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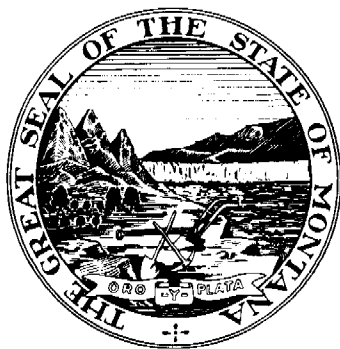
8 1996

OF MONTANA

MONTANA ADMINISTRATIVE REGISTER

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PAGES 616-702



MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 5

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

In the matter of the repeal) NOTICE OF PROPOSED REPEAL
and transfer of rules per-) AND TRANSFER OF RULES
taining to nutritionists) PERTAINING TO NUTRITIONISTS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Person:

1. On April 6, 1996, the Board of Medical Examiners proposes to repeal and transfer rules pertaining to nutritionists.

2. The Board is proposing to repeal ARM 8.28.1807 and transfer the text of ARM 8.28.911 to subchapter 18 pertaining to nutritionists. The authority sections are 37-1-131, 37-1-319 and 37-25-201, MCA and the implementing section is 37-25-308, MCA. The Board published a notice of public hearing at page 1736, 1995 Montana Administrative Register, issue number 17 and an adoption notice at page 2480, 1995 Montana Administrative Register, issue number 22. The Board inadvertently neglected to repeal ARM 8.28.1807 in the original proposal and incorrectly numbered ARM 8.28.911 in the adoption notice. The text of ARM 8.28.911 should have been placed under subchapter 18 pertaining to nutritionists. The text of ARM 8.28.1807 is found at page 8-912 of the Administrative Rules of Montana.

3. Interested persons may submit their data, views or arguments concerning the proposed repeal and transfer in writing to the Board of Medical Examiners, 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., April 4, 1996.

4. If a person who is directly affected by the proposed repeal and transfer 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 Medical Examiners, 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., April 4, 1996.

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

persons directly affected has been determined to be 20 based on the 191 licensees in Montana.

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

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

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, February 26, 1996.

BEFORE THE BOARD OF RADIOLOGIC TECHNOLOGISTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment and repeal of rules) AND REPEAL OF RULES
pertaining to radiologic) PERTAINING TO RADIOLOGIC
technologists) TECHNOLOGISTS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On April 6, 1996, the Board of Radiologic Technologists proposes to amend ARM 8.56.402, 8.56.408, 8.56.409, 8.56.602, 8.56.602A, 8.56.602B, 8.56.602C, 8.56.604, 8.56.801 and repeal ARM 8.56.404, 8.56.407, 8.56.410, 8.56.411, 8.56.601, 8.56.605, 8.56.608.

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

"8.56.402 APPLICATIONS (1) All applications for license shall be made on printed forms provided by the board office and signed by the applicant, with the signature acknowledged before a notary public. Completed applications shall be examined for compliance with the board rules. The information requirements which appear on the application form generally include applicant's educational history, work experience, and verification of license in other states.

(2) The application must be typed or legibly written in ink, and accompanied by the appropriate fee(s) and contain sufficient evidence that the applicant possesses the qualifications set forth in Title 37, chapter 14, MCA, and rules promulgated thereunder.

(3) The board shall review fully-completed applications for compliance with board law and rules. The board may request additional information or clarification of information provided in the application as it deems reasonably necessary. Incomplete applications shall be returned to the applicant with a statement regarding incomplete portions.

(4) The applicant shall correct any deficiencies and resubmit the application as requested. Failure to re-submit the application within 60 days shall be treated as a voluntary withdrawal of the application. In order to consider an applicant after voluntary withdrawal, a new application and fee(s) is required.

(2) All applications for a license shall be submitted to the board office with copies of the following documents:

(a) copy of board approved 24 month x-ray course certificate;

(b) copy of current A.R.R.T. wallet card;

(c) three statements from persons attesting to the applicant's good moral character;

- (d) ~~application fee; and~~
- (e) ~~original certificate fee.~~

(3) ~~All applications and related data will be kept in permanent files and maintained by the board office.~~

(4) ~~At any time within one year after date of notice of action by the board, a written request may be made for reconsideration of an application. After one year has expired from the date the application is received by the board, a new application must be submitted.~~

Auth: Sec. 37-14-202, MCA; IMP, Sec. 37-14-302, 37-14-303, 37-14-304, 37-14-305, 37-14-306, MCA

REASON: The proposed amendments are necessary to make more explicit the application process and to require that the applicant's signature on the application be notarized to protect against fraud. The phrase "for licensure" is deleted to imply that the application process applies to both licensees and limited permit holders. The last sentence in (1) and all of subsections (2) and (3) are proposed for deletion because they are not reasonably necessary to effectuate the purpose of the statute. Subsection (2) unnecessarily repeats 37-14-302, MCA, regarding qualifications for licensure, but is silent on qualifications for the permit applicant and is, therefore, inconsistent. The board will notify applicants of the necessary qualifications via the application form. Subsection (4) is proposed for deletion as it conflicts with the established procedure for considering an applicant's qualifications. Once an application has been denied, a new application and fees commensurate with the cost of processing the application are required.

"8.56.408 DUPLICATE OR LOST REPLACEMENT LICENSES AND PERMITS (1) ~~A registrant requesting a replacement certificate of registration, must do so in writing, stating the reason for his request. A fee shall be charged for a replacement certificate.~~

~~(2) A fee shall be charged for duplicate or lost license or permit. Such requests shall be in written form stating the reason for issuance of a duplicate license or permit. Licensees and permit holders shall immediately notify the board of lost, damaged or destroyed licenses and permits, and obtain a duplicate by written request to the board, stating the reason for the need to issue a duplicate and by paying the appropriate fee.~~

Auth: Sec. 37-14-202, MCA; IMP, Sec. 37-14-308, 37-14-309, MCA

REASON: The proposed amendment is necessary to eliminate use of the terms "registrant" and "certificate" in favor of uniform reference to "licensees," "licensees," and "permits" and "permit holders." The proposed language is gender neutral and eliminates a redundancy with regard to payment of fees.

"8.56.409 FEE SCHEDULE (1) through (1)(f) will remain the same.

(g) Verification/certification of licensure to another state

5.00"

Auth: Sec. 37-1-101, ~~37-1-134~~, 37-14-202, 37-14-310, MCA; IMP, Sec. ~~37-1-134~~, 37-14-303, 37-14-310, MCA

REASON: The proposed amendment is necessary to address an increasing number of requests to administrative staff to verify licensure in current and good standing from Montana licensees making application to other states.

"8.56.602 PERMIT APPLICATIONS - TYPES (1) ~~Applications for a limited permit shall be submitted to the board office with the following documents:~~

~~(a) a copy of a certificate showing satisfactory completion of a board approved course;~~

~~(b) application fee and exam fees; and~~

~~(c) written statements attesting to the applicant's good moral character from three individuals.~~

~~(2) After the applicant has been approved, the appropriate examination fee must be submitted.~~

~~(1) A temporary practice permit as provided in 37-14-306(3), MCA, may be obtained by radiologic technologist course graduates who have completed all requirements for licensure other than passage of the American registry of radiologic technologists (ARRT) examination.~~

~~(2) A limited practice permit as provided in 37-14-306(1) and (2), MCA, may be obtained by:~~

~~(a) graduates of the 40-hour course set forth in ARM 8.56.602B; or~~

~~(b) students who have completed 12 months of a 24-month board approved x-ray course.~~

~~(3) A temporary regional hardship permit as provided in 37-14-306(4), MCA, may be sought by applicants under the circumstances set forth in ARM 8.56.604.~~

~~(4) Upon approval of the permit application, the applicant shall submit the appropriate examination fee.~~

~~(5) Upon passing passage of the examination, as the license applicant shall submit the appropriate original license original certificate fee will be required."~~

Auth: Sec. 37-1-131, 37-14-202, 37-14-306, MCA; IMP, Sec. 37-14-306, MCA

REASON: The proposed amendments are necessary to clarify the various types of temporary or limited practice permits available. Current subsection (1) is proposed for deletion because it is unnecessary to effectuate the purpose of the authorizing statute. Subsection (2) is renumbered as (4).

"8.56.602A PERMITS - PRACTICE LIMITATIONS

~~(1) Applicants for permit to perform x-ray procedures must meet the following requirements for approval to take the examination for permit:~~

~~(a) must have completed the minimum formal training in a board approved course as outlined in ARM 8.56.602B, or have successfully completed 12 months of a 24 month board approved x-ray course. A student enrolled in a 24 month board approved x-ray course may apply for a permit as outlined in ARM 8.56.602 after the completion of 12 months of study.~~

~~(2) will remain the same, but will be renumbered (1).~~

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

Auth: Sec. ~~37-14-306~~, MCA; IMP, Sec. ~~37-14-306~~, MCA

REASON: Subsections (1) and (2) are proposed for repeal as their substance is now found in ARM 8.56.602 "PERMIT APPLICATIONS - TYPES." The title of the rule is changed to better reflect the content of the remaining rule.

"8.56.602B. COURSE REQUIREMENTS FOR LIMITED PERMIT APPLICANTS (1) All qualified course applications for limited permits must be approved by the board in advance.

(a) Course approval shall be based upon board review of the course outline, agenda and instructors' qualifications.

(b) Courses shall be reviewed by the board every two years following initial approval.

(2) A basic 40 hour course shall be required for all permit applicants, which shall include the following curriculum:

(1) Course providers shall receive board approval prior to offering the courses outlined below and shall submit a request for re-approval every two years thereafter. The provider shall submit for the board's review, a course outline, agenda, and the identification and qualifications of all instructors.

(2) The course shall be 40 hours in length and consist of the following:

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

Auth: Sec. ~~37-1-131~~, ~~37-14-301~~, ~~37-14-306~~, MCA; IMP, Sec. ~~37-14-301~~, ~~37-14-306~~, MCA

REASON: The proposed changes are necessary to resolve an ambiguity in subsection (1) and make the rule easier to read.

"8.56.602C. PERMIT EXAMINATIONS (1) The general portion of the permit examination will encompass containing questions common to all areas of specified x-ray procedures and includes the following topics: pertaining to basic radiobiology, radiation protection, imaging equipment, x-ray physics, radiographic technique and principles of radiographic exposure, darkroom procedures, and inter-relationship of the radiographic chain, in a basic format which is common to all of the areas of specified x-ray procedures. All permit applicants shall pass The general portion of the permit examination, must be passed, as well as specific sections, prior to issuance of a permit. In addition to the general portion, 40-hour course graduates the applicant shall complete an examination for each specified x-ray procedure the applicant desires to be permitted to

performed by the applicant, which. The specified examinations shall include questions in anatomy, physiology, pathology, and x-ray technique common to the specified procedure.

~~(2) The permit examination will be administered at the board office at least twice a year. Applicants for examination will be notified of the scheduled examination.~~

~~(a) will remain the same, but will be renumbered (2).~~

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

~~(5) Applicants failing the examination must wait 30 days after the date of failure before retaking the examination.~~

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

~~(7) (6) An Applicant who has failed an examination on two attempts, twice must complete retake that portion of the formal x-ray training before being allowed admission to a third examination. Upon completion of the additional course work, the applicant must file a new application accompanied by the appropriate fees, with the board office.~~

~~(8) (7) A passing score of 70% is required for on each of the general and specified sections of the initial permit examination. shall be deemed to be correct responses to no less than 70% of the total questions on each section. An Retakes of any portion or section of an attempt to achieve a passing score on any section of the permit examination subsequent to failing that section shall require a correct response to a minimum of 75% passing score of the total questions on that section."~~

(9) All requests for reasonable accommodations under the Americans with Disabilities Act of 1990, 42 U.S.C. Sec. 12101, et seq., in regard to a board-administered licensing examination must be made on forms provided by the board and submitted with the application for examination prior to any deadline set by the board."

Auth: Sec. 37-1-131, 37-14-202, 37-14-306, MCA; IMP, Sec. 37-14-306, MCA

REASON: The amendments are necessary to make clear the examination requirements as between the 40-hour program graduates and the students enrolled in a 24-month x-ray program. Other amendments attempt to make the rule easier to read. Subsection (2) repeats statutory language and is not necessary to effectuate the purpose of the statute. Subsection (5) was ambiguous and created scheduling difficulties for administration and candidates. Subsection (8) is added to provide notice to persons requesting reasonable accommodations under 42 U.S.C. Sec. 12101 (1990).

"8.56.604 HARDSHIP TEMPORARY PERMITS (1) Any person applying for a temporary permit must file with the board office an application, which shall include:

(1) A regional hardship exists when there is no other facility in the area staffed by a qualified radiologic technologist, radiologist, or permit holder. Applications for a permit under this rule require the following:

(a) a letter written statement from the health facility administrator or physician stating documenting the regional

hardship or emergency condition which ~~that~~ exists in the area;

~~(b) a non-refundable temporary permit fee.~~

~~(b) a written statement from a licensed radiologic technologist attesting that the applicant possesses basic knowledge of radiation protection and radiobiology, x-ray physics, anatomy, physiology, positioning, radiographic technique, darkroom procedures, and film critique; and~~

~~(c) a written statement from the applicant setting forth the applicant's training and experience.~~

~~(2) The board shall review the application and information submitted.~~

~~(3) If the board should deny the issuance of the temporary permit, the board shall write to the administrator stating the reason why the request was rejected."~~

Auth: Sec. 37-14-202, 37-14-306, MCA; IMP, Sec. 37-14-305, 37-14-306, MCA

REASON: The proposed amendment incorporates, under one rule, provisions pertaining to the temporary hardship permit authorized under 37-14-306, MCA. New subsection (1) was previously found in a separate rule. The amendment further proposes to delete extraneous information and provide information useful in assisting the board's determination of a hardship or emergency. Other changes are proposed to make the rule easier to read.

"8.56.801 ~~UNETHICAL UNPROFESSIONAL CONDUCT~~ For the purposes of implementing ~~section 37-14-321~~ 37-1-307, MCA, and in addition to the provisions of 37-1-316, MCA, "unethical unprofessional conduct" is defined by this board to include, but not be limited to, the following:

~~(1) an act or acts committed by a licensee or permit holder which physically or mentally endangers any persons receiving the services of said licensee or permit holder.~~

~~(2) will remain the same, but will be renumbered (1).~~

~~(2) unnecessary radiation exposure to patient and public;~~

~~(4) release of confidential patient information without permission;~~

~~(5) lack of respect for patient dignity and/or privacy;~~

~~(6) sexual harassment;~~

~~(7) alteration of patient records;~~

~~(8) will remain the same, but will be renumbered (3).~~

~~(4) performing radiologic procedures outside the scope of the license or permit;~~

~~(10) being impaired by the influence of alcohol or drugs while performing radiologic duties authorized by the license or permit;~~

~~(11) (5) failing to report to the board any unethical conduct or illegal activities he or she may be aware of in the field of radiologic technology of which a licensee has personal knowledge;~~

~~(6) failing to comply with the provision of Title 37, chapter 14, or any rule promulgated thereunder."~~

Auth: Sec. 37-14-202, 37-1-319, MCA; IMP, Sec. ~~37-14-321~~
~~37-1-307~~, MCA

REASON: The proposed changes are necessary to avoid unnecessary repetition of the unprofessional conduct provisions found at 37-1-316, MCA.

