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OF MONTANA

MONTANA ADMINISTRATIVE REGISTER

**DOES NOT
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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 18

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

Page Number

TABLE OF CONTENTS

NOTICE SECTION

STATE AUDITOR, Title 6

6-98 Notice of Public Hearing on Proposed
Amendment - Accreditation Fees. 1623-1624

COMMERCE, Department of, Title 8

8-18-21 (State Electrical Board) Notice of
Proposed Amendment - Applications - General
Responsibilities - Screening Panel. No Public
Hearing Contemplated. 1625-1627

8-40-42 (Board of Pharmacy) Notice of Proposed
Amendment - Fees - Internship Regulations -
Pharmacy Technicians. No Public Hearing
Contemplated. 1628-1632

8-64-22 (Board of Veterinary Medicine) Notice of
Proposed Amendment and Adoption - Definitions -
Application Requirements - Temporary Permits -
Support Personnel. No Public Hearing Contemplated. 1633-1635

ENVIRONMENTAL QUALITY, Department of, Title 17

(Board of Environmental Review)

17-055 Water Quality - Supplemental Notice -
Temporary Water Standards for Daisy Creek,
Stillwater River, Fisher Creek, and the Clark's
Fork of the Yellowstone River. 1636-1637

TRANSPORTATION, Department of, Title 18

18-84 Notice of Proposed Amendment - Motor Carrier Services Program. No Public Hearing Contemplated. 1638-1640

LIVESTOCK, Department of, Title 32

(Board of Livestock)

32-3-138 Notice of Proposed Amendment - Brucellosis Vaccination(s). No Public Hearing Contemplated. 1641-1642

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

36-12-59 Notice of Proposed Adoption and Amendment - Extensions of Time to Complete a Water Use Permit or Change Authorization - Application and Special Fees. No Public Hearing Contemplated. 1643-1645

36-22-60 (Board of Oil and Gas Conservation) Notice of Proposed Amendment - Well Plugging Requirement - Plugging and Restoration Bond - Financial Responsibility. No Public Hearing Contemplated. 1646-1648

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-76 Notice of Public Hearing on Proposed Amendment - Low Income Energy Assistance. 1649-1653

REVENUE, Department of, Title 42

42-2-614 Notice of Public Hearing on Proposed Adoption - Restaurant Beer/Wine License Lottery Process. 1654-1659

RULE SECTION

ADMINISTRATION, Department of, Title 2

(Public Employees' Retirement Board)

AMD Review of and Administrative Decision - Service Credit for Compensated Hours - Granting of Service Credit and Membership Service as the Result of Court Action. 1660-1661

Page Number

LIVESTOCK, Department of, Title 32

(Board of Milk Control)

AMD Quota Rules.
NEW 1662

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

AMD Model Rate Matrix Used to Determine Foster
Care Maintenance Payments. 1663

AMD Qualifications of Child Care Staff, Foster
Parents, and Regular Members of Foster
Parents' Households. 1664

REP Fee Schedule for Audiology Services. 1665

INTERPRETATION SECTION

Before the Department of Commerce, Board of Funeral
Service.

Declaratory Ruling.

In the Matter of the Petition for Declaratory
Ruling on the Applicability of Section
37-19-101(13) and 37-19-301, MCA, to Seven Funeral
Homes' Pre-need Funeral Arrangement Program in 1666-1668
Montana.

SPECIAL NOTICE AND TABLE SECTION

Functions of the Administrative Code Committee. 1669

How to Use ARM and MAR. 1670

Accumulative Table. 1671-1679

Boards and Councils Appointees. 1680-1684

Vacancies on Boards and Councils. 1685-1690

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

In the matter of the	)	NOTICE OF PUBLIC HEARING ON
proposed amendment of Rule	)	PROPOSED AMENDMENT
6.6.4101 pertaining to)	
accreditation fees.)	
)	

TO: All Interested Persons

1. On October 15, 1997, at 9:00 a.m., a public hearing will be held in the conference room of the State Auditor's Office, Room 270, Mitchell Building, 126 North Sanders, Helena, Montana, to consider the amendment of Rule 6.6.4101 pertaining to accreditation fees.

2. The proposed amendment provides as follows (new text is underlined; text to be deleted is interlined):

6.6.4101 ACCREDITATION FEES (1) The annual accreditation fee to be paid by each domestic and foreign insurer for annual continuation of certificates of authority is ~~\$200-00~~\$275.00.

(2) Remains the same.

AUTH: 33-1-313 and 33-2-708, MCA
IMP: 33-2-708, MCA

3. This proposed rule amendment is necessary because the 1997 legislature directed the State Auditor's Office to increase fees to a level that would adequately fund the Insurance Program's operations. The legislature increased the State Auditor's Office Insurance Program's state special revenue appropriations by \$447,293 over the previous biennium. Using the fiscal year 1998 beginning balance of the Insurance Fee Account, a \$75 increase in the accreditation fee in fiscal years 1998-99 would enable the Insurance Program to collect sufficient fees to fund its operations. Without the proposed increase, the program would not have adequate revenue to meet the level appropriated by the legislature.

4. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to John Huth, State Auditor's Office, P.O. Box 4009, Helena, Montana 59604-4009 and must be received no later than October 20, 1997.

5. The State Auditor's Office will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you require an

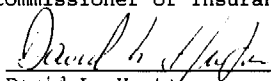
accommodation, contact the office no later than 5:00 p.m., October 6, 1997, to advise us as to the nature of the accommodation needed. Please contact John Huth, State Auditor's Office, P.O. Box 4009, Helena, Montana 59604-4009.

6. John Huth has been designated to preside over and conduct the hearing.

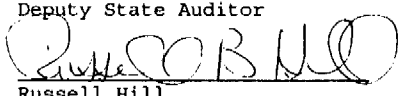
7. The State Auditor's Office maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies whether the person wishes to receive notices regarding insurance rules, securities rules, or both. Such written request may be mailed or delivered to the State Auditor's Office, P.O. Box 4009, Helena, MT 59604, faxed to the office at 406-444-3497, or may be made by completing a request form at any rules hearing held by the State Auditor's Office.

MARK O'KEEFE, State Auditor
and Commissioner of Insurance

By:


David L. Hunter
Deputy State Auditor

By:


Russell Hill
Rules Reviewer

Certified to the Secretary of State this 8th day of September, 1997.

BEFORE THE STATE ELECTRICAL BOARD
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to applications, general responsibilities and screening panel)	NOTICE OF PROPOSED AMENDMENT OF 8.18.402 APPLICATIONS, 8.18.403 GENERAL RESPONSIBILITIES, 8.18.409 CONTINUING EDUCATION AND 8.18.412 SCREENING PANEL
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NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On October 22, 1997, the State Electrical Board proposes to amend the above-stated rules.
2. The proposed amendments will read as follows: (new matter underlined, deleted matter interlined)

"8.18.402 APPLICATIONS (1) through (2)(b) will remain the same.

~~(c) contractor bond for wages and benefits as provided under 37-3-703, MCA.~~

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

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

REASON: The proposed amendment will delete reference to a bond requirement, as 37-3-703, MCA, was repealed by the 1997 legislature, and a bond is no longer therefore required.

"8.18.403 GENERAL RESPONSIBILITIES (1) through (3) will remain the same.

(a) When the contracting company is without any active permits, the responsible master electrician is not deemed to be engaged in "full-time employment" for the electrical contractor, and may therefore work for himself or another electrical contractor.

(b) The responsible master electrician must notify the board office of the "no active permit" status before undertaking outside electrical work as allowed above.

(4) will remain the same.

(a) When the limited contracting company is without any active permits, the responsible master or journeyman electrician is not deemed to be engaged in "full-time employment" for the limited electrical contractor, and may therefore work for himself or another electrical contractor.

(b) The responsible master or journeyman electrician must notify the board office of the "no active permits" status before undertaking outside electrical work as allowed above.

(5) through (13) will remain the same."

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

REASON: The proposed amendment will clarify the phrase "full-time employment" as used in the rule, as many licensees have questioned their outside employment options in light of the rule. The intent of the "full-time" language in (3) and (4) is to insure that public safety is protected from the possibility of a licensed electrician, in responsible charge of a company's work, becoming unfamiliar with the work being performed or the licensed people performing it. The intent of the language is not to limit or control where a person works or how many specific hours an individual works. The intent is to protect the quality of the work.

"8.18.409 CONTINUING EDUCATION (1) Each master, journeyman, and residential electrician license shall not be renewed unless the continuing education requirements imposed by this rule have been met, prior to a July 15th renewal date. Any licensee who fails to fulfill the continuing education requirements, imposed by this rule, by the August 15th following a July 15th renewal date, shall be required to remit all applicable fees and re-examine for licensure cause the license to lapse. It is unlawful for a person whose license has lapsed to perform electrical work in this state. For reinstatement after August 15th and before July 15th of the next year, the applicant shall have completed the continuing education requirements, certified that fact to the board, and met all other renewal requirements.

(2) through (2)(j)(viii) will remain the same."

Auth: Sec. 37-1-131, 37-1-312, 37-68-201, MCA; IMP, Sec. 37-1-306, 37-68-201, MCA

REASON: The proposed amendment will clarify the licensure status of a licensee who fails to submit continuing education with the required renewal. The amendment will also set forth the procedure for reinstatement after failure to comply with continuing education requirements, as this procedure had not previously been contained in the rules.

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

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

REASON: The proposed rule change will expand the screening panel to two board members, to allow for greater input and discussion at the initial screening stage of consideration of complaints. Additionally, industry members had suggested this change to benefit all involved in the complaint process.

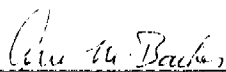
3. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the State Electrical Board, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., October 20, 1997.

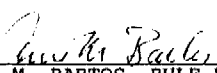
4. If a person who is directly affected by the proposed amendments wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the State Electrical Board, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., October 20, 1997.

5. If the Board receives requests for a public hearing on the proposed amendments from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendments, 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 336 based on the 3366 licensees in Montana.

STATE ELECTRICAL BOARD
CHARLES T. SWEET, CHAIRMAN

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, September 8, 1997.

BEFORE THE BOARD OF PHARMACY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of rules pertaining) OF RULES PERTAINING TO FEES,
to fees, internship regulations) INTERNSHIP REGULATIONS AND
and pharmacy technicians) PHARMACY TECHNICIANS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On October 22, 1997, the Board of Pharmacy proposes to amend rules pertaining to fees, internship regulations and pharmacy technicians.

2. The proposed amendment of ARM 8.40.404, 8.40.901, through 8.40.904, 8.40.906, 8.40.1303 and 8.40.1308 will read as follows: (new matter underlined, deleted matter interlined)

"8.40.404 FEE SCHEDULE

(1) Application for ~~reciprocity licensure~~ \$250-00
transfer

(2) through (11) will remain the same.

(12) NAPLEX Examination fee ~~(paid directly~~ 275 250
to exam service)

(13) NAPLEX examination processing fee 25
(paid to board)

(13) through (19) will remain the same, but will be renumbered (14) through (20)."

Auth: Sec. ~~37-1-134~~, ~~37-7-201~~, 50-32-103, MCA; ~~IMP~~, Sec. ~~37-1-134~~, ~~37-7-201~~, ~~37-7-302~~, 37-7-303, 37-7-321, 37-7-703, MCA

REASON: The proposed amendment will clarify rule language and split the NAPLEX examination fee into two components, to reflect the new computerized method of administering the exam. The NAPLEX exam fee will now be sent directly to the testing service, while the exam processing fee will now be sent directly to the board.

"8.40.901 SUMMARY OF OBJECTIVES (1) Internship training, using academic training as a foundation, ~~is to~~ provide a learning experience in real life situations that will result in a complete professional who is competent to practice pharmacy and render professional services on his/her own, without supervision at the time of licensure. The objectives shall be:

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

(c) a legally trained intern. ~~(Form no. 6 will constitute the basic implementation of the approved internship program.)~~

Auth: Sec. ~~37-7-201~~, MCA; ~~IMP~~, Sec. ~~37-7-201(2)-(f)~~, MCA

REASON: The proposed amendment will delete a reference to a form which is no longer in use.

"8.40.902 INTERNSHIP PROGRAM DEFINITIONS (1) through (3) will remain the same.

(4) "Intern" means a qualified [under rule ARM 8.40.903(8)] pharmacy student, or a graduate from an accredited ~~college school~~ of pharmacy, and registered in an approved program of supervised training.

(5) "Intern certificate of registration" means that certificate furnished by the board upon approval of ~~Form no. 1 the intern application form~~, received from the intern applicant.

(6) "Internship period" means 1500 hours of practical experience in an approved pharmacy, hospital or other facility. The intern must acquire a minimum of 20 hours experience per calendar week in not less than 5 five days per calendar week, and may acquire a maximum of 48 hours experience per calendar week. However, the student may acquire up to ~~700 1000~~ hours concurrently with school attendance in approved courses, clinical pharmacy programs externships and clerkships, or demonstration projects in the B.S. program and up to 1500 hours concurrently with school attendance in approved courses, externships and clerkships, or demonstration projects in the Pharm.D. program.

