

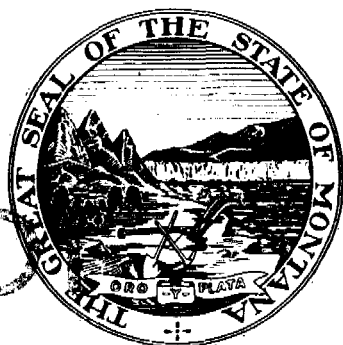
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MONTANA ADMINISTRATIVE REGISTER

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1998 ISSUE NO. 21
NOVEMBER 5, 1998
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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 21

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Administrative Rules Bureau at (406) 444-2055.

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BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the proposed)	NOTICE OF
adoption of new rules I)	PROPOSED ADOPTION
through IX pertaining to)	
pesticide reporting, cleanup)	
and pesticide containment)	NO PUBLIC HEARING
)	CONTEMPLATED

TO: All Interested Persons

1. On December 5, 1998 the Montana Department of Agriculture proposes to adopt the new rules I through IX pertaining to pesticide reporting, cleanup and pesticide containment.

2. These rules, as proposed for adoption, appear as follows:

RULE I DEFINITION OF TERMS These definitions apply to all rules adopted under the Montana Pesticides Act, Title 80, chapter 8, MCA.

(1) "Appurtenances" means all valves, pumps, fittings, pipes, hoses, metering devices and mechanical devices which are connected to a pesticide storage container or are used to transfer a material into or out of a storage container.

(2) "Bulk pesticide" means any pesticide which is transported or held in an individual container in undivided quantities of greater than 55 U.S. gallons liquid measure or 100 pounds net dry weight.

(3) "Dry pesticide" means any pesticide which is in solid form.

(4) "Liquid pesticide" means any pesticide in liquid form.

(5) "Operational activities" means transferring, loading, unloading, mixing, repackaging and refilling pesticides.

(6) "Permanent storage facility" or "PSF" means a facility or location where any primary containment capable of storing more than 500 U.S. gallons or 4,500 pounds of formulated bulk pesticides is in-service for more than 14 consecutive days. Primary containment capable of being moved and not in-service at a single site for more than 14 days is not a PSF. PSF will include primary containment and secondary containment.

(7) "Precipitation" means rain, snow, sleet or hail.

(8) "Primary containment" means a dedicated container or vessel effectively designed and constructed to contain a pesticide. Application equipment is excluded.

(9) "Secondary containment" means a device or an area or structure designed, constructed and maintained to hold or confine or prevent a discharge of pesticides from primary containment and appurtenances.

(10) "Spill" means a release, leak, discharge, disposal.

or escape of pesticides or pesticide mixtures into the environment, whether accidentally or not, including the discarding or abandonment of pesticide containers, but excludes the use or disposal of pesticides or pesticide containers in a manner consistent with approved labels and in compliance with the Montana Pesticides Act and the Federal Insecticide, Fungicide and Rodenticide Act, as amended.

AUTH: 80-8-105, MCA

IMP: 80-8-105, MCA

NEW RULE II. GENERAL SPILL CLEANUP, REPORTING, AND CONTAINMENT REQUIREMENTS (1) All persons shall contain, confine and clean up spills of pesticides or pesticide mixtures.

(2) All persons shall report spills occurring as a result of their use of pesticides or spills of pesticides in facilities or from equipment under the control of that person. Spills shall be verbally reported to the department immediately, subject to any immediate actions a person can undertake to contain and confine the spill.

(a) Spills confined within secondary containment are exempt from the reporting requirement.

(b) Spills of pesticides not exceeding an aggregate amount of 5 U.S. gallons or 100 U.S. dry pounds are exempt from reporting. The aggregate amount includes formulated product, diluent and other additives.

(c) The reporting requirements include, but are not limited to the following information:

(i) the specific location of the pesticide spill, including legal description, landmark references or address. The location shall be described in terms that are adequate for the department or emergency responders to locate the spill;

(ii) the manufacturer's name and complete trade name of the product or products spilled;

(iii) the amount of pesticide spilled; and

(iv) the name, address and telephone number of the person reporting the spill or the person who is the primary contact.

(3) All pesticides or contaminated material recovered from a spill shall be placed in containers.

(a) The container(s) must have the following information on a label attached to the container:

(i) date the material was recovered into the container(s);

(ii) the active ingredient(s), trade name, and formulation;

(iii) environmental protection agency registration number for each product;

(iv) signal word; and

(v) name, address and telephone number of the responsible person.

(b) Contained materials must be stored, recycled, used or disposed of in accordance with label instructions, rinsing and disposing of pesticide containers as per ARM 4.10.801, and all state and federal disposal regulations.

(4) All persons not subject to [Rules III through IX], constructing a mixing and loading or containment facility may follow the bulk pesticide containment rules or the guidelines in the publication "Designing Facilities for Pesticide and Fertilizer," David W. Kammel, Midwest Service, or similar construction guidelines.

(5) Persons using water to mix or load pesticides or to clean or rinse pesticide equipment or containers shall use a backflow prevention device or procedures, such as an air gap or check valve, to prevent contamination of all water sources. Any person using a public water supply must comply with ARM 17.38.105.

(6) Any person that causes pesticide contamination of soil or water through faulty, careless or negligent mixing, loading, transferring, or storage of pesticides may be required by the department to construct containment for the control of pesticide spills. Implementation of this provision does not preclude the department from initiating other remedial or enforcement actions authorized by Title 80, chapter 8, MCA.

(7) Persons, whether licensed or not, who use or sell pesticides are responsible for remediating spills caused during their use or sale of pesticides or caused by persons under their supervision or employment.

(8) The department encourages all persons mixing, loading or transferring pesticides, and using or cleaning pesticide application equipment to have an emergency spill response plan as set forth in [Rule VIII].

(9) Upon the written request by a person, the Montana department of agriculture may approve a deviation from this rule if the deviation maintains the intent of the rule. This request shall describe the proposed deviation and reason for the deviation.

AUTH: 80-8-105, MCA

IMP: 80-8-105, MCA

NEW RULE III GENERAL REQUIREMENTS AT PERMANENT STORAGE FACILITIES (1) Any person constructing or operating a new PSF or making an addition to an existing PSF must comply with [Rules I through IX].

(2) A person who operates a PSF prior to [the effective date of these rules] must, within four years, bring their facility into compliance with [Rules I through IX].

(3) Mobile containers such as railcars or tank trucks used to transfer pesticide to or from a PSF must use catch basins that may be temporary and portable, to recover spills from connections.

(4) Protection against vandalism or unauthorized access shall be provided for at a PSF. Valves on primary containment shall be closed, locked or otherwise secured when not in use.

(5) Floor drains are not permitted in facilities designed to contain spills of pesticide and pesticide mixtures unless:

(a) Complete and reasonable access for routine inspections is provided for the entire system.

(b) All parts of the drain and its systems are constructed above the normal ground plane of the immediate surrounding area.

(c) The floor drain shall be for recovery purposes only.

(d) Discharge outlets, valves and gravity drains on existing secondary containment that do not comply with this rule shall be sealed upon adoption of these rules.

AUTH: 80-8-105, MCA

IMP: 80-8-105, MCA

NEW RULE IV PRIMARY CONTAINMENT STANDARDS FOR BULK PESTICIDES (1) Formulated bulk pesticides in undivided quantities of more than 500 U.S. gallons or 4,500 pounds, stored for more than 14 consecutive days, shall be in primary containment meeting the following requirements:

(a) Primary containment and appurtenances shall be constructed, installed and maintained to prevent a spill of pesticide.

(b) Primary containment and appurtenances shall be of materials which are resistant to corrosion, puncture and cracking.

(c) Materials used in the construction or repair of primary containment and appurtenances may not be of a type which react chemically or electrolytically with stored pesticides in a way which may weaken the storage container or appurtenances, or create a risk of discharge.

(d) Materials used for valves, fittings and repairs shall be compatible with the materials used in the primary containment.

(e) Primary containment and appurtenances shall handle all operation stresses, taking into account static head, pressure buildup from pumps and compressors, and any other mechanical stresses to which the primary containment and appurtenances may be subject in the foreseeable course of operations.

(f) Every primary containment connection, except a safety relief valve and conservation vent connection, shall be equipped with a manual shut-off valve.

(g) Appurtenances shall be adequately supported to prevent sagging and possible breakage because of gravity and other forces encountered in the ordinary course of operation.

(h) Primary containment and appurtenances shall be protected against reasonably foreseeable risks of damage by moving vehicles or objects.

(i) Primary containment, not in-service for longer than two years shall be thoroughly cleaned with all hatches secured and all valves or connections secured. Vents shall be functional. An integrity test shall be performed before primary containment can be placed back in service.

(j) Primary containment shall be anchored or secured or elevated to prevent instability or flotation as a result of liquid accumulations within the secondary containment.

(k) Primary containment may not be filled beyond the capacity for which it is designed, taking into account the

density of the liquid being stored and thermal expansion during storage.

(l) Primary containment retaining liquid shall be equipped with a liquid level gauging device by which the level of liquid in the storage container can be readily and safely determined. A gauging device is not required if the liquid in the container can be measured safely by other means. The gauging device shall be secured to protect against breakage or vandalism which may result in a discharge. External sight gauges must be equipped with an automatic shut-off valve.

(m) Primary containment used for liquid pesticide shall be equipped with a conservation vent which opens and closes within the designed pressure limits of the container.

(n) All primary containment shall be labeled in accordance with the labeling requirements set forth in the Code of Federal Regulations Title 40, parts 152 and 156 (July 1, 1996), which are hereby incorporated by reference. Copies of 40 CFR, parts 152 and 156 are available upon request to the Montana Department of Agriculture, P.O. Box 200201, Helena, MT 59620-0201. The registered product label shall be attached to primary containment in a prominent location. The label shall be complete and legible.

AUTH: 80-8-105, MCA

IMP: 80-8-105, MCA

NEW RULE V SECONDARY CONTAINMENT AT PERMANENT STORAGE FACILITIES (1) Any individual primary containment capable of storing more than 500 U.S. gallons or 4,500 pounds and in-service for more than 14 consecutive days and its associated appurtenances must be placed within secondary containment that meets the following requirements:

(a) Secondary containment not protected from precipitation shall contain at least 125% of the volume of the largest primary containment within the secondary containment plus the displacement of all other primary containment, appurtenances, and other items which cause displacement within the secondary containment.

(b) Secondary containment located indoors or under a roof to prevent accumulation of precipitation shall contain at least 110% of the volume of the largest primary containment plus the displacement of all other primary containment, appurtenances, and other items which cause displacement within the secondary containment.

(c) The walls and floors of secondary containment shall be constructed of steel, poured reinforced concrete, precast concrete modules, solid masonry, synthetic liners, or other materials that will provide secondary containment. Floors and walls constructed of clay, natural soil, natural soil clay mixtures or clay bentonite mixtures are prohibited. Materials used in the secondary containment shall be chemically compatible with the pesticides being stored. A written conformation of compatibility from the manufacturer and kept on file at the PSF or at the nearest office from which the PSF is administered is recommended.

(d) Walls shall withstand a full hydrostatic head of any spill, and shall be sealed to prevent leakage.

(e) Piping through the outside walls of a secondary containment is prohibited.

(f) The secondary containment floor shall slope to a liquid tight collection point or sump that allows spilled or deposited material to be easily removed. Any pump used for recovering materials from the secondary containment shall be manually activated.

(g) Synthetic liners shall be installed under the supervision of a qualified representative of the manufacturer, a contractor certified by the manufacturer, or a certified engineer. All seams shall be tested and repaired, if necessary, in accordance with the manufacturer's recommendation. A record regarding installation date, life expectancy and chemical compatibility must be kept.

(h) A prefabricated secondary containment shall be composed of a rigid prefabricated basin having a base and walls constructed of steel or synthetic materials which are resistant to corrosion, puncture and cracking.

(i) The prefabricated secondary containment shall withstand all foreseeable loading conditions, including the primary containment load and a full hydrostatic head of any spill. Multiple basins shall be connected in a manner which assures an adequate transfer of discharge between basins.