3. The Board is proposing to repeal ARM 8.56.404 - authority sections 37-14-202, 37-14-310, MCA; implementing section 37-14-305, MCA (not necessary to reasonably effectuate the purpose of the authorizing statute); 8.56.407 - authority sections 37-1-101, 37-14-202, 37-14-310, MCA; implementing section 37-14-310, MCA (not reasonably necessary to effectuate the purpose of the authorizing or implementing statute, substantive renewal issues are governed by 37-1-141 and 37-14-310, MCA); 8.56.410 - authority section 37-14-202, MCA; implementing section 37-14-321, MCA (unnecessarily repeats statute(s) in Title 37, Chapter 1, Part 3, Montana Code Annotated); 8.56.411 - authority section 37-14-202, MCA; implementing section 37-14-321, MCA (see reason for 8.56.410); 8.56.601 - authority sections 37-14-202, 37-14-306, MCA; implementing section 37-14-306, MCA (substance of rule moved to 8.56.604); 8.56.605 - authority section 37-14-202, MCA; implementing section 37-14-306, MCA (substance of rule moved to 8.56.604); and 8.56.608 - authority sections 37-14-306, 37-14-310, MCA; implementing sections 37-14-306, 37-14-310, MCA (expiration dates for permits are found at 8.2.208; unnecessarily repeats 37-14-306, MCA). The text of the rules proposed for repeal is located at pages 8-1561, 8-1562, 8-1563, 8-1564, 8-1571, 8-1574, and 8-1575, Administrative Rules of Montana.

4. Interested persons may submit their data, views or arguments concerning the proposed amendments and repeals in writing to the Board of Radiologic Technologists, 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., April 4, 1996.

5. If a person who is directly affected by the proposed amendments and repeals 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 Radiologic Technologists, 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., April 4, 1996.

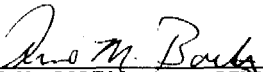
6. If the Board receives requests for a public hearing on the proposed amendments and repeals from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendments and repeals, from the Administrative Code Committee of the legislature, from a governmental 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 96 based on the 961 licensees in Montana.

BOARD OF RADIOLOGIC TECHNOLOGISTS
JIM WINTER, RT, CHAIRMAN

BY: 

ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, February 26, 1996.

BEFORE THE BOARD OF SANITARIANS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

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

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On April 6, 1996, the Board of Sanitarians proposes to amend, repeal and adopt rules pertaining to sanitarians.

2. The proposed amendment of ARM 8.60.401, 8.60.403, 8.60.408, 8.60.412, 8.60.413 and 8.60.415 will read as follows: (new matter underlined, deleted matter interlined)

"8.60.401 BOARD MEETINGS (1) and (2) will remain the same.

~~(3) The meetings shall be on the call of the chairman or any 2 members of the board, the time and place to be determined by the chairman, after telephone consultation with the department secretary and the other 2 members of the board. The notice of the meeting shall be mailed by the department to the members of the board at least 10 days in advance of the date of the meeting. The administrative secretary shall, whenever so requested by any member of the board, poll the board by telephone as to each members vote on any issue. That vote shall be confirmed by mail."~~

Auth: Sec. 37-40-203, MCA; IMP, Sec. 37-40-201, MCA

REASON: Subsection (3) is being proposed for deletion because it is not reasonably necessary to effectuate the purpose of the statute, and may conflict with 37-40-201, MCA, which requires the board to meet at least four times annually and at such other times as agreed upon.

"8.60.403 SEAL OF THE BOARD (1) will remain the same.

(2) The seal of the board shall be used to authenticate all ~~certificates of registration licenses~~ issued by the board and other instruments which may be designated by the board as requiring a seal as prescribed by law. The department shall be responsible for the safekeeping of the seal of the board."

Auth: Sec. 37-40-203, MCA; IMP, Sec. 37-40-203, MCA

REASON: The amendment is being proposed to achieve uniformity in reference to licenses issued by the board.

"8.60.408 MINIMUM STANDARDS FOR REGISTRATION CERTIFICATE LICENSURE (1) The board will accept the following graduation from an accredited college or university with a bachelor's degree and including a minimum of 30 quarter or 20 semester

hours in the physical and biological sciences, including one or more courses in chemistry, microbiology, and biology as the an equivalent qualification of a bachelor's degree in environmental health as required by 37-40-302, MCA.

~~(a) graduation from an accredited college or university with a bachelor's degree and including a minimum of 30 quarter hours in the physical and biological sciences, including one or more courses in chemistry, microbiology, and biology;~~

~~(i) (2) Center for disease control correspondence course #3018-G, #3016-F, #3016-G or #3012-G will be accepted in lieu of a specific college microbiology course.~~

~~(2) The applicant must successfully complete a written examination within 90 days from the date of application with a minimum score of 70% overall. For good cause shown additional time to take the test may be allowed at the discretion of the board.~~

~~(3) The sanitarian license must be displayed in a conspicuous place."~~

Auth: Sec. 37-40-203, MCA; IMP, Sec. 37-40-302, MCA

REASON: The proposed amendment to this rule defines the equivalent of quarter hours in semester hours to address graduates from colleges under the semester system and corrects a mistake in reference to a CDC course. The substance of (2) will now be found in new rule II on Examinations. Subsection (3) is being deleted in this rule and moved to ARM 8.60.412 Unprofessional Conduct.

"8.60.412 SUSPENSION AND REVOCATION UNPROFESSIONAL CONDUCT (1) For the purpose of implementing the provisions of 37-1-307, MCA, and in addition to the provisions of 37-1-316, MCA, the following is defined as unprofessional conduct: Under the provisions of chapter 1 and 40, Title 37, MCA, certificates of registration may be suspended or revoked or letters of reprimand issued by the board for cause and after proper hearings as set forth in sections 37-1-136 and 37-40-311, MCA.

~~(2) For purposes of defining the terms unprofessional conduct, incompetency and misconduct as used in subsections (1) and (3) of section 37-40-311, MCA, it is determined by the board to mean acts, knowledge and practices which fail to conform to accepted standards of the sanitarian profession and which may jeopardize the health and welfare of the public and shall include but not be limited to the following:~~

~~(a) wilful disobedience of Title 37, chapter 40, MCA and/or the rules of the board failure to comply with the provisions of Title 37, chapter 40, MCA, or any rule promulgated thereunder;~~

~~(b) aiding or abetting in the practice of a sanitarian a person not licensed to practice as a sanitarian or a person whose license has been suspended or revoked;~~

~~(c) (b) failure to uphold Montana laws, rules and regulations pertaining to environmental and public health;~~

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

~~(e) mentally or physically unable to engage in or act in the professional status as a practicing sanitarian;~~

~~(f) habitual intemperance or excessive use of narcotic drugs, alcohol, or any other drug or substance to the extent that use impairs the user physically or mentally; and~~
~~(g) any condition which impairs intellect or judgement to the extent that the condition incapacitates the person from the proper performance of professional duties.~~

~~(d) failure to properly supervise a sanitarian-in-training in accordance with the board-approved plan;~~

~~(e) failure to provide proof of licensure upon request;~~

~~(3) When a certificate or registration has been suspended or revoked the individual shall surrender to the custody of the department his or her registration certificate and pocket registration card.~~

~~(f) failure to display current sanitarian license in a conspicuous place."~~

Auth: Sec. ~~37-1-312~~, 37-40-203, MCA; IMP, Sec. ~~37-40-311~~
37-1-307, MCA

REASON: The proposed amendments are necessary to effectuate the purpose of House Bill 518 (the Uniform Professional Licensing and Regulation Procedures Act) for uniformity among licensing boards, to delete unnecessarily repetitive language, and to address unique standards of professional conduct.

8.60.413 FEE SCHEDULE

(1) will remain the same.

~~(2) Reciprocity~~ 50.00

(3) through (7) will remain the same, but will be renumbered (2) through (6).

~~(7) All fees are nonrefundable."~~

Auth: Sec. ~~37-1-134~~, 37-40-203, MCA; IMP, Sec. ~~37-1-134~~,
37-1-304, 37-40-302, 37-40-303, 37-40-304, MCA

REASON: The amendments are proposed to clarify the non-refundability of fees as they are set commensurate with the costs necessary to process applications and renewals. The reciprocity category is repealed because the fee is the same as the application fee.

"8.60.415 SANITARIAN-IN-TRAINING (1) On a form prescribed by the board, an applicant shall apply and the board may issue a sanitarian-in-training temporary practice permit to an applicant who meets the minimum educational requirements for a registered sanitarian under sections 37-40-301 and 37-40-302, MCA, and ARM 8.60.408.

(2) A sanitarian-in-training must work under the direct supervision of a licensed sanitarian. The supervising sanitarian must submit a plan for supervision for approval by the board.

(a) The plan of supervision shall include:

(i) an estimate of time of direct supervision provided.

(ii) number of hours of training to be provided per month, and

(iii) method of maintaining contact and supervision.

(3) Direct supervision means the availability of a licensed sanitarian on the premises for purposes of immediate communication and consultation.

(4) Applicants for a temporary practice permit may apply to the board for a regional hardship exception to the on-premises direct supervision requirement, provided there are no other licensed sanitarians in the county in which the temporary permit applicant seeks employment. Under this exception, the permittee shall be in communication on a weekly and as needed basis with an active licensed sanitarian engaged in duties similar to those assigned the permittee.

~~(3)~~ (5) A sanitarian-in-training temporary practice permit may be issued to an applicant one time and is valid for a maximum duration period of one year only or until the permit holder fails the examination, whichever occurs first. Temporary practice permit holders may continue to practice under the temporary practice permit until they are notified that they have passed the examination and are issued a permanent license or that they have failed the examination."

Auth: Sec. 37-1-319, 37-40-203, MCA; IMP, Sec. 37-40-101, 37-1-305, 37-40-203, MCA

REASON: The proposed deletion of (1) is proposed as it unnecessarily repeats statutory language. The definition of direct supervision is proposed to clarify that term. Subsection (2)(a) is proposed to address situations where a temporary practice permit holder seeks employment in a county where there are no other licensed sanitarians to conduct direct supervision. Subsection (3) is amended to reflect the mandates of 37-1-305, MCA, implemented by the 1995 Legislature.

3. The Board is proposing to repeal ARM 8.60.404, 8.60.406, 8.60.407, 8.60.410, 8.60.411 the text of which can be located at pages 8-1647, 8-1648, 8-1649, 8-1650, 8-1651, Administrative Rules of Montana. The authority section is 37-40-203 and the implementing sections are 37-40-101, 37-40-203, 37-40-301, 37-40-302, 37-40-304, MCA. The reason for the proposed repeal of 8.60.404 is the rule is not reasonably necessary to effectuate the purpose of any statute of the board. ARM 8.60.406 is being repealed in part because of its reference to ARM 8.60.405 which was repealed effective July 31, 1992; further it is not reasonably necessary to effectuate the purpose of any statute of the board and may in fact, engraft additional requirements upon the statute. ARM 8.60.407 is being replaced by new rule I which proposes to implement anti-fraud devices in the application process and to provide a more detailed explanation of the procedure of the board in the processing of applications. ARM 8.60.410 is being proposed for repeal and its substance will be incorporated in new rule I. ARM 8.60.411 is being proposed for repeal and its substance is now set forth under new rule III.

4. The proposed new rules will read as follows:

"I APPLICATIONS (1) An application for original license, renewal, examination or reinstatement must be made on

a form provided by the board and completed and signed by the applicant, with the signature acknowledged before a notary public.

(2) The application must be typed or written in ink, accompanied by the appropriate fee or fees, and contain sufficient evidence that the applicant possesses the qualifications as set forth in Title 37, chapter 40, MCA, and rules promulgated thereunder.

(3) The board shall require the applicant to submit a recent, passport-type photograph of the applicant.

(4) The board shall review fully-completed applications for compliance with board law and rules. The board may request additional information or clarification of information provided in the application as it deems reasonably necessary. Incomplete applications may be returned to the applicant with a statement regarding incomplete portions.

(5) The applicant shall correct any deficiencies and re-submit the application as requested. Failure to re-submit the application within 60 days shall be treated as a voluntary withdrawal of the application. After voluntary withdrawal an applicant will be required to submit an entirely new application to begin the process again.

(6) The board shall notify the applicant in writing of the results of the evaluation of the application and schedule the applicant to sit for the examination within 30 days of the approval date.

(7) All requests for reasonable accommodations under the Americans with Disabilities Act of 1990, as 42 U.S.C. section 12101, et seq., with regard to a board-administered licensing examination must be made on forms provided by the board and submitted with the application prior to any application deadline set by the board."

Auth: Sec. 37-40-203, MCA; IMP, Sec. 37-40-301, 37-40-302, MCA

REASON: The new rule is proposed to implement anti-fraud devices in the application process and to provide a more detailed explanation of the procedure of the board in the processing of applications.

"II. EXAMINATION (1) Upon approval of the application set forth in new rule I or ARM 8.60.415, the applicant shall submit an examination fee and make an appointment with the board office to sit for the written examination within 30 days of the application approval. Examination candidates must present photo identification prior to being admitted to the examination.

(2) An overall score of 70% will be required to pass the examination.

(3) The board shall inform candidates of the result of their examinations in writing within 10 days of receipt of the results from the testing agency. No score will be released over the telephone or via facsimile. The board staff shall discuss score-related matters with the candidate or the candidate's legal representative only.

(4) Applicants who fail the examination and wish to reschedule to take the examination must pay the examination fee, and schedule and sit for the examination within 30 days of the last examination date. Applicants who fail the examination twice shall wait 60 days before taking the examination again.

(5) If, after one year of receipt of an application, an applicant has not passed the examination, a new application and application fee will be required to sit for the examination.

(6) This rule does not apply to sanitarian-in-training temporary practice permit holders because the sanitarian-in-training permit expires upon failure of the examination."

Auth: Sec. 37-40-203, 37-40-302, MCA; IMP, Sec. 37-40-302, MCA

REASON: The proposed rule is necessary to clarify the procedure for accepting and processing an application and notifying examination candidates of board procedure. The board proposes to require presentation of a photo ID to ensure the identity of the candidate being admitted to the examination. The proposed rule sets forth procedures for notifying candidates of the results of their examination. The rule proposes language regarding rescheduling the examination and a limitation of 60 days before a candidate may retake an examination that he or she has failed twice to prevent the candidate from memorizing the examination and allowing the testing agency to recirculate questions within the test pool. The rule clarifies that the retake of the examination does not apply to temporary practice permit holders.

"III RENEWAL (1) Renewal application forms will be sent to the licensee's address on file in the board office approximately six to eight weeks prior to the renewal deadline. Failure to receive a renewal application form in no way releases the licensee from the obligation to renew prior to the end of the licensing year.

(2) Licensees shall have 90 days after the expiration date of their licenses to submit a renewal application with the accompanying renewal and late fees and proper documentation of continuing education requirements.

(3) Ninety days after the expiration date, the license lapses. To reinstate a lapsed license, an applicant must submit a new application and retake and successfully pass the licensing examination."

Auth: Sec. 37-40-203, 37-40-304, MCA; IMP, Sec. 37-40-304, MCA

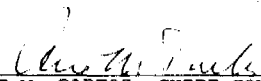
REASON: This rule is necessary to clarify that an application for renewal must be approved and not granted by virtue of merely paying a renewal fee and submitting proof of continuing education. The proposed rule further clarifies the term lapse as used to mean the point in time when a licensee may no longer renew a license, but must instead submit a new application and retake and pass the licensing examination. The proposed rule also provides for a 90-day late renewal period.

