

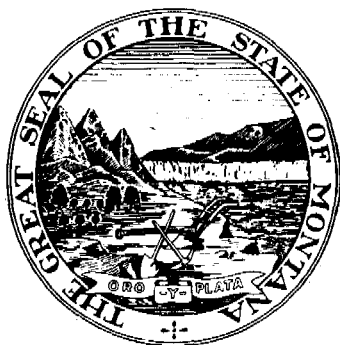
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MONTANA ADMINISTRATIVE REGISTER

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MAR 30 1998
OF MONTANA

1998 ISSUE NO. 6
MARCH 26, 1998
PAGES 695-806



MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 6

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

In the matter of the adoption) NOTICE OF PUBLIC HEARING
of new Rules I and II) ON PROPOSED ADOPTION OF
pertaining to individual loss) RULES
sensitive dividend)
distribution plan)

TO: All Interested Persons:

1. On April 15, 1998, the State Compensation Insurance Fund will hold a public hearing at 3:00 p.m., in Room 201 of the State Compensation Insurance Fund Building, 5 South Last Chance Gulch, Helena, Montana, to consider the adoption of New Rules I and II.

2. The new rules proposed to be adopted provide as follows:

NEW RULE I. DEFINITIONS The following definitions apply to [New Rule II]:

(1) "Fiscal year" or "Dividend year" means the period of time between July 1 and the succeeding June 30.

(2) "Premium" means payroll times the manual rate for each classification code, times premium modifiers and minus volume discount for the dividend year. The premium utilized for dividend calculation purposes shall be the premium on a date no later than 12 months after the close of the dividend year and the premium utilized is not subject to change thereafter.

(3) "Dividend factors" means the percentage multiplied times premium to arrive at the dividend amount payable to an eligible policyholder.

(4) "Incurred losses" means:

(a) losses as reflected on the first report of the unit statistical reports including any corrections to the first report as provided to the national council on compensation insurance (NCCI) for the dividend year; or

(b) incurred losses for the dividend year on a date selected by the state fund board of directors.

(5) "Loss ratios" means incurred losses divided by premium for the dividend year.

(6) "Insurance charge" means an actuarially determined loss component associated with the probability of exceeding an expected range of loss.

AUTH: , Sec. 39-71-2315 and 39-71-2323 MCA;

IMP: Sec. 39-71-2323 MCA.

NEW RULE II. INDIVIDUAL LOSS SENSITIVE DIVIDEND DISTRIBUTION PLAN (1) Upon declaration of a dividend by the state fund board of directors (board) as of the end of any

fiscal year, but in no event not prior to July 1, 1998, the following factors and procedures shall be utilized to determine the entitlement of a state fund policyholder to an individual loss sensitive dividend. The dividend shall be declared as an amount not to exceed the approved dividend amount, to aid distribution of the declared dividend among policyholders through the table of dividend factors.

(2) Distribution of dividends to individual policyholders shall be based on a table of dividend factors as approved by the board, subject to the certification by the state fund independent consulting actuary pursuant to (4). The table of dividend factors shall be constructed with one axis based on increments of policyholder premium size in the dividend year and the other axis based on increments of policyholder loss ratios from the dividend year.

(3) Dividend factors shall be based on an actuarial determination of policyholders' proportionate contribution to the operating results of the state fund during the dividend year. The proportionate contribution of the policyholder shall be determined by taking into consideration factors such as, but not limited to, the following: incurred losses, loss development, credibility of incurred loss ratios, provision for excess losses, loss adjustment expenses, other expenses including differences in expense levels by premium segment, rate adequacy by premium segment, actuarially determined insurance charges, and future investment income on premiums paid.

(4) The independent actuary shall certify that the approved table of dividend factors, to include the increments of policyholder premium size and loss ratios, is consistent with (3) and generally accepted actuarial principles.

(5) To be eligible for a dividend a policyholder must have 6 continuous months of coverage with the state fund in the dividend year.

(6) The board may set a minimum amount below which a dividend shall not be payable to an individual policyholder.

(7) A dividend will be issued as a warrant to a policyholder, unless (7)(a) through (7)(c) exist. The dividend will be applied to the account if the following situations exist:

(a) The current policy is pending forced cancellation for non-payment of premium;

(b) A canceled policy with an existing debt owed the state fund; or

(c) The dividend amount is above the minimum amount established pursuant to (6) above but below an amount as established by the board.

(8) If a dispute under the policy arising from the dividend year exists and remains unresolved at the time the dividend is declared, the dividend amount will be withheld and not applied to the account or a warrant issued until such time as outstanding issues with the state fund are resolved.

