation, ARM 16.40.101 through 16.40.1103, and 16.42.101 through 16.42.405, inclusive with the exception of any repealed rules, are transferred to the Department of Environmental Quality, ARM 17.70.101 through 17.70.1103, and 17.74.101 through 17.74.405. (Refer to 2-15-133, MCA.)

2. The Department of Environmental Quality has determined that the transferred rules will be numbered as follows:

OLD	NEW	
16.40.101	17.70.101	Policy
16.40.102	17.70.102	Definitions
16.40.103	17.70.103	Exemptions
16.40.104	17.70.104	Records
16.40.105	17.70.105	Inspections
16.40.106	17.70.106	Tests
16.40.107	17.70.107	Prohibited Uses
16.40.108	17.70.108	Communications
16.40.201	17.70.201	Purpose
16.40.202	17.70.202	Definitions
16.40.203	17.70.203	Exemptions
16.40.204	17.70.204	Registration
16.40.205	17.70.205	Out-of-State Radiation Machines
16.40.301	17.70.301	Purpose
16.40.302	17.70.302	Exemptions--Source Material
16.40.303	17.70.303	Exemptions--Radioactive Material other than Source Material
16.40.304	17.70.308	Licenses--Types of Licenses
16.40.305	17.70.309	General Licenses--Source Material
16.40.306	17.70.310	General Licenses--Radioactive Material other than Source Material
16.40.307	17.70.311	General Licenses--Intrastate Transportation of Radioactive Material
16.40.308	17.70.312	Specific Licenses--Filing Application for Specific Licenses
16.40.309	17.70.313	Specific Licenses--General Requirements for Issuance of Specific

		Licenses
16.40.310	17.70.314	Specific Licenses--Special Requirements for Issuance of Certain Specific Licenses for Radioactive Material
16.40.311	17.70.315	Specific Licenses--Special Requirements for Specific Licenses of Broad Scope
16.40.312	17.70.316	Specific Licenses--Special Requirements for a Specific License to Manufacture, Assemble, Repair, or Distribute Commodities, Products, or Devices which Contain Radioactive Material
16.40.313	17.70.317	Specific Licenses--Issuance of
16.40.314	17.70.318	Specific Licenses--Specific Terms and Conditions of License
16.40.315	17.70.319	Specific Licenses--Expiration
16.40.316	17.70.320	Specific Licenses--Renewal of License
16.40.317	17.70.321	Specific Licenses--Amendment of License at Request of Licensee
16.40.318	17.70.322	Specific Licenses--Department Action on Applications to Renew and Amend
16.40.319	17.70.323	Specific Licenses--Persons Possessing a License for Source, Byproduct, or Special Nuclear Material in Quantities not Sufficient to Form a Critical Mass
16.40.320	17.70.324	Existing Specific Licenses--NARM
16.40.321	17.70.325	Specific Licenses--Transfer of Material
16.40.322	17.70.326	Specific Licenses--Modification, Revocation, and Termination
16.40.323	17.70.330	Reciprocity
16.40.324	17.70.331	Transportation--Preparation of Material
16.40.401	17.70.401	Purpose and Scope
16.40.402	17.70.402	Permissible Doses, Levels and Concentrations--Radiation Dose to Individuals in Restricted Areas
16.40.403	17.70.403	Permissible Doses, Levels, and Concentrations--Determination of Accumulated Dose
16.40.404	17.70.404	Permissible Doses, Levels, and Concentrations--Exposure of Individuals to Concentrations of Radioactive Material in Air in Restricted Areas
16.40.405	17.70.405	Permissible Doses, Levels, and Concentrations--Exposure of Minors
16.40.406	17.70.406	Permissible Doses, Levels, and Concentrations--External Sources in Unrestricted Areas
16.40.407	17.70.407	Permissible Doses, Levels, and Concentrations--Radioactivity in Effluents to Unrestricted Areas

16.40.408	17.70.408	Permissible Doses, Levels, and Concentrations--Orders Requiring Furnishing of Bioassay Services
16.40.409	17.70.412	Precautionary Procedures--Surveys
16.40.410	17.70.413	Precautionary Procedures--Personnel Monitoring
16.40.411	17.70.414	Precautionary Procedures--Caution Signs, Labels, and Signals
16.40.412	17.70.415	Precautionary Procedures--Exceptions from Posting and Labeling Requirements
16.40.413	17.70.416	Precautionary Procedures--Instruction of Personnel
16.40.414	17.70.417	Precautionary Procedures--Storage and Control of Sources of Radiation
16.40.415	17.70.418	Precautionary Procedures--Procedures for Picking Up, Receiving, and Opening Packages
16.40.416	17.70.422	Waste Disposal--General Requirement
16.40.417	17.70.423	Waste Disposal--Method of Obtaining Approval of Proposed Disposal Procedures
16.40.418	17.70.424	Waste Disposal--Disposal by Release into Sanitary Sewerage Systems
16.40.419	17.70.425	Waste Disposal--Disposal by Burial in Soil
16.40.420	17.70.426	Waste Disposal--Disposal by Incineration
16.40.421	17.70.430	Records, Reports, and Notification--Surveys, Radiation Monitoring, Disposal
16.40.422	17.70.431	Records, Reports, and Notification--Reports of Theft or Loss of Sources of Radiation
16.40.423	17.70.432	Records, Reports, and Notification--Notification of Incidents
16.40.424	17.70.433	Records, Reports, and Notification--Reports of Overexposures and Excessive Levels and Concentrations
16.40.425	17.70.434	Records, Reports, and Notification--Vacating Premises
16.40.426	17.70.435	Records, Reports, and Notification--Notifications and Reports to Individuals
16.40.501	17.70.501	Purpose
16.40.502	17.70.502	Scope
16.40.503	17.70.503	Definitions
16.40.504	17.70.507	Equipment Control--Limits on Levels of Radiation
16.40.505	17.70.508	Equipment Control--Locking of Sources of Radiation
16.40.506	17.70.509	Equipment Control--Storage Precautions
16.40.507	17.70.510	Equipment Control--Radiation Survey Instruments
16.40.508	17.70.511	Equipment Control--Leak Testing,