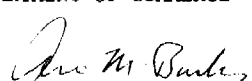
5. Interested persons may submit their data, views or arguments concerning the proposed amendments, repeals and adoptions in writing to the Board of Sanitarians, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile (406) 444-1667, to be received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

6. If a person who is directly affected by the proposed amendments, repeals and adoptions wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Sanitarians, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile (406) 444-1667, to be received no later than 5:00 p.m., April 4, 1996.

7. If the Board receives requests for a public hearing on the proposed amendments, repeals and adoptions from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendments, repeals and adoptions, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 18 based on the 179 licensees in Montana.

BOARD OF SANITARIANS
MELISSA TUENMLER, CHAIRMAN

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


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, February 26, 1996.

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

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment and adoption of rules) OF 8.63.504 REGISTRATION OF
pertaining to passenger) NEW, RELOCATED OR MAJOR
tramways) MODIFICATIONS OF TRAMWAYS
) AND THE ADOPTION OF NEW RULE
) I NOTICE OF CONFERENCE CALL
) MEETINGS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On October 13, 1994 at page 2703, 1994 Montana Administrative Register, Issue No. 19, the Board of Passenger Tramway Safety published a notice of proposed adoption of new rules pertaining to inspections and conference call meetings. Those proposed new rules were not adopted within the six-month timeline set forth in MAPA. On September 14, 1995, at page 1767, 1995 Montana Administrative Register, Issue No. 17, the Board published a notice of proposed adoption of those same rules, but inadvertently inserted incorrect language. The Board voted not to adopt the rules as proposed.
2. On April 6, 1996, the Board of Passenger Tramway Safety proposes to amend and adopt the above-stated rules.
3. The proposed amendment will read as follows: (new matter underlined, deleted matter interlined)

"8.63.504 REGISTRATION OF NEW, RELOCATED OR MAJOR MODIFICATION OF TRAMWAYS (1) through (8) will remain the same.

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

(a) The board's contracted inspection engineer or other qualified designee shall observe the acceptance testing procedure as outlined by the certified design engineer retained by the ski area, and shall assure that the procedure meets the requirements of the Montana board of passenger tramway safety laws and rules and the ANSI B77.1 standards. The contracted inspection engineer shall, at the time of the inspection, submit a written report to the ski area liaison regarding items of non-compliance or deficiency and further report these findings to the board.

(b) Any acceptance testing procedure completed without the presence of the board's contracted inspection engineer or other qualified designee will be accepted subject to the board's discretion and may require a repeat test in the presence of the board's contracted inspection engineer before certification will be granted.

(c) Before any new, relocated, or major modified tramway is licensed for public transportation of passengers, the ski area shall submit a certificate of compliance that all deficiency items cited by the designated inspection engineer and the board contracted engineer have been corrected."

Auth: Sec. 23-2-721, MCA; IMP, Sec. 23-2-701, 23-2-711, 23-2-712, 23-2-713, 23-2-721, 23-2-722, 23-2-723, MCA

REASON: The proposed amendments are necessary so the board engineer or designee can be present during the tramway inspections to ensure that the inspection procedure is carried out in compliance with the laws and rules of the Montana Board of Passenger Tramway Safety.

4. The proposed new rule will read as follows:

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

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

REASON: This rule is being proposed so that the board will have the necessary means to allow adequate notice of, and participation in, all board conference calls; and to ensure that the public and board members have all pertinent materials in hand before such conference calls.

5. Interested persons may submit their data, views or arguments concerning the proposed amendment and adoption in writing to the Board of Passenger Tramway Safety, 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., April 4, 1996.

6. If a person who is directly affected by the proposed amendment and adoption wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Passenger Tramway Safety, 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., April 6, 1996.

7. If the Board receives requests for a public hearing on the proposed amendment and adoption from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendment and adoption, from the Administrative Code Committee of the legislature, from a

governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 7 based on the 70 licensees in Montana.

BOARD OF PASSENGER TRAMWAY SAFETY
KEVIN TAYLOR, CHAIRMAN

BY: _____

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

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, February 26, 1996.

In the matter of the proposed) NOTICE OF PUBLIC HEARING ON
amendment of rules pertaining) THE PROPOSED AMENDMENT OF
to the Microbusiness Advisory) RULES PERTAINING TO THE
Council) MICROBUSINESS ADVISORY
) COUNCIL

1. On March 27, at 9:00 a.m., a public hearing will be held in the upstairs conference room of the Department of Commerce, 1424 - 9th Avenue, Helena, Montana, to consider the proposed amendment of rules pertaining to the Microbusiness Advisory Council.

"8.99.401 DEFINITIONS As used in this sub-chapter, the following definitions apply:

(9) "Standards of practice" means administrative rules, guidelines, policies and procedures, as well as performance indicators and historical performance levels, for the operation of loan programs serving microbusinesses, including, but not limited to, program elements such as client training and technical assistance, credit analysis, underwriting criteria, portfolio management, staffing, and general loan fund administration.

~~(16)~~ (15) "Default" shall be defined in the development agreement between the department and MBDC. An MBDC is in default when it receives notice from the department declaring to be in default under the provisions of the loan agreement.

Auth: Sec. 17-6-406, MCA; IMP, Sec. 17-6-406, 17-6-408.

REASON: The Microbusiness Advisory Council and the Department of Commerce no longer refer to this terminology within the program. Subsection (16) is being amended to insert the word "in" for clarification purposes.

(2) The department will compile standards of practice by surveying a selection of revolving loan fund programs and lending institutions targeted to microbusinesses both inside and outside Montana, against which proposals for certification will be measured. This survey will include at least, but will not be limited to, a direct loan program model, a loan

~~guarantee program model, and a group or circle lending program model.~~

~~(a) The department will distribute the standards of practice to all persons and organizations responding to requests for proposals to become certified MBDCs, and all others who request the information.~~

~~(b) The department with the council will review and update the standards of practice at least every biennium to reflect evolving standards of practice and new program models.~~

~~(c) The department will review United States general accounting office and generally accepted accounting principles, and choose a standard set of accounting principles against which to measure the administrative procedures of applicants for certification. The department will announce the selected standard set of accounting principles in its requests for proposals for certification.~~

~~(3) through (5) (a) will remain the same, but will be renumbered (2) through (4) (a).~~

~~(b) The department will develop a standard evaluation and scoring form for review of proposals, based on standards of practice as identified in subsection (2) above, and certification requirements as identified in subsection (4). Proposals that deviate from the standards of practice must provide a rationale for such deviations. Acceptance of such deviations and rationale is at the department's discretion.~~

~~(b)(c) Using the standard evaluation and scoring form, the department will review proposals and determine whether to recommend certification of the MBDC. The proposal and staff's recommendation will be forwarded to the department director for a decision on certification.~~

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

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

~~Auth: Sec. 17-6-406, MCA; IMP, Sec. 17-6-408, MCA~~

REASON: See reason for ARM 8.99.401.

"8.99.405 CERTIFICATION OF A STATEWIDE MICROBUSINESS DEVELOPMENT CORPORATION (1) will remain the same.

~~(2) The department will compile standards of practice for microlending by surveying a selection of revolving loan fund programs and lending institutions targeted to microbusinesses both inside and outside Montana, against which proposals for certification will be measured. This survey will include at least, but will not be limited to, a direct loan program model, a loan guarantee program model, and a group or circle lending program model.~~

~~(a) The department will distribute the standards of practice to all persons and organizations responding to requests for proposals to become certified MBDCs, and all others who request the information.~~

~~(b) The department with the council will review and update the standards of practice for microlending at least every biennium to reflect evolving standards of practice for microlending and new program models.~~

~~(c) The department will review United States general accounting office and generally accepted accounting principles,~~

~~and choose a standard set of accounting principles against which to measure the administrative procedures of applicants for certification. The department will announce the selected standard set of accounting principles in its requests for proposals for certification.~~

(3) and (4) will remain the same, but will be renumbered (2) and (3)."

Auth: Sec. ~~17-6-406~~, MCA; ~~IMP~~, Sec. ~~17-6-406~~, ~~17-6-408~~, MCA

REASON: See reason for ARM 8.99.401.

"8.99.504 DEVELOPMENT LOAN - TERMS (1) Development loans shall be interest-only loans, renewable at intervals of no more than four years. Contract extensions of 12 months may be approved by the department in lieu of repayment for non-performing loan funds at the department's discretion.

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

Auth: Sec. ~~17-6-406~~, MCA; ~~IMP~~, Sec. ~~17-6-407~~, MCA

REASON: There has been some confusion with the Microbusiness Development corporations regarding how the Department of Commerce will handle non-performing loans at the time of renewal. This gives the Department the flexibility of extending the loan until satisfactory performance is established and make the rules consistent with the contract between the Microbusiness Development corporations and the Department of Commerce.

"8.99.505 DEVELOPMENT LOAN - MATCHING CONTRIBUTIONS AND COLLATERAL (1) through (4)(a) will remain the same.

~~(b) invested in one or more of the kinds of securities listed in 17-6-103, MCA.~~

(5) through (8) will remain the same.

(9) In the case that an MBDC establishes both a revolving loan fund and a guarantee fund, cash collateral must be allocated between the guarantee fund and the revolving loan funding fund in the same proportion that development loan proceeds are allocated between the guarantee fund and the revolving loan fund.

(10) through (10)(d) will remain the same.

(i) the MBDC must maintain a reserve fund of cash collateral deposited or so long as any development loan balance is outstanding between the department and an MBDC, cash collateral from the MBDC must be maintained in the form of microbusiness loans made from the guarantee fund, or in the form of such deposits and invested as specified in paragraph (4) above, pledged as collateral against the development loan in the amount of at least \$1 for every \$6 of development loan proceeds allocated to the guarantee fund or the amount specified in the development loan agreement, whichever is greater;

(A) a letter of credit provided to the department as collateral for the development loan by the financial institution or institutions having a guarantee agreement with the MBDC, may at the department's discretion be substituted in

~~place of up to \$10,000 of the reserve fund required under (i) above.~~

(ii) will remain the same."

Auth: Sec. 17-6-406, MCA; IMP, Sec. 17-6-406, MCA

REASON: The language being deleted in (4)(b) is no longer required by the Department of Commerce because the language exists in the contract between the Microbusiness Development corporations and the Department of Commerce. The amendment in (9) is being proposed to correct a typographical error. The new language being proposed in (10)(i) is consistent with the language in the contracts between the Microbusiness Development corporations and the Department of Commerce. Subsection (10)(d)(i)(A) is being deleted because the practice is not currently being implemented by the Department and is not considered a necessity.

"8.99.511 MICROBUSINESS LOANS - ELIGIBILITY FOR AND TERMS AND CONDITIONS (1) through (4) will remain the same.

(5) ~~The department will survey a selection of Montana financial institutions no less often than semiannually to determine a benchmark market interest rate. The department will set minimum and maximum annual percentage interest rate limits for microbusiness loans based on that benchmark. Interest rates charged to microbusiness by MBDCs must fall within the maximum and minimum rates set by the department for the period. The initial interest rate charged to microbusiness borrowers by MBDCs, will be the New York prime rate published weekly by the Montana Board of Investments, plus 3% as a minimum annual percentage rate and plus 7% as a maximum annual percentage interest rate. MBDCs will report quarterly, in writing to the department, interest charged borrowers.~~

(6) will remain the same."

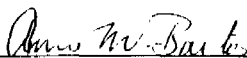
Auth: Sec. 17-6-406, MCA; IMP, Sec. 17-6-406, 17-6-407, MCA

REASON: Some Microbusiness Development corporations have had misgivings in the past regarding the results of the Department's bank surveys. As a result, the Department, at the direction of the Microbusiness Advisory Council, will discontinue the practice of the Department's bank surveys and adopt the stated procedure.

3. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Business Development Division, 1424 - 9th Avenue, Helena, Montana 59620, and by facsimile (406) 444-1872, to be received no later than 5:00 p.m. April 4, 1996.

4. Lynn Robson has been designated to preside over and conduct this hearing.

BUSINESS DEVELOPMENT DIVISION

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


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, February 26, 1996.

BEFORE THE BOARD OF MILK CONTROL
OF THE STATE OF MONTANA

In the matter of proposed) NOTICE OF PUBLIC HEARING
amendments to rule 8.86.301)
as it relates to the)
wholesale prices for class)
I, II and III milk.) DOCKET #2-96

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

1. On April 15, 1996, at 9:30 a.m., or as soon thereafter as possible, a public hearing will be held in the Scott Hart auditorium, 301 N. Roberts St., Helena, Montana, to consider amendments to rule 8.86.301. The hearing will continue on April 16th if necessary to allow all interested persons to have a fair opportunity to be heard and to submit data, views or arguments.

2. The hearing will be in response to a petition submitted by Jock O. Anderson, attorney for Meadow Gold Dairies INC.

3. The rule as proposed to be amended provides as follows: (text of rule with matter to be omitted interlined and new matter added, then underlined)

"8.86.301 PRICING RULES

(1)-(2) remains the same.

(3) Formula for fixing class I price at the producer level.

(a) The minimum prices which shall be paid to producers by distributors in the state of Montana shall be calculated by either applying the flexible economic formula described below or the basic formula price plus ~~three dollars and fifteen cents (\$3.15)~~ two dollars and twenty cents (\$2.20) whichever price is lower. The flexible economic formula utilizes a November 1969 base equalling 100, an interval of 4.5 and consists of seven factors. The factors and their assigned weights are as follows:

	FACTOR	CONVERSION WEIGHT	FACTOR
(i)	Unemployment US (6.67 (3.8 - C) + 100)	.05 5%	
(ii)	Unemployment MT. (6.67 (6.1 - C) + 100)	.10 10%	
(iii)*	Weekly Wages - Total private (Revised and seasonally adjusted)	15%	.13297873
(iv)	Prices Received by Farmers - MT. ('47 - '49 = 100)	15%	.22960139
(v)	Mixed Dairy Feed	20%	.32258065
(vi)	Alfalfa Hay	12%	.48000000
(vii)	Prices Paid by Farmers - US ('90 - '92 = 100)	23%	.78879040
		100%	

*Note: The reported revised weekly wage - total private is seasonally adjusted by dividing each month's revised figures by the following factors: Jan. - .9867; Feb. - .9832; March - .9809; April - .9822; May - .9911; June - 1.0053; July - 1.0165; August - 1.0261; Sept. - 1.0136; Oct. - 1.0192; Nov. - 1.0047; Dec. - .9905.

The following table will be used in computing producer prices:

TABLE 1

Producer price determination using above formula with November, 1969 - 100 and an interval - 4.5

FORMULA INDEX	PRICE PER CWT
201.5 - 205.1	\$13.01
206.0 - 209.6	13.24
210.5 - 214.1	13.47
215.0 - 218.6	13.70
219.5 - 223.1	13.93
224.0 - 227.6	14.16
228.5 - 232.1	14.39
233.0 - 236.6	14.62
237.5 - 241.1	14.85
242.0 - 245.6	15.08
246.5 - 250.1	15.31
251.0 - 254.6	15.54
255.5 - 259.1	15.77
260.0 - 263.6	16.00
264.5 - 268.1	16.23
269.0 - 272.6	16.46
273.5 - 277.1	16.69
278.0 - 281.6	16.92
282.5 - 286.1	17.15
287.0 - 290.6	17.38

~~(b) The class I butterfat differential will be calculated by multiplying the average Chicago area butterfat~~

price (grade A 92 score) by or most recently reported by the United States department of agriculture, by .110 and the resulting answer from this calculation shall be rounded to nearest half cent. When milk does not test 3.5 percent butterfat, the price per CWT will be adjusted by the above resulting calculation for each .1 percent the butterfat test moves up or down.

