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MONTANA ADMINISTRATIVE REGISTER

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1997 ISSUE NO. 23
DECEMBER 1, 1997
PAGES 2134-2223



MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 23

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

COMMERCE, Department of, Title 8

8-4-11 (Board of Alternative Health Care) Notice of Public Hearing on Proposed Amendment and Adoption - Naturopathic Physician Continuing Education Requirements - Licensing by Examination - Midwives Continuing Education Requirements - Natural Substances Formulary List.	2134-2141
8-6-22 (Board of Architects) Notice of Proposed Amendment and Adoption - Licensure of Out-of-State Applicants - Examinations - Individual Seal - Renewals - Unprofessional Conduct - Fees - Architect Partnerships - Screening Committee - Solicitation of Business by Architects from other States - Use of Title. No Public Hearing Contemplated.	2142-2148
8-15-3 (Boilers, Blasters and Crane Operators Program) Notice of Proposed Amendment and Adoption - Construction Blasters - Hoisting Operators - Crane Operators - Boiler Engineer Training. No Public Hearing Contemplated.	2149-2156
8-16-54 (Board of Dentistry) Notice of Proposed Amendment and Adoption - Fees - Dentist Licensure by Credentials. No Public Hearing Contemplated.	2157-2160
8-18-22 (State Electrical Board) Notice of Public Hearing on Proposed Amendment - Applications - General Responsibilities - Continuing Education - Screening Panel.	2161-2162

Page Number

COMMERCE, Continued

8-19-2 (Fire Prevention Program) Notice of
Proposed Amendment - Practice of Selling, Servicing
or Installing Fire Prevention Systems. No Public
Hearing Contemplated. 2163-2168

8-42-21 (Board of Physical Therapy Examiners)
Notice of Proposed Amendment - Fees - Temporary
Licenses - Continuing Education. No Public Hearing
Contemplated. 2169-2171

8-54-30 (Board of Public Accountants) Notice of
Proposed Amendment - Education Requirements - Fee
Schedule - Enforcement Against Licensees. No
Public Hearing Contemplated. 2172-2174

REVENUE, Department of, Title 42

42-2-621 Notice of Proposed Adoption - Family
Education Savings Act. No Public Hearing
Contemplated. 2175-2177

RULE SECTION

ADMINISTRATION, Department of, Title 2

AMD 9-1-1 Emergency Telephone Systems.
NEW 2178-2179

STATE AUDITOR, Title 6

NEW Fidelity Bonds. 2180

COMMERCE, Department of, Title 8

AMD (Board of Cosmetologists) Practice of
REP Cosmetology, Electrology, Manicuring and
NEW Esthetics. 2181-2196

AMD (Board of Medical Examiners) Physician
Temporary Certificate - Fee Schedule -
Acupuncture - Podiatry - Nutrition Practice
Rules. 2197

ENVIRONMENTAL QUALITY, Department of, Title 17

AMD (Petroleum Tank Release Compensation Board)
Eligible Reimbursement for Per Diem Expenses. 2198

REVENUE, Department of, Title 42

AMD Tax Assessment Review Process. 2199

INTERPRETATION SECTION

Opinions of the Attorney General.

9 Elections - Application of Term Limit Statute
for Public Service Commissioners - Meaning of
Words "Term" and "Years" in Term Limit
Initiative - Term Limits for Statewide
Elected Officials and Legislators -
Initiative and Referendum - Rules of
Construction for Constitutional Initiatives -
Legislature - Term Limits for Legislators -
Public Service Commission - Term Limits for
Public Service Commissioners. 2200-2211

SPECIAL NOTICE AND TABLE SECTION

Functions of the Administrative Code Committee. 2212
How to Use ARM and MAR. 2213
Accumulative Table. 2214-2223

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

In the matter of the proposed amendment of rules pertaining to continuing education requirements, licensing by examination, midwives continuing education requirements, and the adoption of a new rule pertaining to the natural substances formulary list)	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF 8.4.405 NATUROPATHIC PHYSICIAN CONTINUING EDUCATION REQUIREMENTS, 8.4.501 LICENSING BY EXAMINATION, AND 8.4.508 MIDWIVES CONTINUING EDUCATION REQUIREMENTS AND THE ADOPTION OF NEW RULE 1 NATUROPATHIC PHYSICIAN SUBSTANCE FORMULARY LIST
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TO: All Interested Persons:

1. On January 8, 1998, at 10:00 a.m., a public hearing will be held in the Professional and Occupational Licensing Bureau Conference Room, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana, to consider the proposed amendment and adoption of rules pertaining to continuing education requirements, licensing by examination, midwives continuing education requirements and the natural substance formulary list.

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

"8.4.405 NATUROPATHIC PHYSICIAN CONTINUING EDUCATION REQUIREMENTS (1) through (2)(b) will remain the same.

(i) One continuing education credit shall be granted for each hour of participation in the continuing education activity excluding breaks and meals. A licensed naturopath must earn at least 15 continuing education credits within the 12 months prior to renewal on April 30 of each year. (Five must be in naturopathic pharmacy, five additional in obstetrics if licensee has childbirth specialty certification.) A maximum of two credits by cassette or videotape will be allowed. A certificate of completion or an outline of course content must be submitted by the licensee for each cassette or videotape for the maximum two continuing education credits to be granted.

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

Auth: Sec. 37-1-319, 37-26-201, MCA; IMP, Sec. 37-1-306, MCA

REASON: The proposed amendment will clarify that a licensee must show a certificate of completion or a course outline in order to be granted the two continuing education credits that are allowed by this rule. In the past, licensees would list a certain tape for continuing education credit, but the board could not audit that claim and request proof the tape had been listened to or viewed by the licensee. This change will

allow the board to require some evidence of completion to be maintained by the licensee, in case they are chosen for a continuing education audit.

"8.4.501 LICENSING BY EXAMINATION (1) through (2) will remain the same.

(a) sit for the NARM examination only when administered by the board, at its designated Montana site, or when administered by proper NARM officials in conjunction with the annual NARM midwives alliance of North America (MANA) national meeting;

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

Auth: Sec. 37-27-105, MCA; IMP, Sec. 37-27-201, 37-27-202, 37-27-203, MCA

REASON: The proposed amendment will change the name of the national midwife organization to MANA, for Midwives Alliance of North America, as this is the correct name of the organization which conducts the national meetings. The acronym "NARM" for North American Registry of Midwives will continue to be used for references to the examination, as this is the correct name of the examination.

"8.4.508 MIDWIVES CONTINUING EDUCATION REQUIREMENTS

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

(i) One continuing education credit shall be granted for each hour of participation in the continuing education activity excluding breaks and meals. A licensed direct-entry midwife must earn at least 14 continuing education credits within the 12 months prior to renewal on April 30 of each year. A maximum of two credits by cassette or video tape will be allowed. A certificate of completion or an outline of course content must be submitted by the licensee for each cassette or videotape for the maximum two continuing education credits to be granted.

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

Auth: Sec. 37-1-319, 37-27-105, MCA; IMP, Sec. 37-1-306, MCA

REASON: The proposed amendment will clarify that a licensee must show a certification of completion or a course outline in order to be granted the two continuing education credits that are allowed by this rule. In the past, licensees would list a certain tape for continuing education credit, but the Board could not audit that claim and request proof the tape had been listened to or viewed by the licensee. This change will allow the Board to require some evidence of completion to be maintained by the licensee in case they are chosen for a continuing education audit.

3. The proposed new rule will read as follows:

"I. NATUROPATHIC PHYSICIAN NATURAL SUBSTANCE FORMULARY LIST

(1) Naturopathic physicians may prescribe and administer for preventive and therapeutic purposes the drugs listed in this natural substance formulary list as provided for in 37-26-

301, MCA.

(2) Naturopathic physicians may prescribe and administer all amino acids and amino acid combinations. The following are examples:

- (a) alanine;
- (b) arginine;
- (c) aspartic acid;
- (d) cystine;
- (e) glutamic acid;
- (f) glycine;
- (g) histidine;
- (h) hydroxyproline;
- (i) isoleucine;
- (j) leucine;
- (k) levocarnitine;
- (l) lysine;
- (m) methionine;
- (n) N-acetyl cysteine;
- (o) phenylalanine;
- (p) proline;
- (q) serine;
- (r) threonine;
- (s) tryptophan;
- (t) valine.

(3) Naturopathic physicians may prescribe and administer antimicrobials. Naturally derived examples are:

- (a) antifungal agents -- nystatin (*Streptomyces noursei*), griseofulvin, gentian violet;
- (b) cephalosporins, cephalaxan, cefaclor -- all derived from penicillium species;
- (c) erythromycin and its salts (*Streptomyces erythraeus*);
- (d) penicillins: amoxicillin, ampicillin, penicillin G, penicillin VK, cloxacillin, dicloxacillin -- all derived from penicillium species;
- (e) tetracycline, oxytetracycline, doxycycline, minocycline, all derived from *Streptomyces* species.

(4) Naturopathic physicians may prescribe and administer barrier contraceptives.

(5) Naturopathic physicians may prescribe and administer all botanical extracts and their derivatives -- prescription and nonprescription substances -- as exemplified in traditional botanical and herbal pharmacopeia. These are to be used at accepted therapeutic dosages, which means a dose which by its actions on organs does not impair function or destroy human life. The following are examples:

- (a) belladonna;
- (i) atropine, atropine sulfate;
- (b) carnivora;
- (c) cineraria maritima;
- (d) codeine salts;
- (e) colchicine;
- (f) digitalis glycosides;
- (g) ephedra;
- (i) ephedrine;

- (ii) pseudoephedrine;
 - (h) ergot;
 - (i) ergonovine;
 - (ii) ergotamine tartrate;
 - (iii) methylergonovine;
 - (i) glycyrrhiza (licorice);
 - (j) hydrocodone;
 - (k) hyoscamus;
 - (i) hyoscyamine sulfate;
 - (ii) hyoscyamine;
 - (iii) scopolamine;
 - (l) morphine;
 - (m) nicotine preparations;
 - (n) paregoric;
 - (o) pilocarpine;
 - (i) physostigmine;
 - (p) quinine;
 - (q) rauwolfia serpentina;
 - (r) salicylate salts;
 - (s) sarapin;
 - (t) theophylline;
 - (u) thiosinimum;
 - (v) viscum album;
 - (i) iscador;
 - (ii) iscucin;
 - (w) yohimbine HCL.
- (6) Naturopathic physicians may prescribe and administer electrolytes and fluid replacement. The following are examples:
- (a) dextrose solutions;
 - (b) lactated ringer's solution;
 - (c) ringer's solution;
 - (d) saline solutions;
 - (e) sterile water for injection.
- (7) Naturopathic physicians may prescribe and administer expectorants and mucolytics. The following are examples:
- (a) acetyl cysteine;
 - (b) guaiaacol;
 - (c) iodinated glycerol;
 - (d) potassium iodide.
- (8) Naturopathic physicians may prescribe and administer enzyme, digestive, and proteolytic preparations. The following are examples:
- (a) amylase;
 - (b) chymotrypsin;
 - (c) hyaluronidase;
 - (d) lipase;
 - (e) pancreatin;
 - (f) pancrelipase;
 - (g) papain;
 - (h) trypsin.
- (9) Naturopathic physicians may prescribe and administer homeopathic preparations - all prescription and nonprescription remedies.

(10) Naturopathic physicians may prescribe and administer hormones. The following are examples:

- (a) adrenal;
- (i) adrenal cortical extract;
- (ii) cortisol;
- (iii) DHEA;
- (iv) epinephrine;
- (v) pregnenolone;
- (vi) prednisone;
- (b) calcitonin;
- (c) glucagon;
- (d) gonadal;
- (i) estrogens;
- (A) conjugated estrogens;
- (B) estradiol;
- (C) estriol;
- (D) estrone;
- (E) estropipate;
- (F) ethynyl estradiol;
- (G) mestranol;
- (H) quinestrol;
- (ii) progesterones;
- (A) medroxyprogesterone acetate;
- (B) norethindrone and salts;
- (C) progesterone;
- (D) progestogens;
- (iii) testosterone and its salts;
- (e) insulin preparations;
- (f) pituitary hormones;
- (i) ACTH;
- (g) thymus;
- (h) thyroid USP (Ex. armour thyroid), thyroglobulin USP (Ex. proloid), liothyronine, levothyroxine.

(11) Naturopathic physicians may prescribe and administer liver preparations. The following is an example:

- (a) trinsicon.
- (12) Naturopathic physicians may prescribe and administer all prescription and nonprescription minerals, trace metals and their derivatives. The following are examples:

- (a) boron;
- (b) calcium compounds;
- (c) calciumedetate sodium;
- (d) copper compounds;
- (e) fluoride compounds;
- (f) iodine;
- (i) potassium iodide;
- (ii) niacinamide hydroiodide;
- (g) iron salts;
- (h) magnesium compounds;
- (i) potassium compounds;
- (j) silver nitrate;
- (k) trace mineral compounds;
- (i) chromium;
- (ii) selenium;

- (iii) molybdenum;
- (iv) vanadium;
- (v) zinc compounds.
- (13) Naturopathic physicians may prescribe and dispense the following miscellaneous drugs:
 - (a) bile salts and acids;
 - (i) chenodiol;
 - (ii) cholic acid;
 - (iii) chenodeoxycholic acid;
 - (iv) dehydrocholic acid;
 - (v) ursodeoxycholic acid;
 - (vi) ursodiol;
 - (b) biological agents;
 - (i) urea;
 - (ii) bee venom;
 - (c) digestive aides;
 - (i) betaine HCL;
 - (ii) glutamic HCL agents;
 - (d) DMSO, DMSA, DMPS;
 - (e) oxygen;
 - (f) pyridium and pyridium plus;
 - (g) salicylic acid;
 - (h) vaccines.
- (14) Naturopathic physicians may prescribe and administer vitamins, including all prescription and nonprescription vitamin preparations and their derivatives. The following are examples:
 - (a) ascorbic acid (vitamin C);
 - (b) biotin;
 - (c) cyanocobalamin (vitamin B₁₂);
 - (i) hydroxocobalamin, including intrinsic factor;
 - (d) folic acid;
 - (e) niacin (vitamin B₃);
 - (f) pantothenic acid (vitamin B₅);
 - (i) dexpantenol;
 - (g) pyridoxine (vitamin B₆);
 - (h) riboflavin (vitamin B₂);
 - (i) thiamin (vitamin B₁);
 - (j) vitamin A;
 - (i) betacarotene and derivatives;
 - (k) vitamin D;
 - (i) calcitrol;
 - (ii) cacifiediol;
 - (iii) dovonex;
 - (iv) ergocalciferol;
 - (l) vitamin E;
 - (m) vitamin K;
 - (i) menadiol.
- (15) Naturopathic physicians may prescribe and administer childbirth preparations. The following are examples:
 - (a) laminaria;
 - (b) methergine;
 - (c) pitocin - IM injection;
 - (d) prostaglandin E2;

- (e) rhogam;
- (f) triple dye.
- (16) Naturopathic physicians may prescribe and administer topical medicines. The following are examples:
 - (a) debridement/escharotic agents;
 - (i) podophyllum resin;
 - (ii) podofilox 0.5% solution;
 - (iii) urea cream 40%;
 - (iv) trichloroacetic acid (TCA);
 - (b) miscellaneous topical agents;
 - (i) selenium sulfide;
 - (ii) hydrocortisone;
 - (c) salicylic acid;
 - (d) scabicides and pediculoses - lindane, permethrin or whichever agent is the current recommended treatment for these infections;
 - (e) topical antibiotics;
 - (i) silver sulfadiazine cream;
 - (ii) bactroban;
 - (f) topical and local anesthetics;
 - (i) ethyl chloride spray;
 - (ii) fluoro-ethyl spray;
 - (iii) fluoro-methane spray;
 - (iv) lidocaine HCL;
 - (v) procaine HCL.
 - (17) The licensed pharmacist member of the formulary committee formed pursuant to 37-26-301, MCA, shall serve on the committee for a four year term unless the pharmacist resigns, or is replaced by vote of the board."

Auth: Sec. 37-26-201, MCA; IMP, Sec. 37-26-301, MCA

REASON: The proposed new rule will implement the changes of HB 164 passed by the 1997 Legislature. That bill cleaned up contradictory language found in Section 37-26-201, MCA, which in one subsection prohibited naturopathic physicians from prescribing, dispensing or administering legend drugs except a few listed there, and in another subsection allowed naturopathic physicians to prescribe and administer natural therapeutic substances and drugs. The contradictory language created confusion among the health care professionals, such that naturopathic physicians did not have a clear guideline on appropriate prescribing practices, and pharmacists did not have a clear guideline as to which prescriptions by naturopathic physicians could be properly filled by the pharmacy. The Legislature therefore created a naturopathic formulary committee to recommend a naturopathic physician natural substance formulary list to the full Board. This list would include the scope of substances covered by approved naturopathic college curricula and CE courses, and would list those substances, drugs, and therapies which a naturopathic physician may prescribe and administer. The formulary committee created the list, and recommended it to the full Board. The Board is now required to adopt the formulary list as a Board administrative rule.

4. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you wish to request an accommodation, contact the Department no later than 5:00 p.m., January 2, 1998, to advise us of the nature of the accommodation that you need. Please contact Cheryl Brandt, Board of Alternative Health Care, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 444-5436; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-1667. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Cheryl Brandt.

5. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Alternative Health Care, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile, number (406) 444-1667, to be received by the close of hearing, January 8, 1998.

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

7. Persons who wish to be informed of all Board of Alternative Health Care administrative rulemaking proceedings may be placed on a list of interested persons by advising the Board at the rulemaking hearing or in writing to the Board of Alternative Health Care, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513 or by calling (406) 444-5436.

BOARD OF ALTERNATIVE HEALTH CARE
MICHAEL BERGKAMP, ND, CHAIRMAN

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

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, November 17, 1997.