(7) will remain the same.

(8) "Reporting period" means ~~after each period of 500 hours of at the completion of~~ internship or externship experience in a given site.

(9) will remain the same.

~~(10) "Training area certification" means that approval furnished by the board upon certification of Form no. 3, received from the preceptor.~~

~~(11) "Tri-Partite Committee" means the advisory and evaluation committee on internship, whose membership includes representation from the board, students and faculty of the School of Pharmacy, and the Montana State Pharmaceutical Association."~~

Auth: Sec. 37-7-201, MCA; IMP, Sec. 37-7-201(2)(f), MCA

REASON: The proposed amendment will delete language on forms and definitions which are no longer used by the board. The proposed amendment will also update the internship and externship hours section to include 1000 hours under the B.S. program (320 summer or intercession and 640 final semester) and 1500 hours under the new Pharm.D. degree program which is just getting started. Subsection (11) will delete the Tri-Partite Committee language, as the committee is no longer in existence.

"8.40.903 INTERNSHIP REQUIREMENTS (1) will remain the same.

(2) Application shall be made on ~~Form no. 1 the intern application form.~~

(3) through (11) will remain the same."

Auth: Sec. 37-7-201, MCA; IMP, Sec. 37-7-201(2)(f), MCA

REASON: The proposed amendment will delete a reference to a form which is no longer in use.

"8.40.904 PRECEPTOR REQUIREMENTS (1) will remain the same.

(a) ~~hold current certification as a preceptor apply for board approval to be a preceptor;~~

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

~~(e) submit Form no. 3, which signified willingness to train the intern;~~

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

~~(i) (h) notify the board of any change of address or employment within 10 days. Change of employment shall serve to suspend certification preceptor approval until such time as re-evaluation is made by the board; and~~

~~(j) will remain the same, but will be renumbered (i).~~

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

~~(3) A preceptor shall supervise only one intern, or only one extern at a time. A pharmacist preceptor may, however, supervise two students at a time if the students are completing a clerkship experience through an approved school of pharmacy."~~

Auth: Sec. 37-7-201, MCA; IMP, Sec. 37-7-201+2+(f), MCA

REASON: The proposed amendment will update language on forms and add the clarification that the ratio of preceptor to intern or extern shall be 1:1, unless clerkship students are being supervised, when a 2:1 ratio is allowed. No ratio had previously been contained in the rules, creating confusion for preceptors, interns and externs. The renumbering change of the second (a) is to correct a typographical error.

"8.40.906 REQUIRED FORMS AND REPORTS (1) Forms and ~~work books~~ shall be furnished by the board, cost of which is included in the application for internship registration. The forms are:

(a) ~~Form no. 0. The "Internship Record"- is the~~ current record of individual intern for board use.

(b) ~~Form no. 1. The "Application for Registration of Intern Application and Notice of Employment"-~~ Must be filed by the intern before computed time is credited and to receive intern certificate of registration.

(c) ~~Form no. 2. The "Employer's Affidavit Record of Hours"- must be filed at the end of each period by the preceptor and at the end of each academic quarter by the School of Pharmacy instructor by the intern at the end of the internship experience in a given site, or at the end of the academic experience~~ for those courses which are approved for internship credit.

~~(d) Form no. 3. Application for Certification of Preceptor. To be filed for board approval of the preceptor and the training area.~~

~~(e) (d) Form no. 4. The "Progress Report of Internship Period" must be filed by the intern at the end of each period completion of internship or externship experience in a given site.~~

~~(f) (e) Form no. 5. The "Preceptor's Evaluation of Internship" must be filed by the preceptor at the end of each period completion of internship or externship experience in a given site.~~

~~(g) Form no. 6. Summary of Objectives and Procedures. Outlines the concepts of internship training, expectations, and responsibilities of the intern, preceptor, and pharmacy.~~

~~(2) Reports and project assignments as may be required to accompany forms under the approved program shall be furnished by the board. In addition, an essay must be completed covering topics selected by the board.~~

~~(3) Forms are available from the board office, 1424 9th Avenue 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513."~~

Auth: Sec. 37-7-201, MCA; IMP, Sec. 37-7-201~~(2)~~(f), MCA

REASON: The proposed amendment will update all references to forms required by the board and delete references to forms no longer in use.

"8.40.1303 APPLICATION FOR APPROVAL OF UTILIZATION PLAN

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

(3) A registered pharmacist in good standing in the state of Montana may apply to the board to designate that pharmacy as a technician training site for a board-approved academic program curriculum. If the pharmacy training site does not have an approved technician utilization plan in place, the pharmacy may substitute an academic program training plan, assessment criteria and periodic contact plan for board approval, for the purpose of providing on-the-job experience for technician trainees."

Auth: Sec. 37-7-201, MCA; IMP, Sec. 37-7-201, 37-7-308, 37-7-309, MCA

REASON: The proposed amendment will encourage pharmacies to act as training sites for technician trainees. The language will allow the pharmacist to simply supply the academic program training plan instead of another board-approved utilization plan.

"8.40.1308 RATIO OF PHARMACY TECHNICIANS TO SUPERVISING PHARMACISTS (1) through (2)(d) will remain the same.

(3) A registered pharmacist in good standing may supervise the services of two technicians at the same time if one of the two technicians is a technician trainee enrolled in an approved academic training program, engaged in on-the-job training for a specific period of time."

Auth: Sec. 37-7-201, MCA; IMP, Sec. 37-7-201, 37-7-307, 37-7-308, 37-7-309, MCA

REASON: The proposed amendment will allow a 1:2 ratio to allow students to be trained as pharmacy technicians in a lawful and acceptable manner. The new rule language will allow this expanded ratio only for students enrolled in a board-approved academic training program.

3. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Pharmacy, 111 N. 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., October 20, 1997.

4. If a person who is directly affected by the proposed amendments 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 Pharmacy, 111 N. 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., October 20, 1997.

5. If the Board receives requests for a public hearing on the proposed amendments from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 110 based on the 1107 licensed pharmacists and pharmacies in Montana.

BOARD OF PHARMACY
ANN PASHA, PRESIDENT

BY:

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

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, September 8, 1997.

BEFORE THE BOARD OF VETERINARY MEDICINE
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PROPOSED AMENDMENT
amendment of rules pertaining	)	OF RULES PERTAINING TO THE
to definitions, application	)	PRACTICE OF VETERINARY
requirements and temporary	)	MEDICINE AND THE ADOPTION OF
permits and adoption of a new	)	A NEW RULE PERTAINING TO
rule pertaining to support	)	SUPPORT PERSONNEL
personnel)	

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On October 22, 1997, the Board of Veterinary Medicine proposes to amend rules pertaining to definitions, application requirements and temporary permits and adopt a new rule pertaining to support personnel.

2. The proposed amendment of ARM 8.64.401, 8.64.501 and 8.64.502 will read as follows: (new matter underlined, deleted matter interlined)

"8.64.401 DEFINITIONS - REMUNERATION OR HIRE (1) For purposes of 37-18-102(1)(c), MCA, the words, "For remuneration or hire", shall mean direct or indirect payment for the services rendered. This includes not only monetary payments but also payment by giving or receiving of material goods or services.

(2) "Emergency" shall mean any instance in which an animal has a condition that threatens its life and immediate treatment is required to sustain life.

(3) "Support personnel" shall mean any person employed by a licensed veterinarian who assists a licensed veterinarian in the practice of veterinary medicine."

Auth: Sec. 37-18-202, MCA; IMP, Sec. 37-18-102, MCA

REASON: The proposed amendment will add the definitions of the phrases "emergency" and "support personnel," as these phrases are used in SB 101, enacted by the 1997 Legislature, and relating to the practice of veterinary medicine. The phrases are also used in new rule 1 proposed by the board to implement the legislation.

"8.64.501 APPLICATION REQUIREMENTS (1) Applicants for licensure by examination shall submit a completed application with the proper fee and supporting documents to the board office no later than 30 45 days prior to the examination date as set by the board. Supporting documents shall include:

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

Auth: Sec. 37-18-202, MCA; IMP, Sec. 37-18-202, 37-18-302, 37-18-303, MCA

REASON: The proposed amendment will increase the application deadline to 45 days prior to the examination to make this deadline consistent with ARM 8.64.509, licensure of out-of-state applicants, which is currently set at 45 days also.

"8.64.502 TEMPORARY PERMITS (1) will remain the same.

(2) An applicant for licensure by examination may be issued a temporary permit if he/she is employed by, working under the supervision of, and in the same office with, a veterinarian licensed in Montana. A temporary permit holder shall not work at a satellite office at a remote location distant from the supervisor's main office.

(3) will remain the same.

(4) The responsibility for the standard of care provided by a temporary licensee employee remains with the supervising veterinarian."

Auth: Sec. 37-1-319, 37-18-202, MCA; IME, Sec. 37-1-305, MCA

REASON: The proposed amendment to (2) will clarify that temporary permit holders are not to be working independently and running a satellite office for the convenience of the supervising veterinarian. Instead, a temporary permit holder should work out of the same main office, under more direct supervision.

The proposed amendment to (4) will clarify that responsibility for the temporary permit holder employee's treatment of animal patients remains with the supervising veterinarian, as the board is concerned that supervisors have not recognized this when employing temporary permit holders.

3. The proposed new rule will read as follows:

"I SUPPORT PERSONNEL (1) Support personnel shall work under the supervision of a veterinarian licensed and residing in Montana, who is responsible for the services performed by the support personnel. Support personnel shall not diagnose, initiate treatment, perform surgery, prescribe medicine, prognosticate or accept a direct fee for services rendered as support personnel. Support personnel may only administer anesthesia when the supervising veterinarian is physically present.

(2) The supervising veterinarian is responsible for determining the competency of the support personnel to perform animal health care tasks delegated to the support personnel. In addition, the supervising veterinarian shall be responsible for making all decisions relative to the diagnosis, treatment, management and future disposition of the animal patient.

(a). When the supervising veterinarian is on the premises, the veterinarian shall examine the animal patient before delegating any tasks to support personnel;

(b) When the supervising veterinarian is not on the premises, the veterinarian must instruct support personnel by radio or telephone as to the appropriate action to take. These

instructions are to be recorded in writing by the support personnel in the animal patient's file and initialed and dated by the supervising veterinarian within 24 hours.

(3) In an emergency, support personnel may initiate treatment only after consulting with the supervising veterinarian. In any such instances, a licensed veterinarian shall instruct the support personnel as to the appropriate action to take, shall advise the support personnel of potential complications and shall maintain an ongoing communication if necessary."

Auth: Sec. 37-18-202, MCA: IMP, Sec. 37-18-104, MCA.

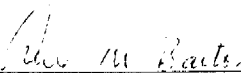
REASON: The proposed new rule will define the tasks and duties of veterinarian support personnel, as well as the prohibited activities. The rule will also outline the procedures necessary for support personnel to render aid in an emergency. This rule will implement the changes enacted in SB 101, by the 1997 Legislature.

4. Interested persons may submit their data, views or arguments concerning the proposed amendments and adoption in writing to the Board of Veterinary Medicine, 111 N. 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., October 20, 1997.

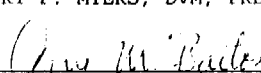
5. If a person who is directly affected by the proposed amendments and adoption wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Veterinary Medicine, 111 N. 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., October 20, 1997.

6. If the Board receives requests for a public hearing on the proposed amendments and adoption from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendments 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 96 based on the 966 licensees in Montana.

BOARD OF VETERINARY MEDICINE
ROBERT P. MYERS, DVM, PRESIDENT


ANNIE M. BARTOS
RULE REVIEWER

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, September 8, 1997.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the adoption of	)	SUPPLEMENTAL
new rule I regarding temporary	)	NOTICE
water standards for Daisy Creek,)	
Stillwater River, Fisher Creek,)	
and the Clark's Fork of the)	
Yellowstone River.)	

(Water Quality)

To: All Interested Persons

1. On August 24, 1995, on page 1652 of the 1995 Montana Administrative Register, Issue No. 16, and October 26, 1995, on page 2211 of the 1995 Montana Administrative Register, Issue No. 20, the Board gave notice of a proposed rule to establish temporary water quality standards for four streams or stream segments near Cooke City. At the December 7, 1995, hearing, commenting parties disagreed whether the rule should be adopted. The Board requested several of the parties to engage in discussions to reach a mutually acceptable resolution of the issues. The parties negotiated with the goal of agreeing on a consent decree to be entered in an enforcement action filed by the Department of Environmental Quality. On April 25, 1996, on page 1049 of the 1996 Montana Administrative Register, Issue No. 8, and in anticipation that the parties would reach agreement on a consent decree, the Board published a notice of supplemental comment period. In that notice, the Board asked the public to comment on whether the Board should adopt temporary standards or allow the matter to be resolved by entry of the consent decree. However, the parties did not reach agreement on a consent decree before the close of the supplemental comment period on June 24, 1996.