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

(c)-(e) Remain the same but are renumbered (b)-(d).

(4) Formula for fixing class II price to be paid to producers.

(a) Prices paid producers for class II milk will be the basic formula price, two months prior, plus thirty cents, last spray process nonfat dry milk solids price per pound quote for the month, Central States area, as most recently reported by the United States department of agriculture, plus a factor of \$.0125 per pound for freight, multiplied by 0.2 (which is the amount of solids not fat in skim milk), plus the last Chicago area butter price quote for the month (grade A, 92 score), as most recently reported by the United States department of agriculture, multiplied by 4.2 (which is the amount of butter in pounds, which can be produced from one hundred (100) pounds of three point five percent (3.5%) milk), less a make allowance of eight and one half percent (8.5%). In the case of milk containing more or less than three point five percent (3.5%) butterfat, the differential to be employed in computing prices will be determined by multiplying the above mentioned Chicago area butter price by .111 and the resulting answer from this calculation shall be rounded to nearest half cent (\$0.005).

(b) Remains the same.

(5) Formula for fixing the class III price to be paid to producers.

(a) Prices paid to producers for class III milk will be the basic formula price, two months prior, last Chicago area butter price quote for the month (grade A, 92 score) as most recently reported by the United States department of agriculture, less ten percent (10%) and, in addition, when skim milk is utilized in this classification by any distributor, the last spray process nonfat milk solids price per pound quote for the month, the central states area, as most recently reported by the United States department of agriculture, plus a factor of \$.0125 per pound for freight, multiplied by 0.2, less seventeen percent (17%).

(5) (b) - (8) (b) Remains the same.

(9) Butterfat differential. The butterfat price per pound and skim price per pound for the current month in class I, II and III will be determined by using the two months prior butterfat differential (which is announced in .1 of .1% units by the US department of agriculture) and the class I, II, and III prices for the Montana current month. The formula is as follows:

(a) [Class I price minus (35 x butterfat differential)] divided by 100 = class I skim cost per pound. Skim cost per

pound + (butterfat differential x 10) = class I butterfat cost per pound.

(b) [Class II price minus (35 x butterfat differential)] divided by 100 = class II skim cost per pound. Skim cost per pound + (butterfat differential x 10) = class II butterfat cost per pound.

(c) [Class III price minus (35 x butterfat differential)] divided by 100 = class III skim cost per pound. Skim cost per pound + (butterfat differential x 10) = class III butterfat cost per pound."

AUTH: 81-23-104, MCA

IMP: 81-23-103 and 402, MCA

4. Persons known to have an interest in this proposal are Montana milk producers and distributors.

5. The petitioner contends that the rule subject to this proposal directly affects the price at which class I, II and III milk is purchased from Montana dairy producers. The effect of this proposed amendment is to change the pricing formula for all three classes of milk with the resulting effect of lowering the price paid for class I milk relative to the current formula and raising the price paid for class II and III milk.

6. The petitioner also contends that economic market forces, specifically prices in adjacent and neighboring states, justify a reduction in class I producer prices so that the Montana milk remains competitive. Compared to other states, and particularly surrounding states, Montana has relatively high producer prices for class I and relatively low prices for class II and III. This amendment proposes to adjust those prices so as to reallocate the total amount paid to producers among the classes in a manner more in line with those surrounding states. Doing so will allow class I Montana milk to be more competitively priced to adapt to the economic forces soon to be brought into play as a result of the elimination of pricing regulations at the retail level in Montana.

7. Specific factors which the board will take into consideration in these proceedings will include, but may not be limited to the following:

- (a) Supplies of milk in adjacent and surrounding areas.
- (b) Prices of milk in adjacent and surrounding areas.
- (c) Current and prospective supplies of milk in relation to current and prospective demand for such milk for all purposes.
- (d) The cost factors in producing milk, which shall include among other things, the prices paid by farmers generally (as used in parity calculations of the USDA), prices paid by farmers for dairy feed in particular, and farm wage rates in this state.
- (e) The cost of transporting bulk and packaged milk between plants or between states.

(f) A direct comparison of announced prices paid to farmers to the prices that would have been announced had the proposed rule changes been in effect for said months.

(g) Any price or date series that may be relevant to the deliberations.

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

(a) Current audited information reveals Meadow Gold Dairies is purchasing bulk milk out-of-state from Magic Valley Quality milk producers in Jerome, Idaho. The rate per CWT to purchase the milk and the freight rate respectfully for October 1995 are as follows for the three Montana Meadow Gold plants: Billings--\$12.86 and \$2.10; Kalispell--\$12.52 and \$2.20; and Great Falls--\$12.57 and \$2.10.

(b) The rate for transporting class III milk allowed by ARM 8.86.301(8)(b) is \$.95 per running mile. The cost of the freight and the amount the selling plant is short in dollars of the Montana minimum price are charged back to the producers in the form of a reduced price. These charges have been charged back to the producers since 1982.

(c) The maximum allowable rates for transporting milk contained in ARM 8.86.301(6)(a) are as follows:

<u>DISTANCE</u>	<u>MAXIMUM FREIGHT ALLOWANCE</u>
25 to 50 miles	\$.25
51 to 75 miles	.40
76 to 100 miles	.50
101 to 150 miles	.64
151 to 200 miles	.85
201 to 250 miles	1.06
251 to 300 miles	1.28
301 to 350 miles	1.49

(d) Utilization of producer milk receipts in Montana and surrounding states for December 1995 were as follows:

TABLE 1

	<u>CLASS I</u>	<u>CLASS II</u>	<u>CLASS III</u>
Pacific Northwest	169,403,248	41,170,843	281,669,577
SW Idaho-E Oregon	14,171,346	5,039,968	180,822,882
Great Basin	69,513,001	15,167,941	117,385,091
Western N. Dakota	8,525,377	524,638	4,065,949
Montana	16,344,459	2,062,632	5,989,306

(e) Montana and surrounding states producer prices per hundredweight (CWT) for December 1995 were as follows:

TABLE 2

	<u>CLASS I</u>	<u>CLASS II</u>	<u>CLASS III</u>	<u>UNIFORM BLEND</u>
Pacific Northwest	14.51	12.91	12.91	13.44
SW Idaho-E Oregon	14.11	12.91	12.91	13.31
Great Basin	14.51	12.91	12.91	13.44
Western N. Dakota	14.60	12.91	12.39	13.55
Montana	15.76	12.36	10.59	14.17

(f) The actual Montana 1995 producer milk prices as set by ARM 8.86.301 were as follows:

TABLE 3

1995	CL I	CL I	CL II	CL II	CL III	CL III
	CWT	BF	CWT	BF	CWT	BF
January	15.01	.85	10.87	.80	9.35	.64
February	14.53	.75	10.56	.70	9.12	.58
March	14.50	.75	10.58	.70	9.14	.58
April	14.94	.80	10.72	.75	9.24	.60
May	15.04	.80	10.73	.75	9.26	.60
June	14.31	.80	10.72	.75	9.24	.60
July	14.27	.80	10.66	.75	9.19	.60
August	14.57	.90	10.97	.85	9.44	.67
September	14.38	.90	10.98	.85	9.45	.67
October	14.70	.95	11.17	.90	9.62	.72
November	15.23	.95	11.31	.90	9.71	.73
December	15.76	1.20	12.36	1.15	10.59	.93

(g) The following table is based on the Meadow Gold proposal assuming it had been in effect in 1995:

TABLE 4

1995	CL I	CL I	CL II	CL II	CL III	CL III
	CWT	BF	CWT	BF	CWT	BF
January	14.06	.76	12.16	.74	11.86	.74
February	13.58	.70	11.68	.68	11.38	.67
March	13.55	.67	11.65	.65	11.35	.64
April	13.99	.68	12.09	.66	11.79	.66
May	14.09	.69	12.19	.67	11.89	.67
June	13.36	.70	11.46	.68	11.16	.68
July	13.32	.70	11.42	.68	11.12	.68
August	13.62	.75	11.72	.73	11.42	.73
September	13.43	.82	11.53	.80	11.23	.80
October	13.75	.88	11.85	.86	11.55	.86
November	14.28	.90	12.38	.88	12.08	.87
December	14.81	1.07	12.91	1.06	12.61	1.05

(h) The following table exemplifies the value of the skim milk price per CWT in 1995 for Montana (MT) producers and the assumed skim milk price per CWT as proposed by the Meadow Gold (MG) petition:

TABLE 5

1995	CL I	CL II	CL III	CL I	CL II	CL III
	MT	MT	MT	MG	MG	MG
	SKIM	SKIM	SKIM	SKIM	SKIM	SKIM
January	12.035	8.070	7.109	11.820	9.920	9.620
February	11.905	8.110	7.093	11.550	9.650	9.350
March	11.875	8.130	7.109	11.625	9.725	9.425
April	12.140	8.095	7.143	12.030	10.130	9.830
May	12.240	8.105	7.159	12.095	10.195	9.895
June	11.510	8.095	7.143	11.295	9.395	9.095
July	11.470	8.035	7.093	11.255	9.355	9.055
August	11.420	7.995	7.093	11.380	9.480	9.180

September	11.230	8.005	7.101	10.945	9.045	8.745
October	11.375	8.020	7.101	11.055	9.155	8.855
November	11.905	8.160	7.159	11.550	9.650	9.350
December	11.560	8.335	7.340	11.450	9.550	9.250

(i) The following table is a recap of 1995 Montana (MT) milk production and values and an assumption of the effect of the Meadow Gold (MG) proposal on blend prices.

TABLE 6

	TOTAL PRODUCTION	CURRENT MT MILK VALUES	VALUE UNDER MG PROPOSAL	MT BLEND PRICE	MG BLEND PRICE
1995	IN MT/CWT				
JAN	\$251,549.92	\$3,377,543	\$3,403,317	\$13.43	\$13.53
FEB	224,978.86	2,926,902	2,926,409	13.01	13.01
MAR	249,177.19	3,274,428	3,246,718	13.14	13.03
APR	249,732.78	3,206,292	3,300,246	12.84	13.22
MAY	264,119.58	3,446,228	3,517,201	13.05	13.32
JUN	257,601.95	3,186,797	3,211,560	12.37	12.47
JUL	261,502.79	3,190,358	3,234,919	12.20	12.37
AUG	254,511.67	3,294,104	3,286,163	12.94	12.91
SEP	241,888.92	3,110,278	3,100,730	12.86	12.82
OCT	248,167.41	3,316,830	3,302,083	13.37	13.31
NOV	236,296.64	3,238,415	3,265,183	13.70	13.82
DEC	<u>243,964.44</u>	<u>3,458,484</u>	<u>3,486,529</u>	<u>14.18</u>	<u>14.29</u>
	\$2,983,492.15	\$39,026,659	\$39,281,058	\$13.08	\$13.17

9. The board may deliberate on the following specific issues and would like data, views, and arguments from interested persons:

a. What changes are occurring in the marketplace that would enable surplus milk to be marketed at a higher price when no one presently or in the past has been able to accomplish this?

b. What disruptions are likely to occur in the marketplace if this proposal is or is not adopted?

c. What additional costs are legitimate and need to be considered in marketing surplus milk?

10. Interested parties 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 Milk Control Bureau, 301 N. Roberts St. - RM 236, PO Box 202001, Helena, MT 59620-2001. Any comments must be received no later than April 5, 1996.

11. Mr. Lon Mitchell, Esq., Dept. of Livestock, 301 N. Roberts St. - Rm. 307, Helena, MT 59620-2001, (406)444-5203, has been designated to preside over and conduct the hearing.

MONTANA BOARD OF MILK CONTROL
MILTON J. OLSEN, Chairman

By: Marc Bridges / s/
Marc Bridges, Exec. Secretary
Board of Livestock

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

Certified to the Secretary of State February 26, 1996.

Editorial note: On February 8, 1996, at page 456 of the Montana Administrative Register, Issue No. 3, ARM 8.86.301 was transferred to ARM 32.24.301.

BEFORE THE BOARD OF OIL AND GAS CONSERVATION
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

In the matter of the proposed amendment)	NOTICE OF PUBLIC
of rules 36.22.1401, 36.22.1410,)	HEARING
36.22.1416, 36.22.1417, and)	
36.22.1418, and the proposed)	
adoption of new rules I and II,)	
pertaining to underground injection))	

TO: All Interested Persons

1. On March 27, 1996, at 1:00 p.m., a public hearing will be held in the conference room of the Oil and Gas Conservation Office, 2535 St. John's Avenue, Billings, Montana, to consider the amendment of rules 36.22.1401, 36.22.1410, 36.22.1416, 36.22.1417, and 36.22.1418, and the proposed adoption of new rules I and II.

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

36.22.1401 DEFINITIONS For the purposes of this subchapter the following are defined:

(1) "Area of review" means the area surrounding an injection well to a radius calculated according to the criteria set forth in ARM 36.22.1424 or a fixed radius of one quarter (1/4) mile, or for an area project, the project area plus a radius calculated according to the criteria set forth in rule II circumscribing area the width of which is one quarter (1/4) mile.

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

(4) "Class II injection well" means a well that:

(a) injects fluids brought to the surface in conjunction with conventional oil and gas production and may be commingled with waste waters (regardless of their source) from gas plants which are an integral part of production operations, unless those waters are classified as a hazardous waste at the time of injection;

(b) is used to inject brines or other fluids brought to the surface in connection with oil or gas production or gas storage operations;

(c) is used to inject brines or other fluids described in (4)(b) which, prior to injection, have been:

(i) used on-site for purposes integrally associated with oil and gas production or storage;

(ii) chemically treated or altered to the extent necessary to make them useable for purposes integrally related to oil and gas production or storage; or

(iii) commingled with fluid wastes resulting from the treatment described in (4)(c)(ii), so long as they do not constitute a hazardous waste;

(d) is used to inject fresh water (i.e., water containing less than 10,000 mg/L total dissolved solids) from groundwater or surface water sources, added to or substituted for the brine

may also be injected, as long as the only use of the water is for purposes integrally associated with oil and gas production or storage:

(b)(e) is used to inject fluids for the enhanced recovery of oil or gas; or

(b)(f) is used to inject fluids for storage of hydrocarbons that are liquid under standard conditions of temperature and pressure; or

(g) is used to inject exempt waste fluids associated with oil or natural gas exploration and production as long as their physical state allows it, including produced water, drilling fluids, drill cuttings, rigwash, well completion fluids, workover wastes, gas plant dehydration wastes, gas plant sweetening wastes, spent filters and backwash, packing fluids, produced sand, production tank bottoms, gathering line pigging wastes, hydrocarbon-bearing soil, and waste crude oil from primary field sites.

Subsections (5) through (15) remain the same.

(16) "Well" means a bored, drilled, or driven shaft, or a dug hole, whose depth is greater than the largest surface dimension.

(17) "Well injection" means the subsurface emplacement of fluids through a bored, drilled, or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension.

(18) "Well plug" means a watertight and gastight seal installed in a borehole or well to prevent movement of fluids.

(19) "Well stimulation" means several processes used to clean the wellbore, enlarge channels, and increase pore space in the interval to be injected thus making it possible for wastewater to move more readily into the formation, and includes surging, jetting, blasting, acidizing, and hydraulic fracturing.