BEFORE THE BOARD OF ARCHITECTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PROPOSED AMENDMENT
amendment of rules pertaining	)	AND ADOPTION OF RULES PER-
to licensure of out-of-state	)	TAINING TO THE PRACTICE OF
applicants, examinations,	)	ARCHITECTURE
individual seal, renewals,)	
unprofessional conduct, fees,)	
architect partnerships,)	
screening committee, and)	
solicitation of business by)	
architects from other states)	
and the adoption of a new rule)	
pertaining to use of title)	

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 31, 1997, the Board of Architects proposes to amend and adopt rules pertaining to the practice of architecture.

2. The proposed amendment of ARM 8.6.405, 8.6.407, 8.6.409, 8.6.410, 8.6.412, 8.6.413, 8.6.415, 8.6.416 and 8.6.418 will read as follows: (new matter underlined, deleted matter interlined)

"8.6.405 LICENSURE OF OUT-OF-STATE APPLICANTS (1) through (2) will remain the same.

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

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

REASON: The proposed amendment will correct a grammatical error only.

"8.6.407 EXAMINATION (1) An examination prescribed by the board must be taken, but only after the applicant has met the prerequisites and has been approved by the board for admission to the examination. Applicants for examination are required to file an application with the board. Application forms will be supplied by the board office. ~~A copy of the applicant's architectural degree and the examination fee must~~

~~accompany the completed application. Application for examination must be filed at least 60 days prior to the examination date.~~

(2) through (a) (i) will remain the same.

(ii) Meet the alternate education criteria outlined in the National Council of Architectural Registration Boards (NCARB) ~~Circular of Information Number 3, 1985 education standards.~~

~~(b) The applicant must submit three reference letters from either licensed architects or employers describing the applicant's fitness of character.~~

~~(c) The applicant must satisfy one of the following practical experience requirements.~~

~~(i) Have at least three years' practical training in the office of a registered architect who is a practicing principal in an architectural firm; or~~

~~(ii) The equivalent thereof, as outlined in the official 1985 NCARB Table of Equivalents, Circular Information No. 1.~~

(3) Beginning April 15, 1995, ~~all~~ examination applicants must complete the national council of architectural registration board's (NCARB) intern development program (IDP) for admission to the licensing examination. The applicant shall request NCARB transmit a complete copy of the applicant's IDP record to the Montana board. Upon receipt of an examination application and the IDP record, the Montana board will make a decision on granting the applicant admission to the licensing examination.

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

(5) An applicant failing to pass the examination is entitled to re-examination on divisions of the examination that the applicant failed to pass. ~~Re-examination may be at the next scheduled examination. A re-examination fee will be charged.~~ If the entire examination is not successfully completed within four consecutive years, the applicant must reapply and retake the entire examination, unless the board, in its sole discretion, provides an exception to the applicant. Such exceptions shall be provided only upon proof of medical hardship or other extraordinary circumstances."

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

REASON: The proposed amendment will delete language which is no longer necessary due to changes in the application process for the examination. NCARB has changed the name of some forms and deleted some previous requirements. The amendments will contain the most current language.

"8.6.409 INDIVIDUAL SEAL (1) Every licensed architect shall have a seal, the impression of which must contain the name of the architect, the city and state of architect's place of business, the architect's Montana license number, and the words "LICENSED ARCHITECT, STATE OF MONTANA", with which the architect shall stamp and sign all drawings and specifications issued from the architect's office for use in this state.

(2) Every licensed architect shall have a seal which shall contain the information required by the board. All technical submissions prepared by such architect, or under his or her responsible control, shall be stamped with the impression of his or her seal, which shall mean that the architect was in responsible control over the content of such technical submissions during their preparation and has applied the required professional standard of care. No licensed architect may sign or seal technical submissions unless they were prepared by or under the responsible control of the architect; except that:

(a) the architect may sign or seal those portions of the technical submissions that were prepared by or under the responsible control of persons who are licensed under the architecture licensure laws of Montana if the architect has reviewed and adopted in whole or in part such portions and has either coordinated their preparation or integrated them into the architect's work; and

(b) the architect may sign or seal those portions of the technical submissions that are not required by this law to be prepared by or under the responsible control of an architect if the architect has reviewed and adopted in whole or in part such submissions and integrated them into his or her work.

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

Auth: Sec. 37-1-131, 37-65-204, MCA; IMP, Sec. 37-65-308, MCA

REASON: The proposed amendment will add a requirement for city and state to be part of an architect's seal, to better identify the architect's place of business location. The proposed amendments will also add a new subsection defining "responsible control" and clarifying when it is or is not appropriate to stamp a design. The Board has previously received complaints about this issue, but did not have rule language setting guidelines in this area. The proposed amendment will also bring the Montana rule in line with nationally recognized guidelines on stamping designs and "responsible control."

"8.6.410. RENEWALS (1) Annual Biennial renewals receipt cards shall be issued by the board, upon receipt of annual biennial renewal fee. Notice of biennial renewal shall be mailed to each licensed architect before the first day of July each year in advance of the renewal date. The notice shall be returned with the renewal fee or late renewal fee to the board office.

(2) The beginning of the fiscal year is July 1 and all licenses bear this date. The renewal fee shall be due beginning on by July 1. However, a one-month grace period thereafter is provided by statute. A late renewal fee will be imposed upon any license which has not been renewed by July 31. Both a renewal fee and late renewal fee will be imposed for each year a license is lapsed. A license that has lapsed for three successive years automatically terminates and may not be reinstated, and a new license must be obtained, and

appropriate fees must be paid. This is in conformity with 37-1-141, MCA."

Auth: Sec. 37-1-131, 37-65-204, MCA; IMP, Sec. 37-1-131, 37-65-306, MCA

REASON: The proposed amendment will convert the previous annual renewal to a biennial renewal, or every two years. The Board noted this would streamline renewal processes, while still keeping the Board updated with current information on licensee's locations and other professional activities.

"8.6.412 UNPROFESSIONAL CONDUCT (1) through (b) will remain the same.

(c) ~~failing to supervise staff to the extent that the public's safety or the client's safety is at risk the work of another whereby the supervisor has both control over and detailed professional knowledge of the work prepared under the supervisor's supervision;~~

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

(j) ~~representing the work of others as the architect's own signing or sealing drawing specifications reports, or other professional work which was not prepared in accordance with ARM 8.6.409;~~

(i) "responsible control" shall be that amount of control over detailed professional knowledge of the content of technical submissions during their preparation as is ordinarily exercised by architects applying the required professional standard of care. Reviewing, or reviewing and correcting, technical submissions after they have been prepared by others, does not constitute the exercise of responsible control because the reviewer has neither control over, nor detailed knowledge of, the content of such submissions throughout their preparation;

(k) will remain the same.

(l) performing professional services which have not in general been authorized by the client or the ~~architect's~~ client's legal representative;

(m) will remain the same."

Auth: Sec. 37-1-131, 37-1-319, 37-65-204, MCA; IMP, Sec. 37-1-316, MCA

REASON: The proposed amendment to (1)(c) will add language consistent with ARM 8.6.409 on proper procedures for stamping an architectural design, and make clear that it is unprofessional conduct to stamp a design over which the architect did not have responsible control. The proposed amendment to (1)(j) will also address responsible control over designs. The proposed amendment to (1)(l) will correct a language error.

"8.6.413 FEE SCHEDULE (1) through (2) will remain the same.

(3) Biennial Renewal (if paid by July 31st) ~~40~~ 80

(4) Late biennial renewal (if paid after July 31st)

(5) Original license fee

95 170

(6) through (8) will remain the same."

20 40

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

REASON: The proposed amendment will indicate the change in the renewal fees from an annual to a biennial renewal. No fee increase is involved.

"8.6.415 ARCHITECT PARTNERSHIPS TO FILE STATEMENT WITH BOARD OFFICE (1) ~~After July 1, 1986, all~~ licensees who enter into partnerships, limited partnerships or profit corporations, sub-chapter S corporations or any other form of business entity in which their professional talent and service are utilized, must file with the board office a statement of the existence of the business entity and of their relationship to it."

Auth: Sec. 37-1-131, 37-65-204, MCA; IMP, Sec. 35-4-209, 37-65-302, MCA

REASON: The proposed amendments will delete an unnecessary phrase which contains a date no longer in use.

"8.6.416 SCREENING COMMITTEE (1) The board screening panel shall consist of three members of the board including the current chairman president of the board, and two other board members, as chosen by the chairman president. The chairman president may reappoint screening panel members, or replace screening panel members as necessary at the chairman's president's discretion. Auth: Sec. 37-65-204, MCA; IMP, Sec. 37-1-307, MCA

REASON: The proposed amendment will change all references from "chairman" to "president" as this is the title given to the board presiding officer by statute.

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

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

REASON: The proposed amendment will add NCARB certification requirements to allow licensed architects from other states to offer services in Montana. NCARB certification is required for licensure in this state, and will offer a good measure of an

architect's licensurability in this state if they will be advertising here.

3. The proposed new rule will read as follows:

"I. USE OF TITLE (1) Persons who are not licensed under Title 37, chapter 65, MCA, may use certain titles in representing themselves to the public, as long as the titles clearly delineate the nature and level of training. Such persons may use the title "architect-in-training," provided that such persons perform their activities under the direct supervision and responsibility of a licensed architect.

(a) the architect-in-training must have obtained the proper degree, and be actively pursuing training toward licensure; and

(b) the architect-in-training must cease use of the title if he/she ceases activities or work in pursuit of licensure.

(2) Principals of firms employing architects-in-training may use the title "architect-in-training" as they deem appropriate when making presentations, or in promotional materials, etc."

Auth: Sec. 37-65-204, MCA; IMP, Sec. 37-65-301, MCA

REASON: The proposed new rule will clarify the title that is acceptable for those persons who have obtained the proper architectural degree, and are now working to gain the experience necessary for licensure. In the past, these persons, as well as the licensed architects under whom they were working, were not clear on whether or not a title could be used to indicate the status of these persons.

4. Interested persons may submit their data, views or arguments concerning the proposed amendments and adoption in writing to the Board of Architects, 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., December 29, 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 Architects, 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., December 29, 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

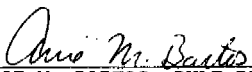
percent of those persons directly affected has been determined to be 98 based on the 982 licensees in Montana.

7. Persons who wish to be informed of all Board of Architects administrative rulemaking proceedings or other administrative proceedings may be placed on a list of interested persons by advising the Board at 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513 or by phone at (406) 444-3745.

BOARD OF ARCHITECTS
PAMELA HILL, PRESIDENT

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, November 17, 1997.

BEFORE THE DEPARTMENT OF COMMERCE
BOILERS, BLASTERS AND CRANE OPERATORS PROGRAM
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of rules pertaining) AND ADOPTION OF RULES PER-
to construction blasters,) TAINING TO THE BOILER,
hoisting operators and crane) BLASTER AND CRANE OPERATOR
operators and the adoption of) INDUSTRY
a new rule pertaining to boiler)
engineer training)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 31, 1997, the Boilers, Blasters and Crane Operators Program of the Department of Commerce proposes to amend and adopt rules pertaining to construction blasters, hoisting operators, crane operators and boiler engineer training.

2. The proposed amendment of ARM 8.15.103, 8.15.106, 8.15.202, 8.15.203, 8.15.204, 8.15.205 and 8.15.301 will read as follows: (new matter underlined, deleted matter interlined)

"8.15.103 CONSTRUCTION BLASTER LICENSE REQUIREMENTS

(1) through (3) will remain the same.

(a) application fee \$25 35

(b) will remain the same.

(c) license fee 30 40

(d) annual renewal fee 16 40

(e) reexamination fee 25 35

(f) duplicate license fee 10 15

(4) through (4)(c) will remain the same.

(d) has ~~one~~ two year's field experience in construction blasting; and

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

Auth: Sec. 37-72-201, 37-72-202, MCA; IMP, Sec. 37-72-301, 37-72-302, 37-72-303, 37-72-304, 37-72-305, 37-72-306, MCA

REASON: The proposed amendment to (4)(d) will change the experience requirement from "one year" to "two years," as this substitution was enacted by the 1997 Legislature in 37-72-302, MCA. The higher level of experience will ensure applicants are qualified for licensure in this field. The proposed amendment to (3) will raise the fees charged to applicants and licensees as a revenue shortfall has been experienced, and these changes will make fees commensurate with costs.

"8.15.106 TRAINING PROGRAMS (1) and (2) will remain the same.

(a) ~~For class 1, 2, and 3 license:~~ Northwest laborers employers training program laborers;

- (b) - AGC training program for state of Montana;
- ~~(b) For class 4 license;~~
- (c) kinopak blasting seminar;
- (d) dupont blasting seminar;
- (e) society of explosive engineers;
- (f) Karl Burgher explosive classes;
- (g) United States forest service explosive training classes;
- (h) BS consulting explosive training classes (William and Amanda Hale, trainers).

(3) will remain the same."

Auth: Sec. 37-72-202, MCA; IMP, Sec. 37-72-302, MCA

REASON: The proposed amendment will add four new classes to the list of training programs approved by the department. The addition of new approved training programs will allow applicants a greater opportunity to obtain the necessary training prior to licensure.

"8.15.202. DEFINITIONS For purposes of this sub-chapter, the following definitions apply:

(1) through (6) will remain the same.

(7) "Tower crane" is a crane with a vertical mast extending from a base support with a jib and/or boom attached to the mast at the opposite end (or near the opposite end) of the base support. The vertical mast is seldom, if ever, less than fifty feet in length when the crane is in operation."

Auth: Sec. 50-71-301, 50-76-112, MCA; IMP, Sec. 50-71-301, 50-76-101, 50-76-102, 50-76-103, MCA

REASON: The proposed amendment will add the definition of "tower crane" to the list of definitions, as this term is used elsewhere in statute and rule and has not previously been defined. The additional definition will clarify that this equipment is also subject to licensure for its operation.

"8.15.203. HOISTING OPERATORS LICENSE REQUIREMENTS

(1) through (3) (a) will remain the same.

(b) have passed a physical examination within ~~±20~~ 180 days prior to a new application or license renewal each year and present this report to the department, or present proof of passing an applicable physical examination. A biennial physical examination shall be required after the license is granted. The biennial physical examination report, or proof of passing an applicable physical exam shall be presented to the department every second renewal date after the original licensure date, and may not be dated more than 180 days prior to the renewal date of the license.

(3) (c) through (7) (d) will remain the same.

- (i) first-class hoisting \$60+ 80
- (ii) second-class hoisting 50+ 70
- (iii) renewals 16+ 40

(A) 4The license must be renewed within 13 months of obtaining the previous license. If not renewed within this period, the fee will be the same as for the original license. Failure to renew a license within 12 months of the date of expiration will require application procedure as for a new license.+

(iv) through (8) (e) will remain the same."

Auth: Sec. ~~50-71-301, 50-76-104, 50-76-112~~, MCA; IMP,
Sec. ~~50-71-301, 50-76-102, 50-76-104~~, MCA

REASON: The proposed amendment to (3) (b) will extend the time limit in which to obtain a physical examination from 120 to 180 days in order to allow applicants more time to complete this requirement. The extension will not jeopardize public safety. The proposed amendment will also extend the time frame for required physical examinations after licensure from every year, to every two years as mandated by a statutory change by the 1997 Legislature. This will reduce costs for licensees and unnecessary tracking requirements for the department, while still protecting the public adequately.

The proposed amendment to (7) (d) will raise fees for original licenses and renewals, as the program has experienced a revenue shortfall. The new fees are commensurate with the costs of the program.

"8.15.204 MINE HOISTING OPERATORS LICENSE REQUIREMENTS

(1) through (3) (a) will remain the same.

(b) have passed a physical examination within ~~120~~ 180 days prior to a new application ~~or license renewal each year and present this report to the department, or present proof of passing an applicable physical examination. A biennial physical examination shall be required after the license is granted. The biennial physical examination report, or proof of passing an applicable physical examination shall be presented to the department every second renewal date after the original licensure date, and may not be dated more than 180 days prior to the renewal date of the license.~~

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

(i) first-class mine hoisting license \$60+ 80

(ii) second-class mine hoisting license 50+ 70

(iii) renewals 16+ 40

(A) 4The license must be renewed within 13 months of obtaining the previous license. If not renewed within this period, the fee will be the same as for the original license. Failure to renew a license within 12 months of the date of expiration will require application procedure as for a new license.+

(iv) will remain the same."

Auth: Sec. ~~50-71-301, 50-76-104, 50-76-112~~, MCA; IMP,
Sec. ~~50-73-302, 50-76-104~~, MCA

REASON: The proposed amendment to (3) (b) will extend the time limit in which to obtain a physical examination from 120 to 180 days in order to allow applicants more time to complete this

requirement. The extension will not jeopardize public safety. The proposed amendment will also extend the time frame for required physical examinations after licensure from every year, to every two years as mandated by a statutory change by the 1997 Legislature. This will reduce costs for licensees and unnecessary tracking requirements for the department, while still protecting the public adequately.

The proposed amendments to (10) (d) will raise fees for original licensees and renewals, as the program has experienced a revenue shortfall. The new fees are commensurate with the costs of the program.

"8.15.205 CRANE HOISTING OPERATORS LICENSE REQUIREMENTS

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

(f) third-class crane hoisting

(g) first-class tower crane;

(h) second-class tower crane.

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

(b) have passed a physical examination within ~~120~~ 180 days prior to a new application ~~or license renewal each year and present this report to the department, or present proof of passing an applicable physical examination. A biennial physical examination shall be required after the license is granted. The biennial physical examination report, or proof of passing an applicable physical examination shall be presented to the department every second renewal date after the original licensure date, and may not be dated more than 180 days prior to the renewal date of the license.~~

(c) will remain the same.

(4) An applicant for a first-class crane hoisting license, first-class crane hydraulic license, first-class tower crane license or a first-class gantry and trolley license shall have no less than three years experience in the operation of crane hoist equipment covered by this ~~section rule~~; or if between one and three years of experience, the applicant must pass an actual performance test on the applicable equipment. This test is conducted by the bureau to determine equivalent competency and is in addition to the written or oral examination. Applicants with less than one year of experience do not qualify for a first-class crane hoisting license as described above. Applicants with work experience acquired in states that have no licensing requirements will qualify if their notarized certificate of experience indicates they have the required work experience on the applicable equipment.