On August 12, 1996, Crown Butte Mines, Inc., the United States Department of Justice, and a number of public interest groups entered an agreement whereby the parties agreed to pursue an exchange of Crown Butte's mining property, which is located in the drainages to which this rulemaking pertains, for federal land at another location or locations. In the agreement the parties also committed to negotiate in good faith the terms of a consent decree, to be entered in a federal court action, that would require environmental response and/or restoration actions on these drainages. The parties anticipate that temporary standards could be beneficial to allow the remediation or restoration to occur.

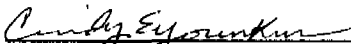
On October 3, 1996, at page 2502 of the 1996 Montana Administrative Register, Issue No. 19, the Board, in anticipation that a consent decree would be negotiated in early

1997, reopened the comment period to allow the public the opportunity to comment on whether the consent decree eliminates the need for temporary standards. That comment period closed on March 20, 1997. A consent decree had not been negotiated by that date.

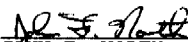
On March 24, 1997, on page 534 of the 1997 Montana Administrative Register, the Board issued a supplemental notice advising that the proceeding was suspended pending negotiation of a consent decree.

A consent decree has not been negotiated. It is not possible to predict when agreement will be reached. The Board is therefore suspending action in this matter pending completion of the negotiations. When negotiations have been completed, the Board may issue another supplemental notice and reopen the comment period. A supplemental notice would be issued no later than March 22, 1998.

BOARD OF ENVIRONMENTAL REVIEW


CINDY E. YOUNKIN, Chairperson

Reviewed by:


JOHN F. NORTH
Rule Reviewer

Certified to the Secretary of State September 8, 1997.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF PROPOSED
of rules 18.8.509, 18.8.517 and) AMENDMENT
18.8.1101 concerning the Motor)
Carrier Services program) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Interested Persons.

1. On October 29, 1997, the Department of Transportation proposes to amend rules 18.8.509, 18.8.517 and 18.8.1101 concerning the Motor Carrier Services program.

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

18.8.509 GENERAL PERMIT RESTRICTIONS

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

(f) Vehicles or vehicle combinations with a non-built-up load exceeding 18 feet wide, or 120 feet long, or 18 feet high may travel only during daylight hours, Monday through Friday. No travel is allowed ~~Saturday, Sunday, on~~ holidays, or holiday weekends. No travel is allowed after 3 p.m. on Friday until sunrise on Monday on routes indicated on "red route restrictions" map.

(g) through (11) remain the same.

AUTH: 61-10-155, MCA; IMP: ~~61-10-101 through 61-10-140 61-10-121, 61-10-122, and 61-10-124, MCA~~

REASON: The amendment is for clarification and to eliminate redundancy.

18.8.517 SPECIAL VEHICLE COMBINATIONS

(1) through (8) remains the same.

(9) As required by 49 CFR section 177.835(c), transportation of ~~Class A Division 1.1 and 1.2~~ explosives is prohibited.

(10) through (20) remains the same.

AUTH: 61-10-129, MCA; IMP: 61-10-124, MCA.

REASON: The amendment is proposed to be consistent with the definition of Federal Hazardous Material Regulation, 49 CFR section 173.53, which classifies explosive materials formerly listed as Class A as Division 1.1 and Division 1.2 explosives.

18.8.1101 MOVEMENT OF HOUSES, BUILDINGS, EXTREMELY HEAVY MACHINERY, AND OTHER LARGE AND UNUSUAL OBJECTS

(1) through (12)(d) remain the same.

(e) ~~Travel is allowed during daylight hours only from sunrise Monday until 3 p.m. Friday, and from sunrise Saturday~~

until 12 noon on Sunday on all highways not designated on the "red route restrictions" map. Class one buildings or loads may be moved only during daylight hours, Monday through Friday. No travel is allowed on holidays or holiday weekends. No travel is allowed after 3 p.m. on Friday until sunrise on Monday on routes indicated on "red route restrictions" map.

(f) Travel is allowed during daylight hours only from sunrise Monday until 3 p.m. Friday on highways indicated on the "red route restrictions" map is available from the Motor Carrier Services Division, Box 4639, Helena, MT 59604, (406) 444-6130.

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

AUTH: 61-10-155, MCA; IMP: 61-10-101 through 61-10-140 61-10-121, 61-10-122, and 61-10-124, MCA.

REASON: The amendments are for clarification, to eliminate redundancy, and to correct language which contradicts language found in ARM 18.8.509(f).

3. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to Dave Galt, Motor Carrier Services Division, Department of Transportation, P.O. Box 201001, Helena, MT 59620-1001. Any comments must be received no later than October 27, 1997.

4. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Dave Galt, Motor Carrier Services Division, Department of Transportation, P.O. Box 201001, Helena, Montana 59620-1001. A written request for hearing must be received no later than October 27, 1997.


5. If the agency receives requests for a public hearing on the proposed amendment from either 10 percent or 25, whichever is less, of the persons who are directly affected by the proposed action; from the administrative code committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 75 persons based on the number of permittees (trucking companies and individual owner-operators) who purchase overdimensional permits.

-1640-

MONTANA DEPARTMENT OF TRANSPORTATION

By: 

MARVIN DYE, Director


Lyle Manley, Rule Reviewer

Certified to the Secretary of State September 4, 1997.

BEFORE THE BOARD OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF PROPOSED
rule 32.3.212 as it relates to)	AMENDMENT OF RULE
brucellosis vaccination(s))	32.3.212
)	NO PUBLIC HEARING
)	CONTEMPLATED

To: All interested parties

1. On October 23, 1997, the Board of Livestock, acting through the Department of Livestock proposes to amend Rule 32.3.212.

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

32.3.212 ADDITIONAL REQUIREMENTS FOR CATTLE ~~(1)~~ All female cattle over the age of 4 months must be officially vaccinated against brucellosis, unless exempted under 81-2-801, MCA.
(1) Except as provided in ~~(2), (3), (4) and (5)~~ no female cattle over the age of 4 months may be imported into the state of Montana for any purpose other than immediate slaughter unless they are officially vaccinated, by a licensed veterinarian approved in his or her state to administer the vaccination, with a Brucella abortus vaccine approved by the veterinary biologics division, U.S. department of agriculture.
(2) Cattle being transported or moved through Montana with no intent to unload in the state are exempt from this section. In an emergency situation, they may be unloaded in compliance with quarantine rules promulgated by the department of livestock pursuant to 81-2-102, MCA.
(3) Spayed cattle.
(4) Non-vaccinated cattle less than 11 months of age placed under a hold order for brucellosis vaccination or spaying within 30 days of arrival.
(5) Non-vaccinated cattle from those class free states or areas designated by the Board of Livestock.
~~(2)~~ (6) All cattle imported into Montana must meet the interstate requirements as set forth in title 7 9 CFR.
AUTH: 81-2-102, 81-20-101, 81-2-707, MCA IMP: 81-2-102, 81-20-101, MCA.

3. The amendment of rule 32.3.212 is necessary because the legislature repealed 81-2-801, MCA. This rule change will

allow the department more flexibility in dealing with changing disease scenarios involving brucellosis in other states, provinces and countries. It also allows the department to initiate more timely responses to those changing disease scenarios.

4. Interested parties may submit their data, views or arguments, in writing concerning the proposed amendments to the Department of Livestock, 301 N. Roberts, PO Box 202001, Helena, Montana 59620-2001 (Attention: Larry Petersen, Executive Officer), to be received no later than October 20, 1997.

5. If a person who is directly affected by the proposed action wishes to express data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Department of Livestock, 301 N. Roberts, PO Box 202001, Helena, Montana 59620-2001 (Attention: Larry Petersen, Executive Officer). A written request for hearing must be received no later than October 20, 1997.

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

Reviewed by

Board of Livestock,
John Paugh, Chairman



Lon Mitchell, Rule Reviewer
Livestock Chief Legal Counsel



A. Laurence Petersen
Executive Officer
Board of Livestock
Department of Livestock

Certified to the Secretary of State August 29, 1997.

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

In the matter of the adoption)	NOTICE OF PROPOSED ADOPTION
of new rules for extensions of)	OF NEW RULES I-III FOR
time to complete a water use)	EXTENSION OF TIME TO PERFECT
permit or change authorization)	PERMIT OR CHANGE, AND AMENDMENT
and amendment of application)	OF ARM 36.12.103 APPLICATION
fee)	AND SPECIAL FEES

NO PUBLIC HEARING
CONTEMPLATED

TO: All Interested Persons.

1. On October 31, 1997 the Department of Natural Resources and Conservation will consider the adoption of new rules I through III and the amendment of 36.12.103 application and special fees.

2. The proposed new rules provide as follows:

RULE I DEFINITIONS In addition to the definitions in 85-2-102, MCA the following definitions apply to these rules:

(1) "Applicant" means a person who filed an application for an extension of time.

(2) "Application" means an application for an extension of time, Form No. 607.

(3) "Change authorization" means an authorization to change the point of diversion, place of use, purpose of use, or place of storage of an existing water right issued by the department pursuant to Title 85, chapter 2, MCA.

(4) "Notice of completion due date" means the date on the permit, change authorization or an authorized extension when the notice of completion is to be received by the department. The postmark on the envelope, if the notice is mailed, must be on or before the notice of completion due date.

AUTH: 85-2-312(3), MCA

IMP: 85-2-312(3), MCA

RULE II FILING AN APPLICATION FOR EXTENSION OF TIME

(1) When an appropriator cannot complete the project under a permit or change authorization by the notice of completion due date specified, an application for extension of time may be filed. The application must be postmarked at least 30 days or more prior to the due date.

(2) A complete application must include the following:

(a) name, mailing address, and telephone number of applicant;

(b) identification number of the permit or change authorization;

(c) notice of completion due date;

(d) a chronological narrative describing how the applicant has diligently worked to complete the project, and a

description of the work completed on the project prior to the deadline date;

(e) the reasons the project was not completed as scheduled which must include a discussion of how the information provided prior to the issuance of the permit or change authorization has changed concerning the following:

- (i) the cost of the project;
 - (ii) the magnitude of the project;
 - (iii) the engineering of the project;
 - (iv) the physical features encountered during development of the project;
 - (v) the time line for completion of the project.
 - (f) a notarized signature; and
 - (g) the required filing fee.
- (3) An application postmarked less than 30 days prior to the notice of completion due date is void.

AUTH: 85-2-312(3), MCA

IMP: 85-2-312(3), MCA

RULE III ACTION ON THE APPLICATION (1) Upon receipt of a timely application, the department will determine whether to grant or deny the extension based on the applicant's diligence in attempting to complete the project and the reasons which prevented project completion as documented in the application for extension of time. The department may gather additional information from the applicant and conduct a field investigation.

(2) When the department determines the applicant has proceeded with diligence and has established that the reasons stated in the application justify an extension based on a consideration of the cost and magnitude of the project, the engineering and physical features encountered during development of the project, and the time reasonably necessary for the project, an extension shall be granted. The extension of time must state the new notice of completion due date and any conditions to ensure completion.

(3) When the department determines there has been no diligence and a lack of good cause for the extension, the application must be denied. The department shall notify the applicant of its decision and reasons, and shall provide the applicant opportunity to be heard. An applicant must request a hearing in writing, within 30 days after the date of the notice. When an applicant requests a hearing, it shall be the applicant's burden to show cause why the application should not be denied.

AUTH: 85-2-312(3), MCA

IMP: 85-2-312(3), 85-2-314, MCA

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

36.12.103 APPLICATION AND SPECIAL FEES

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

(f) For an Application for Extension of Time, Form No. 607 there shall be a fee of \$50 plus \$20 for publication costs.

(g) through (n) remain the same.

(2) remains the same.

AUTH: 85-2-113, MCA

IMP: 85-2-113, MCA

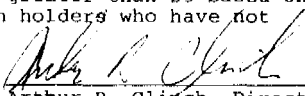
4. Rationale: As mandated by Mont. Code Ann. 85-2-312(3) these rules provide a process for water use permit or change authorization holders to apply for and receive from the department an extension of time to complete their projects. The statute was amended to no longer require public notice of an application for extension, so there is no need for the applicant to pay the publication cost of \$20.

5. Interested persons may submit their data, views, or arguments concerning the proposed new rules and amended rule in writing to Ann Glubcynski, Water Rights Bureau, PO Box 201601 Helena, MT 59620-1601 no later than October 24, 1997.

6. If a person who is directly affected by the proposed new rule or amendment wishes to express his data, views and arguments orally at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Ann Glubcynski, Water Rights Bureau, PO Box 201601 Helena, MT 59620-1601. A written request for hearing must be received no later than October 24, 1997.

7. If the agency receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the administrative code committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be greater than 25 based on the permit and change authorization holders who have not completed projects.

By:


Arthur R. Clinch, Director

Reviewed By:


Donald D. MacIntyre

Certified to the Secretary of State September 8, 1997.