AUTH: Sec. 39-71-2315 and 39-71-2323 MCA;
IMP: Sec. 39-71-2323 MCA.

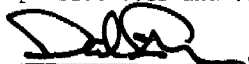
RATIONALE: The State Fund's authority to declare and distribute a dividend to policyholders is pursuant to 39-71-2323, MCA but is also subject to 39-71-2316, MCA which allows a dividend to be declared effective 7-1-98. Rules are required under 39-71-2323, MCA to prescribe the manner of payment of dividends to policyholders who have paid premiums in excess of liabilities. An administrative rule is reasonably necessary at this time to prescribe the manner of payment of a dividend to policyholders should a dividend be declared by the State Fund Board of Directors after July 1, 1998, as no rules currently exist. The rules for distribution of a dividend need to be in place prior to any declaration of a dividend, so that distribution to policyholders can then occur.

3. The State Compensation Insurance Fund makes reasonable accommodations for persons with disabilities who wish to participate in this public hearing. Persons needing accommodations must contact the State Fund, Attn: Mrs. Kim Davis, P.O. Box 4759, Helena, MT 59604; telephone (406) 444-6480; TDD (406) 444-5971; fax (406) 444-6555, no later than 5:00 p.m., April 10, 1998, to advise as to the nature of the accommodation needed and to allow adequate time to make arrangements.

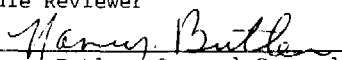
4. Interested persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to State Fund attorney Nancy Butler, Legal Department, State Compensation Insurance Fund, 5 South Last Chance Gulch, P.O. Box 4759, Helena, Montana 59604-4759, and must be received no later than 5:00 p.m. April 23, 1998. The State Fund maintains a list of interested persons which must include the subject or subjects in which each person on the list is interested. Any interested person may be placed on the list by providing the name, address, and subject matter of which the interested person desires notice to Mrs. Kim Davis, P.O. Box 4759, Helena, MT 59601, telephone (406) 444-6480.

5. In accordance with House Bill 199, the State Fund has provided written notice to the sponsors of Senate Bill 67 (1997).

6. The State Fund Legal Department has been designated to preside over and conduct the hearing.


Dal Smilie, Chief Legal Counsel
Rule Reviewer


Jim Brouelette
Chairman of the Board


Nancy Butler, General Counsel
Rule Reviewer

Certified to the Secretary of State March 16, 1998

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment	)	NOTICE OF THE PROPOSED
of rule 4.13.1001A pertaining	)	AMENDMENT OF RULE
to changes in grain fee schedule)	
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons:

1. On April 25, 1998, the Department of Agriculture proposes to amend the above captioned rule.

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

4.13.1001A GRAIN FEE SCHEDULE

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

(c) Regular hourly rate for travel time in connection with sampling and grading of 10 or more railcars within 125 road miles of the state grain laboratory will not be charged Monday through Friday 8:00 a.m. to 5:00 p.m. All other hours will be charged at the overtime rate listed below.

(c) through (e)(i) remain the same, but are renumbered (d) through (f)(i).

(ii) Mileage fees in connection with sampling and grading of 10 or more railcars within 125 road miles of the state grain laboratory will not be charged Monday through Friday 8:00 a.m. to 5:00 p.m. All other mileage will be charged at the mileage rate listed above.

(e)(ii) through (i) remain the same, but are renumbered (f)(iii) through (j).

(3) through (5)(o) remain the same.

Auth: Sec. 80-4-403, MCA IMP, Sec. 80-4-721, MCA

3. Reason: Montana's grain industry requested this change to the State Grain Laboratory's grain fee schedule. The fee change will allow industry to more efficiently and economically utilize the State Grain Laboratory's official sampling and grading services when shipping grain in railcars to points outside of Montana, thereby facilitating the promotion and marketing of Montana's grain crops.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Will Kissinger, Administrator, Agriculture Development Division, Department of Agriculture, PO Box 200201, Helena, MT

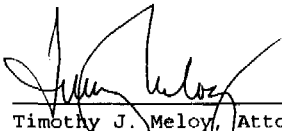
59620-0201, Phone (406)444-3144, FAX (406)444-5409, or E-mail: AGR@MT.GOV. Any comments must be received no later than April 23, 1998.

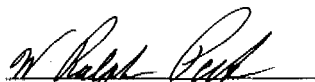
5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Will Kissinger, Administrator, Agriculture Development Division, Department of Agriculture, PO Box 200201, Helena, MT 59620-0201, Phone (406)444-3144, FAX (406)444-5409, or E-mail: AGR@MT.GOV. Requests must be received no later than April 23, 1998.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the Administrative Code Committee or the legislature; from a governmental agency or subdivision; 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 1,450 persons based on 14,500 Montana farmers who raise wheat and barley.