(a) will remain the same.

(b) The holder of a first-class ~~hydraulic~~ crane hydraulic hoisting license can operate all classes of hydraulic cranes, hydraulic boom trucks and hydraulic hoist equipment only.

(c) will remain the same.

(d) The holder of a first-class tower crane license can operate all types of tower cranes only.

(5) An applicant for a second-class crane hoisting license, second-class tower crane license or second-class hydraulic and boom truck license shall have no less than two

years experience in the operation of crane hoisting equipment covered by this ~~section rule~~; or if between one or two years of experience, the applicant must pass an actual performance test on the applicable crane hoisting equipment. This test is conducted by the bureau to determine equivalent competency and is in addition to the written or oral examination. Applicants with less than one year of experience do not qualify for second-class crane hoisting licenses as described above. Applicants with work experience acquired in states that have no licensing requirements will qualify if their notarized certificate of experience indicates they have the required work experience on the applicable equipment.

(a) will remain the same.

(b) The holder of a second-class hydraulic ~~and boom truck~~ license can operate hydraulic cranes or boom trucks up to 15 tons and 60 feet of boom.

(c) The holder of a second-class tower crane license can operate tower cranes up to 16 tons and 60 feet of boom only.

(6) will remain the same.

(7) Persons operating crane hoisting equipment listed in this rule who have less than one year of experience must work under the direct supervision of a ~~licensed~~ qualified crane hoisting operator or participate in a certified apprenticeship training program.

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

(i) first-class crane hoisting	\$ 60+	80
(ii) second-class crane hoisting	50+	70
(iii) third-class crane hoisting	40+	60
(iv) renewals	16+	40

(A) The license must be renewed within 13 months of obtaining the previous license. If not renewed within this period, the fee will be the same as for the original license. Failure to renew a license within 12 months of the date of expiration will require application procedures as for a new license.†

(v) lost license replacement 10.

(9) Crane hoisting operator's licenses need not be obtained to operate the following types of equipment:

(a) crane hoisting equipment that has a manufacturer's rating of six tons or less ~~and~~ or a boom length of 25 feet or less;

(b) overhead trolley cranes of any size not used in construction;

(c) equipment with excavation attachments or log loading equipment;

(d) line trucks and bucket trucks."

Auth: Sec. ~~50-71-301, 50-76-104, 50-76-112~~, MCA; IMP, Sec. ~~50-71-301, 50-76-103, 50-76-104~~, MCA

REASON: The proposed amendment to (2), (4) and (5) will add tower crane hoisting operator to the list of licenses which must be obtained prior to operation of the equipment. This new license category will protect the public by ensuring the tower

on a case-by-case basis. Company training courses shall be pre-approved for an applicant to receive experience credit toward licensure. The applicant shall show proof of successful completion of the approved training course. Credit may be given at a rate of one hour's experience for one hour of training time, up to a maximum of 100 hours of experience credit.

(c) New installation and retrofit projects will be evaluated on a case-by-case basis to determine if the applicant participation and training are sufficient to be granted credit toward experience for upgrading a license. Credit may be given at a rate of one hour's experience for one hour of training time."

Auth: Sec. 50-74-101, MCA; IMP, Sec. 50-74-305, MCA

REASON: The proposed new rule will create guidelines for other types of training which may be allowed credit toward the experience requirement for licensure. Section 50-74-305, MCA, states that an applicant who has training in the operation of steam or water boilers may be credited with experience toward a license, but the types of training which would qualify toward this experience have not previously been defined. The proposed new rule will clarify the training requirements for all applicants.

4. Interested persons may submit their data, views or arguments concerning the proposed amendments and adoption in writing to the Boilers, Blasters and Crane Operators Program, Department of Commerce, 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., December 29, 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 Boilers, Blasters and Crane Operators Program, Department of Commerce, 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., December 29, 1997.

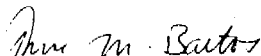
6. If the Department receives requests for a public hearing on the proposed amendments and adoption from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendments and adoption, from the Administrative Code Committee of the legislature, from a governmental 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 567 based on the 5674 boilers, blasters and crane operators in Montana.

7. Persons who wish to be informed of all Boilers, Blasters and Crane Operators Program administrative rulemaking proceedings or other administrative proceedings may be placed on a list of interested persons by advising the Program at 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513 or by phone at (406) 444-1653.

BOILERS, BLASTERS AND CRANE
OPERATORS PROGRAM
DEPARTMENT OF COMMERCE

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, November 17, 1997.

BEFORE THE BOARD OF DENTISTRY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PROPOSED AMENDMENT
amendment of rules pertaining	)	OF 8.16.405 FEES AND ADOPTION
to fees and the adoption of a	)	OF NEW RULE I DENTIST
new rule pertaining to dentist	)	LICENSURE BY CREDENTIALS
licensure by credentials)	

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 31, 1997, the Board of Dentistry proposes to amend and adopt the above-stated rules.

2. The proposed amendment of ARM 8.16.405 will read as follows: (new matter underlined, deleted matter interlined)

"8.16.405 FEE SCHEDULE

(1) through (3) will remain the same.

(4) Credentialing fee

1200

(4) through (10) will remain the same, but will be renumbered (5) through (11)."

Auth: Sec. 37-1-134, 37-4-205, MCA; IMP, Sec. 37-1-134, 37-1-304, 37-4-301, 37-4-303, 37-4-307, MCA

REASON: The proposed amendment will add a fee to be charged for an applicant applying via credentialing. The Board is proposing to add a rule allowing for licensing by credentials, and must also add a fee to cover the cost of processing those applications. The board anticipates the process for credentialing will be very time consuming. The information needed will require extensive research and verification to comply with all rule requirements.

3. The proposed new rule will read as follows:

"I DENTIST LICENSURE BY CREDENTIALS (1) The board shall provide for licensing of a dentist without examination, except a jurisprudence examination, if the applicant meets each of the following:

(a) submits an application on a form provided by the board;

(b) pays the appropriate fees, including credentialing fee, jurisprudence exam fee and license fee;

(c) provides certification to the board that the dentist:

(i) is a graduate of a dental school accredited by the Commission on Dental Accreditation for the American Dental Association, or its successor;

(ii) has successfully completed both Part I and Part II of the national board examination and submits a national board certificate and score card;

(iii) has successfully completed a clinical practical examination for licensure comparable to the examination recognized by the Montana Board of Dentistry. The examination must have included the entry level clinical skills including:

(A) a class II amalgam preparation and finished restoration on a live patient;

(B) preparation of tooth and seated cast gold restoration, minimally involving a class II inlay, onlay or restoration of comparable complexity, up to and including a full crown, on a live patient;

(C) removable prosthodontics;

(D) periodontal testing on a live patient, to include patient evaluation, documentation and scaling and root planing;

(E) root canal treatment on a human tooth involving instrumentation and obturation of at least one canal;

(iv) is in good standing from all jurisdictions where the applicant is licensed or has held a license. If the dentist is employed by the federal government, the dentist must be in good standing with the employing federal agency;

(v) is currently engaged in the practice of clinical, direct patient care dentistry, and has been actively practicing for a minimum of five years immediately preceding application, as demonstrated by the following information:

(A) address of practice location(s);

(B) length of time at location;

(C) certification of not less than 1000 hours per year in clinical direct patient care dentistry;

(D) a letter from all malpractice insurance carriers defining years when insured and any claims history;

(E) DEA registration number, if any;

(F) documentation from a commanding officer regarding length of service, duties and responsibilities, and any adverse actions or restrictions, if the dentist is serving in the United States federal service;

(G) documentation from the dean or appropriate administration of the institution regarding length and terms of employment and their duties and responsibilities and any adverse actions or restrictions, if the dentist is employed by a dental school;

(H) proof of hours completed within a residency program, to be credited toward the dental practice requirement, if the dentist is practicing within a residency program;

(vi) has not failed a clinical licensing examination within the last five years;

(vii) is not the subject of an unresolved or adverse decision based on a complaint, investigation, review procedure or other disciplinary proceeding undertaken by a state, territorial, local or federal dental licensing jurisdiction, dental society, or law enforcement agency that relates to criminal or fraudulent activity, dental malpractice or negligent dental care;

(viii) has completed at least 60 hours or continuing education related to clinical dentistry in the three years immediately preceding application for a license in this state. Courses submitted must meet board approvals as defined in ARM 8.16.1002;

(ix) is not physically or mentally impaired by habitual or excessive use of addictive drugs, alcohol or any other drug or substance or by mental or chronic physical illness;

(d) submits a current CPR card;

(e) a jurisprudence examination shall be taken after the application for licensure has been approved. The grading may be done by a board member or department staff. A final grade of at least 75% is required to pass the exam."

AUTH: Sec. 37-1-131, 37-4-205, MCA; ~~IME~~ Sec. 37-1-304, MCA

REASON: The proposed new rule will allow another option for applicants seeking licensure in Montana. The current rules require an applicant to take and pass the Western Regional Examining Board (WREB) examination. This requirement has denied licensure to many applicants who have completed a different exam for licensure in another state. The new rule will recognize an applicant's previous credentials, and previous licensing exam, if it is demonstrated to be comparable to the exam approved by the Board. This will allow more applicants to apply in Montana and qualify for licensure without having to take the WREB exam, and will make the dentist application licensure rules less restrictive.

3. Interested persons may submit their data, views or arguments concerning the proposed amendment and adoption in writing to the Board of Dentistry, 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., December 29, 1997.

4. If a person who is directly affected by the proposed amendment and adoption wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Dentistry, 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., December 29, 1997.

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

percent of those persons directly affected has been determined to be 112 based on the 1116 licensees in Montana.

6. Persons who wish to be informed of all Board of Dentistry administrative rulemaking proceedings or other administrative proceedings may be placed on a list of interested persons by advising the Board at 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513 or by phone at (406) 444-3745.

BOARD OF DENTISTRY
MARY YOUNGBAUER, DDS, 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, November 17, 1997.

BEFORE THE STATE ELECTRICAL BOARD
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING ON
amendment of rules pertaining) THE PROPOSED AMENDMENT OF
to applications, general) 8.18.402 APPLICATIONS, 8.18.
responsibilities and screening) 403 GENERAL RESPONSIBILITIES,
panel) 8.18.409 CONTINUING EDUCATION
) AND 8.18.412 SCREENING PANEL

TO: All Interested Persons:

1. On September 22, 1997, the State Electrical Board published a notice of proposed amendment of rules pertaining to the electrical industry under MAR Notice No. 8-18-21, at page 1625, 1997 Montana Administrative Register, issue number 18.

2. The Board received a request for public hearing on the proposed amendments from an association having no less than 25 members who will be directly affected by the proposed amendments. The Board will therefore hold a public hearing on the proposed amendments on January 7, 1998, at 10:00 a.m., in the Division of Professional and Occupational Licensing conference room, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana.

3. The comment period will be extended through the close of hearing on January 7, 1998.

4. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you wish to request an accommodation, contact the Department no later than 5:00 p.m., December 29, 1997, to advise us of the nature of the accommodation that you need. Please contact Pat Osterhout, administrative assistant of the State Electrical Board, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 444-4390; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-1667. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Pat Osterhout.

5. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the State Electrical Board, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile, number (406) 444-1667, to be received no later than the close of hearing, January 7, 1998.

6. Persons who wish to be informed of all State Electrical Board administrative rulemaking proceedings or other administrative proceedings may be placed on a list of interested persons by advising the Board at 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513 or by phone at (406) 444-4390 or at the rulemaking hearing.

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

STATE ELECTRICAL BOARD
CHARLES T. SWEET, CHAIRMAN

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

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, November 17, 1997.

BEFORE THE DEPARTMENT OF COMMERCE
FIRE PREVENTION PROGRAM
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of rules pertaining) OF RULES PERTAINING TO
to the practice of selling,) FIRE PREVENTION
servicing or installing fire)
prevention systems)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 31, 1997, the Fire Prevention Program of the Department of Commerce proposes to amend rules pertaining to the practice of selling, servicing or installing fire prevention systems.

2. The proposed amendment of ARM 8.19.108, 8.19.110, 8.19.112, 8.19.117, 8.19.118 and 8.19.119 will read as follows: (new matter underlined, deleted matter interlined)

"8.19.108 CONTINUING EDUCATION (1) will remain the same.

(2) An endorsee shall obtain a minimum of eight hours (60 minutes per hour) annually and submit copies of continuing education certificates with the application for renewal. Up to eight hours earned in excess of the eight hours required in a licensing year may be carried over into the succeeding year. All applicants for renewal of endorsements shall have completed continuing education as provided in this rule as a condition to establish eligibility for renewal. The continuing education requirement will not apply until the endorsee's first full year of endorsement. ~~NICET level II recertification will be accepted in lieu of the continuing education required under this rule, provided that the individual establishes that he or she has completed continuing education for recertification that meets or exceeds the required hours of continuing education under this rule.~~

(3) through (g)(iv) will remain the same."

Auth: Sec. ~~50-3-102~~, 50-39-107, MCA; IMP, Sec. 50-39-102, MCA

REASON: The proposed amendment will delete the NICET level II re-certification as equivalent and therefore a substitute for continuing education credits required by the department for license renewal. NICET level II recertification is not equivalent in that credit is given for number of hours worked, rather than being limited to extra classroom or training hours outside of regular work. In addition, NICET level II recertification is only conducted every three years, making it very difficult for the department to receive a timely report. Instead, all licensees will have to meet the same continuing

education standards through available courses, correspondence courses or videotape courses.

"8.19.110 WHO MUST OBTAIN AN ENDORSEMENT (1) through (6) (a) will remain the same.

(b) A licensed ~~electrical contractor~~ electrician who ~~subcontracts to~~ install smoke detection and fire alarm equipment pursuant to building specifications is exempt from obtaining a license or endorsement under this chapter, provided the installation is inspected and approved by a person endorsed to service or install the fire protection equipment.

(c) will remain the same."

Auth: Sec. 50-3-102, 50-3-103, 50-39-107, MCA; IMP, Sec. 50-3-102, 50-39-101, 50-39-102, 50-39-103, 50-39-104, 50-39-105, 50-39-106, 50-39-107, MCA

REASON: The proposed amendment will clarify that a licensed electrician is exempt from licensure or endorsement by the department when installing smoke detection and fire alarm equipment, and that the licensed electrician need not be an electrical contractor. The present wording of the rule is inconsistent with the statute, 50-39-101(4), MCA, which states an electrician is exempt, not an electrical contractor.

"8.19.112 EXAMINATION FOR ENDORSEMENT (1) and (1) (a) will remain the same.

(b) has been issued a letter of certification, specific to the endorsement being sought, of NICET level II or higher; or is a candidate for certification from NICET level II or higher. The letter of certification must be sent directly to the program office from NICET.

~~(b) (c)~~ (c) has passed the following NICET examination elements ~~for level II certification from NICET~~, for the system(s) for which endorsement is sought, as specified below:
(i) through (d) will remain the same.

(2) The department shall issue an endorsement for pre-engineered fire alarm systems, or special fire agent suppression systems or fire extinguishing systems to an individual who submits proof of manufacturer training on the specific brand and model of such pre-engineered system for which the applicant seeks endorsement. An endorsement granted under this subsection rule shall be valid only for the brand and model number specified on the endorsement. Those extinguisher system endorsements issued under this rule prior to February, 1998, will remain valid until or unless the endorsement lapses or is revoked."

Auth: Sec. 50-3-102, 50-39-107, MCA; IMP, Sec. 50-39-101, MCA

REASON: The proposed amendment to (1) (b) and (c) will allow a NICET level II certification to be used as a basis for an endorsement issued by the department, as mandated by the 1997 legislature in its amendment of 50-39-102, MCA. This change will allow more options for applicants who are seeking an

endorsement, as (1)(c) will still allow endorsement to be granted if certain NICET exam elements have been passed, but the level II certification has not been granted.

The proposed amendment to (2) will delete fire extinguishing systems from the list of endorsements which may be granted through manufacturer training. While pre-engineered fire alarm systems and special fire agent suppression systems may properly be taught through manufacturer training, and an endorsement issued which limits the person to that system, the fire extinguishing systems do not readily fit within this type of training and limitation. The public is not adequately protected by endorsement of this training for fire extinguishing systems.

"8.19.117. DEFINITIONS The following definitions apply to the use of the listed terms in Title 50, chapter 39, part 1, MCA, and in these rules:

(1) ~~"Apprentice" means a person working in a training capacity, for the service or installation of fire alarm systems, special agent fire suppression systems, or fire extinguishing systems, who is studying in accordance with a program approved under the guidelines of ARM 8.19.119.~~

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

(3) ~~"Endorsement" means a document issued by the department to an individual who has met qualifications which authorizes the individual to sell, service and install fire alarm systems, special agent fire suppression systems, or fire extinguishing systems.~~

(4) ~~"Entity" means any business, partnership, sole proprietor(ship), organization, association, corporation, firm, governmental organization, fire agency or any other business association.~~

(5) ~~"Fire alarm system" means a combination of approved compatible devices with the necessary electrical interconnection and energy to produce an alarm signaling the event of fire or system activation but does not include single station smoke or heat detectors.~~

(6) ~~"Fire extinguisher" means a portable device containing an extinguishing agent that can be expelled under pressure for the purpose of suppressing or extinguishing a fire.~~

(7) ~~"Fire extinguishing system" means a fire sprinkler system designed in accordance with nationally recognized standards that consists of an assembly of piping or conduits that conveys water, foam or air with or without other agents to dispersal openings or devices to extinguish, control or contain fire and to provide protection from exposure to fire or the products of combustion. Included are underground and overhead piping, ponds, tanks, pumps, extra or special hazard applications and other related components or devices necessary for water supplies.~~

(8) and (9) will remain the same, but will be renumbered (2) and (3).