(j) Discharge outlets, valves or gravity drains shall comply with [Rule III(5)].

(k) Secondary containment for pesticides must be separate from containment for fertilizer, but they may have a common wall or partition.

AUTH: 80-8-105, MCA

IMP: 80-8-105, MCA

NEW RULE VI OPERATIONAL ACTIVITIES FOR BULK PESTICIDES AT A PSF (1) Operational activities must meet the following standards:

(a) If operational activities are conducted within secondary containment, the containment shall comply with [Rule V] and must withstand the weight of any vehicles and storage containers used within the secondary containment.

(b) A person conducting operational activities outside of secondary containment shall use at a minimum, temporary or portable catch basins under fittings or connections during pesticide transfers. An attendant must be present during all operational activities.

AUTH: 80-8-105, MCA

IMP: 80-8-105, MCA

NEW RULE VII RECOVERY, USE OR DISPOSAL OF SPILLS, DEBRIS, PRECIPITATION AND WASH WATER AT A PERMANENT STORAGE FACILITY

(1) Precipitation or other liquids or debris shall not be allowed to accumulate in secondary containment to the point where required containment capacity is not maintained. Spills, debris, precipitation or wash water in secondary

containment shall be recovered immediately if the capacity is reduced to less than required by [Rule V(1)(a) and (b)].

(2) The department must be immediately notified of any spills outside of the secondary containment in accordance with [Rule II(2)].

(3) Recovered pesticides and contaminated materials shall be labeled, and stored, recycled, used, or disposed of in accordance with [Rule II(3)].

AUTH: 80-8-105, MCA

IMP: 80-8-105, MCA

NEW RULE VIII SPILL RESPONSE PLAN (1) A written emergency response plan shall be prepared for a PSF.

(2) The plan shall include, but not be limited to, the following elements:

(a) The names and telephone numbers of the persons and agencies who are to be contacted in the event of a spill.

(b) A material safety data sheet for each pesticide stored at the facility and a copy of its label and labeling.

(c) The procedures used for controlling and recovering a spill for each type of pesticide stored. These procedures should be kept current.

(d) An inventory of all pesticides and their total volume at the PSF. An inventory shall be updated at least monthly and when a shipment of greater than 500 U.S. gallons or 4,500 pounds of product in undivided quantities is received or dispatched.

(e) The type of emergency equipment and supplies and their location to protect personnel, to contain, recover and store in the event of a spill.

(f) At least one copy of the emergency response plan shall be located at the PSF and a second copy maintained off the premise to ensure its availability in case of an emergency. A responsible person shall be knowledgeable of the locations of plans.

AUTH: 80-8-105, MCA

IMP: 80-8-105, MCA

NEW RULE IX RECORDS, INSPECTION AND MAINTENANCE RECOMMENDATIONS (1) Any person operating a PSF should maintain written records of all inspections and maintenance of the PSF.

(2) All appurtenances and primary containment holding bulk pesticides should be inspected weekly for damage and leakage. Secondary containment should be inspected at least monthly during the use season for cracks or other damage to the containment structures which may permit discharge outside the containment structures.

(3) Regular maintenance of PSF and secondary containment should be performed to ensure that the integrity of the sites is maintained.

AUTH: 80-8-105, MCA

IMP: 80-8-105, MCA

Reason: These rules implement a provision of Senate Bill 334 enacted by the 53rd legislature. This bill amended Section 80-8-105(2)(t), MCA and authorized the department to adopt rules that "prescribe methods of establishing standards for pesticide storage, pesticide mixing or loading sites, and bulk pesticide facilities."

These rules also implement Section 80-8-105 (3), MCA which authorizes the department to implement procedures that are considered necessary to prevent damage or injury. The department determined that general procedures dealing with spill reporting, clean up and backflow prevention are necessary to prevent damage or injury to health, agriculture and the environment.

Rule I defines terms used throughout the rules. Defining these terms is necessary for the regulated community and others to fully understand the rules.

Rule II protects human health and the environment from contamination by pesticides resulting from spills by establishing responsibilities and standards for cleaning up and preventing spills. Pesticide spills that exceed 5 gallons or 100 pounds must be reported to the department. This allows the department to monitor the spill site, focus resources and ensure the safety of health and the environment.

Rules III through IX are intended to prevent spillage of pesticides and facilitate the safe cleanup and handling of pesticide spills thereby mitigating adverse impacts to agriculture, environment and health that can result from uncontrolled, unremediated spills. These rules establish preventative standards for pesticide containers, spill containment structures at storage facilities and operating sites, recovery and handling of spills, and maintenance of spill response plans.

Rule III establishes standards to mitigate pesticide spillage and establish general requirements and deadlines for compliance with rules I through IX for all persons operating a permanent storage facility (PSF). This rule provides a preventative measure against expensive, complicated and time-consuming pesticide clean up at large pesticide holding facilities and compliance deadlines to ensure clean-up.

Rule IV informs industry of construction standards for primary containment and appurtenances. These standards assure the integrity of the container, and that it will withstand the pressures, stresses and be chemically compatible and non-reactive with the pesticide being stored.

Rule V requires that containers be placed within a containment structure to prohibit discharge or release of pesticide into

the environment.

Rule VI establishes standards for containment during operational activities which will reduce pesticide spills from impacting the environment. This rule establishes standards for containment during operational activities.

Rule VII establishes standards for the recovery, storage, use or disposal of pesticides or pesticide contaminated materials to prevent spilled pesticide from contaminating ground water, soil and working areas and to protect health and the environment.

Rule VIII will ensure effective cleanup of spills and the safety of all persons responding to an emergency at a large pesticide storage facility by establishing minimum requirements for an emergency plan.

Rule IX recommends a maintenance and inspection schedule that will ensure the pesticide storage facility operation will not permit a discharge of pesticide into the environment through a faulty containment structure. A high level of maintenance, inspection and record keeping will protect human health and the environment from a pesticide release at a large storage facility.

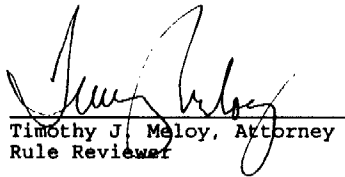
3. Interested persons may submit their data, views, or arguments concerning this proposed adoption in writing to Gary Gingery, Administrator, Department of Agriculture, Agricultural Sciences Division, P.O. Box 200201, Helena, MT 59620-0201, FAX (406)444-5409, or E-mail: agr.state.mt.us, no later than December 3, 1998.

4. If the agency receives requests for a public hearing on the proposed adoption from either 10% or 25 persons, whichever is less, of the persons who are directly affected by the proposed actions; for the administrative code committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be greater than 980 persons based on the number of licensed pesticide applicators and dealers.

5. As required by Sec. 2-4-302, MCA (HB 389, 1997 Montana legislative session), this notice advises that the department maintains an interested person list for purposes of providing notice on rule making matters. Any person wishing to be on that list must provide to the department, in writing, their name, mailing address and a brief description of the subject matter in which they are interested.

DEPARTMENT OF AGRICULTURE


Ralph Peck, Director
DEPARTMENT OF AGRICULTURE


Timothy J. Maloy, Attorney
Rule Reviewer

Certified to the Secretary of State October 26, 1998.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED
amendment of ARM 4.12.1428) AMENDMENT
relating to the assessment fees)
on all produce.)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On December 5, 1998, the Montana Department of Agriculture proposes to amend ARM 4.12.1428 relating to the assessment fees on all produce. The proposed effective date is January 1, 1999.

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

4.12.1428 ASSESSMENT FEES ON ALL PRODUCE (1) The assessment fee on all produce except produce grown in Montana and inspected at shipping point shall be ~~3-5¢~~ 5¢ per each produce unit.

AUTH: 80-3-303, MCA

IMP: 80-3-314, MCA

Reason: The assessment was reduced in 1996 from 5.5 cents to 3.5 cents because of an adequate balance in the fund to service the program. This proposal raises the assessment to the 5.0 cent level. As costs have increased over the past two years, the department has found it necessary to increase the fee in order to maintain and deliver necessary services. However, the revision is less than the 1996 fee of 5.5 cents. The reason for the January 1, 1999 effective date is to coincide the increase with the quarterly billing procedure.

3. Interested persons may submit their data, views, or arguments concerning this proposed amendment to Gary Gingery, Administrator, Department of Agriculture, Agricultural Sciences Division, PO Box 200201, Helena, MT 59620-0201, Phone (406)444-2944, Fax (406)444-5409, or E-mail: agr@mt.gov, no later than December 3, 1998.

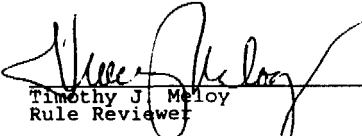
4. If a party who is directly affected by the proposed amendment wishes to express his/her data, views, and arguments orally or in writing at a public hearing, he/she must make written request for a hearing and submit this request along with any written comments he/she has to Gary Gingery, Administrator, Department of Agriculture, Agricultural Sciences Division, PO Box 200201, Helena, MT 59620-0201, Phone (406)444-2944, Fax (406)444-5409, or E-mail: agr@mt.gov no later than December 3, 1998.

5. If the department receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not fewer than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 5 based on the number of produce dealers who first distribute produce in Montana and growers who retail Montana-grown produce with gross annual sales exceeding \$15,000.

6. As required by Sec. 2-4-302, MCA (HB 389, 1997 Montana legislative session), this notice advises that the department maintains an interested person list for purposes of providing notice on rule making matters. Any person wishing to be on that list must provide to the department, in writing, their name, mailing address and a brief description of the subject matter in which they are interested.

DEPARTMENT OF AGRICULTURE


Ralph Peck, Director


Timothy J. Meloy
Rule Reviewer

Certified to the Secretary of State on October 26, 1998.

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

In the matter of the proposed) NOTICE OF PUBLIC HEARING ON
adoption of a rule pertaining) THE PROPOSED ADOPTION OF NEW
to curriculum approval for) RULE I CURRICULUM APPROVAL
applicants for acupuncture)
license)

TO: All Interested Persons:

1. On January 22, 1999, at 1:30 p.m., a public hearing will be held at the Elkhorn Mountain Inn, Montana City, Montana, to consider the proposed adoption of a rule pertaining to curriculum approval for applicants for acupuncture license.
2. The proposed new rule will read as follows:

"I CURRICULUM APPROVAL (1) Subsection 37-13-302(2)(c), MCA, means that the applicant for licensure as an acupuncturist must establish one of the following:

(a) that the applicant has graduated from a school approved by the national accreditation commission for schools and colleges of acupuncture and oriental medicine (NACSCAOM) and that the school offers a curriculum of at least 1,000 hours of entry-level training in recognized branches of acupuncture; or

(b) that the applicant has attended a school which, although the school may not be approved by NACSCAOM, offers a curriculum which is the equivalent of a 1,000 hour course of entry-level training in recognized branches of acupuncture, and thereby merits the board's approval as a basis for licensure."

Auth: This rule is advisory only but may be a correct interpretation of law, Sec. 37-13-102, 37-13-201, MCA; IMP, Sec. 37-13-301, 37-13-302, 37-13-304, MCA

REASON: Pursuant to Mont. Code Ann. Section 2-4-308, the Montana Board of Medical Examiners proposes to adopt the above rule interpreting Mont. Code Ann. Section 37-13-302(2)(c). The current language of Section 37-13-302(2), because of lack of internal punctuation, is ambiguous, and does not give the public adequate notice of the requirements for licensure as an acupuncturist in Montana.

Section 37-13-302, Montana Code Annotated, provides in pertinent part:

"(2) A person making application shall furnish the board evidence that he is: . . .

(c) a graduate of an approved school of acupuncture that is approved by the national accreditation commission for schools and colleges of acupuncture and oriental

medicine and offers a course of at least 1,000 hours of entry-level training in recognized branches of acupuncture or an equivalent curriculum approved by the board; and

(d) has passed an examination prepared and administered by the board or an examination prepared and administered by the national commission for the certification of acupuncturists."