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

In the matter of the	)	NOTICE OF PROPOSED
amendment of Rules 36.22.1303,	)	AMENDMENT
36.22.1308, and 36.22.1408)	
pertaining to well plugging)	
requirement, plugging and)	
restoration bond, and	)	NO PUBLIC HEARING
financial responsibility	)	CONTEMPLATED

TO: All Interested Persons.

1. On October 22, 1997, the Board of Oil and Gas Conservation of the Department of Natural Resources and Conservation proposes to amend Rules 36.22.1303, 36.22.1308, and 36.22.1408 which pertain to well plugging requirement, plugging and restoration bond, and financial responsibility.

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

36.22.1303 WELL PLUGGING REQUIREMENT (1) The owner shall not permit any well drilled for oil, gas, salt water disposal, or any other purpose to remain unplugged after such well is no longer useful for the purpose for which it was drilled or converted, ~~except that as long as the owner has other producing wells on the lease he may hold idle a well on the same lease for possible future use, unless the board shall find that such idle well or wells are causing damage to oil or gas reservoirs or fresh water supplies.~~ When the last a well on a lease is no longer capable of production because the underlying reservoir or reservoirs are depleted and there is no possible future use for the wells on the lease in supplemental recovery operations or for disposal facilities, the operator shall within ~~90 days~~ thereof commence operations to one year plug and abandon ~~all the wells on the lease as set forth in this sub-chapter, unless otherwise authorized by the petroleum engineer or his authorized agent.~~

AUTH: 82-11-111, MCA

IMP: 82-11-123 and 82-11-124, MCA

36.22.1308 PLUGGING AND RESTORATION BOND Subsections (1) through (5) (a) remain the same.

(b) ~~a federally insured certificate of deposit issued and held by any bank or savings and loan association licensed to do business and located in the state of Montana a Montana bank or any national bank in the United States that is federally insured and has total assets greater than \$200 million.~~

Subsections (6) through (10) remain the same.

AUTH: 82-11-111, MCA

IMP: 82-11-123, MCA

36.22.1408 FINANCIAL RESPONSIBILITY Subsections (1) through (4) remain the same.

(5) The board may accept a letter of credit in lieu of a surety bond or certificate of deposit. A letter of credit must meet the following conditions:

(a) it must be issued by a Montana bank or any national bank in the United States that is federally insured and has total assets greater than \$200 million;

Subsections (5)(b) through (6) remain the same.

AUTH: 82-11-111, MCA

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

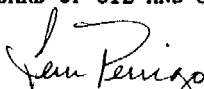

3. Rule 36.22.1303 is being amended to require more timely plugging of dormant wells. Rule 36.22.1308 is being amended to promote competition among certificate of deposit providers. Rule 36.22.1408 is being amended to promote competition among letter of credit providers.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Jim Halvorson, Oil and Gas Conservation Division, 2535 St. John's Avenue, Billings, Montana 59102. Any comments must be received no later than October 20, 1997.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Jim Halvorson, Oil and Gas Conservation Division, 2535 St. John's Avenue, Billings, Montana 59102. A written request for hearing must be received no later than October 20, 1997.

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

BOARD OF OIL AND GAS CONSERVATION

 
TERRI PERRIGO, EXECUTIVE SECRETARY DONALD D. MACINTYRE, REVIEWER

Certified to the Secretary of State September 8, 1997.

In the matter of the) NOTICE OF PUBLIC HEARING
amendment of 46.13.303,) ON PROPOSED AMENDMENT
46.13.304, 46.13.401 and)
46.13.501 pertaining to low)
income energy assistance)

1. On October 15, 1997, at 10:00 a.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment of 46.13.303, 46.13.304, 46.13.401 and 46.13.501 pertaining to low income energy assistance.

2. The rules as proposed to be amended provide as follows. Matter to be added is underlined. Matter to be deleted is interlined.

(a) Households with annual gross income at or below 125% of the ~~1996~~ 1997 poverty level are financially eligible for low income energy assistance. Households with an annual gross income above 125% of the ~~1996~~ 1997 poverty level are ineligible for low income energy assistance.

Family Size	Poverty Guideline	125 Percent	150 Percent
One	\$ 7,740	\$ 9,675	\$ 11,610
Two	10,360	12,950	15,540
Three	12,980	16,225	19,470

Four	15,600	19,500	23,400
Five	18,220	22,775	27,330
Six	20,840	26,050	31,260
Additional member add	2,620	3,275	3,930

One	\$ 7,890	\$ 9,863	\$ 11,835
Two	10,610	13,263	15,915
Three	13,330	16,663	19,995
Four	16,050	20,063	24,075
Five	18,770	23,463	28,155
Six	21,490	26,863	32,235
Additional member add	2,720	3,400	4,080

AUTH: Sec. 53-2-201, MCA
IMP: Sec. 53-2-201, MCA

46.13.304 CALCULATING INCOME (1) through (1)(r) remain the same.

(s) one-time insurance payments or compensation for injury which do not exceed \$10,000; and

(t) the entire amount of Veteran's Administration educational payments made to an applicant or recipient who is attending an institution of higher education, including amounts spent for expenses not directly related to the individual's school attendance.

(2) Out-of-pocket dependent care expenses as defined in ARM 46.13.301(9) may be deducted from income only if:

(a) the household's annual gross income is between 125% and 150% of the 1996 1997 U.S. government office of management and budget poverty level for the particular household size;

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

(3) Medical and dental costs may be deducted from income only if:

(a) the household's annual gross income is between 125% and 150% of the 1996 1997 U.S. government office of management and budget poverty level for the particular household size;

(3)(b) through (3)(x) remain the same.

AUTH: Sec. 53-2-201, MCA
IMP: Sec. 53-2-201, MCA

46.13.401 BENEFIT AWARD MATRICES (1) through (2)(d) remain the same.

(i) SINGLE FAMILY

NATURAL

# BEDROOMS	-GAS	ELECTRIC	PROPANE FUEL	OIL	WOOD	COAL
-ONE	\$190	\$260	\$263	\$212	\$170	\$155
-TWO	-277	-378	-382	-308	-247	-226
-THREE	-377	-515	-521	-419	-337	-308

~~FOUR~~ ~~519~~ ~~709~~ ~~717~~ ~~577~~ ~~464~~ ~~423~~

	<u>NATURAL</u>					
# BEDROOMS	<u>GAS</u>	<u>ELECTRIC</u>	<u>PROPANE</u>	<u>FUEL OIL</u>	<u>WOOD</u>	<u>COAL</u>
<u>ONE</u>	<u>\$279</u>	<u>\$417</u>	<u>\$401</u>	<u>\$321</u>	<u>\$255</u>	<u>\$233</u>
<u>TWO</u>	<u>405</u>	<u>606</u>	<u>582</u>	<u>466</u>	<u>371</u>	<u>339</u>
<u>THREE</u>	<u>552</u>	<u>826</u>	<u>794</u>	<u>635</u>	<u>506</u>	<u>462</u>
<u>FOUR</u>	<u>759</u>	<u>1,137</u>	<u>1,092</u>	<u>874</u>	<u>696</u>	<u>636</u>

(ii) MULTI-FAMILY

	<u>NATURAL</u>					
# BEDROOMS	<u>GAS</u>	<u>ELECTRIC</u>	<u>PROPANE</u>	<u>FUEL OIL</u>	<u>WOOD</u>	<u>COAL</u>
ONE	\$161	\$220	\$222	\$225	\$144	\$131
TWO	243	331	335	339	216	198
THREE	356	486	491	497	318	290
FOUR	416	568	574	581	371	339

	<u>NATURAL</u>					
# BEDROOMS	<u>GAS</u>	<u>ELECTRIC</u>	<u>PROPANE</u>	<u>FUEL OIL</u>	<u>WOOD</u>	<u>COAL</u>
<u>ONE</u>	<u>\$236</u>	<u>\$353</u>	<u>\$339</u>	<u>\$341</u>	<u>\$216</u>	<u>\$197</u>
<u>TWO</u>	<u>355</u>	<u>531</u>	<u>510</u>	<u>513</u>	<u>325</u>	<u>297</u>
<u>THREE</u>	<u>521</u>	<u>779</u>	<u>749</u>	<u>753</u>	<u>477</u>	<u>435</u>
<u>FOUR</u>	<u>608</u>	<u>911</u>	<u>875</u>	<u>880</u>	<u>557</u>	<u>509</u>

(iii) MOBILE HOME

	<u>NATURAL</u>					
# BEDROOMS	<u>GAS</u>	<u>ELECTRIC</u>	<u>PROPANE</u>	<u>FUEL OIL</u>	<u>WOOD</u>	<u>COAL</u>
ONE	\$160	\$219	\$222	\$187	\$143	\$131
TWO	235	320	324	273	210	191
THREE	311	425	430	362	278	254
FOUR	347	474	479	404	310	283

	<u>NATURAL</u>					
# BEDROOMS	<u>GAS</u>	<u>ELECTRIC</u>	<u>PROPANE</u>	<u>FUEL OIL</u>	<u>WOOD</u>	<u>COAL</u>
<u>ONE</u>	<u>\$235</u>	<u>\$351</u>	<u>\$338</u>	<u>\$283</u>	<u>\$215</u>	<u>\$197</u>
<u>TWO</u>	<u>343</u>	<u>514</u>	<u>494</u>	<u>414</u>	<u>315</u>	<u>287</u>
<u>THREE</u>	<u>455</u>	<u>681</u>	<u>654</u>	<u>549</u>	<u>417</u>	<u>381</u>
<u>FOUR</u>	<u>508</u>	<u>760</u>	<u>730</u>	<u>613</u>	<u>466</u>	<u>425</u>

(e) remains the same.

AUTH: Sec. 53-2-201, MCA

IMP: Sec. 53-2-201, MCA

46.13.501 EMERGENCY ASSISTANCE (1) through (3) (a) remain the same.

(4) Subject to the provisions of (5), after a household has requested emergency assistance and provided proof that it is financially and otherwise eligible for such assistance, the contractor shall provide some form of assistance to resolve the emergency:

(a) within 48 hours after the request is made in all cases; and

(b) within 18 hours after the request is made, if the emergency is a life-threatening situation.

(5) The time limits contained in (4)(a) and (b) for provision of emergency assistance do not apply in a geographical area affected by a disaster or emergency as designated in (5)(a) and (b), as long as the designation is in effect, if the Secretary of the U.S. department of health and human services determines that the disaster or emergency makes compliance with the time limits impracticable. This exception to the time limit applies when:

(a) a natural disaster has been designated by the Secretary of the U.S. department of health and human services; or

(b) a major disaster or emergency has been designated by the President under the Disaster Relief Act of 1974.

AUTH: Sec. 53-2-201, MCA

IMP: Sec. 53-2-201, MCA

3. Income requirements for a household to be eligible for the Low Income Energy Assistance Program (LIEAP) are based on the household's income in relation to the federal poverty levels published by the U.S. Office of Management and Budget (OMB). ARM 46.13.303 currently provides that households with income at or below 125% of the 1996 poverty level for a household of that size qualify for LIEAP on the basis of income. ARM 46.13.303 also contains income standards expressed in dollar amounts for different sized households based on the 1996 poverty levels. ARM 46.13.304 specifies types of income which are excluded in computing eligibility and specifies deductions from income applicable to households with annual gross income between 125% and 150% of the 1996 poverty level. ARM 46.13.401 contains matrices of benefit amounts which are based on a number of factors, such as the household's income in terms of the 1996 poverty level, dwelling type, and method of heating.

The federal poverty levels are updated annually to take into account inflationary increases in the cost of living. The amendment of ARM 46.13.303, 46.13.304, and 46.13.401 is necessary to provide that the 1997 poverty levels recently published by the OMB will be used in computing LIEAP eligibility and benefit amount beginning October 1, 1997, which is the beginning of the LIEAP fiscal year.

Additionally, the amendment of ARM 46.13.304(1) is necessary to specify that Veteran's Administration educational payments are

excluded as income in determining the household's annual income for purposes of LIEAP eligibility and benefit amount. The department has decided to exclude this income to make the LIEAP policy consistent with the treatment of V.A. educational payments in other public assistance programs such as Temporary Assistance to Needy Families in which such benefits are excluded.

Finally, subsection (4) is being added to ARM 46.13.501 to provide time limits for LIEAP contractors to furnish emergency assistance to eligible households. These time limits are mandated by Section 8623(c) of the federal Low Income Home Energy Assistance Act of 1981 (42 U.S.C. § 8623(c)(1) and (2)) and are already being complied with by LIEAP contractors. The Department is now including this requirement in the administrative rule which governs emergency assistance to comply with a recent recommendation of the legislative auditor.

4. These rule changes will be applied retroactively to October 1, 1997. The Department was not able to calculate the matrixes until the federal legislation was approved. The changes provide an increase in benefits to those who receive the assistance.

5. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than October 20, 1997.