(10) ~~"Inspection" means and includes the periodic examination of premises, equipment, or procedures or of a licensed or endorsed person or entity to determine whether the person's or entity's business or profession is being conducted in a manner consistent with the public health, safety, and welfare. The term includes the inquiry, analysis, audit, or other pursuit of information, with respect to a written complaint or other information before the department of commerce, that is carried out for the purpose of assisting the department of commerce in determining:~~

- ~~(a) whether a person has violated a provision of law justifying discipline against the person;~~
- ~~(b) whether a license should be granted or denied; or~~
- ~~(c) whether the department of commerce should seek an injunction against unlicensed practice.~~

~~(11) "Install" means the technical work that may be performed only by an endorsed individual or an apprentice, in the assembly of a fire alarm system, special agent fire suppression system, or fire extinguishing system. The term does not include the delivery of supplies or the off site cutting or threading of pipe. The term does include the following tasks:~~

- ~~(a) inspection of work sites to determine the presence of obstructions and to ascertain that holes will not cause structural weaknesses;~~
- ~~(b) determination of the course or plan of installation;~~
- ~~(c) any jobsite bending of pipe or electrical conduit as part of the installation;~~
- ~~(d) jobsite assembly and installation of metal or nonmetal pipe fittings, including but not limited to, those made of brass, copper, lead, glass, and plastic;~~
- ~~(e) jobsite assembly and installation of wiring systems;~~
- ~~(f) joining of piping by any means, including threaded, caulked, wiped, soldered, brazed, fused, or cemented joints;~~
- ~~(g) securing of pipe, wire or electrical conduit to the structure by any means, including but not limited to, clamps, brackets, hangers, and welds; and~~
- ~~(h) testing the installed system for electrical or mechanical malfunctions.~~

~~(12) "License" means the document issued by the department which authorizes a person or entity to engage in the business of servicing fire extinguishers or engaging in the business of selling, servicing, or installing fire alarm systems, special agent fire suppression systems, or fire extinguishing systems.~~

~~(13) will remain the same, but will be renumbered (4).~~

~~(14) "Sell", "sale", and associated words mean offering or contracting to transfer, lease, or rent any merchandise, equipment, or service at retail to the public or any member thereof for an agreed sum of money or other consideration.~~

~~(15) "Service", when referring to portable fire extinguishers and fire extinguisher cylinders, means maintenance and includes breakdown for replacement of parts or agent, repair, recharging, or hydrostatic testing.~~

~~(a) When referring to alarm systems, fire extinguishing systems, and fire suppression systems, "service" means maintenance and testing required to keep the protective signaling, extinguishing, and suppression system and its component parts in an operative condition at all times, together with replacement of the system or its component parts with listed or approved parts, when, for any reason they become undependable, defective, or inoperative.~~

~~(b) "Service" does not include resetting manual alarm systems which may be reset by properly trained building owners or their designated representative.~~

~~(16) "Special agent fire suppression system" means an approved system and components which require individual engineering in accordance with manufacturer specifications and includes dry chemical, carbon dioxide, halogenated, gaseous agent, foam, and wet chemical systems; includes pre engineered system but does not include a fire extinguishing system."~~

Auth: Sec. 50-39-107, MCA; IMP, Sec. 50-39-101, 50-39-102, 50-39-103, 50-39-104, 50-39-105, 50-39-106, 50-39-108, MCA

REASON: The proposed amendments will delete definitions which were placed in statute at 50-39-108, MCA, by the 1997 Legislature. It is unnecessary to repeat statutory changes in rules, so the identical definitions are now being deleted from the rules.

"8.19.118 APPLICATION PROCEDURE (1) through (3) will remain the same.

(4) All certificates for licensure, such as NICET level II certificates, must be received by the department directly from the certifying entity.

(4) through (7) will remain the same, but will be renumbered (5) through (8)."

Auth: Sec. 50-30-107, MCA; IMP, Sec. 50-39-102, 50-39-103, 50-39-105, MCA

REASON: The proposed amendment will clarify that NICET certifications must be received directly from NICET to the program office. Previously, applicants had attempted to submit their own copies, which cannot be accepted as authentic.

"8.19.119 APPRENTICES-APPROVED PROGRAMS (1) through (3)(b) will remain the same.

(4) Once an apprenticeship program has been approved, the licensee shall provide the department with a list of all apprentices performing work for the licensee and the name of the endorsed individual under whom each apprentice will be working. The licensee shall provide the department with updates of such list no later than 30 days after any addition or subtraction of an apprentice from its program."

Auth: Sec. 50-39-107, MCA; IMP, Sec. 50-39-101, MCA

REASON: The proposed amendment will add the requirement that the names of the apprentice supervisors also be supplied to the

department. These names had not been supplied in the past, making it impossible to verify that proper supervision and experience time to count toward licensure was being provided.

3. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Fire Prevention Program of the Department of Commerce, 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., December 29, 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 Fire Prevention Program of the Department of Commerce, 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., December 29, 1997.

5. If the Department 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 31 based on the 306 licensees and endorsees in Montana.

6. Persons who wish to be informed of all Fire Prevention Program administrative rulemaking proceedings or other administrative proceedings may be placed on a list of interested persons by advising the Program at 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513 or by phone at (406) 444-1653.

FIRE PREVENTION PROGRAM
DEPARTMENT OF COMMERCE

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, November 17, 1997.

BEFORE THE BOARD OF PHYSICAL THERAPY EXAMINERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of rules pertaining) OF RULES PERTAINING TO
to fees and temporary licenses) 8.42.403 FEES, 8.42.405
) TEMPORARY LICENSES AND 8.42.416
CONTINUING EDUCATION
NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 31, 1997, the Board of Physical Therapy Examiners proposes to amend rules pertaining to fees and temporary licenses.

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

"8.42.403 FEES (1) will remain the same.

(a) Application for NPTE and NPTAE examination (paid directly to professional examination service by either cashier's check or money order only) ~~\$185~~ \$125

(b) through (j) will remain the same."

Auth: Sec. 37-1-134, 37-11-201, MCA; IMP, Sec. 37-11-201, 37-11-304, 37-11-307, 37-11-308, 37-11-309, MCA

REASON: The examination service charges a processing fee of \$10 in addition to the \$185 examination fee. The Board must set the fees in accordance with what the examination service charges.

"8.42.405 TEMPORARY LICENSES (1) will remain the same.

(2) Applicants for licensure by examination may ~~not~~ be issued a temporary license. The temporary license shall identify the licensed physical therapist who shall be responsible for providing direct supervision. After issuance of the temporary license, the applicant must schedule his/her examination within 120 days of the issuance date. The temporary license shall be valid until the board makes its final determination on licensure, but may be extended at the board's discretion. Only one temporary license will be issued per applicant.

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

Auth: Sec. 37-1-131, 37-11-201, MCA; IMP, Sec. 37-1-305, 37-11-309, MCA

REASON: The registration of examination applicants by the professional examination service is not being completed within 10 days and applicants have had to wait up to four months to be registered to take the examination. During this waiting period, the examination applicant is only allowed to work as a physical therapy aide, which is paid much less than a licensed

physical therapist. The Board proposes to re-establish the temporary permit for examination candidates until such time as processing for the new examination by computer is streamlined.

"8.42.416 CONTINUING EDUCATION (1) through (3) will remain the same.

(a) the activity must have significant intellectual or practical content. The activity must deal primarily with substantive physical therapy issues as contained in the physical therapy definition in Montana. In addition, the board may accept continuing education activities from other professional groups or academic disciplines if the licensee demonstrates that the activity is substantially related to his or her role as a physical therapist or physical therapist assistant. A continuing education program is defined as a class, institute, lecture, conference, workshop, cassette or videotape, or correspondence course or publication of journal article(s) or textbook(s);

(b) through (4) (f) will remain the same."

Auth: Sec. 37-1-319, 37-11-201, MCA; IMP, Sec. 37-1-306, 37-11-201, MCA

REASON: The proposed amendment will allow continuing education credit for publication of a journal article, or a textbook. The Board noted these activities would serve to provide current, updated practice information to a licensee as well as any class or other course. The credit will still be calculated at the one hour of participation equals one continuing education credit rate which is contained elsewhere in the rules.

3. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Physical Therapy Examiners, 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., December 29, 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 Physical Therapy Examiners, 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., December 29, 1997.

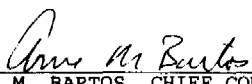
5. If the Board receives requests for a public hearing on the proposed amendments from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision 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 88 based on the 880 licensees in Montana.

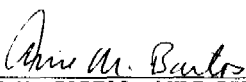
6. Persons who wish to be informed of all Board of Physical Therapy Examiner administrative rulemaking proceedings or other administrative proceedings may be placed on a list of interested persons by advising the Board at 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513 or by phone at (406) 444-3728.

BOARD OF PHYSICAL THERAPY
EXAMINERS
JEFF PALLISTER, PT, CHAIRMAN

BY:



ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE



ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, November 17, 1997.

BEFORE THE BOARD OF PUBLIC ACCOUNTANTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of rules pertaining) OF ARM 8.54.408 EDUCATION
to education requirements, fees) REQUIREMENTS, 8.54.410 FEE
and enforcement against) SCHEDULE AND 8.54.702
licensees) ENFORCEMENT AGAINST LICENSEES

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 31, 1997, the Board of Public Accountants proposes to amend the above-stated rules.
2. The proposed amendments will read as follows: (new matter underlined, deleted matter interlined)

"8.54.408 EDUCATION REQUIREMENTS (1) through (3)(d) will remain the same.

(e) has at least 24 semester hours in ~~upper division or graduate level~~ business related courses. Examples of business related courses include information systems, business law, finance, economics, marketing, ethics, organizational behavior, quantitative applications in business and communication skills;

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

Auth: Sec. 37-50-203, MCA; IMP, Sec. 37-50-302, 37-50-303, 37-50-305, MCA

REASON: The proposed amendment will delete the 24 semester hours in upper division or graduate level business course requirement, as this requirement posed potential problems for many accounting students. Many college curricula offered a business core which included fewer than 24 credits of upper division courses with business prefixes. This has prevented these students from qualifying for licensure. The amendment will still require 24 credits in business courses.

"8.54.410 FEE SCHEDULE

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

(6) Examination fee 175 225

(7) Re-examination fee

(a) all sections 150 200

(b) per section 50 75

(8) Examination proctor fee 100

(8) through (10) will remain the same, but will be renumbered (9) through (11)."

Auth: Sec. 37-1-134, 37-50-203, MCA; IMP, Sec. 37-1-134, 37-50-204, 37-50-314, 37-50-317, MCA

REASON: The proposed amendment will raise examination and re-examination fees as the examination service costs have risen

with the change in contracting of the examination service. The board is now being charged for seating each candidate and scoring each exam. The board is not even breaking even with the current fees and must make these changes to keep fees commensurate with costs.

The proposed amendment to (8) will add a proctoring fee for those applicants who are applying in another state, and will only be taking the examination in Montana. The Montana board will still be charged per candidate by the examination service, whether or not these are actually Montana candidates. The board must pass this cost on to the candidates.

- "8.54.702 ENFORCEMENT AGAINST LICENSEES (1) through (1)(c) will remain the same.
(d) failure to meet the continuing education requirements established by the board; or
(e) failure to respond to correspondence from the board, or to comply with orders of the board."

Auth: Sec. 37-1-131, 37-1-136, 37-1-319, 37-50-203, MCA; IMP, Sec. 37-1-136, 37-1-316, 37-1-319, MCA

REASON: The proposed amendment will add failure to respond to the board or comply with board orders as a term for imposition of disciplinary action. The board had previously deleted similar language from their unprofessional conduct rules, but discovered it was necessary to have this language in the rule to enforce professional monitoring program directives and receive reports. Reinstatement of this rule language would allow for tighter enforcement actions, as well as notifying licensees of their responsibilities toward the board.

3. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Public Accountants, 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., December 29, 1997.

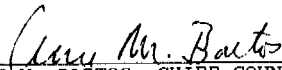
4. If a person who is directly affected by the proposed amendments wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Public Accountants, 111 N. Jackson, 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., December 29, 1997.

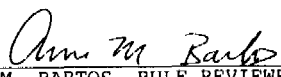
5. If the Board receives requests for a public hearing on the proposed amendments from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision 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 320 based on the 3198 licensees in Montana.

6. Persons who wish to be informed of all Board of Public Accountants administrative rulemaking proceedings or other administrative proceedings may be placed on a list of interested persons by advising the Board at 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513 or by phone at (406) 444-3739.

BOARD OF PUBLIC ACCOUNTANTS
JAMES R. SMRCKA, CHAIRMAN

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, November 17, 1997.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION) NOTICE OF PROPOSED ADOPTION
NEW RULES I through IV)
relating to the Family)
Education Savings Act) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On January 30, 1998, the Department of Revenue proposes to adopt new rules I through IV relating to the Family Education Savings Act.

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

NEW RULE I EDUCATIONAL FAMILY SAVINGS ACCOUNT OWNERS AND DESIGNATED BENEFICIARIES (1) Designated beneficiaries must be a member of the account owner's family as defined by 15-62-103, MCA.

(2) An account owner may name himself or herself as the designated beneficiary of an account established under 15-62-201, MCA.

(3) A designated beneficiary may also be the step-child of a lineal descendant, including adopted children, of the account owner.

(4) Account owners may name only one designated beneficiary per account. Designated beneficiaries may be changed as provided by 15-62-202, MCA.

(AUTH: Sec. 15-30-305 and 15-62-201, MCA; IMP, Sec. 15-30-111, MCA)

NEW RULE II CONTRIBUTIONS TO EDUCATIONAL FAMILY SAVINGS ACCOUNTS (1) A taxpayer is allowed to deduct the lesser of contributions actually made to an educational family savings account during the tax year or \$3,000.

(2) For Montana tax purposes, deductible contributions to an educational family savings account do not include interest earned on the account. Interest generated by educational family savings accounts is exempt from taxation by Montana until the time it is distributed to the account owner or the account beneficiary.

(3) A taxpayer may contribute to more than one educational family savings account. The total deduction for contributions made to all accounts during the tax year may not exceed \$3,000.

(4) Married taxpayers filing a joint return who have separate educational family savings accounts are each entitled to claim a deduction for contributions made to their individual accounts. Each spouse may deduct the contributions made to his or her individual account, not to exceed \$3,000. (AUTH: Sec.

15-30-305 and 15-62-201, MCA; IMP, Sec. 15-30-111, MCA)

NEW RULE III WITHDRAWALS FROM EDUCATIONAL FAMILY SAVINGS ACCOUNTS (1) Nonqualified withdrawals of principal and interest from educational family savings accounts must be included in the account owner's Montana adjusted gross income in the year withdrawn.

(2) The interest portion of a qualified withdrawal is includable in the account beneficiary's Montana adjusted gross income in the year withdrawn. The taxable portion of a qualified withdrawal is determined using the provisions of the Internal Revenue Code, 26 U.S.C. 72.

(3) Penalties assessed for nonqualified withdrawals are not deductible in arriving at Montana taxable income. (AUTH: Sec. 15-30-305 and 15-62-201, MCA; IMP, Sec. 15-30-111, MCA)

NEW RULE IV VERIFICATION OF EDUCATIONAL FAMILY SAVINGS ACCOUNT CONTRIBUTIONS AND WITHDRAWALS (1) Taxpayers claiming a deduction for contributions to educational family savings accounts must attach to their tax return each year, verification as prescribed by the department, showing account contributions, interest earned on contributions, withdrawals, and any penalties assessed on nonqualifying withdrawals from the account. (AUTH: Sec. 15-30-305 and 15-62-201, MCA; IMP, Sec. 15-30-111, MCA)

3. The adoption of new rules I through IV is necessary because House Bill 536 created the allowance of an income tax deduction when arriving at Montana adjusted gross income. Taxpayers will be allowed to deduct up to \$3,000 per tax year for contributions made to educational savings accounts established for family members. The proposed rules are necessary to more clearly define terminology used in the new legislation. The rules also specify the documentation which must accompany the tax returns when claiming this deduction. Additionally, the rules address deduction amounts allowed for married taxpayers.

4. Interested parties may submit their data, views, or arguments concerning the proposed action in writing to:

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

no later than December 29, 1997.

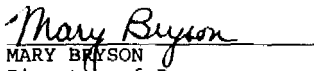
5. If a person who is directly affected by the proposed action wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Cleo Anderson at the above address no later than December 29, 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 adoption; from the Administrative Code Committee of the Legislature; from a governmental subdivision, or agency; or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be greater than 25.

7. All parties interested in receiving notification of any change in rules pertaining to this subject should contact the Rule Reviewer in writing at the address shown in section 4 above.


CLEO ANDERSON
Rule Reviewer


MARY BRYSON
Director of Revenue

Certified to Secretary of State November 17, 1997

BEFORE THE DEPARTMENT OF ADMINISTRATION
STATE OF MONTANA

In the matter of the) NOTICE OF THE AMENDMENT
amendment and adoption of) OF ARM 2.13.201, 2.13.202,
rules pertaining to 9-1-1) 2.13.203, AND 2.13.205
emergency telephone systems.) AND THE ADOPTION OF RULE I
) RELATED TO 9-1-1 EMERGENCY
) TELEPHONE SYSTEMS.

TO: All Interested Persons:

1. On October 6, 1997, the Department of Administration published notice of the proposed amendment of ARM 2.13.201, 2.13.202, 2.13.203, and 2.13.205 and adoption of new rule I pertaining to 9-1-1 emergency telephone systems on page 1691 of the 1997 Montana Administrative Register, issue number 19.

2. The department has adopted Rule I (2.13.206) exactly as proposed, and amended Rules 2.13.201, 2.13.202, and 2.13.203 exactly as proposed.