Subsection (2)(c) can be read two ways: First, if a comma is inserted after the word "medicine," the statute would require that a person graduate from an NACSCAOM-approved school and that the school must have either (A) a 1,000 hour curriculum, or (B) an equivalent curriculum approved by the Board. Second, if a comma is inserted after the phrase "recognized branches of acupuncture," the statute would require that a person graduate either (A) from a NACSCAOM-approved school, or (B) from any school (even one unapproved by NACSCAOM) which has, in the Board's judgment, an equivalent curriculum. Under either interpretation, the person would have to pass the examination given by the national commission for the certification of acupuncturists (NCCA) to qualify for licensure.

Under the first interpretation, applicants who did not attend a NACSCAOM-approved school would not qualify for licensure. Two such applications are presently pending before the Board. The issue has arisen in the past, in other applications for licensure.

Under the second interpretation, both applicants could qualify for licensure if the Board determined that the curriculum of their non-approved school was equivalent to those of NACSCAOM-approved schools.

The Board has received public comment from representatives of the licensed acupuncturists in Montana, favoring the second interpretation, urging that candidates who have qualified to sit for the NCCA exam be deemed to have graduated from "approved" schools. The first interpretation would exclude graduates from all schools outside the United States--even highly qualified professionals from Chinese schools--because NACSCAOM does not approve any foreign schools, thereby reducing public access to quality acupuncture treatment. The representatives also maintain that the credentialing process for permission to take the NCCA exam is rigorous, thorough and careful; that the standards for admission to the NCCA exam are higher than the current educational requirements set forth in Montana statutes; that the NCCA credentialing process screens out unqualified applicants; and that if an applicant has passed the NCCA exam, the Board can be assured that the applicant's schooling appropriately prepared the applicant for the practice of acupuncture in Montana. The representatives maintain that the Board can therefore fulfill its obligation to protect the public by adopting the second interpretation proposed above.

An interpretation of the statute is necessary to determine whether the two current applications, and others which can reasonably be foreseen, can be licensed in Montana. The Board desires public input from all sides of this issue, before electing an interpretation of the statute which best protects the Montana public. The rule-making process provides the opportunity for such public comment.

3. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you wish to request an accommodation, contact the Department no later than 5:00 p.m., January 12, 1999, to advise us of the nature of the accommodation that you need. Please contact Cami Robson, Board of Medical Examiners, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 444-9395; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-9396. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Cami Robson.

4. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Medical Examiners, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile, number (406) 444-9396, to be received no later than the close of hearing on January 22, 1999.

5. Patricia I. England, attorney, has been designated to preside over and conduct this hearing.

6. Persons who wish to be informed of all Board of Medical Examiners administrative rulemaking proceedings or other administrative proceedings may be placed on a list of interested persons by advising the Board at the hearing or in writing to the Board at 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513 or by phone at (406) 444-9395.

BOARD OF MEDICAL EXAMINERS
DANIEL C. BROOKE, CHAIRMAN

BY:



ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE



ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 26, 1998.

BEFORE THE BOARD OF SANITARIANS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of rules pertaining) OF ARM 8.60.410A EXAMINATION
to examinations and sanitarian-) AND 8.60.415 SANITARIAN-IN-
in-training) TRAINING

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 5, 1998, the Board of Sanitarians proposes to amend the above-stated rules.

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

"8.60.410A EXAMINATION (1) through (5) will remain the same.

(6) ~~This rule does not apply to A sanitarian-in-training temporary practice permit holders because the sanitarian-in-training permit expires upon failure of the examination is subject to examination rules set forth in ARM 8.60.415."~~

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

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

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

(3) Supervision for purposes of this rule means the availability of a licensed sanitarian for purposes of immediate communication and consultation on a weekly and as needed basis as identified in the approved plan of supervision.

(4) A sanitarian-in-training exemption is valid for a period of one year. While practicing under a valid sanitarian-in-training exemption, the sanitarian-in-training is eligible to sit for the examination upon making an appointment with the board office and paying the examination fee. There is no limit to the number of times a sanitarin-in-training may take the examination during the one year exemption period."

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

REASON: Pursuant to 37-40-302(3), MCA, all sanitarian applicants must pass the examination offered by the board. The board is expressly authorized in 37-40-203(2)(d), MCA, to adopt rules "defining qualifications for sanitarian-in-training status for issuance of the initial permit." The basis for such

a permit is to allow applicants to gain knowledge and skills for a one-year period prior to licensure (37-40-101(6), MCA). To facilitate the licensing process, the board determined at some point in the past to allow permit holders to attempt the examination any number of times during the one-year period. The rules, however, did not reflect this intent and have been amended to allow permit holders to take the examination by resolving the apparent conflict between 8.60.410A(6) and 8.60.415(4).

3. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Sanitarians, 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 3, 1998.

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 Sanitarians, 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 3, 1998.

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 18 based on the 178 licensees in Montana.

6. Persons who wish to be informed of all Board of Sanitarians administrative rulemaking proceedings, or other administrative proceedings, may be placed on a list of interested persons by advising the Board of Sanitarians in writing at 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513 or by phone at (406) 444-3091.

BOARD OF SANITARIANS
DENISE MOLDROSKI, 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, October 26, 1998.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the adoption	)	NOTICE OF SUPPLEMENTAL
of new rules I through VI	)	COMMENT PERIOD
promulgating listing,)	
delisting, and ranking rules	)	(CECRA)
for CECRA facilities)	

TO: All Interested Persons

1. On May 14, 1998, the department of environmental quality published notice of public hearing on the proposed adoption of new rules outlined above at page 1264 of the 1998 Montana Administrative Register, Issue No. 9.

Proposed Rule VI pertains to delisting of sites from the CECRA priority list. It provides that the department may remove a facility from the list if the department determines that:

-cleanup has been completed so that there will be long-term protection of public health, safety and welfare, and the environment;

-the facility should not have been listed in the first place; or

-another state program has assumed jurisdiction of the facility.

A number of persons commented that Rule VI should be mandatory so that a facility must be delisted if the conditions are met. Many of those commenters also stated that facilities subject only to operation and maintenance requirements or institutional controls should be delisted. Others stated that facilities subject to operation and maintenance should not be delisted.

The department is considering making delisting mandatory for at least some categories of facilities. The department is, therefore requesting comments on which category of facilities, if any, should be mandatory to delist. Commenters should also comment on whether, if delisting is made mandatory, related amendments in other rules should be made.

2. Interested persons may submit their data, views or arguments concerning the proposed rules in writing to Debbie G. Allen, Paralegal, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901, no later than November 25, 1998. To guarantee consideration, the comments must be postmarked on or before that date.

DEPARTMENT OF ENVIRONMENTAL QUALITY

by

Mark A. Simonich
MARK A. SIMONICH, Director

Reviewed by:

John F. North
John F. North, Rule Reviewer

Certified to the Secretary of State October 26, 1998.

BEFORE THE DEPARTMENT OF CORRECTIONS
OF THE STATE OF MONTANA

In the matter of the adoption)	NOTICE OF PUBLIC HEARING
of new rules I through VI)	ON PROPOSED RULES
pertaining to parole of a)	
youth confined in a state)	
youth correctional facility)	

TO: All Interested Persons

1. On November 25, 1998, at 9:00 a.m., a public hearing will be held in the downstairs conference room at the Department of Corrections, 1539 11th Avenue, Helena, Montana, to consider the adoption of new rules for the parole of youth confined in a state youth correctional facility.

2. The Department of Corrections will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. To request an accommodation, contact Claudia (Cj) Johnson, PO Box 201301, Helena, MT 59620-1301; telephone (406) 444-7917; FAX (406) 444-4920, no later than 4:00 p.m. on November 20, 1998, to advise of the nature of the accommodation you need.

3. The new rules proposed for adoption provide as follows:

RULE I PAROLE OF YOUTH FROM A STATE YOUTH CORRECTIONAL FACILITY For the purposes of this sub-chapter the following definitions apply:

(1) "Department" means the department of corrections.
(2) "Facility" means a state youth correctional facility as defined in 41-5-103, MCA.

(3) "Length of stay" means the time between admission to the facility and the tentative parole date established for a youthful offender by the length of stay committee based on the length of stay guidelines.

(4) "Length of stay committee" means the youth correctional facility committee appointed by the facility superintendent that establishes a length of stay and determines a tentative parole date for each youthful offender upon the offender's admission into the facility.

(5) "Length of stay guidelines" means the factors established by department/facility policy and approved by the department director by which a youth's length of stay is determined.

(6) "Parole" means the conditional release of a youthful offender from a facility to the parole supervision of the department.

(7) "Parole date" means the date that a youthful offender may be paroled from a facility as determined by the length of stay committee.

(8) "Secure facility emergency release" is a release granted by the superintendent of a secure facility as a result of the population exceeding the rated capacity of the facility.

(9) "Youth parole agreement" means a document containing the terms and conditions of the youthful offender's release.

(10) "Youthful offender" means a person under the age of 18 who has been adjudicated in a Montana youth court.

AUTH: 52-5-102, 52-5-105 and 52-5-126, MCA

IMP: 52-5-102, MCA

RULE II MEMBERSHIP OF LENGTH OF STAY COMMITTEE (1) The committee must consist of the following, or designee:

- (a) facility's director of care and custody;
- (b) facility's school administrator;
- (c) facility's social work supervisor; and
- (d) a representative of the community corrections

division recommended by the community corrections administrator or designee.

(2) The facility superintendent may appoint other members as necessary.

AUTH: 52-5-102, MCA

IMP: 52-5-102, MCA

RULE III DUTIES OF LENGTH OF STAY COMMITTEE (1) The length of stay committee's duties are as follows:

- (a) to establish each youth's length of stay within 30 days of a youth's arrival at the facility;
- (b) to determine a youth's tentative parole date; and
- (c) to review each youth's final parole date at least 10 days in advance of the youth's parole.

(2) If the committee denies a youth parole, it must:

- (a) list the reasons for the denial; and
- (b) identify conditions to be met for reconsideration of parole.

(3) If the committee is unable to reach agreement on the parole of a youthful offender, a vote must be taken.

(a) The committee member representing community corrections will have one vote, and the facility will have one vote.

(b) If the vote is tied, the decision regarding parole of the youthful offender must be made by the department director.

AUTH: 52-5-102, 52-5-111, 52-5-126 and 52-5-127, MCA

IMP: 52-5-102, MCA

RULE IV LENGTH OF STAY COMMITTEE DECISIONS (1) The committee shall determine length of stay for each youthful offender based upon the following criteria:

- (a) the delinquency history of the youthful offender;

(b) the severity and chronicity of the offenses committed by the youthful offender within the past 12 months; and

(c) mitigating or aggravating circumstances surrounding the act for which the youth has been adjudicated.

AUTH: 52-5-102, MCA

IMP: 52-5-102, MCA

RULE V POLICIES AND PROCEDURES (1) Each facility must have written policies and procedures governing length of stay, based upon department policy and approved by the department director which provide for:

(a) a means of determining length of stay so that youthful offenders with similar delinquency histories and similar offenses will receive similar lengths of stay;

(b) incentives for youthful offenders to maximize opportunities for positive change;

(c) consistent, fair, and objective criteria upon which to base parole release recommendations; and

(d) discretion in individual cases based on aggravating or mitigating factors which demonstrate the necessity of a longer or shorter length of stay.

(2) Each facility must require a youth to sign a youth parole agreement containing:

(a) a statement of the terms and conditions of the youthful offender's release, including a list of the acts that, if committed by the offender, could result in the offender's return to the facility;

(b) a statement that if the department or any person alleges any violation of the terms and conditions of the agreement, the youthful offender is entitled to a hearing as provided for in 52-5-129, MCA, before returning to the facility; and

(c) the youth's signature.

AUTH: 52-5-102, MCA

IMP: 52-5-102, MCA

RULE VI EMERGENCY RELEASE BY SUPERINTENDENT (1) If a facility exceeds its rated capacity, the superintendent has the authority to release certain eligible youthful offenders from the facility pursuant to facility policy, with notice to the community corrections division of the department.