6. The Office of Legal Affairs, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.

Dawn Sliva
Rule Reviewer

Wendy Flinn
Director, Public Health and
Human Services

Certified to the Secretary of State September 8, 1997.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION) NOTICE OF PUBLIC HEARING ON THE
of NEW RULES I THROUGH VIII) PROPOSED ADOPTION OF NEW RULES
relating to Restaurant Beer/)
Wine License Lottery Process)

TO: All Interested Persons:

1. On October 15, 1997, at 9:00 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, at Helena, Montana, to consider new rules I through VIII relating to the restaurant beer and wine license lottery process.

2. The proposed rules do not replace or modify any section currently found in the Administrative Rules of Montana. The rules as proposed to be adopted provide as follows:

RULE I DEFINITIONS The following terms will be used in this chapter.

(1) "Conditional license" means one that is issued upon completion of the investigation and public protest period, but prior to completion of the premises. A conditional license can be revoked by the Montana department of revenue if the premises do not meet the required specifications upon completion. This designation is not to be confused with a license that is issued with conditions written on the face of the license itself pursuant to 16-1-302, MCA. Such conditions are permanent and last throughout the existence of the license itself.

(2) "Existing beer/wine/all beverage license" means either an on-premises or off-premises retail license that is either currently being used at the location in question, or has been approved for nonuse status, or is a license for which a sale has occurred or is pending but not approved by the Montana department of revenue.

(3) "Existing preference" means a preference that will be given to a restaurant that has existed for one year prior to a lottery drawing and which will give it a priority in the final ranking of restaurants over a new restaurant in the lottery procedures. However, an existing preference will not supersede the limits within any quota area on licenses of restaurants with a seating capacity of 101 or more persons.

(4) "Existing restaurant" means one that has been in existence and running continuously for one year before the deadline for filing of the lottery application for the restaurant beer/wine license. These restaurants will be given an existing preference in the final ranking. In the initial lottery to be held November 1997, an "existing restaurant" is one that has been in existence and running continuously since on or before October 1, 1996. Such restaurant will receive an existing preference.

(5) "Lottery application" means a brief one sheet

application for a restaurant beer/wine license stating the location of the restaurant, whether it is licensed at that location, whether it has been in existence for a continuous year, and what the seating capacity of the restaurant is, or will be when completed. If more applications than the number of licenses available for any given incorporated city or town quota area have been submitted, a lottery will be held.

(6) "Restaurant beer/wine/license" means a license which must be attached to a restaurant and can only be used in conjunction with food service. The restaurants must agree to forego any kind of gambling, maintain 75% of their income from food sales, and must only have table service of beer and wine to those customers who are eating or waiting to be seated to eat. Licenses will be issued only in incorporated cities and towns in a number derived from a percentage of the beer licenses in use in these quota areas. A lottery will be held to determine which restaurants will receive these restaurant beer/wine licenses as necessary.

(7) "Seasonal restaurant" means one that is only open during one, two, or three seasons of any year, but never for a full year. Seasonal restaurants can be open any part of a season and not the full season as long as the restaurant is not open year round.

(8) "Service bar" means an area where alcoholic beverages are stored and prepared for table service delivery to patrons for on-premises consumption. Consumption of alcoholic beverages by patrons or any other person is not permitted at the service bar.

AUTH: 16-1-303, MCA IMP: 16-4-420, MCA

RULE II APPLICATION LIMITATION PER PREMISES (1) If more than one person per location files a lottery application for a restaurant beer/wine license for the same premises, the department will have a pre-lottery drawing to determine which one of the names submitted for a single location will actually be entered into the incorporated city or town quota area lottery. Only one application per location is permitted to be entered in the incorporated city or town quota lottery.

AUTH: 16-1-303, MCA IMP: 16-4-420, MCA

RULE III INITIAL LOTTERY APPLICATION PROCESS

(1) Procedures making a restaurant beer/wine license effective begin with the initial step of a person applying to be included in a lottery held for their applicable incorporated city or town. Lotteries will be conducted only for those incorporated cities and towns which have more applicants than new licenses available.

(2) Applications that are not complete will cause the application to be disqualified.

(3) Applications must state the name of the applicant(s). All potential owners including all stockholders of a corporation, all partners of a partnership, and all members of

a limited liability company must be noted on the initial lottery application form.

(4) Applications must state the exact address as well as the city or town in which the restaurant or proposed restaurant is or is to be located.

(5) Applications must state whether the location already has an existing beer/wine/all beverage license, as previously defined in this chapter. If a retail license is currently issued to the location, no restaurant beer/wine license will be considered for this location.

(6) Seating capacity will be a factor in determining the allocation of the restaurant beer/wine licenses and the appropriate fees.

(a) Using the following categories, a lottery application for the restaurant beer/wine lottery must state the exact seating capacity of the restaurant:

- (i) 60 persons or less;
- (ii) 61 to 100 persons; or
- (iii) 101 or more persons.

(7) Applications to be included in the restaurant beer/wine license lotteries can be acquired through the department of revenue.

(8) Answers to questions in the initial lottery application must be identical to answers in the subsequent application for a restaurant beer/wine license. Failure to produce identical information on both documents will cause disqualification of the applicant(s).

(9) Those lottery applicants selected by the lottery process will subsequently be sent application packets to be returned to the department within 30 days of receipt.

AUTH: 16-1-303, MCA IMP: 16-4-420, MCA

RULE IV FINAL APPLICATION PROCESS FOLLOWING SUCCESSFUL APPOINTMENT UNDER A LOTTERY (1) The application process for a restaurant beer/wine license is the same as the process outlined in subchapter 1 of this chapter except for the initial payment which ranges from \$5,000 to \$20,000 depending on the size of the restaurant.

- (2) Applicants must also meet:
 - (a) premises suitability requirements;
 - (b) investigation requirements; and
 - (c) public notice requirements.

(3) In the case of a new or remodeled restaurant, all the current prerequisites listed in ARM 42.12.122 and 42.13.106 must be met.

AUTH: 16-1-303, MCA IMP: 16-4-420, MCA

RULE V WHEN LOTTERY WILL NOT BE HELD (1) If fewer lottery applications are received within an incorporated city quota area than licenses available for that quota area, no lottery will be necessary unless the number of larger restaurants with seating of 101 or more exceeds the 25% maximum limit for this size

restaurant. In such cases, a lottery of these restaurants will be held in order to determine which applicant will be afforded the opportunity to apply for the license. Each applicant must still meet minimum qualifications for applicants of the restaurant beer/wine license.

AUTH: 16-1-303, MCA IMP: 16-4-420, MCA

RULE VI WHEN LOTTERY WILL BE HELD (1) When the number of lottery applications exceed the number of new licenses available for each incorporated city or town, a public lottery will be held by the department.

(2) Applicants will be notified of the date, time, and place of the lottery.

(3) The lottery process will be verified by a third party, not employed or associated with the department, as well as by the public who may attend the lottery drawings.

(4) Applicants do not need to be present to be chosen in the lottery. Those applicants selected to apply for a restaurant beer/wine license will be notified by mail.

AUTH: 16-1-303, MCA IMP: 16-4-420, MCA

RULE VII HOW APPLICANTS WILL BE CHOSEN (1) Successful applicants will be chosen based upon:

(a) rank (order of being drawn);

(b) qualified seating capacity:

(i) 60 persons or less;

(ii) 61 to 100 persons; or

(iii) 101 or more persons; and

(c) whether the applicant is eligible for an existing preference.

(2) The department will first construct a list of the applicants in the order drawn in the lottery. Department personnel will then look to see, within this ordering, which restaurants have an existing preference and the seating capacity of the restaurant. A final ranking of applicants will then be made.

(3) The department will not issue to the restaurants shown in (1)(b)(iii) more than 25% of the eligible restaurant beer/wine licenses in any given quota area. This may result in a quota area not being able to immediately award all of its available restaurant beer/wine licenses. This could also result in larger restaurants who have received a preference being unable to receive a restaurant beer/wine license if many larger restaurants apply to the initial lottery in a given area.

(4) A successful applicant cannot sell his ranking nor can the applicant transfer his ranking to another.

AUTH: 16-1-303, MCA IMP: 16-4-420, MCA

RULE VIII ALTERATION OF PREMISES FOLLOWING RECEIPT OF RESTAURANT BEER/WINE LICENSE - SEATING CAPACITY (1) All alterations to a premises must be approved by the department. Should a location with one stated seating capacity receive a

restaurant beer/wine license and subsequently obtain approval for alteration of the premises to expand its seating, the new expanded capacity will require an additional payment if the expansion causes the restaurant to escalate into a higher category (61 to 100 or 101 or more). Payment of the difference between the application fee paid and the fee charged for the higher category of seating must be made to the department. Given satisfaction of all other requirements, the department will approve the expansion so long as the quota for licenses within the 101 or more seating capacity for that quota area has not been met.

AUTH: 16-1-303, MCA IMP: 16-4-420, MCA

3. The Department is proposing these new rules to comply with a change in the law in 1997 which provides for a special restaurant beer/wine license.

Rule I is necessary because the new legislation uses a number of new words and phrases that need to be defined so that the parameters of the new legislation can be understood and utilized.

Rule II is necessary to prevent applicants from stacking the deck, so to speak. Without this limitation, it is possible, for example, for all 10 stockholders of a corporation to apply. This would throw off the ranking process and give this particular location an unfair advantage.

Rule III is necessary to explain the new procedure and what will be expected of the applicant who wishes to apply for this new species of license.

Rule IV explains what will occur following the new lottery application and following the final ranking of applicants. It will still be necessary for the successful applicants to apply for the license itself. This rule informs those who are successful that they will need to comply with already existing rules on premises suitability etc.

Rule V explains that the lotteries will not be held in every case.

Rule VI addresses when the lottery will be held and how that process will work. It explains that an applicant need not be present to be chosen in the lottery.

Rule VII is necessary because some applicants may not understand this process and the way in which the department will rank applicants. We believe this is important information to communicate. This rule lays out for applicants exactly how the department will make the final determination of who gets to apply for a license.

Rule VIII is needed so that successful applicants know that any alteration of the premises must be approved by the department and that certain expansions of seating capacity may result in a revocation of a license.


4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written

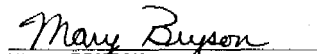
data, views, or arguments may also be submitted to:

Cleo Anderson
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620

no later than October 20, 1997.

5. Cleo Anderson, Department of Revenue, Office of Legal Affairs, has been designated to preside over and conduct the hearing.


CLEO ANDERSON
Rule Reviewer


MARY BRYSON
Director of Revenue

Certified to Secretary of State September 8, 1997

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

In the matter of amendment of ARM)
2.43.203, 2.43.406, and 2.43.427)
pertaining to review of an)
administrative decision, service) NOTICE OF AMENDMENT
credit for compensated hours, and)
granting of service credit and)
membership service as the result of)
court action.

TO: All Interested Persons.

1. On July 7, 1997, the Public Employees' Retirement Board published notice of the proposed amendment of ARM 2.43.203, 2.43.406, and 2.43.427 pertaining to who may request review of an administrative decision, the service credit that members may receive must be for compensated hours, and granting of service credit and membership service to members reinstated as the result of a suit, court order, appeal, or out-of-court settlement at page 1103 of the 1997 Montana Administrative Register, Issue No. 13.

2. The Board amended ARM 2.43.406 and 2.43.427 as proposed. ARM 2.43.203 was amended with the following change.

2.43.203 REVIEW OF ADMINISTRATIVE DECISION (1) Those matters subject to board administrative determination, including contested cases, will be decided by the board initially on the basis of material properly submitted by the requesting party and such other information as the board deems appropriate. The board will notify the requesting party of its preliminary decision. If the decision is adverse, the board will include a general statement of adverse considerations, which need not be exhaustive. The requesting party will be given two options, which must be exercised within 30 days of the date of the notification:

(1)(a), (1)(b), (2), and (3) amended as proposed.

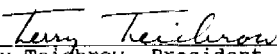
Auth: 19-2-403, MCA
IMP: 19-2-403, MCA

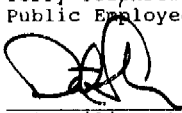
3. One comment concerning the amendment to ARM 2.43.203 was received.

COMMENT NO. 1: The wording in the first sentence infers that all administrative decisions will be made by the Board and none by the Public Employees' Retirement Division staff.

RESPONSE: The Public Employees' Retirement Division staff does and will continue to make administrative decisions. The Board will only review a staff decision if the decision is appealed to the Board. The Board added language to ARM 2.43.203

to correct this problem.


Terry Teichrow, President
Public Employees' Retirement Board


Dal Smilie, Chief Legal Counsel and
Rule Reviewer

Certified to the Secretary of State on August 29, 1997.

BEFORE THE BOARD OF MILK CONTROL
OF THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of amendments) NOTICE OF ADOPTION
of rules 32.24.504, 32.24.505) AND AMENDMENT
and 32.24.506 as they relate)
to quota rules; and the)
adoption of new rule I as it)
relates to quota rules.) DOCKET #1-97

TO: ALL INTERESTED PERSONS:

1. On August 4, 1997, the Montana board of milk control published notice of the proposed adoption of new Rule I, and amendments to rules 32.24.504, 32.24.505 and 32.24.506 concerning quota rules. Notice was published at page 1339 of the 1997 Administrative Register, issue no. 15, as MAR No. 32-3-137.