		Repair, Tagging, Opening, Modification, and Replacement of Sealed Sources
16.40.509	17.70.512	Equipment Control--Quarterly Inventory
16.40.510	17.70.513	Equipment Control--Utilization Logs
16.40.511	17.70.514	Equipment Control--Inspection and Maintenance--Radiographic Exposure Devices and Storage Containers
16.40.512	17.70.515	Equipment Control--Inspection and Maintenance--High Radiation Area Control Devices or Alarm Systems
16.40.513	17.70.520	Personal Radiation Safety Requirements for Radiographers and Radiographers' Assistants--Limitations
16.40.514	17.70.521	Personal Radiation Safety Requirements for Radiographers and Radiographers' Assistants-- Operating and Emergency Procedures
16.40.515	17.70.522	Personal Radiation Safety Requirements for Radiographers and Radiographers' Assistants-- Personnel Monitoring Control
16.40.516	17.70.525	Precautionary Procedures in Radiographic Operations-- Security
16.40.517	17.70.526	Precautionary Procedures in Radiographic Operations--Posting
16.40.518	17.70.527	Precautionary Procedures in Radiographic Operations--Radiation Surveys and Survey Records
16.40.519	17.70.528	Precautionary Procedures in Radiographic Operations--Records Required at Temporary Job Sites
16.40.520	17.70.529	Precautionary Procedures in Radiographic Operations--Special Requirements and Exemptions for Enclosed Radiography
16.40.601	17.70.601	Scope
16.40.602	17.70.602	Definitions
16.40.603	17.70.603	General Safety Provisions
16.40.604	17.70.604	Prohibited Use
16.40.605	17.70.605	Fluoroscopic Installations
16.40.606	17.70.609	Dental Radiographic Installations
16.40.607	17.70.610	Veterinary Medicine Radiographic Installations
16.40.608	17.70.611	Radiographic Installations other than Dental and Veterinary Medicine
16.40.609	17.70.615	Special Requirements for Mobile Diagnostic Radiographic Equipment
16.40.610	17.70.616	Special Requirements for Chest Photofluorographic Installations
16.40.611	17.70.617	Therapeutic X-Ray Installations
16.40.701	17.70.701	Scope
16.40.702	17.70.702	Interstitial, Intracavitary and Superficial Applications

16.40.703	17.70.703	Teletherapy
16.40.801	17.70.801	Scope
16.40.802	17.70.802	Definitions
16.40.803	17.70.803	Equipment Requirements
16.40.804	17.70.804	Area Requirements
16.40.901	17.70.901	Purpose
16.40.902	17.70.902	Registration Procedures and Requirements
16.40.903	17.70.903	General Registration Procedure and Requirements
16.40.904	17.70.904	Registration Procedure--Human Use of Particle Accelerators
16.40.905	17.70.908	Compliance
16.40.906	17.70.909	Limitations
16.40.907	17.70.910	Shielding and Safety Design Requirements
16.40.908	17.70.911	Particle Accelerator Controls and Interlock Systems
16.40.909	17.70.912	Warning Devices
16.40.910	17.70.913	Operating Procedures
16.40.911	17.70.916	Radiation Monitoring Requirements
16.40.912	17.70.917	Ventilation Systems
16.40.1001	17.70.1001	Purpose and Scope
16.40.1002	17.70.1002	Posting of Notices to Workers
16.40.1003	17.70.1003	Instructions to Workers
16.40.1004	17.70.1004	Notifications and Reports to Individuals
16.40.1005	17.70.1005	Inspection Procedures
16.40.1006	17.70.1006	Consultation with Workers during Inspections
16.40.1101	17.70.1101	Scope
16.40.1102	17.70.1102	Permissible Concentrations and Levels of Radiation
16.40.1103	17.70.1103	Stabilization of Tailings Piles and Ponds from Mills
16.42.101	17.74.101	Occupational Noise
16.42.102	17.74.102	Occupational Air Contaminants
16.42.301	17.74.301	Applicability and Purpose
16.42.302	17.74.302	Definitions
16.42.303	17.74.303	Exclusions
16.42.304	17.74.307	Evaluation of Asbestos Hazards in Structures Other Than LEA School Buildings
16.42.305	17.74.308	Clearing Asbestos Abatement Projects in Structures Other Than LEA School Buildings
16.42.306	17.74.309	Evaluation of Asbestos Hazards in LEA School Buildings
16.42.307	17.74.310	Clearing Asbestos Abatement Projects in LEA School Buildings
16.42.308	17.74.314	Requirements of Accreditation and Permitting for Persons Engaged in an Asbestos-Type Occupation

16.42.309	17.74.315	Accreditation of Asbestos Inspector; Asbestos Management Planner; Asbestos Abatement Project Designer; Asbestos Abatement Contractor or Asbestos Abatement Supervisor; and Asbestos Worker
16.42.310	17.74.316	Renewal of Accreditation
16.42.311	17.74.317	Training Course and Examination Requirements
16.42.312	17.74.318	Application for Accreditation of a Training Course; Certification
16.42.313	17.74.319	Course Approval
16.42.314	17.74.325	Asbestos Inspector's Course
16.42.315	17.74.326	Asbestos Management Planners Course
16.42.316	17.74.327	Asbestos Abatement Project Designer's Course
16.42.317	17.74.328	Asbestos Abatement Contractor's and Supervisor's Course
16.42.318	17.74.329	Asbestos Abatement Worker's Course
16.42.319	17.74.330	Examinations
16.42.320	17.74.331	Refresher Courses
16.42.321	17.74.335	Asbestos Abatement Project Permits
16.42.322	17.74.336	Annual Permits
16.42.323	17.74.337	Emergency Asbestos Project Permits
16.42.324	17.74.338	Asbestos Abatement Project Control Measures
16.42.325	17.74.341	Recordkeeping
16.42.326	17.74.342	Inspections
16.42.327	17.74.343	Reciprocity
16.42.401	17.74.401	Fees for Permits
16.42.402	17.74.402	Accreditation & Accreditation Renewal Applications
16.42.403	17.74.403	Course Approval
16.42.404	17.74.404	Course Audits
16.42.405	17.74.405	Penalty

3. The transfer of rules 16.40.101 through 16.40.1103 and 16.42.101 through 16.42.405 is necessary because the Department of Health and Environmental Sciences was eliminated by Chapter 418, Laws of Montana 1995 and the occupational and radiological health program functions exercised by that agency were assumed by the Department of Environmental Quality.

MARK A. SIMONICH, Director

Reviewed by:

JOHN F. NORTH, Rule Reviewer

Certified to the Secretary of State January 29, 1996 .

BEFORE THE FIRE PREVENTION AND INVESTIGATION BUREAU
OF THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the adoption, repeal and amendment of rules pertaining to the adoption of the 1994 Uniform Fire Code and the 1994 edition of the Uniform Fire Code Standards	))))))	NOTICE OF ADOPTION, REPEAL AND AMENDMENT OF RULES

TO: All Interested Persons.

1. On August 10, 1995, the Fire Prevention and Investigation Bureau of the Department of Justice published a notice of hearing concerning the proposed amendment of rules 23.7.108, 23.7.109, 23.7.113, and 23.7.201, the proposed adoption of new rules I through X, and the proposed repeal of rule 23.7.105, concerning the adoption and amendment of the 1994 edition of the Uniform Fire Code. This notice was published at pages 1497 through 1524 of the Montana Administrative Register, issue number 15.

2. The agency has adopted the amendments to ARM 23.7.108, 23.7.109, 23.7.113, and 23.7.201 as proposed; no comments or testimony concerning the amendment of these rules were received.

3. The agency has adopted new rules IV (ARM 23.7.304), V (23.7.305), VII (23.7.307), and X (23.7.310) as proposed; no comments or testimony concerning the adoption of these rules were received.

4. The agency has repealed rule 23.7.105 found on page 23-361.1 of the Administrative Rules of Montana; no comments or testimony concerning the repeal of this rule were received.

AUTH: Sec. 50-3-102 MCA IMP: Sec. 50-3-102 MCA

5. The agency has adopted new rules I (ARM 23.7.301), II (23.7.302), III (23.7.303), VI (23.7.306), VIII (23.7.308), and IX (23.7.309), as proposed with the following changes (matter stricken from the proposed rules is interlined; matter added to the proposed rules is underlined):

NEW RULE I (23.7.301) ADOPTION OF UNIFORM FIRE CODE

Subsections (1) and (2) remain as proposed.