3. The department will adopt 2.13.205 as proposed, but with the following changes:

2.13.205 DISTRIBUTION OF EMERGENCY TELECOMMUNICATIONS ACCOUNTS (1) An amount equal to ~~3-76%~~ 7.48% of the money received pursuant to 10-4-201, MCA, shall be transferred into the state general fund to cover administrative costs incurred by the department of revenue and the department of administration. ~~The department of revenue shall submit an itemized statement of actual expenses incurred during each calendar quarter to the department within 30 days following the end of each calendar quarter. If such a statement is not received by the department within 30 days following the end of the quarter the department shall not distribute any of the account to the department of revenue for that calendar quarter.~~

~~(2) The department shall prepare an itemized statement of actual expenses incurred during each calendar quarter for carrying out its responsibilities within 30 days following the end of each calendar quarter. If such a statement is not prepared by the department within 30 days following the end of the quarter the department shall not receive any of the account for that calendar quarter.~~

(3) remains the same but is renumbered (2).

(4) remains the same but is renumbered (3).

(5)(a) through (c) remain the same but are renumbered (4)(a) through (c).

(d) for the enhanced 9-1-1 fund distribution, the department shall compute the percentage quarterly allocation amount for each county which is 84% of each county's share of the basic 9-1-1 fund distribution based upon the percentages computed in (4)(b) applied against 84% of the enhanced 9-1-1

fund account;

~~(e) the department shall compute the quarterly allocation amounts for each county based upon the percentages computed in (5) (d) applied against the enhanced 9-1-1 account;~~

~~(f) (e) the balance (16%) of the enhanced 9-1-1 fund account shall be distributed evenly divided among to the counties that receive 1% of the basic 9-1-1 fund distribution with 1% or less than 1% of the total population of the state;~~

~~(g) remains the same but is renumbered (f).~~

~~(h) (g) the department shall compute the quarterly distribution amount for each 9-1-1 jurisdiction based upon the percentages computed in (5) (4) (d), (5) (e), and (5) (f) applied against each county's quarterly allocation amount computed in (5) (4) (c), (4) (d), and (4) (e);~~

~~(i) through (n) remain the same but are renumbered (h) through (m).~~

AUTH: Sec. 10-4-102, MCA; IMP, 10-4-121, 10-4-301, 10-4-302, MCA.

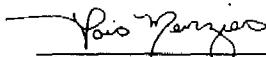
4. One comment was received.

COMMENT: The rules must accurately reflect the statute. Even though the intent of the Legislature was that 3.76% of the money received from the basic and enhanced fees is to be transferred to the state general fund for administrative expenses, the statute provides that 7.48% of the fees be transferred. The language of subsections (1) and (2) of 2.13.205 is no longer relevant since the de-earmarking of administrative costs. The distribution of the enhanced 9-1-1 account must accurately reflect the statute.

RESPONSE: We have made those changes.



Rule Reviewer



Director, Department of
Administration

Certified to the Secretary of State November 17, 1997

BEFORE THE BOARD OF COSMETOLOGISTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment,)	NOTICE OF AMENDMENT, REPEAL
repeal and adoption of rules)	AND ADOPTION OF RULES PER-
pertaining to the practice of)	TAINING TO THE PRACTICE OF
cosmetology, electrology, mani-)	COSMETOLOGY, ELECTROLOGY,
curing and esthetics)	MANICURING AND ESTHETICS

TO: All Interested Persons:

1. On October 6, 1997, the Board of Cosmetologists published a notice of proposed amendment, repeal and adoption of rules pertaining to the practice of cosmetology, electrology, manicuring and esthetics at page 1709, 1997 Montana Administrative Register, issue number 19.

2. The Board has amended ARM 8.14.605, 8.14.607, 8.14.608, 8.14.611, 8.14.801, 8.14.802, 8.14.803, 8.14.804, 8.14.805, 8.14.813, 8.14.815, 8.14.819, 8.14.820, 8.14.1204, 8.14.1215; repealed ARM 8.14.806 and 8.14.1010; and adopted new rules II (8.14.613), III (8.14.403), IV (8.14.822), V (8.14.821) and VI (8.14.823) exactly as proposed. The Board has amended ARM 8.14.401, 8.14.402, 8.14.601, 8.14.602, 8.14.603, 8.14.606, 8.14.807, 8.14.814, 8.14.816, and adopted new rule I (8.14.612) as proposed, but with the following changes: (authority and implementing sections remain the same as proposed)

"8.14.401 GENERAL REQUIREMENTS (1) will remain the same as proposed.

(2) All persons practicing cosmetology, manicuring, electrology or esthetics as defined, must provide a suitable place equipped to give adequate service to patrons, as specified in the rules in subchapter 14, subject to inspection by the inspector or persons authorized by the board or the department with board approval."

"8.14.402 UNPROFESSIONAL CONDUCT For purposes of implementing the provisions of Title 37, chapter 1, MCA, and in addition to the unprofessional conduct provisions set forth at 37-1-316, MCA, the board defines unprofessional conduct as follows:

(1) through (15) will remain the same as proposed.

(16) removing a student from ~~theory~~ scheduled class to perform cosmetology, manicuring or esthetics work on the public; and

(17) allowing a patron to be ~~released from the chair, after being served by a student,~~ without ~~inspection an~~ instructor present on the clinic service floor and approval by a licensed instructor."

"8.14.601 APPLICATION FOR SCHOOL LICENSE (1) through (2)(c) will remain the same as proposed.

(3) The school shall present a bond in the amount of \$5,000. The bond shall provide a refund of ~~all~~ prepaid tuition

to enrolled students in the event the school ceases to operate or otherwise is unable to complete the course of instruction. A cosmetology school offering courses in manicuring and/or esthetics shall be required to post one bond."

"8.14.602 INSPECTION - SCHOOL LAYOUT (1) will remain the same as proposed.

(2) (a) Cosmetology schools shall have floor space of at least 1,500 square feet for the first 25 students and 60 square feet for each additional student, which may include locker room and office space. Schools shall be inspected at least once a year for compliance with the statutes and rules enforced by the board. The inspection shall be conducted during the school's business hours as stated on the school application. In the board's discretion, the board administrator or board members may accompany inspectors on a school inspection.

(b) (3) Manicuring schools or course shall have floor space of at least 450 square feet for the first 10 students and 45 square feet for each additional student, which may include locker room and office space, of a sufficient amount to ensure a work area free of obstruction. For purposes of this rule, the minimum area for various types of students is as follows:

(a) a circle around the cosmetology student's chair encompassing an area of 17 1/2 square feet measured either by:
(i) a radius originating at the chair's pivot point and extending out for two feet, four and one half inches; or
(ii) a rectangle having its center at the chair's pivot point and having dimensions of three and one half feet wide and five feet long with the width being measured parallel to the student's work station;

(b) a rectangle centered around the manicure student's table having dimensions of two and one half feet wide and five and one quarter feet long with width measured parallel to the chair;

(c) An area encompassed by a rectangle centered around the esthetic student's facial bed or chair having dimensions of four and one half feet wide and five and one half feet long with width measured parallel to the feet or head of the chair or bed.

(c) Esthetic schools or course shall have floor space of at least 900 square feet for the first 10 students and 90 square feet for each additional student, which may include locker room and office space.

(3) Schools shall be inspected at least once a year for compliance with the statutes and rules enforced by the board. The inspection shall be conducted during the school's business hours as stated on the school application. In the board's discretion, the board administrator or board members may accompany inspectors on a school inspection.

(4) through (6) will remain the same as proposed.
(a) one ~~hydraulic styling~~ chair and work station with mirror per student on the clinic floor; and
(b) through (i) will remain the same as proposed.
(j) one ~~lab jacket~~ protective covering for each student;
and

(k) through (7)(a) will remain the same as proposed.
(b) one manicure table with chairs for each student on the clinic floor;
(c) through (8)(b) will remain the same as proposed.
~~(e) lab jacket protective covering;~~
(d) through (c) will remain the same as proposed.
(p) ~~pumish stone~~/pedi-paddle;
(q) through (11)(b) will remain the same as proposed.
(c) ~~lab jacket protective covering~~;
(d) through (13) will remain the same as proposed.

(14) At the entrance of each school, a large legible sign with the words "School of Cosmetology" or "School of Manicuring" shall be displayed. Each classroom shall have similar signs with the words "Student Work Only" posted."

"8.14.603 SCHOOL OPERATING STANDARDS (1) through (6) will remain the same as proposed.

(7) There shall be a qualified licensed instructor directly supervising students on the school premises at all times. In no event may an instructor supervise more than ~~20~~ 25 students at any time. In determining the appropriate number of students supervised by an instructor, under no circumstances may the number of students include more than 10 manicure students and/or six esthetician students.

(8) The department shall be notified of all instructors, including substitutes, employed by the school either full or part time. The board must receive this information ~~prior to the start of instruction~~ and must be notified of any changes immediately. Instructors must possess teaching credentials and post a copy of the instructor license in a central location where it may be inspected by members of the public."

"8.14.606 STUDENT REGISTRATION (1) through (8) will remain the same as proposed.

(9) Recruitment of students currently enrolled in a school through the awarding of hours by a person associated with another school is unprofessional conduct subject to discipline by the board pursuant to 37-1-316, MCA."

"8.14.807 TRANSFER STUDENTS - OUT-OF-STATE - COSMETOLOGY, MANICURING, ESTHETICS (1) will remain the same as proposed.

(2) Out-of-state students will be considered entry level students ~~needing theory instruction~~ until the board office has

received and reviewed their transcript of hours, registration card enrollment form and/or any other papers or documents which the board may deem necessary and may not be permitted to work on members of the public.

"8.14.814 FEES - INITIAL, RENEWAL, PENALTY AND REFUND
FEES (1) through (13) (d) will remain the same as proposed.

(e) Active instructor license 60

(f) Inactive instructor license 50

(e) through (m) will remain the same, but will be renumbered (g) through (o).

(14) Examination fees

(a) Cosmetology 82

(b) Manicure 82

(c) Esthetic 82

(d) Electrology 82

(e) Instructor 82

(f) Retake examination fee 70

(14) will remain the same as proposed, but will be renumbered (15).

~~(15)~~ (16) All cosmetologist, manicurist, esthetician, instructors and electrologist licenses will be renewed on a bi-annual biennial basis and will expire on December 31 of that year.

(16) through (19) will remain the same, but will be renumbered (17) through (20)."

"8.14.816 SALONS - COSMETOLOGICAL, MANICURING OR ESTHETICS (1) and (2) will remain the same as proposed.

(3) ~~In order to guarantee adequate service to members of the public, space in a salon shall be allocated in the following manner:~~

~~(a) there shall be a zone of free space encompassed by a circle having a radius of three feet originating at the pivot point of the cosmetologist's chair.~~

~~(b) Each manicurist shall have a zone of free space encompassed by a rectangle measuring three feet wide and five feet long with the measurement of width being made parallel to the back of the manicurist's chair or stool.~~

~~(c) Estheticians shall have a free zone of space encompassed by a rectangle measuring six feet in width and nine feet in length with the measurement of width being made parallel to the foot or head of the esthetician's bed. The esthetician's area must also be equipped with a privacy screen or "draw drapes" which are no less than five and one half feet in height and no more than two feet above the floor.~~

~~(d) The applicant must furnish the board with a blueprint or scale drawing of the floor plan when filing a salon application.~~

(4) through (10) will remain the same as proposed."

"8.14.612 TRANSFER POLICIES - RECRUITMENT - FIELD TRIPS

(1) through (4) will remain the same as proposed.

(5) A school may not ~~recruit solicit~~ students already enrolled in another school offering a similar program of study.

Violation of this subsection is unprofessional conduct subject to disciplinary action by the board.

(6) Credit for hours spent in alternative educational offerings is available if students are accompanied by an instructor from the school in which the student is enrolled. Names of attendees must be supplied on a form provided by the board ~~and submitted prior to the program~~. Attendance must be taken at the beginning and ending of each program segment and provided to the board."

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

Generally: Commentor asked that the Board consider grand fathering some rules for existing salons and schools.

RESPONSE: The Board determined rules as proposed and adopted under this notice placed no burdens on the schools that would warrant the use of a grand father clause. Any new burdens placed on the schools consist primarily of paper work easily accomplished through minor changes in administrative procedures.

8.14.401

COMMENT NO. 1: Subsection (2): Commentor suggests that language be added to include manicuring and esthetics.

RESPONSE: The Board accepted the comment and amended the rule as shown above.

8.14.402

COMMENT NO. 2: Subsection (8): Commentor suggests further defining the terms "good faith" and specify the body responsible for providing such an interpretation.

RESPONSE: The Board rejected this comment as the term "good faith" is well defined and has a commonly understood meaning.

COMMENT NO. 3: Subsection (12): Commentor suggests that the subsection not be adopted as it is essentially "void for vagueness."

RESPONSE: The Board rejected this comment as the terms "incompetence, negligence and malpractice" are well defined and have a commonly understood meaning.

COMMENT NO. 4: Subsection (14): Commentor suggests that this subsection should not be adopted as the Board does not have the capability to record the specific areas of expertise, training, or competency sufficient to adequately enforce the subsection.

RESPONSE: The Board rejected this comment as the terms "expertise and competence" are well defined and have a commonly understood meaning.

COMMENT NO. 5: Subsection (15): Commentors suggest that the subsection not be adopted as it is essentially "void for vagueness."

RESPONSE: The Board rejected this comment as the phrase "according to generally accepted standards of practice" is well defined and has a commonly understood meaning.

COMMENT NO. 6: Subsection (16): Commentor questions whether theory class is actually required by the statutes or defined.

RESPONSE: The Board accepted the comment and amended the rule as shown above.

COMMENT NO. 7: Subsection (17): Commentor suggests that this requirement is unworkable. Commentor states that the school should be responsible for the time it will take to assess patron services and the assessment method employed by the school.

RESPONSE: The Board accepted the comment and amended the rule as shown above.

8.14.601

COMMENT NO. 8: Subsection (2) Commentor suggests that the requirement of a sign clearly advertising that work performed within a school is performed by students should remain.

RESPONSE: For purposes of organization and clarity the language requiring signs specifying student work only, is better suited to be placed under ARM 8.14.602.

COMMENT NO. 9: Subsection (3): Commentor suggests that the language following \$5,000 should be deleted. Commentor states that it is not the Board's responsibility to enforce the requirements of NACCAS regarding bonding requirements.

RESPONSE: The Board rejected this comment because the bonding requirements are set forth by statute and the Board is without the authority to amend a statutory mandate. However, to add clarity to the rule, the Board amended the rule as shown above.

8.14.602

COMMENT NO. 10: One commentor suggests providing a temporary permit for schools.

RESPONSE: The Board is without statutory authority to provide for such a temporary permit.

COMMENT NO. 11: Subsection (2) Commentor suggests that the 1500 minimum square footage requirement remain.

Commentor suggests that the measurements are ludicrous and that the method of measuring the distance will be too difficult. Commentor suggests not adopting the rule. Other commentors suggest that the language is too confusing.

RESPONSE: The Board accepted these comments and amended the square footage rule for esthetic schools.

COMMENT NO. 12: Subsection (5): Two commentors provided statements. Both commentors stated that the shampoo bowl requirements are too high.

RESPONSE: The Board rejected the comment as the requirement had not been changed, but merely restructured to add clarity to the rule.

COMMENT NO. 13: Subsection (6)(a): Commentors request greater clarification pertaining to whether one hydraulic chair and mirror is to be present for each student on the clinic floor or for each student enrolled.

RESPONSE: The Board has accepted this comment and amended the rule as shown above.

COMMENT NO. 14: Subsection (6)(c): Commentor states that four manicure tables for up to fifteen manicure students enrolled is too much. Commentor suggests keeping the current rule.

RESPONSE: The Board rejected this comment because it feels that the requirement as proposed is adequate and reasonable.

COMMENT NO. 15: Subsection (6)(j): Commentor states that the rule should be deleted because while we are requiring a lab jacket, nowhere does the Board state that it must be worn.

RESPONSE: The Board rejected this comment, but amended the rule to add clarity to the proposed language.

COMMENT NO. 16: Subsection (6)(k): Commentor states that the Board should not dictate the contents of a kit. The kits will be too expensive, a cost which is ultimately passed on to the students.

RESPONSE: The Board rejected the comment due to the high number of inquiries from students stating that the schools do not provide them the minimally necessary equipment and tools to complete the required curriculum.

COMMENT NO. 17: Subsection (7)(b): Commentor states that one manicure table per student is excessive.

RESPONSE: The Board rejected the comment, but amended the rule as shown above for clarity.

COMMENT NO. 18: Subsection (9): Commentor states that the section needs more clarity regarding the equipment which is to be utilized by each student and the equipment which is to be shared by the students. Commentor suggests that the equipment is too expensive and not cost effective for an esthetics course.

RESPONSE: The Board rejected the comment due to the high number of inquiries from students stating that the schools do not provide them the minimally necessary equipment and tools to complete the required curriculum.

COMMENT NO. 19: Subsection (10)(g): Commentor states that the board is requiring one unit with specific equipment attached. Commentor states that one unit is more costly but suggests that the unit could be pieced together.

RESPONSE: The Board rejected the comment because the board-required curriculum necessitates that the equipment, in whatever form, must be available for the student's use.

COMMENT NO. 20: Subsection (13): Commentor states that this subsection needs additional work to address the proper size of equipment, cleanliness, maintenance, and actual operation of the equipment.

RESPONSE: The Board rejected the comment because the Board is relying on the professionalism of school owners to determine the necessary size of the equipment, cleanliness, maintenance and actual operation of the equipment.

8.14.603

COMMENT NO. 21: Subsection (3) Commentor states that the amendment is not needed. Commentor suggests that if the former standards were not enforceable, these will be similarly unenforceable and, therefore, should not be adopted. Other commentor states that not all students bring their high school diploma or birth certificates the first day of registration and would lose money on enrollments.

RESPONSE: The Board rejected the comment to delete the accommodations made for those schools' owners who constantly failed to submit registration materials within the amount of time required by board rule. Therefore, the Board has determined that the more stringent time period is necessary to reduce the lag in receipt of student registration materials and the initial submittal of instruction hours.

COMMENT NO. 22: Subsection (4): Commentor states that contracts should not be dictated by the Board and, therefore, the Board should not adopt this subsection. Other commentor states that the board is outside their responsibility with having the students make sure they have their deposit.