AUTH: 52-5-102 and 52-5-105, MCA

IMP: 52-5-102, MCA

4. Rules I through VI are reasonably necessary for the following reasons: In 1967, when juvenile corrections was under the Department of Institutions, the legislature enacted the language still contained in 52-5-102, MCA, which provides for the "department" to establish by rule, standards for transfer, discharge and parole supervision. That responsibility transferred to the Department of Corrections in 1995 during departmental reorganization. Rules regarding

transfer, discharge and parole were not written when juvenile corrections was under the auspices of either the Department of Institutions or the Department of Family Services. It is important for the Department of Corrections to standardize the procedures for discharge and parole supervision in administrative rule. The Department is now responsible for juvenile corrections, and finds these rules necessary to establish in writing for the juvenile justice system how long a youth will likely remain at a secure youth correctional facility, and how the youth will be paroled.

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 Cj Johnson, PO Box 201301, Helena, MT 59620-1301, and must be received no later than December 3, 1998.

6. Lois Adams, Rule Reviewer, has been designated to preside over and conduct the hearing.

7. Any person/party may be placed on the Department of Corrections' list of interested persons/parties by contacting Cj Johnson, Administrative Support, in writing, at the address listed above or may be made by completing a request form at any rules hearing held by the department.



Rick Day, Director
Department of Corrections



Lois Adams
Rule Reviewer

Certified to the Secretary of State, October 26, 1998.

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

In the Matter of Proposed) NOTICE OF PUBLIC HEARING
Amendments to Rules) ON AMENDMENT OF RULES
Pertaining to Pipeline Safety) 38.5.2202 AND 38.5.2302

TO: All Interested Persons

1. On Wednesday, December 9, 1998, at 9:00 a.m., in the Bollinger Room, Public Service Commission (PSC) offices, 1701 Prospect Avenue, Helena, Montana, the PSC will hold a hearing to consider the proposals identified in the above titles and described in the following paragraphs, all related to pipeline safety. Anyone needing accommodations for physical, hearing, or sight impairment in order to attend and participate in the hearing should contact the PSC Secretary at (406) 444-6199 at least one week prior to hearing.

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

38.5.2202 INCORPORATION BY REFERENCE OF FEDERAL PIPELINE SAFETY REGULATIONS (1) The commission hereby adopts and incorporates by reference the U.S. Department of Transportation (DOT) Pipeline Safety Regulations, Code of Federal Regulations (CFR), Title 49, Chapter 1, subchapter D, parts 191, 192, and 193, including all revisions and amendments enacted by DOT on or before ~~October 20, 1997~~ October 20, 1998. A copy of the referenced regulations may be obtained from DOT, Research and Special Programs Administration, Western Region, Pipeline Safety, 12600 W. Colfax Ave., Suite A-250, Lakewood, Colorado 80215-3736, or may be reviewed at the Public Service Commission Offices, 1701 Prospect Avenue, Helena, Montana 59620-2601.

AUTH: Sec. 69-3-207, MCA; IMP: Sec. 69-3-207, MCA.

38.5.2302 INCORPORATION BY REFERENCE OF FEDERAL PIPELINE SAFETY REGULATIONS -- DRUG AND ALCOHOL TESTING AND PREVENTION PROGRAMS (1) Except as otherwise provided in this subchapter the commission hereby adopts and incorporates by reference the DOT Pipeline Safety Regulations, Drug and Alcohol Testing, 49 CFR 199, including all revisions and amendments enacted by DOT on or before ~~October 20, 1997~~ October 20, 1998. A copy of the referenced CFR's is available from the DOT, Research and Special Programs Administration, Western Region, Pipeline Safety, 12600 W. Colfax Ave., Suite A-250, Lakewood, Colorado 80215-3736, or may be reviewed at the Public Service Commission Offices, 1701 Prospect Avenue, Helena, Montana 59620-2601.

AUTH: Sec. 69-3-207, MCA; IMP: Sec. 69-3-207, MCA.

3. Rationale: These amendments (annual update) are reasonably necessary to allow the PSC to properly administer the most current version of federal rules applicable in the PSC's administration of all federal aspects of Montana's pipeline safety program.


4. Interested persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments (original and 10 copies) may also be submitted to Martin Jacobson, Public Service Commission, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, no later than December 9, 1998. (PLEASE NOTE: When filing comments pursuant to this notice please reference "Docket No. L-98.10.4-RUL".)

5. The Public Service Commission, a commissioner, or a duly appointed presiding officer may preside over and conduct the hearing.

6. The Montana Consumer Counsel, 616 Helena Avenue, P.O. Box 201703, Helena, Montana 59620-1703, phone (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

7. The bill sponsor notification requirements of Section 2-4-302, MCA, are not applicable in this instance as this rulemaking is not the initial rulemaking implementing Section 69-3-207, MCA.

8. The Public Service Commission maintains a list of persons interested in Commission rulemaking proceedings and the subject or subjects in which each person on the list is interested. Any person wishing to be on the list must make a written request to the Commission, providing a name, address, and description of the subject or subjects which the person is interested. Direct the request to the Public Service Commission, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601.


Dave Fisher, Chairman

CERTIFIED TO THE SECRETARY OF STATE OCTOBER 26, 1998


Reviewed By Robin A. McHugh

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE PROPOSED) NOTICE OF THE PROPOSED AMENDMENT
AMENDMENT of ARM 42.22.1311)
and 42.22.1312 relating to)
Industrial Property Trend)
Factors) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 5, 1998, the Department of Revenue proposes to amend ARM 42.22.1311 and 42.22.1312 relating to Industrial Property Trend Factors.

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

42.22.1311 INDUSTRIAL MACHINERY AND EQUIPMENT TREND FACTORS (1) Remains the same.

1999 1999 INDUSTRIAL MACHINERY & EQUIPMENT TREND FACTORS

The Trend table, description, and life columns remain the same.

Note: 1. Lab equipment is to be included in its related industry's table at a 10-year life expectancy.

YEAR	TABLE 1	TABLE 2	TABLE 3	TABLE 4	TABLE 5
1997	1.000	1.000	1.000	1.000	1.000
1996	1.010	1.014	1.013	1.013	1.015
1995	1.024	1.029	1.028	1.033	1.031
1994	1.064	1.072	1.069	1.071	1.074
1993	1.092	1.105	1.097	1.097	1.107
1992	1.109	1.126	1.115	1.114	1.127
1991	1.117	1.141	1.127	1.126	1.142
1990	1.135	1.166	1.148	1.151	1.170
1989	1.159	1.198	1.177	1.184	1.205
1988	1.217	1.264	1.246	1.254	1.274
1987	1.273	1.321	1.305	1.310	1.332
1986	1.287	1.343	1.323	1.327	1.355
1985	1.293	1.366	1.331	1.338	1.381
1984	1.310	1.393	1.348	1.358	1.409
1983	1.346	1.426	1.383	1.391	1.441
1982	1.371	1.446	1.404	1.411	1.459
1981	1.431	1.515	1.465	1.477	1.531
1980	1.577	1.676	1.614	1.634	1.696
1979	1.747	1.852	1.784	1.809	1.880
1978	1.916	2.030	1.940	1.968	2.058
1977	2.057	2.181	2.097	2.116	2.478

YEAR	TABLE 6	TABLE 7	TABLE 8	TABLE 9	TABLE 10
1997	1.000	1.000	1.000	1.000	1.000
1996	1.029	1.030	1.033	1.035	1.032
1995	1.066	1.068	1.068	1.063	1.075
1994	1.089	1.090	1.093	1.090	1.104
1993	1.106	1.104	1.113	1.119	1.122
1992	1.115	1.112	1.124	1.140	1.136
1991	1.138	1.136	1.140	1.160	1.164
1990	1.168	1.166	1.182	1.205	1.197
1989	1.227	1.232	1.243	1.263	1.269
1988	1.270	1.285	1.288	1.305	1.320
1987	1.283	1.299	1.304	1.322	1.350
1986	1.291	1.305	1.315	1.334	1.371
1985	1.310	1.323	1.336	1.350	1.395
1984	1.342	1.358	1.376	1.378	1.428
1983	1.364	1.378	1.402	1.407	1.447
1982	1.438	1.451	1.480	1.488	1.516
1981	1.597	1.613	1.642	1.659	1.677
1980	1.757	1.789	1.807	1.832	1.864
1979	1.919	1.945	1.969	2.007	2.033
1978	2.064	2.096	2.115	2.163	2.180
1977	2.182	2.207	2.247	2.282	2.295

YEAR	TABLE 11	TABLE 12	TABLE 13	TABLE 14	TABLE 15
1997	1.000	1.000	1.000	1.000	1.000
1996	1.031	1.018	1.030	1.028	1.031
1995	1.065	1.067	1.073	1.070	1.070
1994	1.087	1.093	1.107	1.099	1.107
1993	1.094	1.105	1.129	1.116	1.133
1992	1.090	1.106	1.145	1.126	1.153
1991	1.097	1.118	1.172	1.150	1.180
1990	1.116	1.140	1.205	1.180	1.213
1989	1.183	1.205	1.273	1.245	1.282
1988	1.260	1.275	1.331	1.300	1.339
1987	1.269	1.288	1.354	1.316	1.363
1986	1.276	1.294	1.376	1.331	1.386
1985	1.288	1.310	1.402	1.352	1.410
1984	1.321	1.347	1.437	1.383	1.445
1983	1.337	1.368	1.459	1.398	1.469
1982	1.381	1.416	1.529	1.463	1.535
1981	1.511	1.552	1.689	1.618	1.692
1980	1.695	1.734	1.865	1.793	1.863
1979	1.865	1.906	2.045	1.960	2.045
1978	1.977	2.032	2.204	2.103	2.210
1977	2.073	2.134	2.327	2.213	2.334

YEAR	TABLE 16	TABLE 17	TABLE 18	TABLE 19	TABLE 20
1997	1.000	1.000	1.000	1.000	1.000
1996	1.034	1.029	1.038	1.033	1.028
1995	1.066	1.067	1.061	1.072	1.068
1994	1.105	1.095	1.091	1.103	1.095
1993	1.138	1.116	1.115	1.124	1.111

1992	1.162	1.128	1.133	1.141	1.121
1991	1.109	1.151	1.156	1.170	1.145
1990	1.224	1.103	1.187	1.205	1.176
1989	1.290	1.246	1.242	1.272	1.234
1988	1.341	1.297	1.287	1.323	1.287
1987	1.363	1.317	1.303	1.345	1.304
1986	1.379	1.328	1.313	1.367	1.312
1985	1.399	1.348	1.330	1.394	1.336
1984	1.437	1.387	1.363	1.430	1.372
1983	1.466	1.411	1.391	1.452	1.404
1982	1.528	1.476	1.467	1.526	1.468
1981	1.682	1.626	1.630	1.692	1.627
1980	1.840	1.785	1.793	1.865	1.808
1979	2.017	1.944	1.966	2.034	1.982
1978	2.186	2.083	2.120	2.183	2.134
1977	2.311	2.188	2.238	2.299	2.248

YEAR	TABLE 21	TABLE 22	TABLE 23	TABLE 24	TABLE 25
1997	1.000	1.000	1.000	1.000	1.000
1996	1.030	1.030	1.034	1.029	1.031
1995	1.062	1.070	1.072	1.067	1.066
1994	1.091	1.097	1.094	1.093	1.098
1993	1.115	1.115	1.105	1.110	1.123
1992	1.133	1.124	1.113	1.114	1.129
1991	1.159	1.147	1.142	1.130	1.161
1990	1.196	1.177	1.171	1.148	1.191
1989	1.260	1.244	1.231	1.211	1.256
1988	1.300	1.298	1.282	1.268	1.308
1987	1.311	1.314	1.286	1.289	1.325
1986	1.310	1.322	1.287	1.302	1.334
1985	1.334	1.341	1.301	1.319	1.349
1984	1.361	1.379	1.325	1.363	1.387
1983	1.392	1.401	1.338	1.389	1.412
1982	1.469	1.469	1.426	1.441	1.478
1981	1.631	1.623	1.599	1.582	1.630
1980	1.790	1.793	1.777	1.750	1.791
1979	1.958	1.956	1.941	1.921	1.951
1978	2.118	2.103	2.095	2.066	2.106
1977	2.243	2.215	2.217	2.178	2.220