(3) This rule establishes a minimum fire protection code to be used in conjunction with the Uniform Building Code, ARM 80.70.101, et seq. Nothing in this rule prohibits any local government unit from adopting those ~~chapters~~ portions of the Uniform Fire Code that are not adopted by the fire prevention and investigation bureau or standards which are more restrictive than the Uniform Fire Code.

AUTH: Sec. 50-3-102 MCA IMP: Sec. 50-3-103 MCA

NEW RULE II (23.7.302) ADMINISTRATION

Subsection (1) remains as proposed.

Subsection (2)(a) through (d) remains as proposed.

(e) APPENDIX I-A, Subsection 1.2 Effective Date. is amended to read as follows: 1.2 Effective Date. Plans and specifications for the necessary alterations shall be filed with the chief within the time period established by the department after the date of owner notification. Work on the required alterations to the building shall be completed within 36 months. The chief ~~shall~~ may grant necessary extensions of time when it can be shown that the specified time periods are not physically practical or pose an undue hardship. The granting of an extension of time for compliance shall be based upon the showing of good cause and subject to the filing of an acceptable systematic progressive plan of correction with the chief.

AUTH: Sec. 50-3-102 MCA IMP: Sec. 50-3-103 MCA

NEW RULE III (23.7.303) ADDITIONAL DEFINITIONS ARTICLE 2-DEFINITIONS AND ABBREVIATIONS is adopted with the following additions:

(1) "Farm" means a tract of land devoted to agricultural purposes;

(2) "Ranch" means a tract of land devoted to ~~the raising of livestock~~ agricultural purposes; and

(3) "Rural" means any area outside a three-mile radius of a Class 1 or a Class 2 city's boundaries, as defined in 7-1-4104, MCA and outside a one and one-half mile radius of a Class 3 city's boundaries. In the case of an unincorporated place, the place will be considered rural if it has a population of less than 1,000 and a density of less than 800 persons per square mile, according to the most recent U.S. Census.

AUTH: Sec. 50-3-102 MCA, Sec. 50-61-102 MCA

IMP: Sec. 50-3-102 MCA

NEW RULE VI (23.7.306) SPECIAL PROCESSES The introductory sentence remains unchanged.

Subsections (1) through (6) are renumbered and amended as follows (new subsections indicated but not underlined):

~~(1) (2)~~ Subsection 5202.3.4. Fuel tanks at bulk plants. is not adopted ~~amended by adding the following exception to the existing subsection (which is unchanged): EXCEPTION: Tanks located at bulk plants in rural areas as permitted for rural automotive motor vehicle fuel dispensing stations in Section 5300.~~;

(1) is renumbered (2) and remains unchanged.

(NEW) (3) Subsection 5201.4.1.3 is amended as follows:

5201.4.1.3 Bulk plants. Motor vehicle dispensing stations at bulk plants shall be separated by a fence or similar barrier from the area in which bulk operations are conducted and in accordance with Section 5201. See also Section 5202.3.1.

(NEW) (4) Subsection 5202.3.1 is amended as follows:

5202.3.1 General. Class I liquids shall be stored in closed containers, in tanks located at bulk plants, underground or in special enclosures in accordance with Section 5202.3.6.

Classes II and III-A liquids shall be stored in containers or in tanks located underground or in special enclosures in accordance with Sections 5202.3.6 or 5201.4.1.3. See also Appendix II-F.

(3) is renumbered (5) and remains unchanged.

(6) ~~(4)~~ Subsection 5202.4.1 Aboveground tanks. is amended as follows: Class I and Class II liquids shall not be dispensed into the fuel tank of a motor vehicle from aboveground tanks except when such tanks are installed inside special enclosures in accordance with Sections 5202.3.6 or 5201.4.1.3. See Appendix II-F. and by adding the following exception ~~to the existing subsection (which is unchanged)~~: EXCEPTION: As permitted for rural areas in accordance with Section 5300.;

(5) is renumbered (7) and remains unchanged.

Subsection (6) is renumbered (8). Sections 5301.1 through 5301.11 remain as proposed.

5301.12 Spill control, ~~and~~ drainage control, and diking. Spill control, drainage control, and diking shall be provided as set forth in Sections 7901.8 and 7902.2.8.

Sections 5301.13 through 5302.4.3 remain as proposed.

5302.4.3.1 General. Class I and II liquids shall be transferred from tanks by means of fixed pumps so designed and equipped as to allow control of the flow and to prevent leakage or accidental discharge.

Supplemental means shall be provided outside of the dispensing area whereby the source of power can readily be disconnected in the event of fire or other accident.

Dispensing devices for Class I, II or III-A liquids shall be of an approved type. See Article 90, Standard u. 1.6. Class I, II or III-A liquids shall be dispensed by approved pumps taking suction through the top of the container on horizontal tanks. ~~Vertical~~ Above ground tanks dispensing Class I, II or III-A liquids may rely on gravity flow, ~~connected to "day tanks", not exceeding 250 gallons capacity, provided with submersible~~ pumps located at the tanks, or ~~may be directly connected to~~ suction pumps located in the base of the dispenser. Approved means shall be provided to prevent siphoning. Class I, II, and III-A liquids shall not be dispensed by a device that operates through pressure within a storage tank or container unless the tank or container has been approved as a pressure vessel for the use to which it is subjected. Air and oxygen pressure shall not be used for dispensing Class I, II or III-A liquids.

Sections 5302.4.3.2 through 5302.10.4.2 remain as proposed.

AUTH: Sec. 50-3-102 MCA IMP: Sec. 50-3-103 MCA

NEW RULE VIII (23.7.308) SPECIAL SUBJECTS

Subsections (1) through (4) remain as proposed.

Subsection (5) and Sections 7904.1 through 7904.2.8 remain as proposed.

7904.2.8.1 General. When performed in the operation of a farm or ranch, or when approved by the chief, liquids used as

fuels may be transferred from tank vehicles into the tanks of motor vehicles or special equipment, provided:

Subsections 1. through 8. remain as proposed.

AUTH: Sec. 50-3-102 MCA IMP: Sec. 50-3-102 MCA

NEW RULE IX (23.7.309) FLAMMABLE AND COMBUSTIBLE LIQUIDS

The introductory sentence remains unchanged.

Sections 7904.8 through 79.8.5.6.1 remain the same.

7904.8.6.2 The introductory sentence and subsection 1. remain the same.

2. Horizontal tanks with top openings only shall be equipped with a tightly and permanently attached, approved pumping device having an approved hose of sufficient length for filling vehicles, equipment or containers to be served from the tank. An effective antisiphoning device shall be included in the pump discharge unless a self-closing nozzle is provided. Siphons or internal pressure discharge devices shall not be used. Existing hoses not equipped with a breakaway coupling shall be retro-fitted within ~~12~~ 36 months of the adoption of this code.