2. The board has adopted new Rule I as proposed. The number assigned to new Rule I is 32.24.507.

AUTH: 81-23-104, MCA

IMP: 81-23-103, MCA

3. The board has amended rules 32.24.504, 32.24.505 and 32.24.506 as proposed.

AUTH: 81-23-104, MCA

IMP: 81-23-103, MCA

4. No comments or testimony were received.

DEPARTMENT OF LIVESTOCK

By: 

Laurence Petersen, Exec.
Officer, Board of Livestock
Department of Livestock

By: 

Lon Mitchell, Rule Reviewer
Livestock Chief Legal Counsel

Certified to the Secretary of State September 8, 1997.

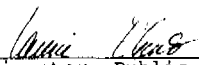
BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of rule 11.7.313 pertaining to)
the model rate matrix used to)
determine foster care)
maintenance payments)

TO: All Interested Persons

1. On July 7, 1997, the Department of Public Health and Human Services published notice of the proposed amendment of rule 11.7.313 pertaining to the model rate matrix used to determine foster care maintenance payments at page 1149 of the 1997 Montana Administrative Register, issue number 13.
2. The Department has amended rule 11.7.313 as proposed.
3. No comments or testimony were received.
4. The changes will apply to services provided on or after July 1, 1997.


Rule Reviewer


Director, Public Health and
Human Services

Certified to the Secretary of State September 8, 1997.

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


In the matter of the amendment	)	NOTICE OF AMENDMENT
of rules 11.12.115, 11.12.413)	
and 11.12.601 pertaining to)	
qualifications of child care)	
staff, foster parents, and)	
regular members of foster)	
parents' households)	

TO: All Interested Persons

1. On July 7, 1997, the Department of Public Health and Human Services published notice of the proposed amendment of rules 11.12.115, 11.12.413 and 11.12.601 pertaining to qualifications of child care staff, foster parents, and regular members of foster parents' households at page 1145 of the 1997 Montana Administrative Register, issue number 13.

2. The Department has amended rules 11.12.115, 11.12.413 and 11.12.601 as proposed.

3. No comments or testimony were received.



Rule Reviewer



Director, Public Health and
Human Services

Certified to the Secretary of State September 8, 1997.

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

In the matter of the repeal of) NOTICE OF REPEAL
rule 46.12.539 pertaining to)
the fee schedule for audiology)
services)

TO: All Interested Persons

1. On July 21, 1997, the Department of Public Health and Human Services published notice of the proposed repeal of rule 46.12.539 pertaining to the fee schedule for audiology services at page 1247 of the 1997 Montana Administrative Register, issue number 14.

2. The Department has repealed rule 46.12.539 as proposed.

3. No comments or testimony were received.

Dawn Shiva
Rule Reviewer

Russell E. Coker, for
Director, Public Health and
Human Services

Certified to the Secretary of State September 8, 1997.

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

IN THE MATTER OF THE PETITION FOR) DECLARATORY RULING
DECLARATORY RULING ON THE)
APPLICABILITY OF SECTION 37-19-101)
(13) AND 37-19-301, MCA, TO SEVEN)
FUNERAL HOMES' PRE-NEED FUNERAL)
ARRANGEMENT PROGRAM IN MONTANA)

TO: All interested persons:

1. On July 21, 1997, the Board of Funeral Service published a Notice of Petition for Declaratory Ruling from seven licensed funeral homes in Montana: Livingston, Malletta & Geraghty, Missoula; Squire, Simmons & Carr, Missoula; Sunset Memorial Funeral Home and Cemetery, Missoula; O'Connor Funeral Home, Great Falls; Chapel of Chimes, Great Falls; Gorder Funeral Home, Choteau; and Retz Funeral Home, Helena. The Petitioners questioned whether their pre-need funeral arrangement services, which are offered to the general public, may be offered by non-licensed persons, who are supervised by licensed morticians.

2. Petitioners noted that 37-19-101 (13), MCA, states that the definition of "funeral directing" includes "supervising funerals, including the making of pre-need or at-need contractual arrangements for funerals."

3. Petitioners further noted that 37-19-301, MCA, states that the practice of funeral directing by anyone who does not hold a funeral director's license or a mortician's license issued by the department is prohibited.

4. Petitioners presented the issue to the board as the question "whether the Petitioners' pre-need program complies with Montana law to the extent that it utilizes non-licensed personnel under the direct supervision of a licensed funeral director...."

5. The Board considered the Petition at a hearing held August 19, 1997. The Board ruled that the Petitioners, or any other licensed funeral homes, funeral directors, or morticians, may NOT utilize unlicensed personnel under the direct supervision of a licensed mortician to offer, present, facilitate, sell, contract with, or otherwise participate in pre-need contractual arrangements for funerals.

6. The Board's reasoning stated that the plain reading of 37-19-101(13), the definition of "funeral directing," does not appear to allow for pre-need or at-need contractual funeral arrangements to be conducted under supervision only. Instead, this definition of "funeral directing," plus Section 37-19-301, MCA, which states the practice of funeral directing may only be done by a licensed person, requires pre-need and at-need contractual funeral arrangements to be restricted to licensed persons only.

7. Section 37-19-101(13) had been amended in 1989, but the purpose of adding the clause "including the making of pre-need or at-need contractual arrangements for funerals" was not meant to modify the word "supervision" only. The clause was to expand the definition of funeral directing, and clarify when licensed persons must conduct the activities. The purpose was not to expand the definition and therefore the practice of funeral directing to unlicensed persons, with or without any type of supervision arrangement.

8. The Board's intent in its ruling is to rule in the best interests of the public. The public is not well served, and it is not in their best interest, to allow pre-need or at-need contractual funeral arrangements to be made by unlicensed persons. The Board noted, as a safety issue, that it has jurisdiction over its own licensees only. These people may be held accountable, and their actions may be a cause for license discipline if fraud, misrepresentation, or any of a myriad of other conducts serves to cheat the consumer during the pre-need sale. This same safeguard does not exist for a consumer cheated by an unlicensed person, as the Board would be limited to a District Court injunctive action to prevent future sales. There is no recourse with the Board if unlicensed persons fail to act up to the standards of the profession in conducting their pre-need contractual funeral arrangement sales.

9. Further, the Board noted any contrary ruling allowing unlicensed persons to conduct the practice of funeral service, including their utilization to sell pre-need funeral arrangements under supervision, would be a sweeping change of interpretation for this Board. The statute has been read and interpreted by the Board as requiring licensure for all activities included under the definition of "funeral directing" for many years, back to the year it was enacted.

10. The Board specifically noted that the issue presented and ruled upon is not whether a particular funeral home, or a particular in-state or out-of-state corporation may engage in this practice. Instead, the issue and ruling are to be applied state-wide, to all funeral homes and licensed morticians and funeral directors in the state of Montana. The best interest of the consumer requires this prohibition be enforced state-wide.

11. Finally, the Board found the Petitioners' suggested statutory interpretation to be strained. The Petitioners' witness, an unlicensed funeral home employee, stated he was performing the duties and activities of a licensed funeral director for pre-need consumers, but was not allowed to conduct the same activities for at-need consumers. This contradictory position again suggested the statute should be read to require a licensed funeral director or mortician for all pre AND at-need contractual funeral arrangements.

12. The Board denied the Petition, and interprets the statutes as NOT allowing unlicensed persons to be utilized by licensed funeral homes, licensed funeral directors, or licensed morticians for the purpose of selling pre-need funeral

arrangements, whether or not the unlicensed person is supervised by a licensee of the Board.

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

DATED: this Third day of September,
1997.

BOARD OF FUNERAL SERVICE

BY: David G. Fulkerson
DAVE FULKERSON, CHAIRMAN

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules, amendment or repeal of existing rules filed with the Secretary of State, except rules proposed by the Department of Revenue. Proposals of the Department of Revenue are reviewed by the Revenue Oversight Committee.

The Administrative Code Committee has the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. In addition, the Committee may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt or amend a rule.

The Committee welcomes comments from the public and invites members of the public to appear before it or to send it written statements in order to bring to the Committee's attention any difficulties with the existing or proposed rules. The address is Room 138, Montana State Capitol, Helena, Montana 59620.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE
MONTANA ADMINISTRATIVE REGISTER

Definitions: Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

- | | |
|------------|---|
| Known | 1. Consult ARM topical index. |
| Subject | Update the rule by checking the accumulative |
| Matter | table and the table of contents in the last |
| | Montana Administrative Register issued. |
| Statute | 2. Go to cross reference table at end of each |
| Number and | title which lists MCA section numbers and |
| Department | corresponding ARM rule numbers. |

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 1997. This table includes those rules adopted during the period July 1, 1997 through September 30, 1997 and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 1997, 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 1996 and 1997 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.

ADMINISTRATION. Department of, Title 2

I	and other rules - State Procurement, p. 1107
2.21.122	and other rules - Sick Leave, p. 971, 1440
2.21.216	and other rules - Annual Vacation Leave, p. 966, 1442
2.21.619	and other rules - Holidays, p. 962, 1444
2.21.3603	and other rules - Veterans' Employment Preference, p. 956, 1445
2.21.3802	and other rules - Probation, p. 952, 1446
2.21.5006	and other rule - Reduction in Work Force, p. 946, 1447
2.21.8011	and other rules - Grievances, p. 949, 1448
2.21.8107	and other rule - Equal Employment Opportunity, p. 964, 1449

(Public Employees' Retirement Board)

2.43.203	and other rules - Review of an Administrative Decision - Service Credit for Compensated Hours - Granting of Service Credit and Membership Service as a Result of Court Action, p. 1103
----------	--

AGRICULTURE, Department of, Title 4

- I Establishing Grading Standards for Mustard Seed, p. 1413
- I License Fees for Commodity Dealers/Public Warehouse Operators, p. 741, 1023
- I Use of Pesticides in Alfalfa Seed Crops, p. 616, 985
- 4.5.109 and other rules - Noxious Weed Trust Fund Procedures, p. 974, 1264
- 4.12.1508 Conditions Governing Importation of Mint and Mint Rootstock, p. 1005, 1450

STATE AUDITOR, Title 6

- I Transactional Exemptions for Cooperative Associations, p. 1496
 - I-VI Regulation of Living Trusts, p. 1415
 - 6.6.511 Medicare Supplement Insurance, p. 1421
 - 6.6.4001 Valuation of Securities, p. 371, 688
 - 6.6.4002 Definitions of Money Market Funds, p. 1502
 - 6.6.5101 Plan of Operation of the Small Employer Health Reinsurance Program, p. 1500
- (Classification Review Committee)
- 6.6.8301 Updating References to the NCCI Basic Manual for Workers Compensation and Employers Liability Insurance, 1996 Edition, p. 1419
 - 6.6.8301 Updating References to the NCCI Basic Manual for Workers Compensation and Employers Liability Insurance, 1996 Edition, p. 369, 664, 1357

COMMERCE, Department of, Title 8

- (Chemical Dependency Counselors Certification Program)
- I Fees, p. 1008, 1451

- (Board of Dentistry)
- 8.16.408 and other rules - Inactive to Active Status Licenses for Dentists and Dental Hygienists - General Standards - Denturist Examination - Denturist Inactive to Active Status License - Reinstatement of Denturist Licenses, p. 848, 1265

- (Board of Hearing Aid Dispensers)
- 8.20.401 and other rules - Hearing Aid Dispensers, p. 3009, 832

- (Board of Horse Racing)
- 8.22.502 and other rules - Parimutuel Wagering - Fees - Permissible Medication, p. 526, 889

- (Board of Nursing)
- 8.32.413 and other rules - Conduct of Nurses - Survey and Approval of Schools - Annual Report - Definitions - Registered Nurse's Responsibility to the Nursing

Process - Standards for Schools of Nursing -
Standards for IV Therapy - Charge Nurse for Licensed
Practical Nurses, p. 2638, 626, 1176

(Board of Nursing Home Administrators)

8.34.404A and other rules - Nursing Home Administrators,
p. 3174, 1, 237

8.34.414A Application for Licensure, p. 1423

(Board of Optometry)

8.36.406 and other rules - General Practice Requirements -
Unprofessional Conduct - Fees - Disciplinary Actions
- Continuing Education Concerning the Practice of
Optometry, p. 2238, 2654, 305

(Board of Outfitters)

8.39.505 and other rules - Outfitter Applications and
Renewals - Guide or Professional Guide Licenses and
Qualifications - Safety Provisions - Unprofessional
Conduct, p. 1330

8.39.512 and other rule - Licensure - Inactive - Fees for
Outfitter, Operations Plan and Guide or Professional
Guide, p. 530, 667, 1178

(Board of Physical Therapy Examiners)

8.42.402 and other rules - Examinations - Fees - Temporary
Licenses, p. 852, 1359

(Board of Professional Engineers and Land Surveyors)

8.48.507 Classification of Experience, p. 1504

(Board of Private Security Patrol Officers and Investigators)