YEAR	TABLE 26	TABLE 27	TABLE 28	TABLE 29	TABLE 30
1997	1.000	1.000	1.000	1.000	1.000
1996	1.031	1.031	1.025	1.028	1.024
1995	1.070	1.067	1.065	1.060	1.053
1994	1.099	1.092	1.088	1.087	1.088
1993	1.120	1.113	1.100	1.108	1.114
1992	1.133	1.125	1.106	1.122	1.129
1991	1.158	1.150	1.124	1.147	1.149
1990	1.189	1.182	1.154	1.176	1.177
1989	1.255	1.243	1.222	1.235	1.229
1988	1.306	1.292	1.280	1.287	1.268
1987	1.325	1.313	1.294	1.308	1.286

1986	1.335	1.323	1.300	1.323	1.295
1985	1.355	1.347	1.320	1.342	1.310
1984	1.396	1.389	1.363	1.381	1.340
1983	1.422	1.418	1.382	1.405	1.356
1982	1.494	1.497	1.443	1.470	1.416
1981	1.653	1.666	1.596	1.622	1.567
1980	1.823	1.835	1.771	1.776	1.706
1979	1.984	2.008	1.922	1.932	1.860
1978	2.128	2.169	2.055	2.076	2.003
1977	2.234	2.282	2.160	2.182	2.114

YEAR TABLE 31 TABLE 32

1997	1.000	1.000
1996	1.033	1.028
1995	1.063	1.070
1994	1.099	1.094
1993	1.137	1.110
1992	1.159	1.116
1991	1.178	1.136
1990	1.210	1.164
1989	1.277	1.229
1988	1.328	1.284
1987	1.347	1.299
1986	1.355	1.306
1985	1.373	1.322
1984	1.411	1.358
1983	1.443	1.377
1982	1.505	1.439
1981	1.651	1.586
1980	1.811	1.756
1979	1.980	1.917
1978	2.148	2.057
1977	2.272	2.169

<u>YEAR</u>	<u>TABLE 1</u>	<u>TABLE 2</u>	<u>TABLE 3</u>	<u>TABLE 4</u>	<u>TABLE 5</u>
1998	1.000	1.000	1.000	1.000	1.000
1997	1.008	1.010	1.008	1.009	1.010
1996	1.020	1.027	1.023	1.026	1.029
1995	1.034	1.042	1.039	1.045	1.045
1994	1.075	1.085	1.080	1.084	1.088
1993	1.103	1.119	1.108	1.110	1.122
1992	1.120	1.140	1.127	1.127	1.142
1991	1.128	1.155	1.138	1.139	1.158
1990	1.146	1.181	1.160	1.165	1.186
1989	1.171	1.213	1.189	1.198	1.221
1988	1.229	1.280	1.258	1.269	1.291
1987	1.285	1.338	1.319	1.326	1.350
1986	1.300	1.360	1.336	1.343	1.374
1985	1.306	1.384	1.345	1.354	1.399
1984	1.323	1.411	1.362	1.374	1.428
1983	1.359	1.444	1.397	1.408	1.460
1982	1.385	1.465	1.418	1.428	1.479

1981	1.445	1.535	1.480	1.495	1.552
1980	1.593	1.698	1.630	1.653	1.719
1979	1.764	1.876	1.802	1.831	1.905

<u>YEAR</u>	<u>TABLE 6</u>	<u>TABLE 7</u>	<u>TABLE 8</u>	<u>TABLE 9</u>	<u>TABLE 10</u>
1998	1.000	1.000	1.000	1.000	1.000
1997	1.010	1.010	1.010	1.011	1.010
1996	1.042	1.042	1.045	1.047	1.045
1995	1.078	1.081	1.082	1.076	1.089
1994	1.102	1.103	1.107	1.103	1.118
1993	1.120	1.117	1.127	1.133	1.137
1992	1.129	1.126	1.138	1.154	1.151
1991	1.151	1.150	1.162	1.182	1.178
1990	1.182	1.180	1.197	1.220	1.212
1989	1.242	1.247	1.259	1.278	1.285
1988	1.285	1.300	1.304	1.321	1.345
1987	1.298	1.315	1.320	1.339	1.367
1986	1.307	1.321	1.331	1.350	1.388
1985	1.326	1.339	1.353	1.366	1.413
1984	1.358	1.375	1.393	1.394	1.446
1983	1.380	1.395	1.419	1.424	1.465
1982	1.455	1.468	1.499	1.506	1.535
1981	1.616	1.633	1.663	1.679	1.699
1980	1.778	1.811	1.829	1.854	1.888
1979	1.942	1.969	1.994	2.032	2.059

<u>YEAR</u>	<u>TABLE 11</u>	<u>TABLE 12</u>	<u>TABLE 13</u>	<u>TABLE 14</u>	<u>TABLE 15</u>
1998	1.000	1.000	1.000	1.000	1.000
1997	1.002	1.005	1.010	1.009	1.009
1996	1.016	1.025	1.044	1.041	1.043
1995	1.070	1.075	1.086	1.083	1.083
1994	1.092	1.101	1.122	1.112	1.120
1993	1.099	1.113	1.143	1.130	1.147
1992	1.095	1.114	1.160	1.140	1.167
1991	1.102	1.126	1.187	1.164	1.194
1990	1.121	1.148	1.220	1.194	1.228
1989	1.189	1.214	1.290	1.260	1.297
1988	1.265	1.284	1.349	1.315	1.355
1987	1.275	1.298	1.371	1.332	1.379
1986	1.282	1.303	1.394	1.347	1.402
1985	1.294	1.320	1.421	1.368	1.427
1984	1.327	1.357	1.456	1.399	1.462
1983	1.343	1.378	1.478	1.415	1.487
1982	1.388	1.426	1.548	1.481	1.553
1981	1.518	1.563	1.710	1.638	1.712
1980	1.703	1.746	1.889	1.814	1.885
1979	1.874	1.920	2.072	1.984	2.069

<u>YEAR</u>	<u>TABLE 16</u>	<u>TABLE 17</u>	<u>TABLE 18</u>	<u>TABLE 19</u>	<u>TABLE 20</u>
1998	1.000	1.000	1.000	1.000	1.000
1997	1.008	1.008	1.008	1.011	1.009
1996	1.045	1.040	1.038	1.047	1.040

1995	1.077	1.078	1.071	1.086	1.080
1994	1.117	1.107	1.102	1.118	1.108
1993	1.150	1.128	1.126	1.140	1.124
1992	1.175	1.139	1.144	1.156	1.134
1991	1.201	1.163	1.167	1.186	1.158
1990	1.237	1.195	1.199	1.222	1.189
1989	1.304	1.259	1.254	1.289	1.248
1988	1.355	1.311	1.299	1.341	1.302
1987	1.377	1.330	1.316	1.363	1.319
1986	1.394	1.342	1.326	1.385	1.327
1985	1.414	1.362	1.343	1.413	1.351
1984	1.452	1.401	1.376	1.449	1.388
1983	1.482	1.425	1.404	1.472	1.420
1982	1.544	1.492	1.481	1.547	1.484
1981	1.700	1.643	1.646	1.715	1.645
1980	1.860	1.803	1.810	1.890	1.829
1979	2.038	1.964	1.985	2.062	2.005

<u>YEAR</u>	<u>TABLE 21</u>	<u>TABLE 22</u>	<u>TABLE 23</u>	<u>TABLE 24</u>	<u>TABLE 25</u>
1998	1.000	1.000	1.000	1.000	1.000
1997	1.011	1.009	1.013	1.004	1.008
1996	1.043	1.043	1.050	1.035	1.043
1995	1.076	1.083	1.089	1.073	1.078
1994	1.105	1.110	1.111	1.100	1.110
1993	1.129	1.128	1.122	1.117	1.136
1992	1.148	1.138	1.131	1.121	1.151
1991	1.174	1.161	1.160	1.137	1.174
1990	1.211	1.191	1.189	1.155	1.204
1989	1.276	1.258	1.250	1.218	1.270
1988	1.317	1.313	1.302	1.276	1.322
1987	1.328	1.330	1.306	1.297	1.340
1986	1.335	1.338	1.307	1.310	1.349
1985	1.351	1.357	1.322	1.328	1.364
1984	1.378	1.395	1.346	1.372	1.403
1983	1.410	1.418	1.359	1.397	1.427
1982	1.488	1.487	1.449	1.451	1.494
1981	1.652	1.643	1.623	1.592	1.649
1980	1.813	1.815	1.804	1.761	1.811
1979	1.983	1.979	1.971	1.933	1.973

<u>YEAR</u>	<u>TABLE 26</u>	<u>TABLE 27</u>	<u>TABLE 28</u>	<u>TABLE 29</u>	<u>TABLE 30</u>
1998	1.000	1.000	1.000	1.000	1.000
1997	1.010	1.010	1.007	1.007	1.005
1996	1.044	1.044	1.034	1.039	1.030
1995	1.083	1.081	1.075	1.070	1.059
1994	1.112	1.106	1.098	1.098	1.094
1993	1.134	1.128	1.111	1.119	1.120
1992	1.147	1.139	1.116	1.133	1.136
1991	1.172	1.165	1.134	1.158	1.156
1990	1.204	1.197	1.164	1.187	1.183
1989	1.270	1.259	1.233	1.247	1.236
1988	1.323	1.309	1.292	1.300	1.276

1987	1.341	1.330	1.306	1.321	1.293
1986	1.352	1.340	1.312	1.336	1.302
1985	1.372	1.365	1.332	1.355	1.317
1984	1.413	1.407	1.376	1.395	1.347
1983	1.439	1.436	1.395	1.419	1.363
1982	1.513	1.516	1.457	1.485	1.424
1981	1.674	1.688	1.611	1.638	1.576
1980	1.845	1.858	1.787	1.794	1.716
1979	2.009	2.034	1.940	1.951	1.870

YEAR	TABLE 31	TABLE 32
1998	1.000	1.000
1997	1.005	1.008
1996	1.040	1.039
1995	1.070	1.081
1994	1.106	1.106
1993	1.144	1.122
1992	1.167	1.128
1991	1.186	1.148
1990	1.218	1.176
1989	1.286	1.242
1988	1.337	1.298
1987	1.356	1.313
1986	1.364	1.320
1985	1.382	1.336
1984	1.421	1.372
1983	1.453	1.391
1982	1.515	1.455
1981	1.662	1.603
1980	1.824	1.775
1979	1.994	1.937

AUTH: Sec. 15-1-201, MCA; IMP: Sec. 15-6-138 and 15-8-111, MCA.

42.22.1312 INDUSTRIAL MACHINERY AND EQUIPMENT DEPRECIATION SCHEDULE (1) Remains the same.

(2) The department will utilize the depreciation schedules set forth above as reflected in the following example:

EXAMPLE

The Trending/Depreciation Procedure

In order to use the economic age-life method to value machinery and equipment, several steps must be followed.

1. Determine the economic life of the subject industry.
2. Acquire a set of reasonable trends for that economic life.
3. Acquire the original installed cost (direct and indirect) for the subject equipment.

4. Apply the appropriate trend factor to the original installed cost to determine replacement cost new (RCN).

5. Depreciate the RCN on the basis of age to arrive at sound value.

Example:

Industry - Sawmill
Economic life - 10 years
~~1998-1999~~ Table - Table 18

Case	I	II
Equipment - Motor		
Original Installed Cost	\$ 200	\$ 100
Year Installed	1987	1974

Case I Case II

Cost	\$ 200	Cost	\$ 100
x Trend	1.061	x Trend	1.303*
RCN	212	RCN	130
x % Good	.76	x % Good	.20
Sound Value	\$ 161	Sound Value	\$ 26

Case	I	II
Equipment - Motor		
Original Installed Cost	\$ 200	\$ 100
Year Installed	1990	1977

Case I Case II

Cost	\$ 200	Cost	\$ 100
x Trend	1.199	x Trend	1.254*
RCN	240	RCN	125
x % Good	.24	x % Good	.20
Sound Value	\$ 58	Sound Value	\$ 25

*The trending factor is applied only to the last year of the economic life. Although the equipment is 20 years old, it is trended by the 10th year trend.