7904.8.6.3 The introductory sentence and subsection 1. remain the same.

2. Bottom or end openings for gravity discharge shall be equipped with a valve located adjacent to the tank shell which will close automatically in the event of fire through the operation of an effective heat-actuated shut-off device. Existing tanks not equipped with a heat-actuated shut-off device shall be retro-fitted within ~~12~~ 36 months of the adoption of this code ~~rule~~. If this valve cannot be operated manually, it shall be supplemented by a second manually operated valve. The gravity discharge outlet shall be provided with an approved hose equipped with a self-closing valve at the discharge end. Existing hoses not equipped with a break away coupling shall be retro-fitted within ~~12~~ 36 months of the adoption of this code.

Sections 7904.8.5.7 through 7904.8.6.1 remain as proposed.

AUTH: Sec. 50-3-102 MCA IMP: Sec. 50-3-102 MCA

6. The department has thoroughly considered the comments and testimony received on the proposed rules. The following is a summary of the comments received, as well as the department's responses to the comments.

COMMENT: Ginny Mullaney, a fireworks dealer from Walkerville, commented that she felt that ARM 23.7.201(5) was unnecessarily vague and that it should not be adopted.

RESPONSE: The sole change to the rule proposed is that "inhabited buildings" would become "inhabited areas." The department believes this change is necessary for reasons of public safety and does not increase the ambiguity of the rule.

COMMENT: Dick Larson, the assistant fire marshal in the city of Missoula, made several comments on the sale of fireworks (ARM 23.7.201). Most of his comments concerned the various locations

for the sale of fireworks, and he concluded: "Personally, I would like to see fireworks made illegal in this state."

RESPONSE: The department declines to adopt Mr. Larson's suggestions because they are beyond the scope of the department's rulemaking authority, and could only be accomplished through changes in state statute or local ordinance.

COMMENT: Paul Gerber, fire marshal in Billings, commented that there was an apparent inconsistency in the treatment of the storage and dispensing of flammable and combustible liquids on farms and ranches, and the treatment of those liquids on construction sites.

Dick Larson commented that he was planning to recommend that the city of Missoula adopt the UFC requirements on parade floats.

RESPONSE: The department believes that the best way to deal with problems such as those receiving comment above is to clarify the local option that applies to the standards set forth in the Uniform Fire Code (new rule I(3)).

COMMENT: Bill Reed, chief of the Missoula Rural Fire District, commented that he was concerned about possible liability to the official granting of an extension of the type discussed in the amendment to new rule II(2)(e).

Dick Larson also commented on this proposed amendment, saying the chief's granting of extensions for filing plans and specifications should be discretionary, not mandatory.

RESPONSE: The department adopts Dick Larson's suggestion, and believes that it addresses Bill Reed's concerns as well.

COMMENT: Several people commented that the proposed definition of "rural" (new rule III(3)), was inadequate in that it did not consider high-population-density unincorporated communities such as Lolo.

Bill Reed commented that the definitions of "farm" and "ranch" (new rule III(1) & (2)), should be consolidated.

RESPONSE: The department believes that both these comments have merit and adopts them.

COMMENT: Bill Edens and the Montana Petroleum Marketers Association commented that the Aboveground Tank Task Force intended that "cardlock/key-trol" motor vehicle fuel dispensing at bulk plants should continue, and that new rule VI as proposed did not do this.

RESPONSE: The department agrees, accepts the recommendation of the Task Force, and has amended new rule VI accordingly.

COMMENT: The staff of the fire prevention and investigation bureau commented that rural motor vehicle fuel-dispensing stations should be subject to the drainage control and diking requirements of the UFC as well as the spill control, drainage control and secondary containment requirements.

RESPONSE: The department agrees and the appropriate amendment has been made to new rule VI, Section 5301.12.

COMMENT: Jason Campbell, testifying at the hearing for the Montana Stockgrowers, suggested that, due to the large number of above-ground-tanks in use on the state's farms and ranches, the period for bringing these tanks into compliance with the new standards of the UFC should be extended.

RESPONSE: The department agrees with this suggestion, and has extended all deadlines for compliance to 36 months.

COMMENT: Burl French, of Northwest Fuel Systems in Kalispell, commented at the hearing that there should be no discrepancy between public and private service stations.

RESPONSE: The department agrees with Mr. French, and would direct him to the proposed UFC definition of "motor fuel dispensing station, automotive" which makes no distinction between public and private stations.

COMMENT: Mr. French also commented that diking requirements for above-ground tanks should be liquid-tight steel, concrete, or earth.

RESPONSE: This is the UFC standard (see section 7902.2.8.3.3).

BY: JOSEPH P. MAZUREK
Attorney General

Rule Reviewer

Certified to the Secretary of State January 29, 1996.

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

In the matter of the amendment of ARM 24.30.2542, the adoption of four new rules and the repeal of ARM 24.30.2543, 24.30.2544, 24.30.2545 and 24.30.2546, concerning safety committees	) NOTICE OF AMENDMENT,) ADOPTION AND REPEAL OF) RULES))) (Safety Culture Act)

TO ALL INTERESTED PERSONS:

1. On August 10, 1995, the Department published notice at pages 1542 through 1547 of the Montana Administrative Register, Issue No. 15, to consider the amendment of ARM 24.30.2542, the adoption of new rules I through IV, and the repeal of ARM 24.30.2543, 24.30.2544, 24.30.2545, and 24.30.2546, all related to safety committees under the Safety Culture Act.

2. On September 11, 1995, a public hearing was held in Helena concerning the proposed rule changes at which oral and written comments were received. Approximately 55 persons attended the hearing and 14 testified at the hearing. Ten written comments from individuals or organizations were received prior to the closing date of September 18, 1995.

3. After consideration of the comments received on the proposed repeals, the Department has repealed the following rules in their entirety:

24.30.2543 COMPOSITION OF THE SAFETY COMMITTEE
24.30.2544 SCHEDULING OF THE SAFETY COMMITTEE MEETINGS
24.30.2545 ROLE OF THE SAFETY COMMITTEE
24.30.2546 SCOPE OF DUTIES OF THE SAFETY COMMITTEE

4. After consideration of the comments received on the proposed amendments to ARM 24.30.2542, the Department has amended the rule as follows: (new matter underlined, deleted matter interlined, added matter in all capitals)

24.30.2542 SAFETY COMMITTEE REQUIRED FOR EVERY EMPLOYER WITH MORE THAN FIVE EMPLOYEES (1) Except as provided by ARM 24.30.2553, 24.30.2554 and 24.30.2558, every ~~Every~~ employer that is subject to the requirements of ARM 24.30.2541 must also have a safety committee. If an employer is a party to a collective bargaining agreement that provides for the establishment and operation of a safety committee, the terms of the collective bargaining agreement shall govern the operation of the safety committee, notwithstanding any other provisions of this rule and ARM ~~24.30.2543 through 24.30.2546~~ 24.30.2551, 24.30.2553, 24.30.2554 AND 24.30.2558.

(2) Remains the same.

(3) ~~A safety committee should not be dominated by either~~

~~management or labor.~~ Federal law prohibits domination of a safety committee by management.

(4) Every safety committee shall:

(a) Same as proposed.