8.50.423 and other rules - Private Security Patrol Officers
and Investigators, p. 2656, 633

(Board of Psychologists)

8.52.402 and other rules - Practice of Psychology, p. 3, 538,
637

(Board of Public Accountants)

8.54.402 and other rules - Practice of Public Accounting,
p. 3018, 540

(Board of Radiologic Technologists)

8.56.602C and other rules - Permit Examinations - Permit Fees
- Inspections - Continuing Education - Continuing
Education--Waiver, p. 977, 1576

(Board of Real Estate Appraisers)

8.57.403 and other rules - Real Estate Appraisers, p. 2665,
308

8.57.411 Continuing Education, p. 532, 1360

(Board of Realty Regulation)

8.58.410 Foreign Land Sales Practices Act, p. 1010

- 8.58.411 and other rules - Fees - Continuing Education -
Renewal of License, p. 1333
- 8.58.419 Grounds for License Discipline - General Provisions
- Unprofessional Conduct, p. 467, 1026
- 8.58.419 Grounds for License Discipline - General Provisions
- Unprofessional Conduct, p. 3101, 399

(Board of Respiratory Care Practitioners)

- 8.59.402 and other rules - Respiratory Care Practitioners,
p. 8, 542

(Board of Sanitarians)

- 8.60.413 Fee Schedule, p. 1243, 1578

(Board of Social Work Examiners and Professional Counselors)

- 8.61.403 and other rules - Practice of Social Work and
Licensed Professional Counseling, p. 239, 986

(Board of Speech-Language Pathologists and Audiologists)

- 8.62.413 Fees, p. 1012, 1453

(Board of Passenger Tramway Safety)

- 8.63.503 and other rules - Passenger Tramway Safety Industry,
p. 2952, 401

(Building Codes Bureau)

- 8.70.101 and other rules - Building Codes Bureau, p. 1509
- 8.70.101 and other rule - Uniform Building Code - Boiler
Inspection, p. 855, 1179

(Banking and Financial Institutions Division)

- I-XVII Foreign Capital Depositories, p. 1534
- 8.87.204 and other rules - Application Procedures to
Establish a New Branch Bank - Procedural Rules for
a Banking Board Hearing, p. 1014, 1454

(Local Government Assistance Division)

- 8.94.3705 and other rules - Federal Community Development
Block Grant (CDBG) Program, p. 19, 1181
- 8.94.4101 and other rules - State of Montana Single Audit Act
- Report Filing Fee Schedule, p. 743, 1027

(Board of Investments)

- 8.97.910 and other rules - INTERCAP Revolving Program,
p. 750, 1028
- 8.97.1301 and other rules - General Requirements for All
Investments in Mortgages and Loans, p. 859, 1579

(Economic Development Division)

- 8.99.401 and other rules - Microbusiness Advisory Council -
Microbusiness Finance Program, p. 1547

(Hard-Rock Mining Impact Board)

- 8.104.203A Administration of the Hard-Rock Mining Impact Act -
Definitions, p. 981, 1337

(Travel Promotion and Development Division)
I Tourism Advisory Council, p. 619, 987

EDUCATION, Title 10

(Office of Public Instruction)

10.16.1101 Protection in Evaluation Procedures, p. 373, 892

(Board of Public Education)

- 10.55.603 Accreditation - Curriculum Development and Assessment, p. 756, 871, 1185
10.56.101 Student Assessment, p. 754, 870, 1186
10.57.107 Teacher Certification - Emergency Authorization of Employment, p. 2961, 312
10.57.211 Teacher Certification - Test for Certification, p. 757, 872, 1187
10.57.215 Teacher Certification - Renewal Requirements, p. 759, 873, 1188
10.58.505 Teacher Education Programs - Business Education, p. 2962, 313

(State Library Commission)

10.101.101 and other rule - State Library Commission - Library Service Advisory Council, p. 1119

FISH, WILDLIFE, AND PARKS, Department of, Title 12

(Fish, Wildlife, and Parks Commission)

- 12.6.101 Regulations for Ice Fishing Shelters, p. 247, 638
12.6.901 Restriction of Motor-propelled Water Craft on Hauser Reservoir, p. 669, 1029
12.6.901 Restriction of Motor-propelled Water Craft on Various Lakes in the Seeley Lake Area and Beavertail Pond, p. 131, 639

ENVIRONMENTAL QUALITY, Department of, Title 17

- 17.36.110 Subdivisions - Emergency Amendment - Certification of Plat Approval, p. 543
17.36.303 Subdivisions - Authority of the Department to Allow Use of Alternative Water Systems in Subdivisions, p. 375, 1458
17.40.201 and other rules - Operator Certification - Revising Water and Waste Water Operator Certification Rules, p. 3182, 545
17.50.412 and other rules - Solid Waste Management - Conform with EPA Flexibility - Allow Reduced Regulatory Requirements for Certain Wastes, p. 671, 1031
17.50.530 and other rule - Solid Waste Management - Class II Landfill Requirements, p. 377, 689

(Board of Environmental Review)

I Water Quality - Temporary Water Standards for Daisy Creek, Stillwater River, Fisher Creek, and the

- Clark's Fork of the Yellowstone River, p. 1652, 1872, 2211, 1049, 2502, 534
- 17.8.102 and other rules - Air Quality - Updating the Incorporations by Reference, p. 1126, 1581
- 17.8.120 Air Quality - Variance Procedures, p. 763, 1189
- 17.8.210 Air Quality - Ambient Air Quality Standards for Sulfur Dioxide, p. 1124, 1582
- 17.8.302 and other rule - Air Quality - Incorporating by Reference Federal Regulations and other Materials Related to Air Quality Emission Standards - Standards of Performance for New Stationary Sources of Air Pollutants, p. 760, 1191
- 17.8.316 Air Quality - Particulate Matter Emissions from Incinerators, p. 874, 1193
- 17.8.504 and other rule - Air Quality - Air Quality Operation Fees - Air Quality Permit Application Fees, p. 1142, 1585
- 17.8.514 Air Quality - Open Burning Fees, p. 1131, 1587
- 17.30.636 Water Quality - Emergency Amendment - Operation of Dams to Avoid Harm to Beneficial Uses of Water, p. 1199
- 17.30.636 Water Quality - Operation of Dams to Avoid Harm to Beneficial Uses of Water, p. 1122, 1588
- 17.30.716 Water Quality - Simplify Review of Individual Sewage Systems Under the Nondegradation Policy, p. 1133
- 17.30.1003 and other rule - Water Quality - Montana Ground Water Pollution Control System Regulations, p. 1138
- 17.30.1501 and other rules - Water Quality - Permitting of In-Situ Uranium Mining, p. 3199, 402
- (Petroleum Tank Release Compensation Board)
- 17.58.333 Petroleum Board - Designating a Representative for Reimbursement, p. 3197, 403

TRANSPORTATION, Department of, Title 18

- 18.7.301 and other rules - Motorist Information Signs, p. 679, 1034
- 18.8.509 and other rule - Motor Carrier Services Program, p. 2964, 546, 1035
- 18.8.511A Motor Carrier Services Program - When Flag Vehicles are Required, p. 21, 647

(Transportation Commission)

- I-XV Railroad Crossing Signalization - Signal Removal - Improved Crossing Surface Installation, p. 3028, 642, 896

JUSTICE, Department of, Title 23

- 23.16.101 and other rules - Public Gambling, p. 2504, 404

(Board of Crime Control)

- 23.14.801 Definition of "Uncertifiable Officer", p. 536, 1036

LABOR AND INDUSTRY, Department of, Title 24

- I-XI Workers' Compensation Administrative Assessment, p. 380, 686, 1364
- 24.16.9007 Prevailing Wage Rates - Service Occupations and Certain Bricklayer Rates, p. 621, 1037
- 24.29.4314 Workers' Compensation Data Base System, p. 1021
- 24.30.102 Occupational Safety and Health Standards for Public Sector Employment, p. 396, 692

LIVESTOCK, Department of, Title 32

(Board of Milk Control)

- 32.24.301 and other rule - Producer Class I Pricing, p. 3201, 434
- 32.24.501 and other rules - Quota Rules, p. 2718, 3215, 314
- 32.24.504 and other rules - Quota Rules, p. 1339

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

- I&II Streamside Management Zone, p. 1552
- I-XII Administration of the Yellowstone Controlled Groundwater Area, p. 22, 469
- 36.17.601 and other rules - Renewable Resources Grant and Loan Program, p. 983, 1268

(Board of Land Commissioners and Department of Natural Resources and Conservation)

- 36.25.146 and other rule - State Land Leasing, p. 3110, 315

(Board of Oil and Gas Conservation)

- 36.22.1231 and other rules - Notice of Application and Objections - Injection Fee and Well Classification - Disposal by Injection - Application--Contents and Requirements - Board Authorization - Notice of Commencement of Discontinuance--Plugging of Abandoned Wells - Records Required, p. 1245, 1589
- 36.22.1408 Underground Injection Control - Financial Responsibility, p. 3107, 471
- 36.22.1423 Injection Fees - Well Classification, p. 32, 473

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

- I and other rules - Laboratory Analysis Fees, p. 823, 1041
- I and other rules - Medicaid Reimbursement Methodology, p. 775, 1269
- I-IX and other rules - Rules in Titles 11 and 46 Pertaining to Mental Health Managed Care Services for Medicaid Recipients and other Eligible Persons, p. 147, 548, 898
- I-X and other rules - Targeted Case Management, p. 2755, 496, 898
- I-XVIII Montana Telecommunications Access Program, p. 2967, 505

- I-XXI and other rule - Minimum Standards for Mental Health Centers, p. 1556
- 11.5.1002 Day Care Rates, p. 879, 1387
- 11.7.313 Model Rate Matrix Used to Determine Foster Care Maintenance Payments, p. 1149
- 11.7.901 Interstate Compact on the Placement of Children, p. 3205, 316
- 11.12.115 and other rules - Qualifications of Child Care Staff, Foster Parents, and Regular Members of Foster Parents' Households, p. 1145
- 11.14.101 and other rules - State Payment for Day Care Services to Eligible Providers and Parents, p. 1427
- 11.14.101 and other rules - Day Care Facilities - Certification for Day Care Benefits, p. 249
- 11.14.106 and other rules - Excluding Care of Children of a Single Family from Day Care Facility Licensing and Registration Rules - State Payment for Registered or Licensed Day Care and Unregistered Day Care, p. 135, 578
- 16.6.101 and other rules - Transfer from the Department of Health and Environmental Sciences - Records and Statistics, p. 1460
- 16.10.1507 Area Requirements, Deck Areas, Handholds for Swimming Pools and Spas, p. 145, 580
- 16.30.102 and other rules - Emergency Medical Services Licensure Requirements and Procedures, p. 801, 1201
- 16.30.901 and other rules - Transfer from the Department of Health and Environmental Sciences - Living Wills, p. 1462
- 16.32.302 Minimum Standards of Construction for a Licensed Health Care Facility, p. 1574
- 16.32.922 Inspection Fees for Personal Care Facilities, p. 877, 1203
- 20.3.401 and other rules - Chemical Dependency Counselor Certification Rules, p. 1249, 1590
- 20.14.302 and other rule - Voluntary Admissions to Montana State Hospital, p. 1347
- 46.6.903 and other rules - Independent Living Program, p. 765, 1204
- 46.12.101 and other rules - General Medicaid Provider Requirements, p. 2724, 474
- 46.12.204 Copayments and Qualified Medicare Beneficiaries, p. 820, 1208
- 46.12.503 and other rules - Medicaid Coverage - Reimbursement of Hospital Services, p. 883, 1209
- 46.12.539 Fee Schedule for Audiology Services, p. 1247
- 46.12.550 and other rules - Home Health Services, p. 771, 1042
- 46.12.1229 and other rules - Medicaid Nursing Facility Services Reimbursement, p. 805, 1044
- 46.12.3803 Medically Needy Assistance Standards, p. 2750, 502
- 46.12.4801 and other rules - Health Maintenance Organizations, p. 811, 1210
- 46.12.4804 and other rules - Health Maintenance Organizations, p. 2418, 503

- 46.12.5003 and other rules - Passport to Health Program,
p. 1350
46.13.302 and other rules - Low Income Energy Assistance
Program (LIEAP), p. 2136, 2887, 504

PUBLIC SERVICE REGULATION, Department of, Title 38

- I-VI Unauthorized Changes of Primary Interexchange
Carrier or Local Exchange Carrier ("Slamming"),
p. 1259
I-IX Montana Interim Universal Access Program, p. 1253
I-IX IntraLATA Equal Access Presubscription, p. 299
I-LVIII Local Exchange Competition and Dispute Resolution in
Negotiations between Telecommunications Providers
for Interconnection, Services and Network Elements,
p. 2528, 319, 651
38.3.706 Motor Carrier Insurance Endorsements (applicable to
Large Motor Coaches), p. 624, 1062
38.5.1010 and other rules - Electric Safety Codes - Electric
Service Standards - Pipeline Safety (including Drug
and Alcohol Testing), p. 2777, 317
38.5.2204 Pipeline Safety Incident Reporting Requirements,
p. 827, 1215

REVENUE, Department of, Title 42

- I Agricultural Improvements from Property Land
Classification, p. 3112, 506
I-XIII and other rules - Assessment of Property - Issuing
Tax Notices, p. 1165, 1593
I-XIII and other rules - Temporary - Assessment of Property
- Issuing Tax Notices Under Senate Bill 195,
p. 1153, 1591
42.20.140 and other rules - Real Property, p. 1438
42.20.166 and other rule - Forest Land Rules, p. 3208, 507

SECRETARY OF STATE, Title 44

(Commissioner of Political Practices)

- I-II Lobbying Activities - Reporting of Lobbying Payments
by Principals, p. 829
44.10.327 and other rule - Reporting of Contributions or
Expenditures by Incidental Political Committees,
p. 1354

BOARD APPOINTEES AND VACANCIES

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

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

In this issue, appointments effective in August 1997, appear. Vacancies scheduled to appear from October 1, 1997, through December 31, 1997, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

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

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of September 1, 1997.