RESPONSE: The Board rejected the comments because as a public protection matter, the issue of terms appearing in contracts which are not subject to negotiation by students and the students not being provided ample opportunity to review those terms mandated that the students be at least provided with a copy of the contract.

COMMENT NO. 23: Subsections (5) and (6): Commentor suggests that these rules are burdensome on the schools and, therefore, should not be adopted.

RESPONSE: The Board rejected the comments based on its determination that many schools were failing to submit attendance hours within the time period allowed by Board rule. Therefore, the more stringent requirement has been adopted in

an effort to ensure that the hours are received in a timely manner.

COMMENT NO. 24: Subsection (5)(b): Commentor suggests that the board allow rounding up of the hours and not in 15 minute increments.

RESPONSE: The Board rejected the comment stating that allowing schools to round to the nearest hour resulted in too much of a discrepancy between the time served in school and the amount reflected in the hour records.

COMMENT NO. 25: Subsection (6): Commentor does not want the subsection adopted as it sets a school up for failure when a student is unable to sign for the hours.

RESPONSE: The Board rejected the comment stating that the time period is more than ample for obtaining a student's signature.

COMMENT NO. 26: Subsection (7): Commentor states that the statute, Mont. Code Ann. § 37-31-311(2)(a) (1997), states that a school may not have more than 25 students per instructor. Commentor suggests that the rule not be adopted as this rule is more stringent than the enabling statute and, therefore, is contrary to law. Other commentor states that the 25 to 1 ratio is adequate.

RESPONSE: The Board accepted this comment and amended the rule as shown above.

COMMENT NO. 27: Subsection (8): Commentor suggest that the rule is unnecessary as it is a further requirement that the Board does not possibly have the time to enforce. Other commentor suggests that there will not be time to inform the board that day when a substitute instructor is needed especially if it is a family emergency.

RESPONSE: The Board rejected the comment, but amended the rule as shown above for clarity.

COMMENT NO. 28: Subsections (9) and (13): Commentor states that these subsections are merely unwanted intrusion into the daily operation of the schools and, therefore, should not be adopted. Other commentor does not believe the board has jurisdiction to require schools to perform evaluations on their students. The department of education regulated that through NACCAS. Other commentor states that the inspectors would have a difficult time evaluating the evaluations. Also comments that there may be a right to the students' privacy.

RESPONSE: The Board rejected these comments due to the Board's documented difficulty in receiving accurate descriptions of a student's progress through the curriculum in a manner easily understood by Board members. With regard to a student's right of privacy, the Board is entitled to receive documentation of a student's progress and follows Division policy regarding dissemination of public documents.

COMMENT NO. 29: Subsection (11): Commentor states that this subsection is listed two and three times, and feels that this subsection should be stricken.

RESPONSE: The Board rejects the comment as the repetition is necessary for clarity between the various subsections in which the language appears.

8.14.605

COMMENT NO. 30: Subsection (2): Commentor suggests that the subsection requires additional work to address whether graduation is accomplished upon obtaining 2000 hours of instruction or after passing the exam and paying the fees.

RESPONSE: The Board rejected the comment because the graduation requirements are set forth by statute.

COMMENT NO. 31: Subsection (3): Commentor suggest that the manicuring curriculum should be expressed in terms of hours rather than in practical operations. Suggestions may be found on pages 4 and 5 of Ms. Battaiola's written comments.

RESPONSE: The Board accepted the comment and will address the comment during a future rulemaking proceeding.

COMMENT NO. 32: Subsections (4) and (7): Commentor suggests that the subsection requires additional work to address whether graduation is accomplished upon obtaining so many hours of instruction or after passing the exam and paying the fees.

RESPONSE: The Board rejected the comment because the graduation requirements are set forth by statute.

COMMENT NO. 33: Subsection (9): Commentor suggests that clarification regarding "daily cleaning" and "general maintenance" is warranted.

RESPONSE: The Board rejected the comment as the terms "daily cleaning" and "general maintenance" are commonly understood and have well defined meanings.

COMMENT NO. 34: Subsection (11): Commentor questions the need for this rule and general support for requiring such a rule.

RESPONSE: The Board rejected the comment due to the high number of student inquiries specifying that students were being called out of classes to perform work on the public.

8.14.606

COMMENT NO. 35: Subsection (1) Commentor strongly disagrees with this rule apparently because the prior relaxed rule was almost unenforceable.

RESPONSE: The Board rejected the comment because the prior relaxed rule of the Board resulted in too many schools failing to provide registration materials on time and therefore

is removing the grace period for submitting registration materials.

COMMENT NO. 36: Subsections (2) and (3): Commentor suggests that additional work is warranted with regard to this subsection. Commentor suggests that the Board further require the various actions prior to graduation or before registering for the Board exam. Other commentor agrees with this subsection.

RESPONSE: The Board rejected the comment due to the large number of students disenrolling from schools and the Board's subsequent inability to accurately verify the number of hours of education received by the student.

COMMENT NO. 37: Subsection (5): Commentor suggests that additional work is required. She requests that the Board address the issue regarding transfers from out-of-state, graduates who have not taken the exam within five years, etc. Other commentor states that this subsection is listed two and three times also.

RESPONSE: The Board rejects the comment due to its verifiable difficulty in obtaining accurate instructional hours past a five-year period for both in-state and out-of-state students.

COMMENT NO. 38: Subsection (7): Commentor suggests that further clarification is needed to specifically identify who is responsible for the interpretation of this rule.

RESPONSE: The Board rejected the comment as it is clear that the Board is responsible for the interpretation and enforcement of the rule.

8.14.607 and 8.14.608

COMMENT NO. 39: Commentor suggests clarity regarding whether a school is approved or licensed for teacher's training.

RESPONSE: The Board rejects the comment as it is clear from the statute that the school is "approved" for providing teacher training.

8.14.608

COMMENT NO. 40: Subsection (4): Comment suggests adding the following language to the final sentence:

"... course work (specific to the curriculum) offered by an accredited post secondary education institution." Other commentor wanted to know if the three years of experience as a cosmetologist can be substituted for the 650 hours. Also wanted to know if a candidate failed the exam could they still work and train in the school.

RESPONSE: With respect to coursework offered by an accredited post-secondary educational institution, the Board

determined that the coursework will be reviewed on a case-by-case basis for equivalency determination. The Board rejected the comment regarding the equivalency for experience as the mere performance of cosmetology duties does not adequately prepare one to instruct, in an educational setting, other individuals on proper cosmetological techniques. Regarding the inquiry pertaining to failed candidates, the Board felt it was clear that candidates may obtain additional training but may not be employed as instructors by the school.

COMMENT NO. 41: Subsection(5): Commentor suggests deleting the requirement that students be registered prior to the first day of classes.

RESPONSE: The Board rejected the comment stating that the grace period resulted in too many schools failing to submit registration materials on time and, therefore, will no longer accept registration materials after the first day of classes.

8.14.611

COMMENT NO. 42: Subsections (1)(b)(i) and (c)(i): Commentor suggests that the Board has made this too specific regarding nail and hair solutions.

RESPONSE: The Board rejects the comment, but will address the matter in a future rulemaking proceeding.

8.14.802

COMMENT NO. 43: Subsection (4): Commentor suggests not adopting the rule. Commentor states that the rule is in violation of Mont. Code Ann. § 37-31-308(2) (1997).

RESPONSE: The Board rejected the comment as it adds clarity to the statutory language.

8.14.803

COMMENT NO. 44: Subsection (8): Commentor suggests that there are times when the first examination for which the student is qualified to take may not be available due to limitation of examinees.

RESPONSE: The Board rejected the comment as the rule adds clarity to the statutory language.

8.14.804

COMMENT NO. 45: Subsections (1)-(3): Commentor suggests adding language including instructors to these provisions.

RESPONSE: The Board rejected the comment as the requirements for instructors are found elsewhere within the rules.

8.14.805

COMMENT NO. 46: Commentor states that this rule requires additional work. Commentor suggests that the simple act of passing the NIC exam is not sufficient to release an individual from the 2000 hour requirement. Commentor suggests allowing documented work experience to count toward the 2000 hour requirement to meet our curriculum standards.

RESPONSE: The Board rejected the comment as it determined that passage of the NIC examination was prima facie evidence that the license candidate possesses minimum basic qualifications to safely practice within the state.

COMMENT NO. 47: Commentor states that rules for manicuring and estheticians should coincide with those currently written and presented.

RESPONSE: The Board rejected the comment as it is clear that the proposed rule is general in its application to manicurists and estheticians as well as cosmetologists.

COMMENT NO. 48: Commentor states that it is not appropriate to address individuals with out-of-state instructor licenses at this time.

RESPONSE: The Board rejected the comment as it did not pertain to any proposed rule in the notice.

8.14.807

COMMENT NO. 49: Subsection (2): Commentor would like the Board to clarify this section.

RESPONSE: The Board accepted this comment and the rule was amended as shown above.

8.14.813

COMMENT NO. 50: Commentor suggests that the rule not be adopted as it conflicts with Mont. Code Ann. § 37-31-322 (1997), which states that "the right to renew an expired license or certificate terminates after 10 years of non-payment." Other commentor did not know what happens after the three year period.

RESPONSE: The Board rejects the comment as it is clear from the statute that after a three year period of non-renewal, a licensee must re-examine prior to obtaining a renewed license. After the ten-year period, the licensee will not be allowed to renew without completing the required hours of instruction and passage of the national examination.

8.14.814

COMMENT NO. 51: Commentor wants clarification regarding the term of the license for which the fees are proposed to be increased. Commentor suggests that the endorsement fee be higher due to the increased record review required of staff.

Commentor further suggests that staff review operating expenditures with a view to lowering such expenses. Other commentor states that the board did not address the instructor's renewal fees. Another commentor states that the board excess money will be given to the general fund and never recovered. Commentor questions whether the board has really looked at the cost of doing business or is just raising fees to make a profit.

RESPONSE: With respect to all comments regarding licensure fees, the Board rejects the comments as it is clear that the commentors misunderstood the terms of licensure corresponding to the fee increase. The fees must be set commensurate with program area costs as set forth in 37-1-134, Montana Code Annotated. Any individual wishing to review the Board's budget may do so by contacting the Board office.

8.14.816

COMMENT NO. 52: Subsections (3)(a)-(c): Commentor simply refers to her objections to the school requirements and states that the same objections apply here. Other commentors indicate that the salon would lose positions and revenue in Montana. Commentors also indicate that there have not been complaints or problems with the distance between chairs.

RESPONSE: The Board accepted the comment and amended the rule as shown above.

COMMENT NO. 53: Subsection (3)(d): Commentor states that the booth rental provisions should remain. Commentor states that including a new floor plan with booth rental applications allows the Board to obtain current information.

RESPONSE: The Board rejected the comment as this is the only practical time in which to obtain accurate information regarding the layout of the salon.

COMMENT NO. 54: Subsection (4)(g): Commentor simply refers to her comments on school requirements.

RESPONSE: The Board rejected the comment as the requirement for mechanical ventilation is for public protection and adds clarity to the existing rule. The Board will be inspecting for proper ventilation and salons that chose not to operate their ventilation equipment during business hours may be disciplined by the Board.

8.14.1215

COMMENT NO. 55: Subsection (1): Commentor asserts that there is a need for the requirement of socks and nylons to be worn in salons and schools. Commentor did not understand the reasons for the deletion of this "designed to reflect current practice".

RESPONSE: The Board rejects the comment as there is no discernable correlation between sanitation and wearing socks or nylons.

New Rule I (8.14.612)

COMMENT NO. 56: Subsection (1): Commentor states that the fourteen day requirement was more than sufficient and that the three-day period as proposed is too short. Other commentor states that if a student doesn't show up for five days and they disenroll them they are already too late to submit the disenrollment papers. Another commentor states that the board is requiring the school to hold back hours if the student is not in good standing.

RESPONSE: The Board rejected the comment based on staff's recommendation that hours be submitted as soon as possible because the Board could not adequately verify the number of hours obtained by the student if a substantial period of time elapsed between disenrollment and re-enrollment at another school.

COMMENT NO. 57: Subsection (4): Same comment above.

RESPONSE: See response to Comment No. 56.

COMMENT NO. 58: Subsection (5): Commentor does not think the rule should be adopted as it is in restraint of free trade and competition.

RESPONSE: The Board rejected the comment and amended it as shown above to add clarity.

COMMENT NO. 59: Subsection (6): Commentor states that this rule, in essence, takes away the school's ability to be responsible in deciding what is educational and what is not and to award the appropriate hours for alternative educational offerings. Other commentor states that they would like the board to allow them to use other instructors that used to work for them in case the school owners and instructors are not available. Commentor would like to see this subsection taken out.

RESPONSE: The Board rejects the comment based on staff's recommendation that hours awarded for attendance at hair shows are too difficult to verify. The rule, therefore, specifies that the individual student's instructor must be present and take attendance.

New Rule II (8.14.613)

COMMENT NO. 60: Subsection (a): Commentor states that additional clarity is required regarding the addition of rest rooms, separate work areas, class rooms, and break rooms.

RESPONSE: The Board rejects the comment as it feels that the language is sufficiently clear.

New Rule IV (8.14.822)

COMMENT NO. 61: Subsection (b): Commentor suggests that if an individual passes a TABY exam, then they could pass the

GED and should do so and obtain a document that is worth something.

RESPONSE: The Board rejects this comment as the statute clearly required the Board to establish an acceptable alternative to the high school equivalency requirement.

BOARD OF COSMETOLOGISTS
VERNA DUPUIS, CHAIRMAN

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

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, November 17, 1997.

BOARD OF MEDICAL EXAMINERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment	)	NOTICE OF AMENDMENT OF RULES
of rules pertaining to the	)	PERTAINING TO THE PHYSICIAN
physician temporary certificate	)	TEMPORARY CERTIFICATE AND
and fee schedule, acupuncture,	)	FEE SCHEDULE, ACUPUNCTURE,
podiatry and nutrition practice	)	PODIATRY AND NUTRITION
rules	)	PRACTICE RULES

TO: All Interested persons:

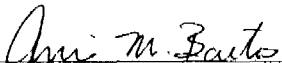
1. On October 6, 1997, the Board of Medical Examiners published a notice of proposed amendment of rules pertaining to the physician temporary certificate and fee schedule acupuncture, podiatry and nutrition practice rules, at page 1746, 1997 Montana Administrative Register, issue number 19.

2. The board has amended rules 8.28.414, 8.28.420, 8.28.503, 8.28.504, 8.28.1702, 8.28.1804 and 8.28.1806 exactly as proposed.

3. No comments or testimony were received.

BOARD OF MEDICAL EXAMINERS
DANIEL C. BROOKE, M.D., PRESIDENT

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, November 17, 1997.

BEFORE THE PETROLEUM TANK RELEASE COMPENSATION BOARD
DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
rule 17.58.342 pertaining to) OF RULE
eligible reimbursement for per)
diem expenses.)

(Petroleum Board)

To: All Interested Persons

1. On October 6, 1997, the board published notice of proposed amendment of ARM 17.58.342, at page 1757 of the 1997 Montana Administrative Register, Issue No. 19.

2. The board amended the rule as proposed with the following nonsubstantive correction (material to be deleted is interlined, which is being made to eliminate an incorrect internal citation to a statute):

17.58.342 OTHER CHARGES ALLOWED OR DISALLOWED

(1)(a)-(f) Same as proposed.

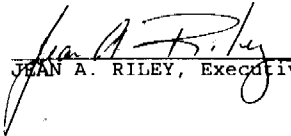
(g) meals at the rates set forth in 2-18-501(1)(b), MCA, for state employees traveling within Montana. Computation of time for purposes of determining meal allowances must be made according to 2-18-502, MCA. Exceptions for higher actual costs may be made by showing that seasonal or other factors make meals available at the above listed rates in certain limited areas (receipts will be required);

(h)-(j) Same as proposed.

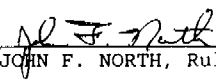
(2)-(3) Same as proposed.

3. No comments were received.

PETROLEUM TANK RELEASE COMPENSATION BOARD
MARK SIMONICH, PRESIDING OFFICER

BY:  JEAN A. RILEY, Executive Director

Reviewed by:

 JOHN F. NORTH, Rule Reviewer

Certified to the Secretary of State November 17, 1997.

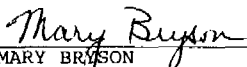
BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT) NOTICE OF AMENDMENT
of ARM 42.2.601 relating to)
Tax Assessment Review Process)

TO: All Interested Persons:

1. On October 6, 1997 the Department published notice of the proposed amendment of ARM 42.2.601 relating to tax assessment review process at page 1814 of the 1997 Montana Administrative Register, issue no. 19.
2. No comments were received regarding this rule.
3. The Department has amended the rule as proposed.


CLEO ANDERSON
Rule Reviewer


MARY BRYSON
Director of Revenue

Certified to Secretary of State November 17, 1997

VOLUME NO. 47

OPINION NO. 9

ELECTIONS - Application of term limit statute for public service commissioners;
ELECTIONS - Meaning of words "term" and "years" in term limit initiative;
ELECTIONS - Term limits for statewide elected officials and legislators;
INITIATIVE AND REFERENDUM - Rules of construction for constitutional initiatives;
LEGISLATURE - Term limits for legislators;
PUBLIC SERVICE COMMISSION - Term limits for public service commissioners;
MONTANA CODE ANNOTATED - Sections 1-1-301(5), 1-2-201(1)(a), 5-2-102, -103, -401(1), -402, -406, 13-27-202, -312, -401 to -410, 69-1-105, -105(4);
MONTANA CONSTITUTION - Article IV, section 8, 8(2); article V, section 3; article XIII, section 1(3);
MONTANA LAWS OF 1995 - Chapter 271.