(i) include in its membership representatives of employees and employer, with employer representatives not exceeding employee representatives; AND

(ii) ~~include in its employer representative membership appointed, elected and/or volunteer members;~~

~~(iii)~~ include in its employee membership volunteers or members elected by their peers. Where employees are represented by a labor organization(s) that organization may choose to appoint or conduct elections to select employee members to serve on safety committee(s); and

(b) include safety committee activities that assist the employer in fact finding. The department recommends that the committee document its activities (i.e. attendees, subjects discussed) and act as a fact finding body and report to the employer regarding:

(i) assessing and controlling hazards;

(ii) assessing safety training and awareness topics;

(iii) communicating with employees regarding safety committee activities;

(iv) developing safety rules, policies and procedures;

(v) educating employees on safety related topics;

(vi) evaluating the safety program on a regular basis;

(vii) inspecting the workplace;

(viii) keeping job specific training current;

(ix) motivating employees to create a safety culture in the workplace; and

(x) reviewing incidents of workplace accidents, injuries and illnesses.

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

AUTH: Sec. 39-71-1505 MCA IMP: Sec. 39-71-1505 MCA

3. After consideration of the comments received on the proposed new rules, the Department has adopted Rule I and Rule II exactly as proposed:

RULE I (24.30.2551) AVERAGE LOST WORKDAY INCIDENCE RATE FOR OCCUPATIONAL INJURIES AND ILLNESSES

RULE II (24.30.2553) WAIVER OF SAFETY COMMITTEE REQUIREMENTS FOR INDIVIDUAL PLAN NO. 1 SELF-INSURERS

4. After consideration of the comments received on the proposed new rules, the Department has adopted Rule III and Rule IV as proposed, but with the following changes: (new matter underlined, deleted matter interlined)

RULE III (24.30.2554) WAIVER OF SAFETY COMMITTEE REQUIREMENTS FOR GROUP PLAN NO. 1 SELF-INSURERS (1) A group plan no. 1 self-insurer whose members are subject to the requirement of having a safety committee may request a waiver of

that requirement from the department.

(2) The department may grant a waiver of the safety committee requirement to a plan no. 1 self-insurer if the self-insurer presents sufficient evidence that it has an effective safety program. Such a waiver is valid for one year, and may be renewed. If the self-insurer is a member of the Montana self-insurers guaranty fund, the decision of the department to grant a waiver is not effective unless the Montana self-insurers guaranty fund concurs in the decision.

(3) The self-insured group may seek either a waiver for all members of the group or only for certain individual members of the group. The decision on the scope of the waiver request lies solely within the discretion of the self-insured group.

(4) The self-insurer seeking a waiver must prove the existence of an effective safety program. Evidence must include, but need not be limited to, proof of the following:

(a) if the request is for an individual employer that is a member of the group:

(i) the employer has a written safety plan that complies with the provisions of the Montana Safety Culture Act and the rules implementing the Act;

(ii) documentary evidence of employee participation in the safety program; and

(iii) a 3 year average lost workday incidence rate for occupational injuries and illnesses that is not greater than 55% of the current average incidence rate for Montana entities with the same 2-digit SIC code; or

(b) if the request is for the group as a whole:

(i) each member of the group has a written safety plan that complies with the provisions of the Montana Safety Culture Act and the rules implementing the Act;

(ii) documentary evidence of employee participation in the safety program; and

(iii) each member has an individual 3 year average lost workday incidence rate for occupational injuries and illnesses that is not greater than 55% of the current average incidence rate for Montana entities with the same 2-digit SIC code.

(5) A group self-insurer that calculates experience modification factors in substantial accordance with the methodology used by the workers' compensation advisory organization designated pursuant to 33-16-1023, MCA, may use experience modification factors in lieu of the average lost workday incidence rate provided in (4)(a)(iii) and (4)(b)(iii). If an experience modification factor is used, a waiver will not be granted if the factor is greater than .87.

(~~5~~6) If the self-insurer disagrees with a department decision not to grant a waiver, the self-insurer may request a contested case hearing.

AUTH: Sec. 39-71-1505 MCA IMP: Sec. 39-71-1505 MCA

RULE IV (24.30.2558) WAIVER OF SAFETY COMMITTEE REQUIREMENTS FOR PLAN NO. 2 AND PLAN NO. 3 EMPLOYERS (1) Any plan no. 2 or plan no. 3 employer that is subject to the requirement of having a safety committee may request a waiver of

that requirement from the insurer that provides the employer with workers' compensation insurance.

(2) An insurer may grant a waiver of the safety committee requirement to an employer for one year, which may be renewed, if the employer provides to the insurer sufficient evidence of the following:

(a) an effective written safety plan that complies with the provisions of the Montana Safety Culture Act and the rules implementing the Act, including documentary evidence of employee participation in the safety program; and

(b)(i) a satisfactory experience modification factor, not greater than .87, if ~~applicable~~ the employer has an experience modification factor established. The experience modification factors must be calculated in substantial accordance with the methodology used by the workers' compensation advisory organization designated pursuant to 33-16-1023, MCA; or

(ii) a low incident of workplace injuries. If the employer does not have an experience modification factor established, a low incidence of workplace injuries is demonstrated by a 3 year average lost workday incidence rate for occupational injuries and illnesses that is not greater than 55% of the current average incidence rate for Montana entities with the same 2-digit SIC code.

(3) ~~Each plan no. 2 or plan no. 3 insurer may establish criteria to determine what constitutes sufficient evidence of the factors identified in (2). An insurer may grant a waiver to an employer if:~~

~~(a) the employer's modification factor is not higher than .87; or~~

~~(b) if the employer does not have a modification factor established, the employer has a 3 year average lost workday incidence rate for occupational injuries and illnesses that is not greater than 55% of the current average incidence rate for Montana entities with the same 2 digit SIC code.~~ An insurer may uniformly require stricter standards or additional safety-related criteria from its insureds as a condition of granting a waiver of the safety committee requirement. An insurer may also refuse to grant any waivers, if such refusal is uniformly applied to all of the insurer's insureds.

(4) Disputes between an insurer and an employer concerning the granting or denial of a waiver must be resolved in the manner provided by the insurance contract for resolution of disputes.

AUTH: Sec. 39-71-1505 MCA IMP: Sec. 39-71-1505 MCA

5. The Department has thoroughly considered the comments and testimony received on the proposed rules. The following is a summary of the comments received, along with the Department's response to those comments, along with an agency overview related to the rule changes:

Agency Overview:

The 1995 Legislature enacted Senate Bill 287 which authorized the Department to adopt rules permitting the waiver of the requirement for safety committees for certain employers with effective safety plans and records of safety.

Based on the recommendations of the Safety Advisory Committee (established by the Safety Culture Act), the Department has drafted rules to define effective safety plans and records of safety. The rules designate employers in the top 25% of their industries regarding safety as candidates for waiver. The .87 modification factor and the 55% lost workday incident rate are numeric equivalents of that 25% figure.

The Department recognizes, as more and more Montana employers develop good safety programs, the "average" will move - and waiver criteria rules will need to be revisited.

General comments:

Comment 1: A commenter supported the concept of safety committee as an important part of an overall safety program, but opposed state actions aimed at mandating and regulating safety committees and questioned the appropriateness of such requirements at the state level, since the Occupational Safety and Health Administration has federal Occupational Safety and Health Act enforcement authority.
Response 1: The Department has promulgated rules regarding safety committees as required by the provisions of the Safety Culture Act.