AUTH: Sec. 15-1-201, MCA; IMP: Sec. 15-6-138 and 15-8-111, MCA

3. ARM 42.22.1311 and 42.22.1312 are proposed to be amended because the Department of Revenue will utilize the industrial trend factors to update historic industrial machinery and equipment costs to present day reproduction/replacement cost new (RCN) for ad valorem tax purposes pursuant to ARM 42.22.1306. The Department uses annual cost indexes from Marshall Valuation Service. The current index is divided by the annual index for each year to arrive at a trending factor. Each major industry has its own trend table. Where no index existed

in the Marshall Valuation Service for a particular industry, that industry was grouped with other industries using similar equipment.

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

Cleo Anderson
Department of Revenue
Director's Office
P.O. Box 202701
Helena, Montana 59620

no later than December 3, 1998.

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 3, 1998.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the Administrative Code Committee of the Legislature; from a governmental subdivision, or agency; or from an association having 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.

8. The notice requirements of 2-4-302(2)(d), MCA, have been satisfied.


CLEO ANDERSON
Rule Reviewer


MARY BRYSON
Director of Revenue

Certified to Secretary of State October 26, 1998

BEFORE THE BOARD OF ATHLETICS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

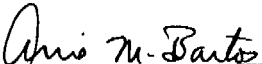
In the matter of the amendment)	CORRECTED NOTICE OF ADOPTION
of rules pertaining to defini-)	OF NEW RULE I (8.8.2809)
tions, prohibitions, physical)	MEDICAL ADVISOR
examinations, physician require-)	
ments, elimination-type events,)	
point system - scoring and)	
promoter-matchmaker and the)	
adoption of a new rule pertain-)	
ing to a medical advisor)	

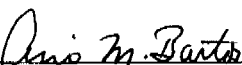
TO: All Interested Persons:

1. On April 30, 1998, the Board of Athletics published a notice of proposed amendment and adoption of the above-stated rules at page 1053, 1998 Montana Administrative Register, issue number 8. On October 22, 1998, the Board of Athletics published a notice of adoption at page 2858, 1998 Montana Administrative Register, issue number 20.

2. New rule I was inadvertently numbered incorrectly in the adoption notice. New rule I should have been numbered 8.8.2809 instead of 8.8.2909.

BOARD OF ATHLETICS
GARY LANGLEY, CHAIRMAN

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


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 26, 1998.

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

In the matter of the amendment	)	NOTICE OF AMENDMENT, REPEAL
of rules pertaining to applica-	)	AND ADOPTION OF RULES
tions, licensure of out-of-state	)	PERTAINING TO THE FUNERAL
applicants, examination, fee	)	SERVICE INDUSTRY
schedule, sanitary standards,)	
transfer or sale of mortuary)	
license, crematory facility)	
regulation, processing of)	
cremated remains; repeal of)	
rules pertaining to board meet-)	
ings, disclosure of funeral)	
arrangements, methods of quoting)	
prices, itemization, disclosure)	
statement; and adoption of new)	
rules pertaining to cemetery)	
regulation, federal trade)	
commission regulations and)	
disclosure statement on)	
embalming)	

TO: All Interested Persons:

1. On May 14, 1998, the Board of Funeral Service published a notice of public hearing on the proposed amendment, repeal and adoption of rules pertaining to the funeral service industry at page 1228, 1998 Montana Administrative Register, issue number 9. On July 16, 1998, the Board of Funeral Service published an amended notice of public hearing on the same amendments, repeals and adoptions because the board inadvertently omitted mailing the notice to all interested persons. This notice was published at page 1833, 1998 Montana Administrative Register, issue number 13.

2. The Board has amended ARM 8.30.402, 8.30.404, 8.30.407, 8.30.601, 8.30.801, 8.30.805, repealed ARM 8.30.401, 8.30.602 through 8.30.605, and adopted new rules I (8.30.901), II (8.30.902), III (8.30.903), VI (8.30.415), VII (8.30.905), VIII (8.30.906), IX (8.30.907), X (8.30.908) and XII (8.30.416) exactly as proposed. The Board has amended ARM 8.30.406, 8.30.607, adopted new rule IV (8.30.904), V (8.30.414), XI (8.30.909) and XIII (8.30.608) as proposed, but with the following changes:

"8.30.406 EXAMINATION (1) The licensing examination shall be ~~any of~~ the national board examination of the conference of funeral service examining boards and in addition, the statutes and rules under Title 37, chapter 19, MCA, pertinent portions of Title 46, chapter 4, MCA, relating to county coroner's duties and the rules of the Montana state department of public health and human services covering registration of deaths, embalming, transportation, disposition of dead human bodies and funeral directing.

(2) will remain the same."

Auth: Sec. 37-19-202, MCA; IMP, Sec. 37-19-302, 37-19-303, MCA

"8.30.607 TRANSFER OR SALE OF MORTUARY LICENSE

(1) will remain the same.

(2) Whenever ownership ~~is transferred outside existing ownership~~ of any mortuary, ~~cemetery or crematory is proposed to be transferred~~, the mortuary, ~~cemetery or crematory~~ shall notify the board. A change in ownership, for purposes of this rule, shall be deemed to occur whenever more than 50% of the equitable ownership of a mortuary is transferred in a single transaction, or in a related series of transactions to one or more persons, associations or corporations. The notice shall specify the address of the principal offices of the mortuary, and whether it will be changed or unchanged, and shall specify the name and address of each new owner and the stockholders.

(3) Notice of such a change of ownership shall be published in a newspaper of general circulation in the county in which the mortuary is located within 30 days of the change of ownership. The notice shall specify the address of the principal offices of the mortuary, whether changed or unchanged, and shall specify the name and address of each new owner and each stockholder owning more than five percent of the stock of each new owner."

Auth: Sec. 37-19-202, 37-19-403, MCA; IMP, Sec. 37-19-403, MCA

"IV (8.30.904) PERPETUAL CARE AND MAINTENANCE FUND REPORTS (1) through (2) (a) will remain the same as proposed.

(b) the amount collected and deposited in both the general and special perpetual care and maintenance funds segregated as to the amounts for crypts, niches and grave spaces by specific periods as set forth either on the accrual or cash basis at the option of the cemetery authority;

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

Auth: Sec. 37-19-807, MCA; IMP: Sec. 37-19-807, 37-19-822, 37-19-823, MCA

"V (8.30.414) CONTRACT FOR GOODS AND SERVICES (1) The current address, telephone number and name of the board of funeral service shall appear prominently on the first page of any contract for goods and services offered by a private cemetery, crematory or mortuary. At a minimum, the information shall be in 10-point boldface type and make the following statement: "FOR MORE INFORMATION ON STATE CEMETERY, CREMATION, AND MORTUARY REGULATIONS CONTACT: BOARD OF FUNERAL SERVICE, (ADDRESS); TELEPHONE NUMBER (NUMBER)."

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

Auth: Sec. 37-19-807, MCA; IMP: Sec. 37-19-807, 37-19-822, 37-19-823, MCA

"XI (8.30.909) PERPETUAL CARE AND MAINTENANCE FUNDS

(1) Every cemetery authority which now or hereafter maintains a cemetery, may place its cemetery under perpetual care and maintenance and establish, maintain and operate a perpetual care and maintenance fund. Perpetual care and maintenance funds and ~~special care funds~~ may be commingled for investment, and the income therefrom shall be divided between the perpetual care and maintenance fund ~~and the special care funds~~ in the proportion that each fund contributed to the principal sum invested. The funds may be held in the name of the cemetery authority or its directors, or in the name of the trustees appointed by the cemetery authority.

(2) The principal of all funds for perpetual care and maintenance funds shall be invested, and the income only may be used for the care, maintenance, and additions, improvements or fixtures to the cemetery property, in accordance with the provisions of law and the resolutions, bylaws, rules and regulations, or other actions or instruments of the cemetery authority and for no other purpose. Perpetual care and maintenance ~~and special care funds~~ shall be maintained separate and distinct from all other funds, and the trustees shall keep separate records thereof.

(3) will remain the same as proposed.

(4) The perpetual care and maintenance fund under these provisions shall be kept separate and apart from all other cemetery funds. Separate records and books shall be kept of the perpetual care and maintenance fund. The amount to be deposited in the perpetual care and maintenance fund shall be separately shown on the original purchase agreement and shall be not less than 15% of the gross proceeds of each sale of cemetery property. A copy of the agreement shall be delivered to the purchaser. In the sale of cemetery property, no commission shall be paid a manager or salesman on the amount deposited by the purchaser in the fund.

(5) will remain the same as proposed."

Auth: Sec. 37-19-807, MCA; IMP: Sec. 37-19-807, 37-19-822, MCA

"XIII (8.30.608) DISCLOSURE STATEMENT ON EMBALMING

(1) A licensed mortician shall include a statement on all written contract materials intended for the public as to the conditions under which embalming is required, which statement shall be in accordance with department of public health and human services rules on embalming.

(2) The statement shall be in addition to the following form: 'Except in certain special cases, embalming is not required by law. Embalming may be necessary, however, if you select certain funeral arrangements, such as a funeral with viewing. If you do not want embalming, you usually have the right to choose an arrangement that does not require you to pay for it, such as direct cremation or immediate burial.'

Auth: Sec. 37-19-202, MCA; IMP: Sec. 37-19-315, MCA

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

8.30.406 EXAMINATION

COMMENT NO. 1: One comment was received stating that the scope of the examination should include reference to Title 46, Chapter 4, MCA, that relates to the coroner's duties.

RESPONSE: The board concurred and amended the rule as shown above.

8.30.601 SANITARY STANDARDS - PREPARATION ROOM

COMMENT NO. 2: Two comments were received requesting clarification regarding who the mortician can authorize to be in the preparation room.

RESPONSE: The board discussed the comment, and determined that the language means "anyone the mortician authorizes to be in the preparation room."

8.30.607 TRANSFER OR SALE OF MORTUARY LICENSE

COMMENT NO. 3: Two comments were received requesting clarification regarding the time period in which the purchaser of a mortuary has to notify the public of the change in ownership requirement.

RESPONSE: The board agreed that a time period should be stated and amended the rule as shown above. Also, during the review the board determined that reinspection would be required only if ownership is transferred outside existing ownership and amended the rule to reflect this change.

New rule IV (8.30.904) PERPETUAL CARE AND MAINTENANCE FUND REPORTS

COMMENT NO. 4: One commentor recommended clarification of "special care fund" in (2)(b).

RESPONSE: The board acknowledged the comment and has amended the rule as shown above.

New rule V (8.30.414) CONTRACT FOR GOODS AND SERVICES

COMMENT NO. 5: Two comments were received. Commentor felt the requirement of placing the board's address and telephone number on the first page of any contract was inflammatory.

RESPONSE: The board's response is that this requirement is an important part of protecting the public because it informs the public of the board's existence. The board did amend (1) to delete the language "the first page of" and added the word "prominently" so that the public will still have access to the information.

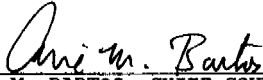
New rule XI (8.30.909) PERPETUAL CARE AND MAINTENANCE FUNDS

COMMENT NO. 6: One commentor recommended clarification of "special care fund." The commentor also questioned whether improvements could be funded by the perpetual care and maintenance funds and questioned the gross proceeds of each sale.

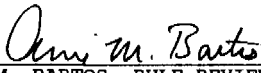
RESPONSE: The Board acknowledged the comments and amended the rule as shown above.

BOARD OF FUNERAL SERVICE
DAVID FULKERSON, CHAIRMAN

BY:



ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE



ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 26, 1998.