- HELD: 1. In situations in which application of article IV, section 8(2), and section 3 of CI-64 could produce conflicting results, the latter provision controls. Applying this rule, for state senators serving a term of office beginning in January 1991, the term limit calculation did not begin until that officer was elected to (or otherwise began serving in) a term beginning during or after January 1993.
2. The reference in CI-64 to "terms of office" refers to the terms provided by the constitution and statutes for the offices covered by CI-64.
 3. The reference in article IV, section 8(1) to "years" of service ascribes two years of service for every complete term as a member of the house of representatives and four years of service for every complete term in the state senate and in the executive branch offices covered by CI-64, disregarding minor deviations from a 12-month calendar year caused by the differences in the initial dates of terms of office.
 4. Article IV, section 8(1) bars a candidate from the ballot if the candidate has served eight or more years in the office sought during the 16-year period ending at the conclusion of the term of office during which the candidate seeks election.
 5. The conclusions expressed in this opinion apply to candidates for the public service commission under Mont. Code Ann. § 69-1-105.

November 6, 1997

The Honorable Mike Cooney
Secretary of State
State Capitol
P.O. Box 202801
Helena, MT 59620-2801

Dear Mr. Cooney:

You have requested my opinion on several questions surrounding the implementation of Constitutional Initiative 64 ("CI-64"), which amended the Montana Constitution to place limits on the years of service of certain elected officials. The Montana electorate passed CI-64 in November 1992. Generally, it limits legislators and certain statewide elected officials to no more than eight years in an office in any 16-year period.

A brief description of the terms of CI-64 would be helpful in understanding the questions you pose. The initiative added a new section 8 to article IV of the Montana Constitution. With respect to certain statewide office holders and state legislators, section 8(1) prohibits the secretary of state from certifying a candidate's nomination or printing a ballot with a candidate's name if, "at the end of the current term of that office," the candidate will have served "8 or more years in any sixteen year period" in the office.¹ Section 8(2) provides: "When computing time served for purposes of subsection (1), the provisions of subsection (1) do not apply to time served in terms that end during or prior to January 1993." CI-64 also contained an applicability clause found in section 3 of the initiative, which stated: "Section 1 applies to terms that begin during or after January 1993." Finally, section 4 of the initiative provided that if approved it would become effective January 1, 1993.

CI-64 did not include public service commissioners among the officers subject to term limits. In 1995, the Montana legislature enacted statutory term limits for public service commissioners, using the language of CI-64 as a model. As amended by this legislation, Mont. Code Ann. § 69-1-105 now provides in pertinent part:

(3) The secretary of state or other authorized official may not certify a candidate's nomination or election to the public service commission or print or cause to be printed on any ballot the name of a candidate for the public service commission if, at the end of the current term of that office, the candidate will have served in that office or, had the candidate

¹ As adopted, CI-64 placed limits on the terms of statewide elected officials, state legislators, and members of Congress. In light of the decision of the United States Supreme Court in United States Term Limits, Inc. v. Thornton, 514 U.S. 779 (1995), the provisions imposing term limits on members of Congress are not enforceable, and your questions present no issue as to them.

not resigned or been recalled, would have served in that office for 8 or more years in a 16-year period.

(4) When computing the time served for the purposes of subsection (3), the provisions of subsection (3) do not apply to time served in terms that ended during or prior to January 1995.

These amendments were adopted in 1995 Mont. Laws, ch. 271. The legislature did not include an applicability clause in the legislation similar to section 3 of CI-64, nor did it include an effective date.

Your letter presents five questions which I have rephrased as follows:

1. In light of the applicability provision and the language of section 8(2) of article IV, how are years of service prior to January 1993 considered in calculating the years of service which trigger the term limits?

2. Does the word "term" in article IV, section 8 of the constitution have the same meaning as the word "term" in article V, section 3, and Mont. Code Ann. § 5-2-102, delineating the terms of legislators, and article VI, section 3, delineating the terms of executive branch officers?

3. Does the word "year" in article IV, section 8 refer to a calendar year period of twelve months, or may a "year" under article IV, section 8 refer to a period which may be slightly more or less than twelve months depending upon the dates on which a term of office actually begins or ends?

4. How does article IV, section 8 affect a potential candidate who has served eight years in office and then left office for a period of eight years?

5. With respect to questions 1, 2, 3, and 4, are the answers different for public service commission candidates subject to statutory term limits under Mont. Code Ann. § 69-1-105?

Since CI-64 is a voter initiative, there is very little in the way of historical material to shed light on the intentions of those who enacted the initiative. In such a case, my task is to attempt to determine from the language of the initiative and the scant available historical documents the intent of the voters, resolving ambiguities in the manner that seems best suited to effectuating the overall intent of the legislation.

I.

You suggest that a conflict exists between the effect of article IV, section 8(2) and the applicability clause of CI-64, section 3 of the initiative (which has not been codified in article IV, section 8 of the constitution but which was part of

the text of the measure enacted). The perceived conflict arises from the provision of section 8(2) that "[w]hen computing time served . . . the provisions of subsection (1) do not apply to time served in terms that end during or prior to January 1993". This language appears to conflict in some applications with the applicability clause of CI-64, which stated: "Section 1 applies to terms that begin during or after January 1993."

It should be noted that the language of the two provisions can be reconciled in many situations. For example, members of the state house of representatives serve a two-year term commencing in January of every odd-numbered year. For these officers, article IV, section 8(2), and section 3 of CI-64 can both be given effect, since no single term of office for a member of the house of representatives can both end during or prior to January 1993 and begin during or after January 1993. Similarly, the conflict has no practical effect for the statewide elected officials covered by CI-64. All five statewide elected officials began terms in January 1993 and have been reelected once to subsequent terms beginning in January 1997. As to them, under the provisions of either article IV, section 8(2), or section 3 of CI-64, article IV, section 8(1) would prevent them from seeking election to a third term during the 16-year period beginning in January 1993. See part V, *infra*.

The perceived conflict with respect to CI-64 has practical significance only for state senators who served in four-year terms beginning in January 1991. The 1991-1995 senate term would not end "during or prior to January 1993," and accordingly a strict reading of article IV, section 8(2) would provide no basis for concluding that the 1991-1995 senate term would not count against the eight-year term limit. However, the 1991-1995 senate term did not begin "during or after January 1993," and a strict reading of section 3 of CI-64 would suggest that the 1991 term cannot count against the eight-year term limit.

Several general rules of law bear on the interpretation of this language. Ordinary rules of statutory construction apply to measures adopted by initiative. State ex rel. Palmer v. Hart, 201 Mont. 526, 655 P.2d 965 (1982); State Bar of Montana v. Krivec, 193 Mont. 477, 632 P.2d 707 (1981). Constitutional language is interpreted by the same rules generally applied in the interpretation of statutes. State ex rel. Gould v. Cooney, 253 Mont. 90, 831 P.2d 593 (1992). The general rule where the language subject to interpretation is clear on its face is that its meaning must be determined solely from the plain import of the language used, and resort to extrinsic sources such as legislative history materials would not be appropriate. See, e.g., Associated Press v. Board of Pub. Educ., 246 Mont. 386, 804 P.2d 376 (1991). However, I find that CI-64 is ambiguous on this point, since its provisions may conflict with respect to the treatment of certain years of legislative service prior to January 1993.

In resolving the ambiguity of this language, first resort should be had to the terms of the initiative. Both article IV, section 8(2), and section 3 of CI-64 seem clearly to be intended to exclude from the term limits computation time served by an officeholder prior to January 1993. This is further buttressed

by the effective date provision, § 4 of CI-64, which states that the amendment, if approved, would be effective January 1, 1993. I find that a voter reading this language would naturally conclude that time served prior to January 1993 would not be counted in calculating time served for term limit purposes. While the implications of this language are not conclusive in light of the ambiguity discussed above, they do suggest that a strict application of article IV, section 8(2) would produce a result that is contrary to the common understanding of the language of the initiative.

I also note that while the applicability clause, section 3 of CI-64, is quite direct in stating that the term limits in article IV, section 8(1) apply "to terms that begin during or after January 1993," the provision of article IV, section 8(2) conflicts only by implication. The latter section says directly that the term limits calculation does not include "time served in terms that end during or prior to January 1993," but only by implication can one conclude that the contrary proposition--that time served in all terms ending after January 1993 does count--is also true. Where one provision is direct and another conflicts only by implication in this way, the direct provision should be preferred.

Since CI-64 is ambiguous, resort to extrinsic aids to construction is also appropriate. Keller v. Smith, 170 Mont. 399, 406, 553 P.2d 1002 (1976); School District # 12 v. Hughes, 170 Mont. 267, 272, 552 P.2d 328 (1976). The legislative history of CI-64 consists primarily of certain pre-enactment documents: the original draft of the proposed initiative submitted by the drafter to the Legislative Council (now known as the Legislative Services Division) and the correspondence between the Legislative Council and the drafter pursuant to the Council's statutory review, see Mont. Code Ann. § 13-27-202; the Attorney General's review of the initiative and drafts of the statement of implication and ballot language, see Mont. Code Ann. § 13-27-312; and the information submitted to the voters in the voter information pamphlet, Mont. Code Ann. §§ 13-27-401 to -410. Of these, the Legislative Council review documents are the most revealing.

The original draft of what was to become CI-64 was submitted to the Legislative Council by State Representative Fred Thomas on October 7, 1991. It was substantially different in structure from the initiative that the voters ultimately approved. Most significantly for present purposes, it set forth in separate sections the term limits for state executive branch officials, members of the state house of representatives, members of the state senate, members of the United States senate, and members of the United States house of representatives. In stating in each separate section the amount of time a person was allowed to serve, the drafter included the following language: "[E]xcept that any time served in the office . . . prior to January 1, 1993, shall not count for purposes of this term limit."

On October 21, 1991, the Legislative Council provided a written review of the draft with suggested changes. Among the changes suggested was the consolidation of the exceptions in one single subsection in order to eliminate "redundancy . . . by inserting

in the section a single sub section that applies to all offices for which terms are limited." There is no indication in the written review that any substantive change in the effect of the language submitted in the original draft was intended. To the contrary, the Council's written review stated that its review was "for clarity, consistency, and other factors generally considered when drafting proposed legislation." The drafter apparently accepted the Council's suggestion, as shown by the form of the revised initiative submitted to the Secretary of State and Attorney General in December 1991, which removed the individual exception provisions from each separate term limit and substituted the overall language now found in article IV, section 8(2).

The initial draft of the initiative also did not include an applicability clause similar to the provision found in section 3 of CI-64 or an effective date provision similar to section 4 of CI-64. The Legislative Council review suggested the addition of these clauses, stating:

Since you wish the amendment to apply to terms beginning in January 1993, you need a January 1, 1993, effective date. The desire to have the amendment apply to terms beginning in January of 1993 also dictates the necessity for the applicability section.

It is apparent from this history that the language now found in article IV, section 8(2) was not inserted to change the original intention of the drafter of CI-64 that "time served in the office . . . prior to January 1993 not be counted" in the term limit calculation. Rather, the language was only inserted to effectuate the drafter's intent to have the amendment "apply to terms beginning in January 1993." This evidence supports what I have suggested above is the most natural understanding of the language, and the one that the voters most likely held when they passed the initiative--that time served prior to January 1993 would not be counted in determining whether an officeholder had served the maximum amount of time.

This view is also most consistent with the Attorney General's explanatory note on CI-64. Since this explanation appears in the voter information pamphlet and on the ballot, it provides insight into the way a voter likely interpreted the provision. In explaining the treatment of years served prior to January 1993, the Attorney General stated: "The measure would apply only to terms of office that begin during or after January 1993." This language is obviously drawn from section 3 of CI-64, and does not mention the potentially conflicting language now found in article IV, section 8(2).

Finally, a preference for the applicability clause is most consistent with the rule that constitutional amendments operate only prospectively unless a contrary intention is clearly indicated. Mont. Const. art. XIV, § 9(3) (constitutional amendment adopted by initiative becomes "a part of the constitution effective the first day of July following its approval, unless the amendment provides otherwise."); see United

States Term Limits v. Hill, 872 S.W.2d 349, 361 (1994), aff'd, United States Term Limits, Inc. v. Thornton, 514 U.S. 779 (1995). A law operates retroactively if it grants privileges or attaches liabilities based on past transactions. See, e.g., O'Shaughnessy v. Wolfe, 212 Mont. 12, 685 P.2d 361 (1984). A construction of CI-64 which would include in the term limits computation years of service accrued before the amendment became effective would clearly be retroactive under this test.

For the foregoing reasons, I hold that in situations in which application of article IV, section 8(2), and section 3 of CI-64 could produce conflicting results, the latter provision controls. Applying this rule, for a state senator serving in a term of office beginning in January 1991, the term limit calculation did not begin until that officer was elected to (or otherwise began serving in) a term that began during or after January 1993. For state senators who have served continuously since January 1991, this means that the first term counted for purposes of the term limits found in article IV, section 8(1) is the term that began in January 1995.

II.

You also raise the question of the status of state senators appointed upon the death or resignation of the incumbent to fill the unexpired portion of a term of office that began in 1991. Montana Code Annotated §§ 5-2-402 and -406 provide a two-stage process for filling such vacancies in the state senate. The vacancy is initially filled by appointment by the county commissioners of the counties in which any portion of the senate district is located. Mont. Code Ann. § 5-2-402. If the vacancy arises more than 85 days before the general election in the second year of the term, Mont. Code Ann. § 5-2-406 requires an election to fill the remaining two years of the term.

Resolution of this question requires an interpretation of the word "terms" found in article IV, section 8(2), and in section 3 of CI-64. Does "terms" relate only to the portion of the term actually served by the person appointed or elected, or does it refer to the statutory or constitutional term of the office as defined by article V, section 3 of the constitution and Mont. Code Ann. § 5-2-102? If the latter interpretation is correct, none of the time served in any term which began prior to January 1993 would be counted in the term limit calculation.

In my opinion the answer to this question is evident from the structure of CI-64. The language refers to "time served in terms" beginning or ending before or after January 1993. It does not refer to a particular date and simply include or exclude years prior to the date (as the initial draft of the initiative would have provided), but rather includes time by reference to the beginning or ending date of a term of office. The provisions of CI-64 and those of article V, section 3; article VI, section 1(2); and Mont. Code Ann. § 5-2-102 are in pari materia, and words used in common in them should be given the same meaning if that can reasonably be done. For this reason, I hold that the reference in CI-64 to "terms of office" refers to the terms provided by the constitution and statutes.

A "term" of office for a state senator is four years beginning on the first Monday in January in the year following the general election. Mont. Code Ann. § 5-2-102. If a state senator accedes to office by appointment or election, he or she serves to complete the term of the person originally elected. Mont. Const. art. V, § 7 ("A vacancy in the legislature shall be filled by special election for the unexpired term unless otherwise provided by law"); Mont. Code Ann. §§ 5-2-401(1) ("term" means the four-year term to which a senator is normally elected), -406 ("an individual shall be elected to complete the term"). If a state senator takes office by appointment or election in the middle of a term, that senator serves in a term that began when the original incumbent took office. Thus, for a senator continually serving from the date of appointment or election to fill the unexpired portion of a term that began when the original incumbent took office in January 1991, the first term of office counted toward the term limit, consistent with part I of this opinion, is the term beginning in January 1995.

III.

Article IV, section 8(1) calculates the amount of time which a person may serve in "years." By statute, "[u]nless the context requires otherwise," a "year" means a calendar year. Mont. Code Ann. § 1-1-301(5). Legislative terms of office are measured in years. Mont. Code Ann. § 5-2-102. This statute distinguishes, however, between terms "of office," which are measured in blocks of two or four years, and terms "of service," which begin when the incumbent actually takes office. It provides:

The **term of office** of a senator is 4 years or until his successor is elected and qualified and of a representative 2 years or until his successor is elected and qualified. The **term of service** shall begin on the first Monday of January next succeeding his election. If a senator is elected to fill a vacancy, his **term of service** shall begin on the next day after his election.

Mont. Code Ann. § 5-2-102 (emphasis added). It is thus clear that in the context of legislative terms of office a "year" need not consist of a calendar year of twelve months. This is so because a term may begin as early as January 1 or as late as January 7, depending upon the falling of the first Monday of the new year. Mont. Code Ann. § 5-2-102.

An example illustrates the point. The first Monday in January 1993 was January 4. A house of representatives member elected to a two-year term beginning on that date would, however, serve two days less than two full calendar years in that term, because the next two-year term began on the first Monday of January 1995, which was January 2. More pertinent for present purposes is the fact that the same representative, elected for the term beginning in January 1993 (the first term considered for calculating term limits) would, after having served four terms, not have served eight full calendar years, since the term beginning in January 1999 (the representative's fourth) would end on January 1, 2001, three days less than eight calendar

years from the date the representative first took office in a term counted for term limit purposes.

You inquire whether in this circumstance the representative is precluded from seeking a fifth term by the provisions of article IV, section 8(1). A reading of the constitutional provision in which a "year" means a calendar year of 12 months would lead to the conclusion that the hypothetical representative would not be precluded. Article IV, section 8(1) states that the secretary of state may not certify a candidate's nomination or print a ballot bearing the candidate's name if "at the end of the current term . . . the candidate will have served in that office . . . 8 or more years in any 16-year period." In the hypothetical given above, the representative would not have served eight calendar years but three days less than eight full calendar years.

In my opinion, this strict reading produces an absurd result which the voters clearly did not contemplate when they approved CI-64. Such results are to be avoided if a reasonable construction is available. Grossman v. Department of Natural Resources, 209 Mont. 427, 451, 682 P.2d 1319 (1984). If an incumbent must serve a full calendar year to be credited with a "year" of service, the actual term limit under the constitutional provision would be four terms in the house of representatives and two terms in the state senate and the executive branch offices affected by CI-64 **unless the first day of the first term falls later in the calendar year than the first day of the fourth house term or second senate or executive branch office term**, in which case the term limit would be five terms for house members and three terms for state senators and executive branch officers. There is no indication in CI-64 or any of its legislative history materials that this serendipitous result is what the drafters, or presumably the voters, intended.

The term limit provisions make specific reference to time served in "terms." It again appears clear that the average voter would have understood that the limit of eight years in any 16-year period amounted to two senate or executive office terms or to four terms in the house of representatives. The most natural reading of the provision, therefore, leads to the conclusion that the reference in article IV, section 8(1) to "years" of service would ascribe two years of service for every complete term as a member of the house of representatives and four years of service for every complete term in the state senate and in the executive branch offices covered by CI-64, and would disregard minor deviations from a 12-month calendar year caused by the differences in the initial dates of terms of office.