Comment 2: A commenter stated that while a small business wants specific levels of qualification for granting waivers, those qualification levels should be easy to understand and require little paperwork. A related comment was that the waiver rules as written are burdensome and put extra paperwork on a businessman who has a low rating.
Response 2: The Department has concluded that the criteria set are appropriate and use terms common to those working with workers' compensation and safety issues. The Department has concluded that there will be a minimal amount of paperwork related to a waiver request. Please also see the comments and responses regarding Rule IV.

Comment 3: TWo commenters opposed the fact that there are no provisions for worker input into the waiver process.
Response 3: The waiver is part of the contractual relationship between an insurer and insured and the waiver process applies to the same two entities. Workers have the right to express any safety concerns through federal agencies such as OSHA and MSHA, and to the Department's Safety Bureau.

Comment 4: Several commenters opposed the granting of a waiver to only 25% of employers. One commenter stated SB 287 did not state or intend that the waiver would apply to such a small group of employers. One commenter believed that the standard for qualifying for the waiver process should be significantly higher than the mean or median accident rate among businesses in the state and supported the modification factor of .87 as a compromise standard that meets the criteria of "satisfactory."
Response 4: The Department believes the legislative testimony and discussion shows the contemplation of the waiver being granted to a restricted number of employers who meet set numerical criteria. Further, the Department believes the intent of the Legislature was to recognize employers with effective safety programs that include employee involvement via methods other than the use of safety committees per ARM 24.30.2542. Thus, the Department believes it is reasonably necessary to set uniform minimal requirements that an employer must meet to apply for a waiver of the Safety Culture Act safety committee requirement.

Comment 5: A commenter stated that the proposal to allow a waiver if the 3 year average lost workday incidence rate is not greater than 55% of the current Montana lost workday incidence rate average for that classification seems to reward average or slightly below average employers.
Response 5: The commenter may have misinterpreted the effect of the language regarding 55% of the lost workday incident rate average. The Department has concluded that the 55% rate reasonably approximates the safety record of the top 25% of an industry.

ARM 24.30.2542 Comments:

Comment 6: One commenter stated that section 24.30.2542(1) contains references to rules that are proposed for repeal.
Response 6: The Department agrees and has amended the rule accordingly to clarify the cross-references.

Comment 7: Several commenters stated that references to collective bargaining in the rules should be removed as the statute does not include such verbiage. One commenter stated that the references were appropriate and should be kept.
Response 7: The Department added references to collective bargaining and federal laws in response to the concerns and comments received from the same commenters at the public hearing on rules adopted in May 1994. The Department has concluded the references are needed to inform employers of federal labor laws in existence which address the issue of safety committees.

Comment 8: Several commenters stated the minimum of four meetings a year seemed unnecessary. Another commenter stated that requiring a minimum number of meetings is appropriate.
Response 8: The rule states a committee must meet at least once every 4 months, or 3 times a year. The Department considers

safety to be important enough for a committee meeting at least 3 times a year. The Department has concluded there is evidence of a strong connection between a safety meeting regularly and an effective safety program.

Comment 9: One commenter agreed with ARM 24.30.2542(3) but found it confusing. The commenter suggested clarification of the first sentence as it brings up the question that there may exist a circumstance where a safety committee could be dominated by management or labor.
Response 9: The Department has amended ARM 24.30.2542(3) deleting the first sentence, and has concluded that the second sentence will convey adequate information on its own.

Comment 10: A commenter stated that ARM 24.30.2542(4), (4)(a), 4(a)(i) directs employers how to form a committee, but that it is unreasonable to expect everyone to operate in the same manner. A commenter stated that ARM 24.30.2542(4)(ii) and (4)(iii) are repetitive of (4)(i) and are unnecessary.
Response 10: This section addresses the National Labor Relations Board rulings in *Electromation* and *DuPont* cases as they relate to the issue of employer domination of safety committees. ARM 24.30.2542(4)(i) addresses the formation of the committee while (4)(ii) and (4)(iii) address the selection of committee members. The Department believes both issues should be addressed to avoid employer dominance of the committee. However, the Department agrees with the commenter that (4)(ii) is unnecessary and has amended the rule accordingly.

Comment 11: A commenter stated that while the proposed requirements for safety committees in 24.30.2542(4) are more generic than the existing requirements, they are still overly detailed, many are not always necessary for effective safety committees, and they require documentation that is an administrative burden. Another commenter stated that ARM 24.30.2542(4)(b)(i-x) puts responsibilities of the employer onto the committee which puts the employer in conflict with the law.
Response 11: The Department proposed the adoption of the new rules to simplify the implementation of safety committees. The safety committee is an advisory body to the employer and an appropriate place to discuss any issues related to safety. The safety committee does not take away the decision making power of the employer nor his responsibility for workplace safety.

Comment 12: One commenter objected to the use of recommendations in the rules, concerned that "recommendations" will be treated by a court as legal requirements. A commenter stated ARM 24.30.2542 should be amended to delete its language on the specifics of the committee and replaced with language that the safety committee should assist the employer in establishing a safety program pursuant to already existing rules 24.30.2521 and 24.30.2541.
Response 12: The Department has balanced the interests of employers, employees, and insurers in a manner that allows but

does not require a single safety structure for all businesses. The recommendations contained in these rules do not establish minimal requirements in any civil action that might be brought against an employer.

Comment 13: Two commenters requested clarification on the handling of safety committee(s) in a multiple worksite situation. One suggested where multiple worksites do exist, the requirement should clearly allow employers to establish one safety committee for the entire state if they chose to do so.
Response 13: ARM 24.30.2542(4)(a) addresses multiple workplaces stating those employers with multiple workplaces may elect to have more than one committee. The employer is encouraged to work with their workers' compensation insurer if one or more than one safety committee would be appropriate for their specific situation.

Rule I Comments:

Comments 14: Several commenters stated the average lost workday incident rate may be a flawed approach and is not easy to determine. One commenter suggested the use of the number of claims that have actual wage loss benefits. A commenter suggested that if there were any number of injuries in which a worker received wage loss benefits in the 24 months preceding the date the waiver was requested, a waiver request should not be granted. Another commenter suggested the use of an acceptable injury incident rate. One commenter stated if the basis was "claims", rather than lost workdays, an employer would be more willing to offer more benefits.
Response 14: The Department has concluded that use of a 3 year average lost workday incidence rate for occupational injuries and illnesses provides an equitable portrayal of an employer's safety record. The use of "claims" would not provide equitable treatment, as it does not take into account the number of employees that a business has. Also, it does not take into consideration those companies that pay a person sick leave rather than filing a compensation claim. In addition, the use of an injury incident rate would not include occupational disease data. The Department, however, is willing to work with interested parties to see whether a simpler approach that provides for equal treatment of employers can be developed.

Rule II and III Comments:

Comment 15: Several commenters stated the use of modification factors serve the same function as lost work incidence rates and should be allowed as a determining factor on whether or not an individual employer within a Plan 1 program is qualified for a waiver.
Response 15: The Department agrees with the comment and has amended the rule accordingly, to reflect the option of using a modification factor if available.