(20) "Well monitoring" means the measurement, by on-site instruments or laboratory methods, of the quality of water of a well.

AUTH: Sec. 82-11-111, MCA;

IMP: Sec. 82-11-111, 82-11-121, 82-11-123, 82-11-124, 82-11-127, and 82-11-137, MCA.

36.22.1410 NOTICE OF APPLICATION (1) New wells or projects. Notice of application for underground injection permit must be mailed to each current operator, and surface owners, lease owner of non-operated lease, and mineral owner of non-operated and unleased tracts within the area of review, and the surface owner of each well site. A copy of the notice must also be mailed to the Region VIII office of the EPA, the water quality bureau of Montana department of health and environmental sciences environmental quality, to the Montana department of natural resources and conservation, and to the clerk and recorder of the county in which the project is located. Such notices must be mailed on or before the date the application is mailed to or filed with the board.

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

AUTH: Sec. 82-11-111, MCA;
IMP: Sec. 82-11-111, 82-11-121, 82-11-123, 82-11-124,
82-11-127, and 82-11-137, MCA.

36.22.1416 MECHANICAL INTEGRITY Subsections (1) and (2)(a) remain the same.

(b) monitoring of the casing-tubing annulus ~~following a valid initial pressure test, or~~

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

(3) A mechanical integrity test also will include a demonstration that there is no significant movement of injected fluid in vertical channels adjacent to the wellbore. Such demonstration must include a cement bond log (with a variable density curve, travel time curve, amplitude curve, and gamma ray curve) or equivalent and may include the following:

(a) cementing records which ~~demonstrate the presence of cement adequate to prevent volume and type of cement used and which demonstrate absence of unauthorized~~ fluid migrations adjacent to the wellbore:

(b) radioactive tracer surveys;+

(c) noise logs;+

(d) temperature surveys;+ ~~or,~~

(a) oxygen activation logs; or

(f) or any other test or combination of tests considered effective by the board and approved by EPA.

(4) After the effective date of these regulations, all existing injection wells which have not had an initial mechanical integrity test ~~must will~~ be tested for mechanical integrity as directed by the board.

(5) Injection wells ~~must will~~ be retested for mechanical integrity no less than once each five (5) years from the date last tested. Wells last tested under supervision of EPA will be retested under supervision of the board no less than five (5) years from the EPA test date.

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

(8) Subsequent to any mechanical integrity test, a well operation which causes the injection packer to be unseated or in which the tubing or packer was pulled, repaired or replaced or that has experienced a loss of mechanical integrity will require that the well be retested for mechanical integrity before being placed in service.

AUTH: Sec. 82-11-111, MCA;
IMP: Sec. 82-11-111, 82-11-121, 82-11-123, 82-11-124,
82-11-127, and 82-11-137, MCA.

36.22.1417 NOTIFICATION OF TESTS - REPORTING RESULTS

(1) To the extent practicable, the board's field representative will schedule routine mechanical integrity tests required under ARM 36.22.1416. The owner or operator of a class II injection well must give the board at least forty-eight (48) hours advance written, telephone, or facsimile notice of any mechanical integrity test not originally scheduled by a board representative. Notification of tests not included in the board's routine test schedule must specify the name and telephone number

of the person responsible for scheduling the test, the name and address of the owner or operator of the injection well, the name and location of the well, and the time and date the mechanical integrity test will be performed. The board may at any time request a retest for wells where the mechanical integrity test was not performed under the oversight of a representative of the board.

(2) The owner or operator must provide a subsequent report of any mechanical integrity test (MIT) on board form 2 regardless of whether or not the MIT is witnessed by a board representative. Subsequent reports are due within fifteen (15) days of the test unless remedial repairs are required, in which case a subsequent report is due within fifteen (15) days of completion of the remedial work. If submitted reports are found to not meet board requirements or if approved testing procedures were not used, the board may require a retest.

(3) Subsequent reports will include the date of the test or the date on which work began, the manner or method of testing, the results of the test, and any remedial work done or required to be performed to demonstrate mechanical integrity. the type and cause of the well failure, and the pressure recording chart used to document the annulus pressure test. The name, address, and telephone number of the company representative, consultant, or contractor that performed the test also must be provided.

Subsection (4) remains the same.

AUTH: Sec. 82-11-111, MCA;
IMP: Sec. 82-11-111, 82-11-121, 82-11-123, 82-11-124,
82-11-127, and 82-11-137, MCA.

36.22.1418 EXEMPT AQUIFERS Subsections (1) and (a) remain the same.

(b) is not reasonably expected cannot now and will not in the future to serve as a source of drinking water because:

Subsections (b)(1) through (2) remain the same.

(a) any aquifer or portion of an aquifer exempted by EPA prior to the effective date of these regulations;

(b) any aquifer or portion of an aquifer exempted by the board after the effective date of these regulations subsequently proposed after notice and hearing, provided such exemption is approved by EPA as required in 40 Code of Federal Regulations, Part 144.7(b)(3);

~~(b)(c)~~ any aquifer or portion of an aquifer exempted by the board as a part of a public hearing on an application for an enhanced recovery or area injection permit or other class II well; or

~~(b)(d)~~ any aquifer or portion of an aquifer proposed by the board for exemption as part of the UIC primacy delegation or subsequently proposed after notice and hearing, provided such exemption is approved by EPA.

AUTH: Sec. 82-11-111, MCA;
IMP: Sec. 82-11-111, 82-11-121, 82-11-123, 82-11-124,
82-11-127, and 82-11-137, MCA.

3. All history notes pertaining to UIC effective dates in subchapter 14 will be changed as follows:

~~NEW, 1992 MAR p. 2171, Eff. the day after primary of the UIC program is delegated to the State of Montana by the U.S. Environmental Protection Agency.~~

The rules will now be effective the day after publication of the adoption notice. See further explanation in 5. below.

4. The proposed new rules provide as follows:

RULE I WAIVER OF REQUIREMENT BY PROGRAM DIRECTOR

(1) When injection does not occur into, through, or above an underground source of drinking water, the program director may authorize a well or project with less stringent requirements for area of review, construction, mechanical integrity, operation, monitoring, and reporting than required herein.

(2) When injection occurs through or above an underground source of drinking water, but the radius of endangering influence when computed under rule II is smaller or equal to the radius of the well, the program director may authorize a well or project with less stringent requirements for an area of review, operation, monitoring, and reporting than required herein to the extent that the reduction in requirements will not result in an increased risk of movement of fluids into an underground source of drinking water.

(3) When reducing requirements under (1) or (2) of this rule, the program director shall prepare a fact sheet explaining the reasons for the action.

AUTH: Sec. 82-11-111, MCA;

IMP: Sec. 82-11-111, 82-11-121, 82-11-123, 82-11-124, 82-11-127, and 82-11-137, MCA.

RULE II AREA OF REVIEW (1) The area of review for each injection well or each field, project, or area of the state shall be determined according to either (2) or (3) of this rule unless a variance from these requirements is granted by the board.

(2) The zone of endangering influence shall be:

(a) in the case of application(s) for single well class II permits, that area the radius of which is the lateral distance in which the pressures in the injection zone may cause the migration of the injection and/or formation fluid into an underground source of drinking water; or

(b) in the case of an application for an area permit, the project area plus a circumscribing area the width of which is the lateral distance from the perimeter of the project area, in which the pressures in the injection zone may cause the migration of the injected and/or formation fluid into an underground source of drinking water.

(3) Computation of the zone of endangering influence may be based upon the parameters listed below and should be calculated for an injection time period equal to the expected life of the injection well or pattern. The following modified Theis

equation illustrates one form which the mathematical model may take.

$$r = \left(\frac{2.25KHt}{S10^x} \right)^{1/2}$$

$$x = \frac{4pKH(h_w - h_{bo} \cdot S_p G_b)}{2.3Q}$$

where:

- r = Radius of endangering influence from injection well (length)
- K = Hydraulic conductivity of the injection zone (length/time)
- H = Thickness of the injection zone (length)
- t = Time of injection (time)
- S = Storage coefficient (dimensionless)
- Q = Injection rate (volume/time)
- h_{bo} = Observed original hydrostatic head of injection zone (length) measured from the base of the lowermost underground source of drinking water
- h_w = Hydrostatic head of underground source of drinking water (length) measured from the base of the lowest underground source of drinking water
- $S_p G_b$ = Specific gravity of fluid in the injection zone (dimensionless)
- p = 3.142 (dimensionless)

The above equation is based on the following assumptions:

- (a) The injection zone is homogenous and isotropic;
 - (b) The injection zone has infinite areal extent;
 - (c) The injection well penetrates the entire thickness of the injection zone;
 - (d) The well diameter is infinitesimal compared to "r" when injection time is longer than a few minutes; and
 - (e) The emplacement of fluid into the injection zone creates instantaneous increase in pressure.
- (4) To determine the fixed radius:
- (a) In the case of application(s) for well individual class II permit(s), a fixed radius around the well of not less than one-fourth (1/4) mile may be used.
 - (b) In the case of an application for an area permit, a fixed width of not less than one-fourth (1/4) mile for the circumscribing area may be used.

(c) In determining the fixed radius, the following factors shall be taken into consideration: chemistry of injected and formation fluids; hydrogeology; population and groundwater use and dependence; and historical practices in the area.

(5) If the area of review is determined by a mathematical model pursuant to (3) of this rule, the permissible radius is the result of such calculation even if it is less than one-fourth (1/4) mile.

AUTH: Sec. 82-11-111, MCA;

IMP: Sec. 82-11-111, 82-11-121, 82-11-123, 82-11-124, 82-11-127, and 82-11-137, MCA.

5. Amendment of rules 36.22.1401, 36.22.1410, 36.22.1416, 36.22.1417, and 36.22.1418 is necessary to address EPA concerns expressed in their review of the existing rules, to provide definitions that are more consistent with EPA requirements, and to eliminate redundant notice requirements. Adoption of the new rules are necessary to provide the Board with additional flexibility in determining areas of review and to recognize that in specific circumstances less stringent requirements may be appropriate if there are no USDW's that could be harmed by injection activities. The Board further intends that all rules in subchapter 14 (36.22.1401 et seq.) be effective the day after adoption of the amendments and new rules herein proposed. Currently the existing subchapter 14 rules carry an effective date "the day after" EPA primacy delegation. Since primacy was never delegated, these rules never took effect. The Board intends them to be effective the day after publication of the notice of amendment and adoption. The rules must be in effect on or before the date EPA delegates primacy.

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 Thomas P. Richmond, Administrator, Oil and Gas Conservation Division, 2535 St. John's Avenue, Billings, Montana, 59107, and must be received no later than April 4, 1996.

7. Stanley Lund, Chair, has been designated to preside over and conduct the hearing.

BOARD OF OIL & GAS CONSERVATION

By: *Thomas P. Richmond*
THOMAS P. RICHMOND, ADMINISTRATOR
Don MacIntyre
DON MACINTYRE, RULE REVIEWER

Certified to the Secretary of State on February 27, 1996.

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

In the matter of the)	NOTICE OF PROPOSED
amendment of rule)	AMENDMENT OF RULE
11.14.105 pertaining to)	
licensure of day care)	
facilities)	
)	NO PUBLIC HEARING
)	CONTEMPLATED

TO: All Interested Persons

1. On April 15, 1996, the Department of Public Health and Human Services proposes to amend Rule 11.14.105 pertaining to licensure of day care facilities.

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

11.14.105 DAY CARE FACILITIES, REGISTRATION AND LICENSING PROCEDURES (1) through (5) Remain the same.

(6) The department, after written notice to the applicant, licensee or registrant, may deny, suspend, restrict, revoke or reduce to a provisional status a registration certificate or license upon finding that:

(a) The applicant has not met the requirements for licensure or registration set forth in these rules, and
or

(b) the licensee or registrant has received 3 warnings of non-compliance with the registration or licensing requirements. The requirement of 3 warnings does not apply to revocation, suspension or refusal of a provisional certificate or registration.

(6)(c) through (11) Remain the same.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-731 and 52-2-723, MCA

3. The current versions of (6)(a) and (6)(b) address the denial of applications and revocation, suspension or restriction of existing licenses and registrations. Subsection (6)(a) provides for denial of applications based on the applicant's failure to meet the requirements of the rules. Subsection (6)(b) provides for revocation or suspension upon 3 warnings of noncompliance with the rules' requirements. The department intends, generally, that (6)(a) and (6)(b) maintain differing treatment for denial of an application and suspension, revocation or restriction of an existing registration or license. However, the "and" following (6)(a) implies that the

provisions must be read together. Therefore, the amendment deleting the "and" and replacing it with "or" is reasonably necessary for the interpretation of the provisions as intended by the department.

It has been the experience of the department's licensing workers that existing facilities are a resource to parents and children of Montana communities. If violations can be corrected through warnings, the resource may be preserved. Applicants have not met all requirements, and are not yet operating in the community. Therefore, there should be no entitlement to three warnings. Based on the same rationale, language added at the end of (6)(b) clarifies that provisional registrations and licenses, that are necessarily not approved for full registration or licensure (see (4) of this rule), may be revoked or suspended without 3 warnings.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendment in writing to Laura Harden, Department of Public Health and Human Services, Office of Legal Affairs, Cogswell Building, P.O. Box 202951, Helena, MT 59620-2951, no later than April 4, 1996.

5. If a person who is directly affected by the proposed amendment wishes to express data, views and arguments orally or in writing at a public hearing, that person must make a written request for a public hearing and submit such request, along with any written comments, to Laura Harden, Department of Public Health and Human Services, Legal Unit, Cogswell Building, P.O. Box 4210, Helena, MT 59604-4210, no later than April 4, 1996.

6. If the Department of Public Health and Human Services receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendment, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who are directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than 25 based on the number of individuals affected by rules covering licensure of day care facilities.


Rule Reviewer


Director, Public Health and
Human Services

Certified to the Secretary of State February 26, 1996.

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

In the matter of the amendment of rules 20.14.104 through 20.14.108, and 20.14.110 through 20.14.112 pertaining to mental health nursing care centers	}	NOTICE OF PROPOSED AMENDMENT OF RULES
	}	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On April 8, 1996, the Department of Public Health and Human Services proposes to amend rules 20.14.104 through 20.14.108, and 20.14.110 through 20.14.112 pertaining to mental health nursing care centers.

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

20.14.104 MISSION STATEMENT PURPOSE (1) The Montana mental health nursing care center, a licensed nursing care facility, provides long term care and treatment of persons with mental disorders. The primary function of the center is set forth in 53-21-411, MCA. The center provides a secure unit for persons with alzheimer/dementia. This program provides for persons who do not require the intensity of treatment available at Montana state hospital. (i) The Montana center for the aged is a licensed residential facility for the long term care and treatment of persons 55 years of age or older, who have chronic mental disorders associated with the aging process, and who require a level of care not available in the community, but who cannot benefit from the intensive psychiatric treatment available at Montana state hospital. The center is not established as a transitional mental health facility because of the chronic nature of its residents' mental disorders. However, the center may discharge residents who can function in, or benefit from, community settings.

AUTH: 53-21-402 and 53-21-411, MCA
IMP: 53-21-411, MCA

20.14.105 DEFINITIONS (1) "Mental disorder" means any impairment as defined in 53-21-102, MCA organic, mental, or emotional impairment which has substantial adverse effects on an individual's cognitive or volitional functions.

(2) "Professional person" means a person as defined in 53-21-102(i), MCA.

(3) "Center" means the Montana center for the aged mental health nursing care center.