You inquire how this language would then be interpreted in the case of an officeholder who took office in the middle of a term as a result of the death or resignation of the incumbent. Given the structure of CI-64 this question need not be answered. CI-64 bars a candidate from office only if, "at the end of the current term," the candidate will have served "eight or more years in any sixteen year period." In no reasonably foreseeable case could a partial term of service, as a practical matter, push a senator over the eight-year limit before he or she would reach it by virtue of full four-year terms to which the senator

was elected. If, for example, a senator took office on January 7, 1996, by appointment due to a resignation from office, that senator would serve four days less than three years if elected to complete the term (the term ending on January 3, 1999). The senator could then seek reelection in 1998, because at the end of the current term (i.e., the 1995-1998 term) the senator would have served fewer than eight years, and again in 2002, because at the end of the then current term (i.e., the 1999-2002 term) the senator would have served a total of seven years (the 2003 term beginning on January 7, seven years after the date the senator originally took office). Thus, consistent with the structure of CI-64, officeholders who take office by appointment can, in some cases, serve more than eight consecutive years in office.

IV.

You also inquire how CI-64 affects an officeholder who serves two four-year terms in the state senate or an executive branch office covered by CI-64 and then sits out two terms before seeking to run again. You pose the example of a statewide elected official taking office in January 1993, and serving two four-year terms. The official then leaves office in January 2001, having served eight years under the analysis in part III of this opinion. In 2008 the former officeholder seeks to run again for the same office formerly held. Your question is whether CI-64 bars the officeholder from doing so in that year.

The plain meaning of article IV, section 8(1) indicates the candidate would be barred from running. The provision effectively bars the candidate from running if, at the end of the "current term," the candidate has served eight or more years in a 16-year period. The "current term" for purposes of applying the term limit in this case would be the term during which the former officeholder seeks to file for office, i.e., the 2005-2009 term. The "16-year period" clearly would be the period ending at the end of the "current term," or the period from January 1993 through January 2009. Since the former officeholder would have served eight years during that period, i.e., from January 1993 through January 2001, the plain language of CI-64 would bar the candidate from the ballot.

A voter reading CI-64 might not readily conclude that this is the result of the language used. A reading of CI-64 could produce the conclusion that the intention is to limit a former officeholder to eight years of service in any 16-year period, and that at the conclusion of the eight-year period the former officeholder would be free to serve in the office again. But this reading would overlook the structure of CI-64. The initiative applied term limits by limiting access to the ballot for persons who have served for a specified period. By its terms it does not prevent a person from serving more than eight years--rather, it operates to prevent a person from **becoming a candidate** for an office if, at the conclusion of the term of the office in which the person seeks to become a candidate, the person has served eight years in the previous 16-year period. Since the bar of CI-64 prevents a candidate from seeking a place on the ballot if the person has served eight or more years in a

16-year period, it effectively prevents the barred candidate's election for a period longer than 16 years.

V.

Your final question is whether the same rules would apply to public service commission candidates governed by the statutory term limits found in Mont. Code Ann. § 69-1-105. The language of the statutory term limits is identical to that of CI-64 for purposes of parts II, III, and IV of this opinion. The statute and the constitutional provision are in pari materia and it is therefore appropriate to construe them in a similar manner if the language allows. City of Billings v. Smith, 158 Mont. 197, 490 P.2d 221 (1971). I therefore hold that parts II, III, and IV of this opinion apply to candidates for the public service commission.

The application of part I is not so clear. Mont. Code Ann. § 69-1-105(4) contains identical language to that found in article IV, section 8(2). However, the bill that enacted the statutory provision, 1995 Mont. Laws, ch. 271, contained no applicability clause similar to section 3 of CI-64. The question then is whether, in the absence of an applicability clause stating that the law applies to terms beginning during or after January 1995, the result reached in part I of this opinion would also be reached here.

In my opinion, the answer is affirmative. As noted in part I, the language of article IV, section 2 is hardly a crystal-clear indication that terms beginning before the effective date of the law should be included. The provision says the converse, that time served in terms ending during or prior to January 1995 is not counted, but it does not clearly state that time served in any other term specifically is counted.

As noted further in part I, inclusion of time served prior to the effective date of the statute would constitute a retroactive application of the statute. No statutory law may be applied retroactively unless the intent to do so is clearly stated. Mont. Const. art. XIII, § 1(3); Mont. Code Ann. § 1-2-109. The amendments to Mont. Code Ann. § 69-1-105 which added term limits do not clearly state an intention to apply the limits retroactively. To the contrary, in the absence of an effective date provision in the statute, it became effective October 1, 1995. Mont. Code Ann. § 1-2-201(1)(a).

To the extent that Mont. Code Ann. § 69-1-105 is ambiguous, its legislative history may be considered in divining the intent of the legislature. The bill was passed in the 1995 legislative session, after the provisions of CI-64 had been in effect for two years. While the legislative history is scant, the proceedings before the committees that considered the bill make it clear that the sponsor's intent was to apply to public service commission candidates the same rules applied to other executive branch officials under CI-64. This also seems logical given the obvious textual similarity between the two enactments.

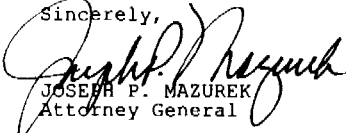
For the foregoing reasons, I hold that the conclusions expressed in part I of this opinion apply to public service commission

candidates. In effect, this means that the term limit calculation begins with the first full term to which a candidate is elected after the effective date of the statute. For public service commissioners serving in January 1995, this would be the term beginning in January 1997.

THEREFORE, IT IS MY OPINION:

1. In situations in which application of article IV, section 8(2), and section 3 of CI-64 could produce conflicting results, the latter provision controls. Applying this rule, for state senators serving a term of office beginning in January 1991, the term limit calculation did not begin until that officer was elected to (or otherwise began serving in) a term beginning during or after January 1993.
2. The reference in CI-64 to "terms of office" refers to the terms provided by the constitution and statutes for the offices covered by CI-64.
3. The reference in article IV, section 8(1) to "years" of service ascribes two years of service for every complete term as a member of the house of representatives and four years of service for every complete term in the state senate and in the executive branch offices covered by CI-64, disregarding minor deviations from a 12-month calendar year caused by the differences in the initial dates of terms of office.
4. Article IV, section 8(1) bars a candidate from the ballot if the candidate has served eight or more years in the office sought during the 16-year period ending at the conclusion of the term of office during which the candidate seeks election.
5. The conclusions expressed in this opinion apply to candidates for the public service commission under Mont. Code Ann. § 69-1-105.

Sincerely,



JOSEPH P. MAZUREK
Attorney General

jpm/cdt/dm

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 September 30, 1997. This table includes those rules adopted during the period October 1, 1997 through December 31, 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 September 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.

GENERAL PROVISIONS, Title 1

- 1.2.419 Filing, Compiling, Printer Pickup and Publication of the Montana Administrative Register, p. 1913

ADMINISTRATION, Department of, Title 2

- I and other rules - State Procurement, p. 1107, 1816
I-VI and other rules - Payroll Administration - Decedent's Warrants, p. 1855
2.13.201 and other rules - 9-1-1 Emergency Telephone Systems, p. 1691
2.21.122 and other rules - Sick Leave, p. 971, 1440, 2057
2.21.216 and other rules - Annual Vacation Leave, p. 966, 1442
2.21.619 and other rules - Holidays, p. 962, 1444
2.21.1412 and other rules - Employment Preference for Persons with Disabilities, p. 1845
2.21.3603 and other rules - Veterans' Employment Preference, p. 956, 1445
2.21.3704 and other rules - Recruitment - Selection, p. 1861
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)

- I Members of Retirement Systems who may Elect Coverage
under the Guaranteed Annual Benefit Adjustment,
p. 1843
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, 1660

(State Compensation Insurance Fund)

- I and other rules - Employers' Liability - Premium
Rates, p. 1697

AGRICULTURE, Department of, Title 4

- I Establishing Grading Standards for Mustard Seed,
p. 1413, 1916
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
4.12.3801 and other rule - Grading Standards for Mustard Seed,
p. 1869
4.13.1004 and other rules - Change of Implementing Statutes,
p. 1867

STATE AUDITOR, Title 6

- I Fidelity Bond, p. 1706
I Transactional Exemptions for Cooperative
Associations, p. 1496, 1990
I-VI Regulation of Living Trusts, p. 1415, 1917
6.6.511 Medicare Supplement Insurance, p. 1421, 1818
6.6.4002 Definitions of Money Market Funds, p. 1502, 1988
6.6.4101 Accreditation Fees, p. 1623, 2058
6.6.5101 Plan of Operation of the Small Employer Health
Reinsurance Program, p. 1500, 1989

(Classification Review Committee)

- 6.6.8301 Updating References to the NCCI Basic Manual for
Workers Compensation and Employers Liability
Insurance, 1996 Edition, p. 1419, 2059
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

- 8.63.101 and other rules - Passenger Tramways, p. 1960

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

(Board of Cosmetologists)

8.14.401 and other rules - Practice of Cosmetology -
Electrology - Manicuring - Esthetics, p. 1709

(State Electrical Board)

8.18.402 and other rules - Applications - General
Responsibilities - Screening Panel, p. 1625

(Board of Hearing Aid Dispensers)

8.20.401 Traineeship Requirements and Standards -
Examinations - Definitions - Transactional Document
Requirements, p. 1743

(Board of Medical Examiners)

8.28.414 and other rules - Physician Temporary Certificate -
Fee Schedule - Acupuncture - Podiatry - Nutrition
Practice Rules, p. 1746

(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)

8.34.414A Application for Licensure, p. 1423

(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 Pharmacy)

8.40.404 and other rules, Fees - Internship Regulations -
Pharmacy Technicians, p. 1628, 2060

(Board of Physical Therapy Examiners)

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

(Board of Plumbers)

8.44.402 and other rule - Definitions - Fees, p. 1751

(Board of Professional Engineers and Land Surveyors)

8.48.507 Classification of Experience, p. 1504

(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)

8.57.411 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, 1819

8.58.419 Grounds for License Discipline - General Provisions
- Unprofessional Conduct, p. 467, 1026

(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 Veterinary Medicine)

8.64.401 and other rules - Definitions - Application
Requirements - Temporary Permits - Support
Personnel, p. 1633

(Building Codes Bureau)

8.70.101 and other rules - Building Codes Bureau, p. 1509,
2061

8.70.101 and other rule - Uniform Building Code - Boiler
Inspection, p. 855, 1179

(Consumer Affairs Division)

8.78.401 and other rules - Proprietary Schools, p. 2016

(Banking and Financial Institutions Division)

I-VIII Annual Fees - Examinations - Reports by the Foreign
Capital Depositories, p. 1871

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

(State Banking Board)

I-XI Application Procedure for a Charter - Notice of
Hearing - Grounds for Denial - Procedural Rules for
Determination - Procedural Rules for Discovery and

Hearing - Application Charter Fee for the Foreign
Capital Depositories, p. 1882

(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)

- 8.97.1301 and other rules - General Requirements for All
Investments in Mortgages and Loans, p. 859, 1361,
1579, 1823

(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, 2070

(Travel Promotion and Development Division)

- I Tourism Advisory Council, p. 619, 987

EDUCATION, Title 10

(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
10.57.211 Teacher Certification - Test for Certification,
p. 757, 872, 1187
10.57.215 Teacher Certification - Renewal Requirements,
p. 759, 873, 1188
10.57.301 Teacher Certification - Endorsement Information,
p. 1962
10.58.527 Teacher Certification - Areas of Permissive Special
Competency, p. 1964
10.65.101 and other rules - Hours and Days of Instruction -
Pupil Instruction-Related Days, p. 1966

(State Library Commission)

- 10.101.101 and other rule - State Library Commission - Library
Service Advisory Council, p. 1119, 1991

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

(Fish, Wildlife, and Parks Commission)

- I Defining Guiding Services for Use of Class B-10 and
B-11 Licenses Which are Outfitter-sponsored
Nonresident Big Game Combination Licenses, p. 1753
12.6.901 Restriction of Motor-propelled Water Craft on Hauser
Reservoir, p. 669, 1029

ENVIRONMENTAL QUALITY, Department of, Title 17

- 17.36.303 Subdivisions - Authority of the Department to Allow Use of Alternative Water Systems in Subdivisions, p. 375, 1458
- 17.50.412 and other rules - Solid Waste Management - Conform with EPA Flexibility - Allow Reduced Regulatory Requirements for Certain Wastes, p. 671, 1031

(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, 1636
- 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
- 17.8.1201 and other rules - Air Quality - Air Quality Operating Permit Program, p. 2018
- 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, 2071
- 17.30.1003 and other rule - Water Quality - Montana Ground Water Pollution Control System Regulations, p. 1138

(Petroleum Tank Release Compensation Board)

- I Applicable Rules Governing the Operation and Management of Tanks - Interpretation of 75-11-308(1)(e), MCA, p. 1755
- 17.58.342 Eligible Reimbursement for Per Diem Expenses, p. 1757

TRANSPORTATION, Department of, Title 18

- 18.7.301 and other rules - Motorist Information Signs, p. 679, 1034

- 18.8.101 Definition of F.O.B. Factory List Price and F.O.B. Port-of-Entry List Price as it Relates to the Motor Carrier Services Program, p. 1969
18.8.509 and other rules - Motor Carrier Services Program, p. 1638
18.8.509 and other rule - Motor Carrier Services Program, p. 2964, 546, 1035

CORRECTIONS, Department of, Title 20

- I-VII Siting and Construction Standards of Private Correctional Facilities in Montana, p. 1895

JUSTICE, Department of, Title 23

- I-VII Valuation and Taxation of Light Motor Vehicles - Imposition of Fees in Lieu of Tax on Buses, Heavy Trucks, Truck Tractors and Trailers, p. 1901
23.16.101 and other rules - Public Gambling, p. 2023

(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

LIVESTOCK, Department of, Title 32

(Board of Livestock)

- 32.3.212 Brucellosis Vaccination(s), p. 1641

(Board of Milk Control)

- 32.24.504 and other rules - Quota Rules, p. 1339, 1662

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

- I&II Streamside Management Zone, p. 1552, 1992
I-III and other rule - Extensions of Time to Complete a Water Use Permit or Change Authorization - Application and Special Fees, p. 1643, 2084
36.17.601 and other rules - Renewable Resources Grant and Loan Program, p. 983, 1268

(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

- 36.22.1303 and other rules - Well Plugging Requirement -
Plugging and Restoration Bond - Financial
Responsibility, p. 1646, 2038

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

- Establishment of a Negotiated Rulemaking Committee
on Bed and Breakfast Establishments, p. 1774
Establishment of a Negotiated Rulemaking Committee
on Guest Ranches and Outfitting and Guide
Facilities, p. 1778
I and other rules - Laboratory Analysis Fees, p. 823,
1041
I and other rules - Medicaid Reimbursement
Methodology, p. 775, 1269
I-XXI and other rules - Youth Care Facilities, p. 1759
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, 1663
11.12.115 and other rules - Qualifications of Child Care
Staff, Foster Parents, and Regular Members of Foster
Parents' Households, p. 1145, 1664
11.14.101 and other rules - State Payment for Day Care
Services to Eligible Providers and Parents, p. 1427,
1920
16.6.101 and other rules - Transfer from the Department of
Health and Environmental Sciences - Records and
Statistics, p. 1460
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, 1993
16.32.399D Medical Assistance Facilities - Laboratory Services,
p. 1910
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
20.3.503 and other rules - Chemical Dependency Educational
Courses, p. 2040
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
46.8.1510 Exceptions to Placement Rules for Developmental
Disabilities Service Positions, p. 2045
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, 1665
- 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
- 46.12.4801 and other rules - Health Maintenance Organizations, p. 811, 1210
- 46.12.5003 and other rules - Passport to Health Program, p. 1350, 2085
- 46.13.303 and other rules - Low Income Energy Assistance, p. 1649

PUBLIC SERVICE REGULATION, Department of, Title 38

- I-VI Unauthorized Changes of Primary Interexchange Carrier or Local Exchange Carrier ("Slamming"), p. 1259, 2088
- I-IX Montana Interim Universal Access Program, p. 1253, 1921
- I-XI IntraLATA Equal Access Presubscription, p. 2048
- 38.3.706 Motor Carrier Insurance Endorsements (applicable to Large Motor Coaches), p. 624, 1062
- 38.5.1010 and other rules - Pipeline Safety, including Drug and Alcohol Testing - National Electric Safety Code, p. 1972
- 38.5.2204 Pipeline Safety Incident Reporting Requirements, p. 827, 1215

REVENUE, Department of, Title 42

- I-III Income Tax Credit for the Preservation of Historic Buildings, p. 1980
- I-VIII Restaurant Beer/Wine License Lottery Process, p. 1654, 2097
- 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
- 42.2.601 Tax Assessment Review Process, p. 1814
- 42.12.106 and other rule - Licensing of Restaurants which meet Certain Minimum Qualifications, p. 1151, 1825
- 42.14.102 and other rules - Accommodation Tax, p. 1983
- 42.15.506 and other rule - Elderly Homeowner Renter Credit, p. 1975
- 42.19.1203 and other rules - Industrial Property Trend - New Industrial Property - Personal Property Trended Depreciation Schedules, p. 1782
- 42.20.140 and other rules - Real Property, p. 1438, 1827
- 42.31.401 Emergency Telephone Service, p. 1978

SECRETARY OF STATE, Title 44

- 1.2.419 Filing, Compiling, Printer Pickup and Publication of the Montana Administrative Register, p. 1913

(Commissioner of Political Practices)

- I&II Lobbying Activities - Reporting of Lobbying Payments
by Principals, p. 829, 1994
- 44.10.327 and other rule - Reporting of Contributions or
Expenditures by Incidental Political Committees,
p. 1354, 1828
- 44.10.331 Limitations on Receipts from Political Committees,
p. 1986