Comment 16: One commenter stated that because of the provisions of 39-71-117(1)(b), MCA, the Montana Self-Insurers Association and all group self-insurers and their members must be treated as a single employer, and thus is only required to have a single safety committee for all self-insured entities. Another commenter stated that the Legislature intended for statewide association safety/loss control committees to be specifically approved under the Safety Culture Act.
Response 16: The Department interprets the requirements of the safety culture act as applying to individual employers, and that being a member of an approved self-insurer group does not relieve individual employer-members of that requirement.

Comment 17: A commenter stated the Department misinterpreted Senate Bill 287, as it does not require the adoption of rules and it gives the insurer the authority to waive the requirements for a safety committee. The commenter also stated that it does not require the use of modification factors and low incident records of injuries to Plan 1 insurers.
Response 17: The Department has concluded that it has the authority to adopt rules related to the waiver so that insurers are consistent in applying the law. The Department believes sufficient evidence of an effective safety program consists of a review of an employer's safety record which is reflected numerically through an employer's modification factor and lost workday incidence rate.

Comment 18: A commenter stated that the Legislature did not intend for self-insured workers' compensation groups to be subject to the same waiver requirement as other insurers or their policy holders, and that self-insurers are already required to prove that they have an effective safety program.
Response 18: The Department disagrees with the commenter. Evidence of an effective safety program to become self-insured is not defined in ARM 24.29.702F **(1)(h)**. The Department has concluded that such evidence should be further defined in measurable terms in the rules related to waivers to ensure consistent application of the law and equal treatment for all employers.

Rule IV Comments:

Comment 19: One commenter stated the experience modification factor of .87 is unduly restrictive. This commenter along with several others felt the modification factor of 1.0 indicates satisfactory performance and thus should be used.
Response 19: The Department has concluded that a modification factor of 1.0 indicates average performance and not necessarily satisfactory performance. The Department believes that the intent of the waiver provision is to recognize employers with superior, not average, safety programs. As more and more employers experience lower accident rates, the use of a rate of .87 will be revisited.

Comment 20: A commenter stated that the individual private carrier and/or provider should be able to establish its own criteria in determining what constitutes sufficient evidence of an acceptable safety program, modification factor and/or incident rate for its individual accounts. A commenter questioned the use of the modification factor as a safety indicator.
Response 20: The Department was given rule-making authority to establish the criteria, and believes it is necessary to establish rules to provide for consistent application of the law. The use of experience modification factors (when available) is expressly required by SB 287.

Comment 21: A commenter noted that Rule IV (2)(a) requires documented evidence of employee participation, and objected to the requirement as essentially requiring a safety committee.
Response 21: Documentation of employee participation in safety activities is already required by ARM 24.30.2521(1)(f). The Department has concluded that the rule does not require the formation of a safety committee.

Comment 22: Two commenters stated Rule IV (2) and (3) needed to be clarified to more directly state the requirements for a waiver. One commenter suggested adding criteria to allow an insurer to deny the waiver to an employer with a modification of one or less.
Response 22: The Department agrees with the comments and has amended the wording to clarify the minimal requirements needed to qualify for a waiver, and to allow insurers to establish additional criteria.

Comment 23: A commenter stated that Rule IV (4) language should be deleted as it opens a door for disputes to arise during a given policy period, and replaced with language requiring an insurer and employer to agree concerning the granting or denial of a waiver prior to the binding of an insurance contract.
Response 23: The Department has included the language to ensure that employers and insurers are aware that the Department does not have authority to adjudicate disputes over the granting of a waiver.

6. The amendments, new rules, and repeals are effective February 10, 1996.

David A. Scott
Rule Reviewer

Laurie Ekanger, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: January 29, 1996.

BEFORE THE MILK CONTROL BUREAU
OF THE STATE OF MONTANA

In the matter of amendments to several rules: rule 8.79.101 as it relates to definitions for the purchase and resale of milk; rule 8.79.102 as it relates to transactions involving the resale of milk; and rule 8.79.201 as it relates to the regulation of unfair trade practices.	)	NOTICE OF AMENDMENT OF RULE DOCKET #24-95

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

1. On December 7, 1995, the Montana milk control bureau published notice of proposed amendments of several rules: ARM 8.79.101 concerning definitions for the purchase and resale of milk; ARM 8.79.102 concerning transactions involving the resale of milk; and ARM 8.79.201 concerning regulation of unfair trade practices. Notice was published at page 2585 of the 1995 Administrative Register, issue no. 23, as MAR NOTICE 32-2-130.

2. The bureau has amended the rules as proposed.
AUTH: 81-23-302, MCA
IMP: 81-23-302, MCA

3. No comments or testimony were received.

By: Marc Bridges
Marc Bridges, Exec. Secretary
Board of Livestock
Department of Livestock

By: Lon Mitchell
Lon Mitchell, Rule Reviewer
Livestock Chief Legal Counsel

Certified to the Secretary of State January 29, 1996.

BEFORE THE BOARD OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of transfer of rules 8.79.101 through 8.79.302; and 8.86.101 through 8.86.515 from the department of commerce to the department of livestock.	)	NOTICE OF TRANSFER DOCKET #1-96

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

1. The Board of Livestock, acting for the department of livestock, is transferring rules 8.79.101 through 8.79.302 (Milk Control Bureau) and 8.86.101 through 8.86.515 (Board of Milk Control) from the department of commerce, as mandated by HB #280 (1995), effective July 1, 1995. (Refer to 2-15-133, MCA.)

2. The department of livestock has determined that the transferred rules will be numbered as follows: (New rule numbers added, then underlined.)

OLD	NEW	CHAPTER TITLE
8.79.101	32.23.101	DEFINITIONS
8.79.102	32.23.102	TRANSACTIONS INVOLVING THE PURCHASE AND RESALE OF MILK WITHIN THE STATE
8.79.201	32.23.201	REGULATION OF UNFAIR TRADE PRACTICES
8.79.301	32.23.301	LICENSEE ASSESSMENTS
8.79.302	32.23.302	ADDITIONAL PRODUCER ASSESSMENT
8.86.101	32.24.101	ORGANIZATION OF BOARD
8.86.201	32.24.201	PROCEDURAL RULES
8.86.301	32.24.301	PRICING RULES
8.86.501	32.24.501	QUOTA DEFINITIONS
8.86.502	32.24.502	INITIAL DETERMINATION AND/OR LOSS OF QUOTA
8.86.503	32.24.503	NEW PRODUCERS--PERCENTAGE OF MILK SALES ASSIGNED TO QUOTA MILK
8.86.504	32.24.504	TRANSFER OF QUOTA
8.86.505	32.24.505	READJUSTMENT AND MISCELLANEOUS QUOTA RULES
8.86.506	32.24.506	PRODUCER COMMITTEE
8.86.511	32.24.511	POOLING PLAN DEFINITIONS
8.86.512	32.24.512	REPORTS AND RECORDS
8.86.513	32.24.513	COMPUTATION OF PRICE FOR QUOTA MILK AND EXCESS MILK

8.86.514	32.24.514	PROCEDURES FOR POOLING OF RETURNS FROM POOL MILK
8.86.515	32.24.515	PAYMENTS TO POOL DAIRYMEN AND ADJUSTMENT OF ACCOUNTS

3. The transfer of the above rules is necessary because of HB #280 (1995) which transferred the Milk Control Bureau and the Board of Milk Control from the department of commerce to the department of livestock.