(4) "Superintendent" means the superintendent of the center for the aged, Montana mental health nursing care center.

AUTH: 53-21-402 and 53-21-411, MCA
IMP: 53-21-411, MCA

20.14.106 ADMISSION CRITERIA (1) Eligibility for admission to the center ~~for the aged~~ is determined without regard to race, color, sex, culture, social origin or condition, political or religious ideas, or ability to pay for the cost of care.

(2) To be eligible for admission on a voluntary basis, a person must:

(a) be 18 years of age;
(b) be diagnosed as having a mental disorder;
(c) require long term nursing care;
(d) exhibit behaviors rendering the person unable to be served appropriately in the community of residence or in a less restrictive setting;

(e) not require acute medical hospital care;
(f) not require active psychiatric treatment as provided by Montana state hospital;

(g) not require the services of a full time psychiatrist;
(h) have received a mental health evaluation and recommendation for admission by a mental health professional person within 60 days prior to application;

(i) be admitted on a voluntary basis through application by the person, a legally appointed guardian or durable power of attorney providing for health care decisions; and

(j) complete a center application for admission.

(3) The following is required for an involuntarily committed person to be admitted to the center from Montana state hospital:

(a) meet voluntary criteria for admission in (2) (a) through (g) of this rule;

(b) notification of the patient, the patient's next of kin, and the Montana disabilities board of visitors pursuant to 53-21-414, MCA.

(4) The final decision for admission remains with the superintendent of the center. Patients referred from Montana state hospital who meet the above criteria will be given priority for admission to the center.

(2) To be eligible for admission a person must:

(a) be in need of long term care;
(b) have a chronic mental disorder associated with the aging process;

(c) be 55 years of age or older; and

(d) meet the following criteria:

(i) The person's mental disorder renders him/her unable to be served appropriately in the community of residence or in services elsewhere in Montana;

(ii) The person does not require acute hospital care, and/or psychiatric treatment as provided by Montana state hospital;

(iii) The person is not in need of active psychiatric treatment as determined by a professional person;

(iv) The person does not require skilled nursing care and is ambulatory or, if confined to a wheelchair, is able to assist in transfer to and from the wheelchair;

(v) The person must have received a comprehensive medical evaluation within 60 days prior to application. The medical evaluation must include a complete blood count, urinalysis, serum multichemistry, thyroid function, chest x-ray, and an EKG;

(vi) The person must have received a mental health evaluation and recommendation for admission by a professional

person within 60 days prior to application;

(vii) ~~The person must not be persistently combative or assaultive;~~

(viii) ~~The person must be admitted on a voluntary basis by self or a legally appointed guardian.~~

(e) ~~Patients referred from Montana state hospital who meet the above criteria will be given priority for admission to the center.~~

AUTH: 53-21-402 and 53-21-411, MCA

IMP: 53-21-411 and 53-21-414, MCA

20.14.107 APPLICATION PROCEDURES (1) To be considered for admission, the applicant, ~~applicant's guardian, or person who has a power of attorney for the applicant,~~ must submit to the superintendent of the center:

(a) a completed admissions packet; and

(b) a medical history including ~~the results of a comprehensive medical evaluation completed no more than 60 days prior to the date of application; and recommendation of a mental health professional.~~

(c) ~~a verification that a mental health evaluation by a professional person has been completed no more than 60 days prior to the date of application.~~

AUTH: 53-21-402 and 53-21-411, MCA

IMP: 53-21-411 and 53-21-414, MCA

20.14.108 ADMISSIONS PROCEDURES (1) The superintendent will review all application materials and determine the applicant's eligibility for admission.

(2) The superintendent ~~or his/her designee~~ will notify the applicant, in writing, of the decision regarding eligibility.

(3) The eligible applicant will be admitted ~~immediately if there is a bed available which is appropriate for a person of the applicant's sex when an appropriate bed is available.~~

(4) If there is no bed immediately available, the applicant will be placed on a waiting list.

(5) Except for priority admissions as described in ARM 20.14.106 the center will admit applicants from the waiting list on the basis of the date of determination of eligibility for admission as beds become available.

(6) through (7) remain the same.

AUTH: 53-21-402 and 53-21-411, MCA

IMP: 53-21-411 and 53-21-414, MCA

20.14.110 TRANSFER AND DISCHARGE CRITERIA (1) The superintendent ~~or his/her designee~~ may authorize the transfer of a center resident to a licensed hospital in a medical emergency without the resident's consent.

(2) The director of ~~institutions public health and human services,~~ may authorize the transfer of a center resident to Montana state hospital for a period not to exceed 10 days.

(3) Residents of the center may be voluntarily admitted to Montana state hospital pursuant to 53-21-111, MCA, or involuntarily committed pursuant to 53-21-114 through 53-21-127, MCA 53-21-128, MCA.

(4) If the patient is currently the subject of an involuntary commitment, the patient may be transferred to Montana state hospital after notification pursuant to 53-21-413, MCA.

(4)(5) A legally competent voluntary resident will be discharged from the center within five (5) days following a written request from the resident. If guardianship or durable power of attorney for the health care of the resident has been established, the written request must be made by the guardian or power of attorney.

(5)(6) The superintendent may also discharge a resident after making proper arrangements if:

(a) the resident consistently displays behavior which violates other residents' rights;

(b) the resident's behavior poses a consistent and/or serious danger to other residents, staff or visitors;

(c) the resident requires specialized care or treatment not available at the center;

(d) the resident is able to function in a setting requiring greater independence;

(e) the resident purposefully refuses to follow rules, regulations and/or prescribed treatment plans. the resident may be served in a less restrictive environment such as a non-specialized nursing home; or

(f) the resident poses a health danger to other residents.

AUTH: 53-21-402, 53-21-411 and 53-21-413, MCA

IMP: 53-21-112, 53-21-113, 53-21-412, and 53-21-413, MCA

20.14.111 APPEAL PROCEDURE (1) Applicants who are denied admission, or residents who are involuntarily discharged may appeal by submitting, in writing, their reasons for appealing the decision to the director of the Department of Institutions, 1539 11th Avenue Public Health and Human Services, 111 N. Sanders, P.O. Box 4210, Helena, MT 59620-4210 prior to discharge or within 30 days of the denial of admission.

(2) The director will respond to the appeal, in writing, within 30 days of receipt of the appeal.

(3) Pending appeal of an involuntary discharge, the patient may be transferred pursuant to ARM 20.14.110 or allowed to remain at the center until the final decision of the director.

AUTH: 53-21-402 and 53-21-411, MCA

IMP: 53-21-411 and 53-21-414, MCA

20.14.112 APPLICATION MATERIALS (1) Application packets are available by writing to:

(a) the superintendent of the Montana Center for the Aged Mental Health Nursing Care Center, 800 Casino Creek Drive, Lewistown, Montana 59457.

AUTH: 53-21-402 and 53-21-411, MCA

IMP: 53-21-411 and 53-21-414, MCA

3. The proposed rule changes are necessary to implement the revisions to Title 53, Chapter 21, Part 4 made by SB 120. SB 120, Chapter 94, Laws of Montana 1995 is an act revising the


name and function of the Montana Center for the Aged and providing criteria for admission and transfer of patients to the Center. The Center's name has been changed to the Montana Mental Health Nursing Care Center. The function of the Center has changed from the care and treatment of persons 55 years of age or older to the care and treatment of persons with mental disorders who require nursing care. Proposed new rules set forth the admission criteria and procedures required by statute. Unnecessary language referring to "designee" has been deleted.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendment in writing to Laura Harden, Department of Public Health and Human Services, Office of Legal Affairs, Cogswell Building, P.O. Box 202951, Helena, MT 59620-2951, no later than April 4, 1996.

5. If a person who is directly affected by the proposed amendment wishes to express data, views and arguments orally in writing at a public hearing, that person must make a written request for a public hearing and submit such request, along with any written comments to Laura Harden, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than April 4, 1996.

6. If the Department of Public Health and Human Services receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendment, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who are directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 20 based on the number of individuals affected by rules covering mental health nursing care centers.


Rule Reviewer


Director, Public Health and
Human Services

Certified to the Secretary of State February 26, 1996.

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

In the Matter of the Proposed)	NOTICE OF PROPOSED AMEND-
Amendment and Repeal of Rules)	MENT OF RULE 38.3.1101 AND
Pertaining to Motor Carriers)	REPEAL OF RULES 38.3.105,
of Property.)	38.3.122, 38.3.202,
)	38.3.203, 38.3.902 THROUGH
)	38.3.919,
)	38.3.1104, 38.3.1304,
)	38.3.1501, 38.3.1601
)	THROUGH 38.3.1603 AND
)	38.3.1901
)	
)	NO PUBLIC HEARING
)	CONTEMPLATED

TO: All Interested Persons

1. On April 11, 1996 the Department of Public Service Regulation proposes to amend and repeal the rules identified in the above title and described in the following paragraphs, all related to motor carriers of property.

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

38.3.1101 TRANSPORTATION OF HOUSEHOLD GOODS (1) Remains the same.

~~(2) Household goods shall be defined as follows: Personal effects and property used or to be used in a dwelling when a part of the equipment or supply of such dwelling, furniture, fixtures, equipment and the property of stores, offices, museums, institutions, hospitals, or other establishments, when a part of the stock, equipment, or supplies of such stores, offices, museums, institutions, hospitals, or other establishments; and articles including objects of art, displays and exhibits, which because of their unusual nature or value require specialized handling and equipment usually employed in moving household goods. Auth: Sec. 69-12-201, MCA; IMP, Sec. 69-12-101, MCA~~

3. The rules proposed for repeal are as follows:

38.3.105 DEFINITION OF VEHICLES DELIVERED BY TRAILAWAY OR TRUCKAWAY The complete text is found at ARM page 38-164. Auth: Sec. 69-12-201, MCA; IMP, Sec. 69-12-101, MCA

38.3.122 BONA FIDE FARMER, RANCHER, OR RAISER OF LIVE-STOCK The complete text is found at ARM page 38-164.1. Auth: Sec. 69-12-201, MCA; IMP, Sec. 69-12-405, MCA

38.3.202 INTERSTATE AND FOREIGN CARRIERS The complete text is found at ARM page 38-165. Auth: Sec. 69-12-201, MCA; IMP, Sec. 69-12-103, MCA

38.3.203 REGISTRATION OF INTRASTATE, INTERSTATE, AND FOREIGN AUTHORITIES The complete text is found at ARM page 38-166. Auth: Sec. 69-12-201, MCA; IMP, Sec. 69-12-103, MCA

38.3.902 DEFINITIONS The complete text is found at ARM page 38-186.25. Auth: Sec. 69-12-201, MCA; IMP, Sec. 69-12-201, MCA

38.3.904 INSURANCE The complete text is found at ARM page 38-186.25. Auth: Sec. 69-12-201, MCA; IMP, Sec. 69-12-402, MCA

38.3.906 SELF-INSURANCE The complete text is found at ARM page 38-186.25. Auth: Sec. 69-12-201, MCA; IMP, Sec. 69-12-402, MCA

38.3.908 ANNUAL PER VEHICLE REGISTRATION The complete text is found at ARM page 38-186.25. Auth: Sec. 69-12-201, MCA; IMP, Sec. 69-12-421, MCA

38.3.910 CARRIER INSURANCE REGISTRATION The complete text is found at ARM page 38-186.35. Auth: Sec. 69-12-201, MCA; IMP, Secs. 69-12-201, 69-12-402 and 69-12-421, MCA

38.3.911 APPLICATION FOR CARRIER INSURANCE REGISTRATION The complete text is found at ARM page 38-186.35. Auth: Sec. 69-12-201, MCA; IMP, Secs. 69-12-201, 69-12-402 and 69-12-421, MCA

38.3.912 CARRIER INSURANCE REGISTRATION FOR EXISTING MOTOR CARRIERS The complete text is found at ARM page 38-186.35. Auth: Sec. 69-12-201, MCA; IMP, Secs. 69-12-201, 69-12-402 and 69-12-421, MCA

38.3.914 MAINTENANCE OF CARRIER INSURANCE REGISTRATION The complete text is found at ARM page 38-186.45. Auth: Sec. 69-12-201, MCA; IMP, Sec. 69-12-201, MCA

38.3.915 RENEWAL OF CARRIER INSURANCE REGISTRATION The complete text is found at ARM page 38-186.45. Auth: Sec. 69-12-201, MCA; IMP, Sec. 69-12-201, MCA

38.3.917 LEASE OF POWER UNITS The complete text is found at ARM page 38-186.45. Auth: Sec. 69-12-201, MCA; IMP, Secs. 69-12-201 and 69-12-611, MCA

38.3.919 TRANSFER OF CARRIER INSURANCE REGISTRATION The complete text is found at ARM page 38-186.45. Auth: Sec. 69-12-201, MCA; IMP, Sec. 69-12-201, MCA

38.3.1104 STATEWIDE AUTHORITY FOR TRANSPORTATION OF BUILDINGS The complete text is found at ARM pages 38-187.15 - 38-187.19. Auth: Sec. 69-12-201, MCA; IMP, Sec. 69-12-331, MCA

38.3.1304 CLASS C CARRIER -- PICKUP AND DELIVERY The complete text is found at ARM page 38-191. Auth: Sec. 69-12-201, MCA; IMP, Sec. 69-12-302, MCA

38.3.1501 "PROPERTY" CERTIFICATES The complete text is found at ARM page 38-192.17. Auth: Sec. 69-12-201, MCA; IMP, Secs. 69-12-101 et seq., MCA

38.3.1601 INTRASTATE MOTOR CARRIERS The complete text is found at ARM page 38-193. Auth: Sec. 69-12-201, MCA; IMP, Secs. 69-12-501 et seq., MCA

38.3.1602 REMITTANCE OF C.O.D. COLLECTION The complete text is found at ARM page 38-193. Auth: Sec. 69-12-201, MCA; IMP, Secs. 69-12-501 et seq., MCA

38.3.1603 SHIPMENT RECORDS The complete text is found at ARM page 38-193. Auth: Sec. 69-12-201, MCA; IMP, Secs. 69-12-501 et seq., MCA

38.3.1901 TRANSPORTATION OF HAZARDOUS MATERIALS The complete text is found at ARM page 38-195. Auth: Sec. 69-12-201, MCA; IMP, Sec. 69-12-201, MCA

4. Rationale: The amendment to 38.3.1101 is reasonably necessary to comply with a Ch. 358, L. 1995, amendment to Sec. 69-12-101(7), MCA, and also the ICC Termination Act of 1995, amending Title 49 USC including the definition of "household goods" at sec. 13102. The repeals are reasonably necessary as the rules are obsolete or otherwise no longer needed as a result of federal preemption of state regulation of motor carriers of property pursuant to the Federal Aviation Administration Authorization Act of 1994 and resulting changes to applicable state law through Ch. 358, L. 1995.

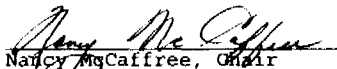
5. Interested parties may submit their data, views or arguments concerning the proposed amendment or repeal in writing (original and 10 copies) to Martin Jacobson, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, no later than April 9, 1996.

6. If a person who is directly affected by the proposed amendment or repeal wishes to express his data, views, and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has (original and 10 copies) to Martin Jacobson, Public Service Commission, 1701

Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, no later than April 9, 1996.

7. If the agency receives requests for a public hearing on the proposed amendment or repeal from either 10% or 25, which ever is less, of the persons who are directly affected by the proposed amendment or repeal; 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 that hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 5 based on an estimate of 50 regulated motor carriers of property.