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

BOARD AND COUNCIL APPOINTEES FROM AUGUST, 1997

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Veteran's Affairs (Military Affairs)			
Ms. Karen Furu	Governor	Ellestad	8/18/1997
Bozeman			5/18/1998
Qualifications (if required): veteran			
Board of Water Well Contractors (Natural Resources and Conservation)			
Mr. Kevin Haggerty	Governor	Lindsay	8/19/1997
Bozeman			7/1/2000
Qualifications (if required): licensed water well contractor			
Family Education Savings Program Oversight Committee (Commissioner of Higher Education)			
Mr. Peter Blouke	Governor	not listed	8/20/1997
Helena			7/1/2001
Qualifications (if required): Director, Department of Commerce			
Mr. Pat Ellis	Governor	not listed	8/20/1997
Bozeman			7/1/2000
Qualifications (if required): public member			
Mr. Jim Kaze	Governor	not listed	8/20/1997
Havre			7/1/1999
Qualifications (if required): presiding officer of the Board of Regents			
Ms. Sarah Kelly	Governor	not listed	8/20/1997
Helena			7/1/1999
Qualifications (if required): public member			
Ms. Lois A. Menzies	Governor	not listed	8/20/1997
Helena			7/1/2000
Qualifications (if required): State Treasurer			

BOARD AND COUNCIL APPOINTEES FROM AUGUST, 1997

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Family Education Savings Program Oversight Committee (Commissioner of Higher Education) Cont.			
Mr. Gerry Meyer, Sr. Great Falls Qualifications (if required): public member	Governor	not listed	8/20/1997 7/1/1998
Auditor Mark O'Keefe Helena Qualifications (if required): Commissioner of Insurance	Governor	not listed	8/20/1997 7/1/2001
Montana Consensus Council (Governor)			
Mr. Robbie Garrett Dillon Qualifications (if required): public member	Governor	not listed	8/26/1997 6/30/1999
Ms. Anne Hedges Helena Qualifications (if required): public member	Governor	not listed	8/26/1997 6/30/1999
Sen. Greg Jergeson Chinook Qualifications (if required): public member	Governor	not listed	8/26/1997 6/30/1999
Rep. Karl Ohs Harrison Qualifications (if required): public member	Governor	not listed	8/26/1997 6/30/1999
Mr. Bruce Vincent Libby Qualifications (if required): public member	Governor	not listed	8/26/1997 6/30/1999

BOARD AND COUNCIL APPOINTEES FROM AUGUST, 1997

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Wheat and Barley Committee (Agriculture)			
Mr. Duane Arneklev	Governor	reappointed	8/20/1997
Plentywood			8/20/2000
Qualifications (if required):	Democrat from District I		
Mr. Dan DeBuff	Governor	Barber	8/20/1997
Shawmut			8/20/2000
Qualifications (if required):	Republican from District V		
Mr. Franklin Mosdal	Governor	McDonnell	8/20/1997
Broadview			8/20/2000
Qualifications (if required):	Democrat from District VI		
Private Land-Public Wildlife Advisory Council (Fish, Wildlife and Parks)			
Mr. Lee Gustafson	Governor	Charles	8/26/1997
Billings			6/30/1999
Qualifications (if required):	hunter		
Mr. Tom Hougén	Governor	Christensen	8/26/1997
Melstone			6/30/1999
Qualifications (if required):	landowner		
Mr. Ray Marxer	Governor	not listed	8/26/1997
Dillon			6/30/1999
Qualifications (if required):	ranch manager		
Mr. Cecil Noble	Governor	Smith	8/26/1997
Kalispell			6/30/1999
Qualifications (if required):	outfitter		
Mr. John Wilkinson	Governor	not listed	8/26/1997
Miles City			6/30/1999
Qualifications (if required):	outfitter		

BOARD AND COUNCIL APPOINTEES FROM AUGUST, 1997

Appointee	Appointed by	Succeeds	Appointment/End Date
Vocational Rehabilitation Advisory Council (Public Health and Human Services)			
Mr. Ben Longie	Director	Sutich	8/25/1997
Dillon			8/25/1999
Qualifications (if required):	not listed		
Water and Wastewater Operators' Advisory Council (Environmental Quality)			
Mr. Robert Cottom	Governor	reappointed	8/25/1997
Dillon			10/16/2003
Qualifications (if required):	wastewater treatment plant operator holding a valid certificate		
Dr. Carol Reifschneider	Governor	Jones	8/25/1997
Havre			10/16/1999
Qualifications (if required):	faculty member of a university		

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 1997 through DECEMBER 31, 1997

Board/current position holder	Appointed by	Term end
9-1-1 Advisory Council (Administration)		
Mr. Mike Sederholm, Lewistown	Director	12/12/1997
Qualifications (if required): Montana Fire Districts Association		
Mr. Dan Green, Helena	Director	12/12/1997
Qualifications (if required): US WEST Communications		
Ms. Judy Fraser, Kalispell	Director	12/12/1997
Qualifications (if required): PTL Communication		
Dr. Drew Dawson, Helena	Director	12/12/1997
Qualifications (if required): representing Department of Health and Environmental Sciences		
Mr. Jim Kraft, Billings	Director	12/12/1997
Qualifications (if required): Association of Disaster and Emergency Services Coordinators		
Mr. Bill Wade, Circle	Director	12/12/1997
Qualifications (if required): Montana Telephone Association		
Mr. Dave Mason, Helena	Director	12/12/1997
Qualifications (if required): Montana State Volunteer Fire Fighters Association		
Mr. Ted Benson, Billings	Director	12/12/1997
Qualifications (if required): Western Wireless		
Mr. James Anderson, Helena	Director	12/12/1997
Qualifications (if required): Department of Military Affairs, Disaster and Emergency Services Division		
Mr. Don Taylor, Belfry	Director	12/12/1997
Qualifications (if required): Montana Association of Counties		

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 1997 through DECEMBER 31, 1997

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
9-1-1 Advisory Council (Administration) Cont. Mr. Rick Newby, Miles City Qualifications (if required): Montana Association of Chiefs of Police	Director	12/12/1997
Mr. Al Brockway, Helena Qualifications (if required): Montana Board of Crime Control	Director	12/12/1997
Ms. Donna Hulse, Helena Qualifications (if required): Commnet Cellular	Director	12/12/1997
Mayor William McCauley, Cut Bank Qualifications (if required): Montana League of Cities and Towns	Director	12/12/1997
Mr. Marshall Kyle, Missoula Qualifications (if required): Montana State Fire Chiefs' Association	Director	12/12/1997
Major Irwin L. Garrick, Helena Qualifications (if required): Montana Highway Patrol	Director	12/12/1997
Mr. Michael Strand, Helena Qualifications (if required): Montana Independent Telecommunications Systems	Director	12/12/1997
Mr. Art Bicsak, Great Falls Qualifications (if required): Montana Emergency Medical Services Association	Director	12/12/1997
Lieutenant Billi Heigh, Helena Qualifications (if required): Association of Public-Safety Communications Officers	Director	12/12/1997

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 1997 through DECEMBER 31, 1997

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Alfalfa Seed Committee (Agriculture)		
Mr. Thomas Matchett, Chinook	Governor	12/21/1997
Qualifications (if required): public member		
Mr. Gayle Patrick, Wagner		
Qualifications (if required): public member	Governor	12/21/1997
Board of Outfitters (Commerce)		
Mr. Robin Cunningham, Gallatin Gateway	Governor	10/1/1997
Qualifications (if required): representative of District 2		
Mr. Paul Roos, Helena		
Qualifications (if required): representative of District 1	Governor	10/1/1997
Capitol Restoration Commission (Administration)		
Ms. Marilyn Miller, Helena	Speaker	12/20/1997
Qualifications (if required): none specified		
Concealed Weapon Advisory Council (Justice)		
Ms. Kim Christopher, Polson	Governor	11/13/1997
Qualifications (if required): law enforcement official		
Rep. Bob Clark, RyeGate		
Qualifications (if required): law enforcement official	Governor	11/13/1997
Sheriff Bill Slaughter, Bozeman		
Qualifications (if required): law enforcement official	Governor	11/13/1997
Rep. Rick Jore, Ronan		
Qualifications (if required): legislator	Governor	11/13/1997
Mr. Gary Marbut, Missoula		
Qualifications (if required): gun owner	Governor	11/13/1997

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 1997 through DECEMBER 31, 1997

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Concealed Weapon Advisory Council (Justice) Cont. Chief Robert Jones, Great Falls Qualifications (if required): law enforcement official	Governor	11/13/1997
Ms. Melissa Tuemmler, Ulm Qualifications (if required): gun owner	Governor	11/13/1997
Department of Corrections Advisory Council (Corrections) Mr. T. Larson Medicine Horse, Hardin Qualifications (if required): sheriff and Native American representative	Governor	12/11/1997
Judge Marge Johnson, Great Falls Qualifications (if required): district court judge	Governor	12/11/1997
Mr. Jim Reno, Billings Qualifications (if required): representing education programs	Governor	12/11/1997
Mr. Paul Stengel, Miles City Qualifications (if required): public member	Governor	12/11/1997
Sen. Bob Hockett, Havre Qualifications (if required): representing education/VoEd	Governor	12/11/1997
Mr. Tom Esch, Kalispell Qualifications (if required): county attorney	Governor	12/11/1997
Ms. Nancy Brosten, Swan Lake Qualifications (if required): member of the Swan River Correctional Training Center Advisory Council	Governor	12/11/1997
Rep. Bob Keenan, Bigfork Qualifications (if required): representative of the Swan River Correctional Training Center	Governor	12/11/1997

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 1997 through DECEMBER 31, 1997

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term and</u>
Department of Corrections Advisory Council (Corrections) Cont.		
Rep. Royal C. Johnson, Billings	Governor	12/11/1997
Qualifications (if required): legislator		
Commissioner Doug Barons, Glendive	Governor	12/11/1997
Qualifications (if required): county commissioner		
Ms. Candy Wimmer, Helena	Governor	12/11/1997
Qualifications (if required): representing the Board of Crime Control and the Youth Justice Council		
Sen. Ethel Harding, Polson	Governor	12/11/1997
Qualifications (if required): legislator and a victim representative		
Judge Ted Mizner, Anaconda	Governor	12/11/1997
Qualifications (if required): district court judge		
Sen. Vivian M. Brooke, Missoula	Governor	12/11/1997
Qualifications (if required): legislator and active in women's issues		
Mr. Steve Rice, Miles City	Governor	12/11/1997
Qualifications (if required): representing Juvenile Justice		
Mr. John Strandell, Great Falls	Governor	12/11/1997
Qualifications (if required): member of the Regional Correctional Facility		
Ms. Anita Richards, Seeley Lake	Governor	12/11/1997
Qualifications (if required): member of the Montana Sentencing Commission and a victim representative		
Ms. Kathy Ogren, Missoula	Governor	12/11/1997
Qualifications (if required): representing business/VoEd		

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 1997 through DECEMBER 31, 1997

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Flathead Basin Commission (Governor)		
Ms. Elna Darrow, Bigfork	Governor	10/1/1997
Qualifications (if required): public member		
Mr. Larry Wilson, Columbia Falls	Governor	10/1/1997
Qualifications (if required): public member		
Historic Preservation Review Board (Historical Society)		
Dr. Arnold Olsen, Helena	Governor	10/1/1997
Qualifications (if required): represents federal land and water conservation interests		
Ms. Gloria J. Weisgerber, Missoula	Governor	10/1/1997
Qualifications (if required): public member		
Resource Conservation Advisory Council (Natural Resources and Conservation)		
Mr. Robert Fossum, Richland	Director	11/30/1997
Qualifications (if required): none specified		
Ms. Marieanne Hanser, Billings	Director	11/30/1997
Qualifications (if required): none specified		
Mr. Tom Stelling, Fort Shaw	Director	11/30/1997
Qualifications (if required): none specified		