By: _____
Marc Bridges, Temporary Exec. Secretary, Board of Livestock

By: _____
Lon Mitchell, Rule Reviewer
Livestock Chief Legal Counsel

Certified to the Secretary of State January 29, 1996.

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

In the matter of the amendment of Rules 11.7.103, 11.7.105, 11.7.106 and the repeal of rules 11.7.107, 11.7.108, 11.7.110 and 11.7.111 pertaining to children in foster care	)))))	NOTICE OF AMENDMENT AND REPEAL OF RULES

TO: All Interested Persons

1. On November 22, 1995, the Department of Public Health and Human Services published notice of the proposed amendment of rules 11.7.103, 11.7.105, 11.7.106 and the repeal of rules 11.7.107, 11.7.108, 11.7.110 and 11.7.111 pertaining to children in foster care at page 2462 of the 1995 Montana Administrative Register, issue number 22.

2. The Department has amended rules 11.7.103, 11.7.105, and 11.7.106 and repealed rules 11.7.107, 11.7.108, 11.7.110 and 11.7.111 as proposed.

3. No written comments or testimony were received.

Dawn Sliva
Rule Reviewer

Michael J. Bielenberg, for
Director, Public Health and Human Services

Certified to the Secretary of State January 29, 1996.

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

In the matter of the amendment of rules 46.12.505, 46.12.509, 46.12.593 and 46.12.1705 pertaining to medicaid cost report filing deadlines and physician attestation for certain providers	)))))))	NOTICE OF AMENDMENT OF RULES

TO: All Interested Persons

1. On December 21, 1995, the Department of Public Health and Human Services published notice of the proposed amendment of rules 46.12.505, 46.12.509, 46.12.593 and 46.12.1705 pertaining to medicaid cost report filing deadlines and physician attestation for certain providers at page 2787 of the 1995 Montana Administrative Register, issue number 24.

2. The Department has amended rules 46.12.505, 46.12.509, 46.12.593 and 46.12.1705 as proposed.

3. The Department has thoroughly considered all commentary received:

COMMENT #1: We support the proposed rule. However, the department should reconsider its decision to retain the current 90-day filing deadline for nursing facility cost reports while adopting the 150-day deadline for hospital providers. Retention of the shorter period for nursing facilities would have the effect of immediately repealing the 150-day limit for all hospitals that have an attached nursing facility. Forty-two of the state's 55 hospitals have attached nursing facilities. The 90-day deadline for nursing facilities will in effect require that the cost reports for attached hospital facilities must also be submitted within 90 days after the end of the reporting period. The department states that it is proposing the 150-day deadline for hospitals so that its rule will be consistent with the medicare rule, yet this benefit is lost because the 90-day nursing facility rule will prevent most hospitals from taking advantage of the change.

The department has stated that its reason for keeping the 90-day deadline for nursing facilities is that the department needs to receive the information as soon as possible for rate setting and budgeting purposes. But under the current rules, providers that need more than 90 days are able to obtain an extension. The 150-day period would merely replace the extension process. The department takes nearly 2 years to process the cost report information anyway. Nonetheless, most providers are able to

submit the cost report within the 90-day limit, and we do not believe they would automatically delay submission longer than the 90 days permitted under the current rule. We do not believe that extending the period to 150 days for nursing facilities would adversely affect the department's rate setting and budgeting activities.

We believe that the department could adopt the 150-day deadline for nursing facilities if it would change its approach to provider relations. The need to insist on filing within 90 days arises because of pressure on the department to rebase rates using the most recent cost reports. The Department should adopt the 150-day time line for nursing facilities and then place the burden on providers to file their cost reports within the time necessary to be included in the new cost base for rebasing purposes. This will put the burden of filing on the provider. If a facility did not file its cost report within 90 days, its nursing facility rate could be determined using the most recent previous cost report on file with the department. The department could also delay payment if the cost report was delayed for unacceptable reasons. This would put the responsibility on providers to file timely if they wished to benefit from rebasing, but would make the rule consistent for all providers.

RESPONSE: The department disagrees with the commentor's analysis of the department's reasons for retaining the 90-day deadline for nursing facility cost reports. While the department would prefer to make the cost report filing deadline consistent for hospitals and nursing homes, the department believes that any need for consistency is outweighed by the department's need for timely cost report information for annual rate setting purposes. The department does not believe that the commentor's proposed solution would adequately address the need for a recent and consistent cost base for rate setting purposes.

The commentor places considerable emphasis on consistency across provider groups but does not take into account the different ways in which the hospital and nursing facility cost reports are used in the respective rate setting processes. The commentor would place on providers the burden to know when their cost report must be filed to be used for the annual rate computation, and would make the provider responsible for the rate impact resulting from a cost report filed beyond the rate setting cutoff date.

But this approach raises several issues more problematic than the issue it purports to resolve. If a report was filed too late to be used for the annual rate setting process, the provider would receive a rate based upon cost information from a different report period than other providers. The issue would then arise whether the department would retroactively adjust the rate after the filing of the cost report. Of course if retroactive adjustment was to the provider's advantage, the

provider would argue for the adjustment, but would argue against it otherwise. This would place an additional administrative burden on the department to adjust rates retroactively and would make it more difficult to establish funding levels within appropriations. Moreover, this would also provide an opportunity for providers to manipulate the system by delaying or filing to maximize the July 1st rate based on a comparison of the latest filed cost report to the new base period cost report.

The department grants few extensions for submission of calendar year end cost reports in rebasing years. This is necessary to assure use of the most current cost information in rate setting and so funding available for the current fiscal year is allocated in a consistent and equitable manner. Under the commentor's suggestion, providers with December year ends would still need to file within 90 days to have their most current costs considered in rebasing. Adoption of the 150-day deadline would impact all nursing facility providers, not only those attached to hospitals. If the commentor is correct in predicting that few if any providers will change their cost report filing time lines in response to a change to the 150-day deadline, most providers will file within 90 days and the impact of retaining the 90-day rule will not be widespread. The department understands the desire for consistency in filing deadlines, but the department believes that the need for a consistent and recent cost base for use in reimbursement calculations is more critical. The department will not adopt the 150-day deadline for nursing facility providers.

4. The changes to ARM 46.12.505(11) will be applied retroactively to medicaid inpatient hospital services provided on or after September 1, 1995. The changes to ARM 46.12.509, 46.12.593 and 46.12.1705 will be applied retroactively to medicaid cost reports for fiscal periods ending on or after June 27, 1995. The changes to ARM 46.12.505, 46.12.509, 46.12.593 and 46.12.1705 are beneficial to providers because they eliminate the need to keep a separate physician attestation record for each medicaid patient and because they grant providers a longer period in which to file cost reports. Medicare adopted these changes in rule notices dated September 1, 1995 and June 27, 1995 respectively. The department initiated and completed these rule changes as soon as possible with the limited staff resources available. Adoption of the same effective dates used by medicare will give providers the full benefit of the medicare changes.

Dawn Sliva
Rule Reviewer

Michael J. Billups
Director, Public Health and Human Services

Certified to the Secretary of State January 29, 1996.

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

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

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 1995. This table includes those rules adopted during the period September 1, 1995 through December 31, 1995 and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through September 30, 1995, this table and the table of contents of this issue of the MAR.

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

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

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