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


Nancy McCaffree, Chair

CERTIFIED TO THE SECRETARY OF STATE FEBRUARY 26, 1996.


Reviewed By Robin A. McHugh

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the repeal)	CORRECTED NOTICE OF REPEAL
of ARM 4.10.1708 pertaining to))	TO ARM 4.10.1708
Rodenticide Surcharge and)	
Grant rules and compliance)	
of HJR 5)	

TO: All Interested Persons

1. On February 22, 1996, the Department of Agriculture published a notice of the repeal of Rodenticide Surcharge and Grant rules at page 545 of the 1996 Montana Administrative Register, Issue No. 4. The department inadvertently omitted the above mentioned rule. ARM 4.10.1708 is found on page 4-303 of the Administrative Rules of Montana.

AUTH: 80-7-1108 MCA IMP: 80-7-1108 MCA

2. The reason for this correction is to include the above-mentioned rule to complete the repeal of sub-chapter 17.

MONTANA DEPARTMENT OF AGRICULTURE

W. Ralph Peck
by Sandra K. Schenck
W. RALPH PECK
DIRECTOR

Timothy J. Mbloj
TIMOTHY J. MBLOJ
RULE REVIEWER
DEPARTMENT ATTORNEY

Certified to the Secretary of State this 26th day of February, 1996.

BEFORE THE BOARD OF OUTFITTERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment,)	NOTICE OF AMENDMENT, REPEAL
repeal and adoption of rules)	AND ADOPTION OF RULES
pertaining to the outfitting)	PERTAINING TO THE OUTFITTING
industry)	INDUSTRY

TO: All Interested Persons:

1. On November 9, 1995, the Board of Outfitters published a notice of proposed amendment, repeal and adoption of rules pertaining to the outfitting industry, at page 2327, 1995 Montana Administrative Register, issue number 21.

2. The Board voted to retain ARM 8.39.703 in its current form and not adopt the proposed amendments. The Board has amended 8.39.202, 8.39.502, 8.39.505, 8.39.704, repealed 8.39.504, 8.39.509, 8.39.511, 8.39.701, 8.39.702 and 8.39.705 through 8.39.708, and adopted new rules II (8.39.506), III (8.39.418) and V (8.39.507) exactly as proposed. The Board has amended 8.39.508, 8.39.514, 8.39.515 and 8.39.518 and adopted new rule I (8.39.512) and IV (8.39.709) as proposed, but with the following changes: (unless otherwise noted, the authority and implementing sections will remain the same as proposed)

"8.39.508 LICENSURE--RENEWAL (1) through (1)(b) will remain the same as proposed.

(c) a copy of the licensee's current insurance ~~policy~~ certificate (outfitters only);

(d) and (e) will remain the same as proposed.

(2) If an outfitter, guide or professional guide does not submit a completed application with the required fee in accordance with (1) on or before December 31 of each license year for an outfitter or April 1 of each license for a guide or professional guide, he or she shall immediately cease practice until a renewal application is submitted and approved by the board.

(3) will remain the same as proposed.

(4) A guide or professional guide who fails to submit an application for renewal prior to ~~December 31~~ April 1 of each license year shall pay a late renewal fee in addition to the license fee, both specified in ARM 8.39.518, the first time the guide or professional guide seeks relicensure after the date of expiration of the previous license."

"8.39.512 LICENSURE - INACTIVE (1) will remain the same as proposed.

(2) An outfitter may have ~~his~~ a license placed on inactive status for a period not exceeding the remainder of the license year in which the request is made, and may not remain inactive for more than one consecutive licensure year ~~at a time~~ without approval of the board on an annual basis.

(3) will remain the same as proposed."

"8.39.514 LICENSURE - GUIDE OR PROFESSIONAL GUIDE LICENSE

(1) An applicant may apply for a guide or professional guide license on forms provided by the board, and accompanied by the required fee. The application must include a signature of the endorsing outfitter, confirming that, to the knowledge of the outfitter, the guide or professional guide meets all the qualifications of a guide or professional guide. The endorsing outfitter may sign the guide's application for licensure only after the outfitter determines, after inquiry, that the guide or professional guide meets all qualifications of a guide.

(2) and (3) will remain the same as proposed.

(4) When issued, the license shall be mailed to the outfitter retaining or employing the guide or professional guide. After receipt of the license, the endorsing Thereafter, each outfitter who uses the services of the guide during the license year shall confirm that the guide or professional guide meets all the qualifications of a guide or professional guide. If the outfitter determines, after inquiry, that the guide or professional guide meets all qualifications, the outfitter may endorse and sign the guide's license, and, following completion of the guide's service on behalf of the outfitter, shall specify dates on which the guide or professional guide license and shall immediately deliver the license to the guide or professional guide provided service for the outfitter."

Auth: Sec. 37-1-131, 37-47-201, MCA; IMP, Sec. 37-47-201, 37-47-301, 37-47-307, 37-47-309, MCA

"8.39.515 LICENSURE - GUIDE OR PROFESSIONAL GUIDE QUALIFICATIONS (1) through (2) (c) (ii) will remain the same as proposed.

(d) The applicant shall produce, on a form provided by the board, character references letters setting forth relevant dates and experiences from:

- (i) three clients the guide has guided, and
- (ii) three currently licensed guides, one licensed outfitter, and
- (iii) one licensed guide.

(e) and (3) will remain the same as proposed."

"8.39.518 LICENSURE-- FEES FOR OUTFITTER, OPERATIONS PLAN, AND GUIDE OR PROFESSIONAL GUIDE (1) Fees for outfitters, operations plan, guides and professional guides shall be as follows set forth below. All fees are nonrefundable.

(a) new outfitter application and license. This fee includes the following costs, but does not include fees related to operations plan. \$900

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

(b) application for amendment to outfitter license. This fee includes the following costs: 150

(i) and (ii) will remain the same as proposed.

(c) through (e) will remain the same as proposed.

(i) review and processing..... 100

(ii) equipment inspection..... 300

(i) amendments requiring inspection as determined by the board (new equipment)..... 400
(ii) amendments to operations plan with no inspection, but requiring permit or permission review by staff..... 100
(iii) amendments to operations plan with no inspection and no permit or permission review..... 10
(iv) amendments to operations plan proposing an increase in net client hunting use..... 300.
(2) New applicants for an outfitter license shall include, with application for license, payment in the amount of \$900 (this does not include fees related to operation plan), which shall be nonrefundable.
(3) Applicants for amendment to license shall include, with application for amendment, payment in the amount of \$150.
(4) Applicants for amendment to operations plan shall include, with application for amendment, payment in the amount of \$400, \$300 of which shall be refunded if the board determines that the application does not propose an increase in the outfitter's net client hunting use."

"8.39.709 STANDARDS FOR OUTFITTERS, GUIDES, AND PROFESSIONAL GUIDES - UNPROFESSIONAL CONDUCT AND MISCONDUCT

(1) through (1)(e) will remain the same as proposed.
(f) furnish each client with a current and complete rate schedule, which shall include all charges, and the mode of payment acceptable, a deposit policy, and deposit refund policy, all in writing, for services offered;
(g) through (3)(j) will remain the same as proposed.
(k) produce their current license at the demand request of a representative of the board;
(l) through (o) will remain the same as proposed."

3. The Board has thoroughly considered all comments and testimony received. Those comments and the Board's responses thereto are as follows:

8.39.502 LICENSURE--OUTFITTER QUALIFICATIONS

COMMENT: One comment was received in support of the rule as proposed. One comment was received against allowing guiding in a state other than Montana to count toward the experience requirement. The comment states the need to be experienced in Montana's unique terrain and suggested that the differences between eastern and western Montana may even require experience specific to the region. One comment opposed the waiver given to persons completing guide schools because schools don't necessarily ensure good outfitters. One comment was received that "game" in (1)(a) was ambiguous.

RESPONSE: The Board rejects the comment to allow guiding in another state to count as experience because basic knowledge gained in guiding is transferrable. The fact that an applicant gained experience in another state does not necessarily mean that the terrain or species hunted was different. The Board rejects the comment opposing guide school waivers on the basis

that the Board has authority to approve guide schools and that completion of the curriculum is an additional form of experience. The Board rejects the comment that "game" is ambiguous because the term is all inclusive in its reference to species for which hunting or fishing licenses are issued.

8.39.505 LICENSURE--OUTFITTER APPLICATION

COMMENT: One comment was received in support of the rule as proposed. One comment was received that (2)(b) was ambiguous in its reference to "guidelines."

RESPONSE: The Board rejects the comment regarding ambiguity because the rule refers to the guidelines set forth in (new rule I). Because the guidelines are extensive, reference to the new rule is sufficient.

8.39.508 LICENSURE--RENEWAL

COMMENT: One comment was received in support of the rule as proposed with regard to outfitters. With regard to guides, three comments were received that outfitters who pay for guides' licenses do not know how many clients they will serve prior to December 31 and therefore, will not know how many guides to license. A later renewal date in May or June was suggested for guides. One comment was received in regard to (1)(c) that the board should require an insurance certificate rather than a policy because the policy may encompass too numerous pages.

RESPONSE: The Board accepts the comments on guide renewal and voted to amend the proposed rule to provide for an April 1 renewal date for guides. The Board accepts the comment with regard to insurance certificates and voted to amend the rule to require an insurance certificate rather than an insurance policy.

8.39.514 LICENSURE--GUIDE OR PROFESSIONAL GUIDE LICENSE

COMMENT: One comment was received that the rule as proposed was "too stringent." One comment was received that 37-47-309, MCA could not be an implementing statute because it had been repealed. One comment urged to strike (4) and amend (1) to read "An applicant may apply for a guide's license on forms provided by the board, accompanied by the fee and signed by the employing outfitter," and argues that one should be able to license a guide at the moment the signed and completed application is dropped in the mail box. The proposed rule is "backwards" because it requires the endorsing outfitter to confirm that the guide meets qualifications after the application is made and the license issued.

RESPONSE: The Board rejects the comment regarding the rule being too stringent as lacking specificity. The Board accepts the comment that the implementing section 37-47-309 has been repealed. The Board rejects the comment to strike (4) and amend (1) as suggested; however, the Board accepts the

remainder of the comment criticizing the requirement that the outfitter verify the guide qualifications after the license is issued. The Board therefore has amended (1) to include language previously placed under (4). With the change, however, the Board believes it necessary to mandate each retaining or employing outfitter to sign the guide's license and provide dates of service of the guide in order to document for whom the guide is working during a specified time during the season. This will help the Board avoid assigning responsibility for the guide's actions to the wrong outfitter in the case of a violation by the guide.

8.39.515 LICENSURE--GUIDE OR PROFESSIONAL GUIDE QUALIFICATIONS

COMMENT: One comment was received that (2)(d)(ii) may limit those guides who have little or no field contact with other guides. One comment criticized the rule as lacking a nexus between standards and public protection -- that the 300 days merely set a three to five year time barrier and that the references required do not mention standards or behavior. The comment did support the continuing education requirement as a "good start." One comment was received that the rule was "too stringent." One comment was received that (2)(d)(ii) should require the employer to evaluate the applicant, and not fellow employees. One comment stated that the option of requiring one season of hunting experience or having worked for an outfitter for six weeks is nonsensical. The comment continued that experiences other than hunting and fishing (backpacking) should be deemed as qualifying experience. One comment suggested that 15 hours of training was too open-ended and provided little or no guidance to applicants.

RESPONSE: The Board accepts the first comment and amends (2)(d)(ii) to read: "One licensed outfitter and one licensed guide." The Board rejected the second comment based on the requirement that an applicant for professional guide who has had no disciplinary action taken against his or her guide's license and the fact that the professional guide will continue to be endorsed by an outfitter as sufficient to provide protection of the public. The Board rejected the comment that the rule was too stringent for lack of specificity. The Board accepted the comment that required an employer to evaluate the applicant as reflected by the amendment to (2)(d)(ii). The Board voted to amend (2)(d) to assist employers in evaluating an applicant. The Board rejects the comment that the alternative experience allowed under (1)(a) doesn't make sense because this language was not proposed for change in this rule notice. The Board rejected the comment to allow experience other than hunting and fishing as hunting and fishing experience are integral parts of being a hunting or fishing guide. The Board rejected the final comment regarding the 15 hours of training as the proposed rule requires the Board to approve topics submitted for education.

8.39.518 LICENSURE--FEES FOR OUTFITTER, OPERATIONS PLAN, AND GUIDE OR PROFESSIONAL GUIDE

COMMENT: Two comments were received that (1)(iv) should be \$235 and not \$200. Two comments were received regarding (1)(e)(i) and (ii) which suggested that the amendment of an operations plan lacked definition and resulted in unfairly requiring submission of \$400 when perhaps only \$100 was actually needed.

RESPONSE: The fee set forth in (1)(iv) is correct at \$200. The Board notes that the comment may have confused the renewal fee for outfitters which had recently been changed to \$235. The Board accepted the comments regarding the operations plan lacking definition and amended the rule accordingly.

8.39.703 OUTFITTER RECORDS

COMMENT: Three comments were received in opposition to the proposed changes based on the need for criminal investigative authorities to access this information in a timely manner. The comments questioned the role and identity of the screening panel. One comment suggested that the rule be deleted because the Board did not need these records.

RESPONSE: The Board rejects the comment suggesting that the rule be deleted in its entirety as the records are essential in determining whether an outfitter is in compliance with Board law and rule. However, the Board accepts the comments in opposition and voted to retain the rule in its current form without the proposed amendments.

8.39.704 SAFETY PROVISIONS

COMMENT: One comment was received in support of the rule as proposed. One comment was received in opposition because of the hardship on persons living in rural areas to obtain first aid training.

RESPONSE: The board rejects the comment in opposition because the 90-day waiver for first time applicants is sufficient time to receive training. Further, first aid training is a minimum requirement for licensure regardless of the location of an individual license applicant.

New Rule I (8.39.512) LICENSURE--INACTIVE

COMMENT: Two comments were received in opposition to the rule and cite various reasons why a licensee may want to extend inactive status beyond one year: returning to school, being called to active military duty, poor health, or personal/family reasons. One comment was received in support of the rule.

RESPONSE: The Board accepts the comment regarding the extension of inactive status beyond one year for good cause and voted to amend the rule accordingly.

New Rule III (8.39.418) INSPECTION

COMMENT: One comment was received expressing concern over the stated justification of "reasonable time" for the purpose to "periodically examine." The comment supports inspections if there is a substantial change in the operations plan, sale or transfer of a business, or investigation of legitimate complaints.

RESPONSE: The Board acknowledges the comment, but voted to adopt the rule as proposed as necessary to protect the public health, safety and welfare.

New Rule IV (8.39.709) STANDARDS FOR OUTFITTERS, GUIDES, AND PROFESSIONAL GUIDES - UNPROFESSIONAL CONDUCT AND MISCONDUCT

COMMENT: One comment was received regarding "supervision" language used in (1)(b) and (c) in that it is not appropriate to supervise independent contractors and makes the point that to "obtain and maintain a reasonable degree of supervision" contradicts independent contractor status. Similarly in (2)(a) the words "and supervising" should be deleted and in (2)(b) changed to "endorsing."

One comment suggested that the words "wherever appropriate" be added to (1)(g) due to the replacement of the drawing by the variable-priced license scheme, even though acknowledging that clients do continue to draw special licenses.