BEFORE THE BOARD OF NURSING HOME ADMINISTRATORS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT OF ARM
of rules pertaining to examina-) 8.34.414 EXAMINATIONS AND
tions and fees) 8.34.418 FEE SCHEDULE

TO: All Interested Persons:

1. On August 13, 1998, the Board of Nursing Home Administrators published a notice of proposed amendment of the above-stated rules at page 2139, 1998 Montana Administrative Register, issue number 15.
2. The Board has amended the rules exactly as proposed.
3. No comments or testimony were received.

BOARD OF NURSING HOME
ADMINISTRATORS
DONNA KAY JENNINGS, 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, October 26, 1998.

BEFORE THE BOARD OF PRIVATE SECURITY
PATROL OFFICERS AND INVESTIGATORS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT OF
of rules pertaining to) 8.50.505 EMPLOYERS'
employers' responsibility and) RESPONSIBILITY AND 8.50.506
type of firearm) TYPE OF FIREARM

TO: All Interested Persons:

1. On September 10, 1998, the Board of Private Security Patrol Officers and Investigators published a notice of proposed amendment of the above-stated rules at page 2366, 1998 Montana Administrative Register, issue number 17.

2. The Board has amended ARM 8.50.505 exactly as proposed and has amended ARM 8.50.506 as proposed, but with the following changes:

"8.50.506 TYPE OF SIDEARM FIREARM (1) through (2) will remain the same as proposed."

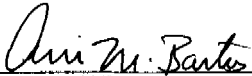
Auth: Sec. 37-60-202, MCA; IMP, Sec. 37-60-405, 37-60-406, MCA

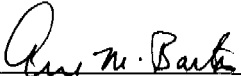
3. The word "sidearm" should have been deleted and the word "firearm" underlined as new language in the original proposed notice, but was inadvertently omitted.

4. No comments or testimony were received.

BOARD OF PRIVATE SECURITY
PATROL OFFICERS AND INVESTIGATORS
GARY GRAY, CHAIRMAN

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 26, 1998.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the adoption)	
of new Rule I, providing for)	
approved providers of)	
training for water treatment	)	NOTICE OF ADOPTION AND
system operators; amendment	)	AMENDMENT OF RULES
of 17.40.201 adding a)	
definition; amendment of)	
17.40.202 updating)	
classification of water and)	
wastewater treatment systems;)	
and amendment of 17.40.213)	
concerning continuing	)	(Water Treatment
education requirements for	)	System Operators)
operators.)	

TO: All Interested Persons

1. On August 27, 1998, the department of environmental quality published notice of the proposed adoption and amendments outlined above at page 2248 of the 1998 Montana Administrative Register, Issue No. 16.

2. The department has adopted rule I (17.40.215) as proposed and amended 17.40.201 and 17.40.202 as proposed.

3. The department has amended the following rule as proposed with the following changes. Matter to be added is underlined. Matter to be deleted is interlined.

17.40.213 CONTINUING EDUCATION REQUIREMENTS (1) Not amended.

(1)(a) and (b) Amended as proposed.

(1)(c) through (2)(a) Remains the same.

(2)(b) through (4) Amended as proposed.

(5) Remains the same.

(5)(a) A safety course qualifies for full credits if it is specific to any type of water or wastewater system operation; other safety courses that contain topics that are generally applicable to water or wastewater treatment system qualify for half credit.

(5)(b) through (10) Amended as proposed.

AUTH: 37-42-202, MCA; IMP, 37-42-304 through 37-42-308, MCA

4. The department received the following comments; department responses follow:

COMMENT #1: Section 7 of the proposed rule stipulates that facility-based training is only eligible for credit if it meets all other requirements of the proposed rule. Unfortunately, the rule has not been drafted to accommodate the manner in which petroleum product refiners train. Industry training is sometimes self-administered using videos, computer-based courses or written materials. The training is specific to the individual's job and training needs. The training may occur at any time. Exxon Company, U.S.A., Billings; Cenex Harvest

States Cooperatives, Laurel.

RESPONSE: Commentors appear to mistakenly believe that, in order to qualify for continuing education credits, a course must meet the requirements of new Rule I (17.40.215). This is not the case. Rule I (17.40.215) applies only to persons who seek to qualify as approved training providers. An approved training provider is a person or firm in the business of providing training for water or wastewater treatment operators. A training provider approved by the department under the requirements of Rule I (17.40.215) is not required to obtain the department's approval for specific courses.

Courses or conferences offered by persons other than the department or an approved training provider may be specifically approved by the department. See ARM 17.40.213(6)(a). To obtain specific approval, the subject matter of a course or conference must be relevant to water or wastewater treatment systems, including industrial treatment systems, and must be relevant to the particular class of certificate to which the credit is being applied. See ARM 17.40.213(5) and (6)(b) and (c). Thus, specialized training courses for operators of industrial wastewater treatment systems, such as petroleum refineries, can still be specifically approved by the department to receive continuing education credit and need not meet the requirements of new Rule I (17.40.215).

COMMENT #2: The proposed amendment to ARM 17.40.213(5) would limit the amount of safety training that would receive credit. The training needs of refiners relative to wastewater treatment are different from those of municipal systems. The rule should specifically state that appropriate training, for which full credit will be granted, will vary according to the nature of the wastewater treatment system. Exxon Company, U.S.A., Billings.

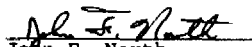
RESPONSE: ARM 17.40.213(5) has been clarified accordingly. [A safety course qualifies for full credits if it is specific to any type of water or wastewater treatment.]

COMMENT #3: The proposed amendment to ARM 17.40.213(1), by stating that operators must earn "one or more" credits, fails to recognize that some classes of operators are required to only earn a fraction of a credit. Barbara Coffman, Montana Environmental Training Center.

RESPONSE: The department agrees and 17.40.213(1) will not be amended.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL QUALITY


John F. North
Rule Reviewer


by  MARK A. SIMONICH, Director

Certified to the Secretary of State October 26, 1998.

21-11/5/98

Montana Administrative Register

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

In the Matter of the Repeal	)	NOTICE OF REPEAL OF
of an Existing Rule and the	)	ARM 38.5.1502 AND
Adoption of a New Rule, both	)	ADOPTION OF RULE I -
Involving Utility-to-Consumer	)	ARM 38.5.2610
Notice of Proposed Tariff Changes)	

TO: All Interested Persons

1. On June 11, 1998, the Department of Public Service Regulation published notice of public hearing on the proposed repeal of an existing rule and adoption of a new rule pertaining to utility-to-consumer notice of tariff changes, at pages 1488 through 1490, issue number 11, 1998 Montana Administrative Register.

2. The Department has repealed the following rule as proposed:

38.5.1502 PROPOSED RATE CHANGES INFORMATION
AUTH: 69-3-103, MCA; IMP: 69-3-102, MCA.

3. The Department has adopted the following rule as proposed, but with the following changes:

38.5.2610 UTILITY NOTICE TO CONSUMERS (1) Public utilities, transmission service providers, distribution service providers, and other providers of utility services regulated by the commission, on filing with the commission an application for approval of a proposed initial tariffed rate or change in existing tariffed rates, ~~services, or policies~~, must notify each current utility consumer subscribing to services which may be affected by the proposed change. Proposed changes in rates, ~~services, or policies~~ which are exempt from this notice requirement and a waiver procedure for proposed changes not specifically exempt are identified below.

(2) Notice required by this rule must be in writing and provided to each affected consumer within ~~30 60 days of (preceding or following)~~ following the filing of the application for a proposed change with the commission. Notice may be through a bill message, bill insert, or separate mailing. A copy of the notice sent to consumers must be provided to the commission when utility notice to consumers is complete. In the event circumstances would otherwise allow the commission to issue a final order on an application for a proposed change, the commission will not issue a final order until at least 10 days following utility notice to the affected consumers.

- (3) The notice shall inform consumers:
- (a) of the effect the proposal may have on ~~rates, services, and policies~~;
- (b) of the amount of the change proposed, in percentage change compared to the existing rate ~~and or~~ in dollars and cents per measured service or commodity unit supplied and per month or other billing cycle per unmeasured service or rate component;
- (c) of the reason for the proposed change;
- (d) that, if required by law or permissible in the commission's discretion, a hearing on the proposal may be held before the commission upon request to the commission by any person directly affected;
- (e) that the time and location of any hearing on the proposal will be available from the ~~utility, commission, and consumer counsel~~ (telephone number included) as soon as a hearing is scheduled; and
- (f) that the consumer counsel (telephone number included) is available to represent consumer interests regarding the proposal.
- (4) Except as the commission may otherwise direct the utility within 60 days of the filing of an application for approval of a proposed ~~change in rates, services, or policies~~ rate, the following proposals are exempt from the requirements of this rule:
- (a) rate decreases;
- (b) initial tariffed rates for new non-basic services which are optional to consumers;
- (c) rate increases for existing non-basic services which are optional to consumers;
- (d) rate increases based on commission-approved commodity cost tracking and adjustment procedures; ~~and~~
- (e) changes not required by law to be made only after hearing or an opportunity for hearing;
- (f) detariffed services;
- (g) pass throughs of federal- or state-mandated initial rates or rate increases;
- (h) rates of small telecommunications providers, defined at 69-3-901, MCA, proceeding pursuant to 69-3-903, MCA;
- (i) interLATA interexchange rates; and
- (j) carrier to carrier (wholesale) rates.
- (5) A public utility, transmission service provider, distribution service provider, or other provider of utility services regulated by the commission, may request the commission grant a one-time or permanent waiver for other specific types of initial tariffed rates and changes which may be proposed to ~~existing tariffed rates, services, or policies~~. The request shall clearly identify the type of change for which waiver is requested and the reason why it should not be subject to this rule. The request must be filed no less than 60 days prior to an application for a change to which the waiver would apply. All waivers granted, whether the grant expressly states or not,

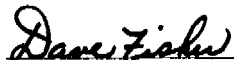
are subject to the commission otherwise directing within 60 days of the filing of an application to which the waiver applies.

AUTH: 69-3-103, MCA; IMP: 69-3-102, MCA.

4. Comments received and responses by the Commission:

The Montana Consumer Counsel supports the rule and urges adoption. Montana Independent Telephone Systems supports the rule, suggesting that it requires only marginally more than its members' existing practices and understanding that the rule does not apply to detariffed services. AT&T, Sprint, and MCI request clarification on whether the rule applies to interLATA inter-exchange carriers and argue that it should not apply. U S West comments that "policies" (in notice of policies) needs to be defined and should be confined to tariffed and customer-impacting policies. U S West, Mountain Water, and MPC comment that it will be difficult to meet the 30-day notice requirement and the requirement should be changed to meet the realities of the billing cycle. U S West suggests that notice to carrier (wholesale) customers should be allowed via website. U S West also suggests that communication of a strict percentage rate increase is confusing and a dollar amount per affected unit of service should be substituted, providing information on the hearing date and location should be PSC responsibility, and the exempt list should include pass throughs of legislative or FCC mandates (e.g., 911, universal service). PacifiCorp requests "bill messages" be an allowable alternative to bill inserts and separate mailings. The Montana Telephone Association suggests the rule should be clarified regarding: notice of changes to policy; what "effect of" means; whether the optional service exemption should extend to new services; meaning of "optional"; conflict with statutes for small telecommunications utilities; and whether federal and state mandated changes should be exempted.

The PSC agrees with the comments received. The PSC has amended the proposed rule to accommodate the concerns expressed. In several instances the accommodation is by striking or exempting the specific subject matter at which one or more concerns might be directed.



Dave Fisher, Chairman

CERTIFIED TO THE SECRETARY OF STATE OCTOBER 26, 1998


Reviewed By Robin A. McHugh

VOLUME NO. 47

OPINION NO. 20

CITIES AND TOWNS - Quorum requirements for town council meeting;
MUNICIPAL GOVERNMENT - Authority of town council to adopt quorum provisions by ordinance;
MONTANA CODE ANNOTATED - Sections 7-3-203, -4221(1)(b), 7-5-4101, -4102, -4121;
OPINIONS OF THE ATTORNEY GENERAL - 41 Op. Att'y Gen. No. 84 (1986).