Two comments were received regarding (1)(f); one that "mode of payment acceptable" was an unnecessary refinement of (i) and the other that requiring the insertion of that language is a new addition and would cause outfitters to have to destroy their current informational brochures.

One comment suggests that wording in (1)(m) be changed to read "insure that the services offered by the outfitter which are provided by a guide or professional guide are being provided in accordance with the laws and rules, with particular regard to those laws and rules pertaining to the health, safety, and welfare of the participants, the public and landowner."

One comment proposed to delete (2)(d) for the reason that guides should not be allowed to advertise directly to the public as it is difficult to enforce. The examples given in the comment include an out-of-state guide advertising services in Montana and hiring a guide to work a river far from an outfitter's normal area of operation.

Two comments were received regarding (3)(i) expressing concern that "harass and abuse" is too broad and could be used to punish outfitters who sometimes need to speak abruptly to clients in emergency situations.

One comment was received that (3)(k) should be amended to "request" licenses rather than "demand" them.

One comment was received that (3)(m) was too vague.

RESPONSE: The Board rejects the first comment because, although supervision is an indication of an employer/employee

relationship, it is still necessary that outfitters maintain a reasonable degree of supervision over their guides regardless of their employment relationship. The supervision required is not to assess how the guides perform their duties, but rather, whether they are in compliance with board laws and rules.

The Board rejects the next comment in regard to (1)(g) because of the fact that clients do continue to draw special licenses.

The Board accepts the two comments received regarding (1)(f) and accordingly voted to delete the words "mode of payment acceptable," noting that this was addressed in (i).

The Board rejects the comment regarding (1)(m). The Board notes that the comment accompanied the previous comment regarding the employee/employer relationship, and that in substance the proposed language in the comment and the proposed rule as published are the same.

In response to the comment regarding (2)(d), the Board rejects the comment as a prohibition on advertising would infringe on a licensee's right to commercial free speech. Nothing prohibits an out-of-state guide from advertising in Montana, as long as the guide is licensed to provide services in Montana under a licensed Montana outfitter. The second example cited supports the notion that an outfitter maintain a reasonable degree of supervision over a guide.

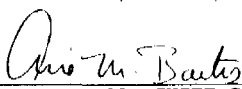
The Board rejects the comment regarding (3)(i) as it believes that speaking abruptly with a client would not be considered harassment or abuse.

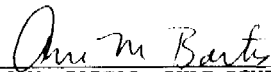
In response to the comment regarding (3)(k), the Board accepts the comment and voted to amend the rule accordingly.

The Board rejected the comment regarding (3)(m) in the event an outfitter or guide is requested to provide his or her license to a representative of the Board and was unable to do so, any ticket issued for unlicensed practice could be defended once it was proven that the individual cited did, in fact, hold a current license.

BOARD OF OUTFITTERS
O. KURT HUGHES, CHAIRMAN

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, February 26, 1996.

BEFORE THE BUILDING CODES BUREAU
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the emergency) NOTICE OF EMERGENCY AMENDMENT
amendment of a rule pertaining)
to building permit fees)

TO: All Interested Persons:

1. On February 9, 1996, the 1994 edition of the Uniform Building Code was incorporated by reference into the State Building Code under ARM 8.70.101(1). Table No. 1-A, the building permit fee schedule, of the 1994 edition of the Uniform Building Code requires building permit fees which are considerably greater than the fees set forth in the Table No. 3-A of the previously repealed 1991 edition of the Uniform Building Code. Because the increased building permit fees allowed under the 1994 edition of the Uniform Building Code will exceed the administration and enforcement costs of the State's building code program; because excess revenues are continuing; and because the statewide building boom is still underway, the Department of Commerce hereby amends Mont. ARM 8.70.101(1)(d) to repeal the building permit fee schedule of Table No. 1-A of the 1994 edition of the Uniform Building Code and replace it with the building permit fee schedule which appears in Table No. 3-A of the 1991 edition of the Uniform Building Code. In addition, the Department of Commerce hereby amends ARM 8.70.101(1)(d) to extend the temporary building permit fee reduction of 15 percent, which expires on June 30, 1996, until June 30, 1997. The rationale for extending the temporary building permit fee reduction is identical to the Department's rationale for restoring the building permit fee schedule set forth in Table No. 3-A of the 1991 edition of the Uniform Building Code.
2. These amendments will become effective February 15, 1996.
3. The text of the emergency amendment will read as follows: (new matter underlined, deleted matter interlined)

"8.70.101 INCORPORATION BY REFERENCE OF UNIFORM BUILDING CODE (1)(a) through (1)(c) will remain the same.

(d) Subsections 107.2 and 107.3 of section 107 of the Uniform Building Code, 1994 Edition, are amended to read as follows:

Subsection 107.2 Permit fees. The fee for each permit shall be as set forth in Table No. 3-A of the Uniform Building Code, 1991 Edition.

Subsection 107.3 Plan review fees. When submittal documents are required by Section 106.3.2, a plan review fee shall be paid. Said plan review fee shall be 25 percent 1 of the building permit fee as set forth in Table No. 3-A of the Uniform Building Code, 1991 Edition. When only plan review services are provided, the plan review fee shall be 65% of the building permit fee as set forth in Table No. 3-A of the

Uniform Building Code, 1991 Edition.

The determination of value or valuation under any of the provisions of this code shall be made by the building official. The value to be used in computing the building permit and building plan review fees shall be the total value of all construction work for which the permit is issued as well as all finish work, painting, roofing, electrical, plumbing, heating, air conditioning, elevators, fire-extinguishing systems and any other permanent equipment. Whenever the building official is the state of Montana, acting through the department of commerce, building codes bureau, the value or valuation of a building or structure under any of the provisions of this code will be determined using the cost per square foot method of valuation and the cost per square foot figures for the type and quality of construction listed in the most current "Building Valuation Data" table published by "International Conference of Building Officials Building Standards" magazine, the trade magazine published by the international conference of building officials, as modified by the regional modifiers set forth in said "Building Valuation Data" table. The building codes bureau may, for public buildings or projects that exceed \$25,000 in building value, use firm bids for establishing the building valuation as an alternative to using "Building Valuation Data" table when such bids include all construction work associated with the building as described earlier in this section and the bidding process is determined as having been open and competitive. Valuation of projects may also be based on firm total project contract amounts if the entire project is contracted and such contracts cover all construction work associated with the building as described earlier in this section, provided this contracted valuation is less than 75% of the valuation as determined by use of "Building Valuation Data" table. Valuation of remodel and/or addition projects, where use of "Building Valuation Data" table is not appropriate, will be based on use of typical and reasonable construction costs. When only plan review fees are charged, the building valuation for determining fees will be based on the design professional's preliminary cost estimate, if such estimate is available or "Building Valuation Data" table, if such estimate is not available. For purposes of calculation of fees, the building valuation shall be rounded off to the nearest \$1,000 and any calculated building and plan review fees shall be rounded off to the nearest \$1. As provided in ARM 8.70.208, local governments certified to enforce the state building code may establish their own permit fees. Local governments may also establish their own method of building valuation. During the period ending on June 30, 1996 1997, the building permit fee above shall be reduced to a sum equal to 85% of the sum calculated above and no plan review fee shall be applied, except where plan review services only are provided the plan review fee shall remain 65% of the building permit fee as set forth in Table No. A-1-A of the Uniform Building Code, 1991 Edition.

(1)(e) through (30) will remain the same."

Auth: Sec. 50-60-104, 50-60-203, MCA; IMP, Sec. 50-60-103, 50-60-104, 50-60-108, 50-60-109, 50-60-201, 50-60-203, MCA


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

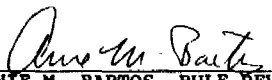
5. A standard rulemaking procedure will be undertaken prior to the expiration of this emergency rule.

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 Building Codes Bureau, 1218 East 6th Avenue, P.O. Box 200517, Helena, Montana 59620-0517.

BUILDING CODES BUREAU
JAMES F. BROWN, CHIEF

BY:


ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, February 15, 1996.

TO: All Interested Persons:

- BY:

ANNIE M. BARTOS, RULE REVIEWER

5-3/7/96

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

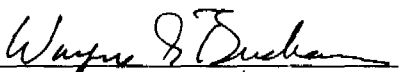
In the matter of the) NOTICE OF AMENDMENT OF
amendment of Teacher) ARM 10.57.211
Certification) TEST FOR CERTIFICATION

To: All Interested Persons

1. On November 26, 1995, the Board of Public Education published a notice of proposed amendment concerning ARM 10.57.211 Test for Certification at page 2457 of the Montana Administration Register, Issue number 22.

2. The board has adopted ARM 10.57.211 as proposed and published in Montana Administrative Register Issue 22.

3. No comments were received.


Wayne Buchanan, Executive Secretary
Board of Public Education

Certified to the Secretary of State on February 21, 1996.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

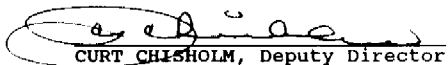
In the matter of the transfer of)
rules 16.40.101 through 16.40.1103,) CORRECTED
pertaining to radiation control,) NOTICE OF TRANSFER
and 16.42.101 through 16.42.405)
pertaining to occupational health,)
with the exception of any repealed)
rules.)
(Occupational Health)

To: All Interested Persons


1. On February 8, 1996, in the Montana Administrative Register, Issue No. 3, page 433, the department issued a Notice of Transfer for the above-referenced rules. The following two rules were incorrectly omitted in that Notice and need to be added to the list of rules being transferred.

2. The Department of Environmental Quality has determined that the omitted rules will be numbered as follows:

OLD	NEW	
16.40.805	<u>17.70.805</u>	Operating Requirements
16.40.806	<u>17.70.806</u>	Personnel Requirements


CURT CHISHOLM, Deputy Director

Reviewed by:


JOHN F. NORTH, Rule Reviewer

Certified to the Secretary of State February 26, 1996.

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

In the matter of the
amendment of rule 16.32.399K
pertaining to utilization
review in medical assistance
facilities

NOTICE OF AMENDMENT

TO: All Interested Persons

1. On January 25, 1996, the Department of Public Health and Human Services published notice of the proposed amendment of rule 16.32.399K pertaining to utilization review in medical assistance facilities at page 234 of the 1996 Montana Administrative Register, issue number 2.
2. The Department has amended rule 16.32.399K as proposed.
3. No written comments or testimony were received.

Dan S. Shira
Rule Reviewer

Pat S. Black
Director, Public Health and
Human Services

Certified to the Secretary of State February 26, 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.

GENERAL PROVISIONS, Title 1

- 1.2.419 Filing, Compiling, Printer Pickup and Publication of the Montana Administrative Register, p. 2239, 2694

ADMINISTRATION, Department of, Title 2

- I and other rules - State Purchasing, p. 1371, 1788
2.5.118 and other rules - State Purchasing, p. 1723, 2241
2.5.403 Application of Preferences to Contracts Involving Federal Funds in State Purchasing, p. 1466, 1931
2.11.101 and other rule - Solicitation - Access Limitations, p. 1, 544
2.21.507 Jury Duty and Witness Leave, p. 2313, 131
2.21.1101 and other rules - The Education and Training Policy, p. 2317, 132
2.21.1601 and other rules - The Alternate Work Schedules Policy, p. 2321, 134
2.21.1711 and other rule - Overtime and Nonexempt Compensatory Time, p. 2544, 404

- 2.21.1802 and other rules - Exempt Compensatory Time, p. 2546, 405
- 2.21.3006 Decedent's Warrants, p. 2319, 136
- 2.21.3703 and other rules - Recruitment and Selection, p. 2553, 406
- 2.21.3901 and other rules - The Employee Exchange/Loan Policy, p. 2315, 137
- 2.21.4906 and other rules - The Moving and Relocation Expenses Policy, p. 2311, 139
- 2.21.5006 and other rules - Reduction in Work Force, p. 2548, 407

(Public Employees' Retirement Board)

- I Service Purchases by Inactive Vested Members, p. 1721, 2386
- I-III Mailing Information on Behalf of Non-profit Organizations, p. 727, 1318
- 2.43.411 and other rules - Service in the National Guard - Job Sharing - Retirement Incentive Program, p. 2323, 408
- 2.43.418 Accrual of Membership Service - Service Credit for Elected Officials, p. 733, 1319
- 2.43.432 Purchase of Additional Service in the Retirement Systems Administered by the Board, p. 516, 1033
- 2.43.451 and other rule - Purchase of Service for Members who are Involuntarily Terminated after January 1, 1995 but before July 1, 1997 - Limitations on Their Return to Employment within the Jurisdiction, p. 730, 1320
- 2.43.606 Conversion of an Optional Retirement Upon Death or Divorce from the Contingent Annuitant, p. 1289, 1791
- 2.43.808 Mailing Information on Behalf of Non-profit Organizations, p. 481

(Teachers' Retirement Board)

- 2.44.301A and other rules - Creditable Service for Members after July 1, 1989 - Calculation of Age - Installment Purchase - Value of Housing - Direct Transfer or Rollover - Reporting of Termination Pay - Payment for Service--Calculation of Retirement Benefits - Definitions - Membership of Teacher's Aides and Part-time Instructors - Transfer of Service Credit from the Public Employees' Retirement System - Eligibility Under Mid-term Retirements - Computation of Average Final Compensation - Adjustment of Benefits - Limit on Earned Compensation - Adjustment of Disability Allowance for Outside Earnings - Membership of Part-time and Federally Paid Employees - Interest on Non-payment for Additional Credits - Purchase of Credit During Exempt Period - Calculation of Annual Benefit Adjustment - Eligibility for Annual Benefit Adjustment, p. 977, 2122

(State Compensation Insurance Fund)

- I and other rule - Policy Charge - Minimum Yearly Premium, p. 1067, 1792
- I and other rule - Temporary - Policy Charge - Minimum Yearly Premium, p. 516, 922
- 2.55.321 and other rules - Premium Rate Setting, p. 2558, 410

AGRICULTURE, Department of, Title 4

- I and other rule - Spread of Late Blight Disease of Potatoes - Civil Penalties - Matrix, p. 3
- I and other rule - Incorporation by Reference of Model Feed and Pet Food Regulations, p. 243, 1321, 2126
- I-IV Importation of Mint Plants and Equipment into Montana, p. 422, 1323
- 4.3.401 and other rules - Registration Requirements - Applicator Classifications and Requirements - Student Loans - Wheat and Barley Food and Fuel Grants - Restriction of Pesticide Rules - Endrin - 1080 Livestock Protection Collars - Registration and Use of M-44 Sodium Cyanide Capsules and M-44 Devices - Rodenticide Surcharge and Grants - Montana Agricultural Loan Authority - Agriculture Incubator Program, p. 2714, 545
- 4.12.1221 and other rules - Alfalfa Leaf-Cutting Bees - Registration - Fees - Standards - Certification - Sale of Bees, p. 1292, 1793
- 4.12.1428 Assessment Fees on All Produce, p. 2712, 546
- 4.12.3402 Seed Laboratory Analysis Fees, p. 2084, 262

STATE AUDITOR, Title 6

- I Supervision, Rehabilitation and Liquidation of State Regulated Employer Groups, p. 1470, 2134, 2468
- I-IV Long Term Care - Standards for Marketing - Appropriate Sale Criteria - Nonforfeiture Requirements - Forms, p. 1729, 2242, 143
- I-V Regulation of Managed Care Community Networks, p. 1819, 2675
- I-VIII Standardized Health Claim Forms, p. 3060, 923
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