- HELD: 1. In a commission-executive form of local government, the presence of the president of the town council, serving as acting mayor in the absence of the mayor, and two of the remaining three members of the council is sufficient to constitute a quorum for the transaction of business.
2. A town with a weak-mayor form of municipal government does not have authority to adopt by ordinance the quorum provisions of Mont. Code Ann. § 7-3-4221(1)(b).

October 19, 1998

Mr. Eric Rasmusson
Boulder Town Attorney
P.O. Box 587
Boulder, MT 59632

Dear Mr. Rasmusson:

You have requested my opinion on several questions concerning the number of town council members necessary to constitute a quorum. I have restated the questions as follows:

1. Where the mayor is absent from a town council meeting in the Town of Boulder and the president of the council serves as acting mayor, is the acting mayor considered a member of the council for purposes of determining whether sufficient members are present to constitute a quorum?
2. May the Town of Boulder adopt by ordinance the quorum provisions of Mont. Code Ann. § 7-3-4221(1)(b)?

Your letter of inquiry states the following facts which I assume to be true for purposes of this opinion. The Town of Boulder operates under a weak-mayor (or "commission-executive") form of government with a four-person town council. See Mont. Code Ann. tit. 7, ch. 3, pt. 2. One of the councilpersons serves as president of the town council. On June 1, 1997, the office of mayor became vacant as a result of the mayor's resignation, and

the president of the town council became "acting mayor" pursuant to a town ordinance which provides that in the absence of the mayor the president of the council "shall exercise all the powers and discharge all duties" of the mayor and shall be styled the "acting mayor" while performing the duties of the mayor.

At the meeting on June 23, prior to the appointment of a successor to the mayor, the president of the council and two other council members were present. The fourth councilperson was absent from the meeting. The president of the council served as acting mayor during the meeting. Following the meeting a question arose as to whether the decisions made at the meeting were valid in view of the quorum requirements of state law and the provisions of Boulder's ordinances.

Montana Code Annotated § 7-5-4121(1) provides that "[a] majority of the members of the council constitute a quorum for the transaction of business, but a less number may meet and adjourn to any time stated and may compel the attendance of absent members, under such rules and penalties as the council may prescribe." In your letter of inquiry you observe parenthetically that Mont. Code Ann. § 7-3-4221(1)(b) sets forth a different method for determining a quorum for a council meeting; however, you correctly conclude that this statute applies only to cities that have reorganized as a municipal-commission government under the provisions of Mont. Code Ann. title 7, chapter 3, part 42, and therefore does not apply to a weak-mayor municipal government such as Boulder's.

A majority of a four-person council would be three members, so the attendance of three members at a meeting of the Boulder Town Council would ordinarily be sufficient to constitute a quorum for the transaction of business. However, when one of the council members is serving as acting mayor, the question then arises as to the status of that council member for purposes of determining whether a quorum is present. Your letter notes that the acting mayor, who is required by ordinance to exercise the powers and discharge the duties of the mayor at a town council meeting, performs an executive function quite different from the legislative function of a council member. Although the mayor is the presiding officer of the council, the mayor is not expressly made a member of the council and does not vote on any question except to break a tie vote; in addition, the mayor has authority to veto the council's resolutions and ordinances, and otherwise performs executive duties apart from the council. See Mont. Code Ann. §§ 7-3-203, 7-5-4102. It would appear that one person could not serve both as mayor and as council member simultaneously at a town council meeting without raising concerns about the proper separation of municipal powers, and it may be argued that a council member who becomes acting mayor loses, at least temporarily, his or her status as a member of the council.

Your letter also acknowledges the opposing view that a member of the town council who serves as acting mayor in the absence of the mayor remains a councilperson and should not be divested of the position to which he or she was elected, even temporarily, simply by discharging the mayor's duties. Divesting the acting mayor of his or her status as a councilperson would arguably create a temporary vacancy in the council and might serve to deprive the electors of their legislative voice in council matters.

Montana's statutory law does not provide an answer to your inquiry, and there are no reported decisions of the Montana Supreme Court which address or shed light on the matter. I am therefore guided by the common-law principles concerning the method of determining or reckoning a quorum. See 62 C.J.S. Municipal Corporations § 399 (1949); 56 Am. Jur. 2d Municipal Corporations §§ 163, 176 (1971). The common-law principles derived from these secondary legal sources are summarized below and provide a basis for resolving the inquiry.

At common law and under state statutes such as Montana's, a majority of the duly elected members of a municipal council constitute a quorum, although more than a majority may be required to be present in order for the council to take particular actions. See, e.g., Mont. Code Ann. § 7-5-4121(2). In reckoning a quorum in the absence of a controlling statutory provision, the general rule is that the total number of all of the duly elected and qualified members of the council is taken as the basis. While the mayor or chief executive may be included in the count under some statutes (see Mont. Code Ann. § 7-3-4221), the mayor is not made a member of the council and is not included in the number on which the quorum is reckoned under other statutes such as Mont. Code Ann. § 7-5-4121, which applies to the Town of Boulder. However, even though the mayor is not counted in the determination of a quorum under such a statute, a member of the council who acts as mayor or presiding officer pro tempore in the absence of the mayor is counted in determining whether or not a quorum is present. Shugars v. Hamilton, 92 S.W. 564 (Ky. 1906).

The Shugars case also illustrates the common-law principle that a member of a municipal council who serves as mayor pro tempore retains the right to vote as a member of the council. Thus the president of the council, when serving as acting mayor in the absence of the mayor, may vote on a measure with the other members of the council and then, as acting mayor, cast the deciding vote in case of a tie. Id., 92 S.W. at 565.

It is therefore my opinion that the presence of the president of the council, serving as acting mayor, and two other members of the council was sufficient to constitute a quorum at the meeting of the Boulder Town Council on June 23, 1997.

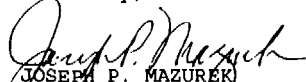
You have also asked whether the Town of Boulder may adopt by ordinance the quorum provisions of Mont. Code Ann. § 7-3-4221(1)(b), which states that in cities having a mayor and four councilmen, the mayor and two councilmen or three councilmen shall constitute a quorum for a council meeting. I assume for purposes of this question that the Town of Boulder is governed by a municipal government with general government powers. As discussed above, this statute applies to cities that have abandoned their organizations and have reorganized under the municipal-commission form of government, in which the mayor has an equal vote with the councilmen on all questions coming before the council and thus exercises legislative as well as executive functions in the city government. The statute would not ordinarily apply to the Town of Boulder, which has a commission-executive form of government.

A town council such as Boulder's has the power to enact ordinances not repugnant to the statutory provisions set forth in title 7, chapter 5, part 41. Mont. Code Ann. § 7-5-4101. The quorum provisions of Mont. Code Ann. § 7-3-4221(1)(b) would conflict with Mont. Code Ann. § 7-5-4121, which states that a majority of the members of the town council constitute a quorum and does not include the mayor as a member of the council for the determination of a quorum. An ordinance adopting a lesser quorum requirement would be repugnant to Mont. Code Ann. § 7-5-4121 and would not come within the ordinance authority of the town council. Generally, a municipal ordinance must be in harmony with the laws of the state; whenever an ordinance comes into conflict with a statute, the ordinance must give way. 41 Op. Att'y Gen. No. 84 (1986); City of Billings v. Weatherwax, 193 Mont. 163, 630 P.2d 1216 (1981); State ex rel. Libby v. Haswell, 147 Mont. 492, 414 P.2d 652 (1966).

THEREFORE, IT IS MY OPINION:

1. In a commission-executive form of local government, the presence of the president of the town council, serving as acting mayor in the absence of the mayor, and two of the remaining three members of the council is sufficient to constitute a quorum for the transaction of business.
2. A town with a weak-mayor form of municipal government does not have authority to adopt by ordinance the quorum provisions of Mont. Code Ann. § 7-3-4221(1)(b).

Sincerely,


JOSEPH P. MAZUREK
Attorney General

jpm/jp/dm

21-11/5/98

Montana Administrative Register

BEFORE THE BOARD OF PLUMBERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the petition for) NOTICE OF PETITION FOR
declaratory ruling on the) DECLARATORY RULING
applicability of 37-69-101,)
37-69-102 and 37-69-301, MCA, on)
work associated with water main)
replacement and building service)
lines connected thereto)

1. On December 9 and 10, 1998 starting each day at 9:00 a.m., in the Montana Telecommunications conference room at 111 North Last Chance Gulch, Helena, Montana, the Board of Plumbers will consider a petition for declaratory ruling on the applicability of 37-69-101, 37-69-102 and 37-69-301, MCA, on work associated with water main replacement and building service lines connected thereto.

2. This petition is filed by Mike Tehle, a master plumber d/b/a Alpine Plumbing from Billings, Montana.

3. The Petitioner identifies the following similarly affected and interested entities: All cities and towns in the state of Montana, all plumbing contractors, and plumbing licensees and any other interested persons.

4. The Petitioner contends that cities and towns of Montana and their contractors are not complying with state law while replacing water mains and connecting building service lines. Petitioner alleges that service lines are being installed by unlicensed persons.

5. The statutes upon which Petitioner requests the declaratory ruling are 37-69-101(7) (a), 37-69-101(7) (b), 37-69-102(1) (d) and 37-69-301, MCA, which provide:

37-69-101. Definitions Unless the context requires otherwise, in this chapter the following definitions apply:

* * *

(7) (a) Except as provided in subsection (7) (b), plumbing system means all potable water supply and distribution pipes, plumbing fixtures and traps, drainage and vent pipes, and building drains, including their respective joints and connections, devices, receptacles, and appurtenances within the property lines of any premises, up to 20 feet beyond the building foundation line, and includes potable water piping, water heaters, and vents for the premises.

(b) As defined in subsection (7) (a), "plumbing system" does not include water services installed and maintained by water districts or water user associations in which water

service is installed by any qualified person appointed or hired by the administrative authority of the water system.

* * *

37-69-102. Exceptions. (1) Licensure is not required in the following instances of plumbing installation:

(d) in cities, towns, water districts, and water user associations extending their own water and sewer mains;

* * *

37-69-301. License required -- temporary exception by municipal resolution when licensed plumber not available. Any person working at the field of plumbing in any incorporated city, town, or in any other area served by a public water supply or a public sewer system in this state, either as a master plumber or as a journeyman plumber, or who while working at the field of plumbing shall connect plumbing to or disconnect plumbing from a public water supply or public sewer system shall first secure a state license as hereinafter provided. The council or commission of any city or town or board of directors or managers of a water or sewer district or water utility, in cases where a duly licensed person or persons are not reasonably available, may by ordinance, rule, or resolution duly adopted and upon reasonable notice by certified letter to the board of plumbers and upon their approval, or after 30 days from the date of the postmark of the certified letter if the board fails to respond to the certified letter, authorize the practice in the field of plumbing by a person or persons who have not obtained the state licenses as hereinafter provided until such time as a duly licensed person or persons are reasonably available or until the board of plumbers withdraws its authorization.

6. The Petitioner requests that the Board of Plumbers make a declaratory ruling that Montana cities and towns and all plumbing contractors come into immediate compliance with the plumbing laws and rules.

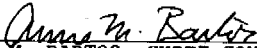
7. Interested persons may submit their data, view, or arguments, either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Plumbers, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than the close of hearing on December 10, 1998.

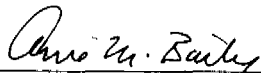
8. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in the public hearing. If you desire an accommodation, contact the Department no later than 5:00 p.m., December 1, 1998, to advise of the nature of the accommodation that you need. Please contact Patricia Osterhout, 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 Patricia Osterhout.

BOARD OF PLUMBERS
DONALD KENT, ACTING CHAIRMAN

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 26, 1998.

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

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

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 1998. This table includes those rules adopted during the period July 1, 1998 through September 30, 1998 and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 1998, 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, 1997 and 1998 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.

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