7. As required by 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


Timothy J. Meloy, Attorney
RULE REVIEWER


Ralph Beck,
DIRECTOR

Certified to the Secretary of State March 16, 1998.

BEFORE THE BOARD OF PROFESSIONAL ENGINEERS
AND LAND SURVEYORS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the	)	NOTICE OF NEGOTIATED
establishment of a	)	RULEMAKING
negotiated rulemaking)	
committee on fire)	
extinguisher systems and the)	
need for engineering)	
services)	

TO: All Interested Persons:

1. The Montana Board of Professional Engineers and Land Surveyors intends to establish a negotiated rulemaking committee to negotiate and develop proposed rules regulating the design of fire extinguisher systems with regard to the necessity of involving a professional engineer in such designs.

2. The proposed rules must take into consideration the size, type, location, and design of the fire extinguisher systems. The primary focus of the committee will be to determine the appropriate point in the design process when the services of a professional engineer are required.

3. Interests which are likely to be significantly affected by the proposed rules are:

a. persons or firms which engaged in the "practice of engineering" as that term is defined in 37-67-101(5), MCA; and

b. persons licensed as fire protection equipment installers as that practice is defined in 50-39-101, MCA.

4. At this time, board chairman, Dave Bowman, has selected Dan Prill and Dr. Warren Scarrah to review applications for appointment to the rulemaking committee. The chairman will appoint board members to serve on the rulemaking committee at a later date.

5. The chairman, based upon the recommendations of the selection committee, will appoint a representative from the Fire Protection Licensing Program, Montana Society of Engineers, and one fire protection endorsee.

6. The proposed working schedule for the negotiated rulemaking committee is as follows:

a. On or about April 25, 1998, the selection committee will convene to review application materials received in the Board Office. This will provide interested parties the required 30 days to file their materials after this notice is published in the March 26, 1998 edition of the Montana Administrative Register.

b. The list of successful candidates will be forwarded to chairman Bowman who will proceed with appointments to the committee.

c. The negotiated rulemaking committee will convene at various times in May, June, July, and August 1998 to negotiate and develop proposed rules. The committee will establish a date in August 1998 for conclusion of the rule negotiations with the goal of reaching a consensus on the proposed rules. At

the committee's option, this date may be extended no later than November 1998. The proposed rules must be submitted to the board for its consideration at the November 1998 meeting. All committee meetings will occur at sites selected by the person selected to chair the committee.

d. By August 31, 1998, and if the negotiated rulemaking committee is successful in achieving a consensus on the proposed rules, the committee will transmit to the board a report containing the proposed rules. If a consensus cannot be reached on the proposed rules, the committee will transmit to the board a report specifying the areas in which the committee has reached a consensus and the issues that remain unresolved.

e. Thereafter, and in accordance with Title 2, chapter 4, part 3, MCA, (Adoption and Publication of Rules), the department will file with the secretary of state for publication in the Montana Administrative Register the proposed rules for engineers.

f. The board may seek the assistance and advice of the negotiated rulemaking committee with respect to comments received during the formal rulemaking process.

7. Any individual or entity interested in applying for or nominating another person for membership on the committee must submit the following information in writing to Mary Hainlin, Board of Professional Engineers and Land Surveyors, Prof. & Occ. Licensing Division, P.O. Box 200513, Helena, MT 59620-0513, no later than April 17, 1998:

a. the person's name or the nominee's name, their address, and contact information including telephone or fax number or e-mail address;

b. a description of the interests the person or nominee represents;

c. a current resume or curriculum vitae outlining the person's or nominee's professional experience;

d. evidence that the person or nominee is authorized to represent parties related to the interest the person proposes to represent;

e. the relationship of the person or nominee to regulated engineers, sanitarians, or qualified persons and the name of the establishment or trade association;

f. a commitment that the person or nominee will be able to participate in the negotiated rulemaking process as contemplated in paragraph 6 and will actively participate in good faith in the development of the rules under consideration; and

g. the ability of the person or nominee to cover committee participation costs (such as telephone calls, travel and per diem expenses). Other than board members and staff, committee members will not receive reimbursement from the board.

8. Interested parties may submit their views or comments concerning the proposed negotiated rulemaking process to Perry Eskridge, Board of Professional Engineers and Land Surveyors, Prof. & Occ. Licensing Division, P.O. Box 200513, Helena, MT 59620-0513, no later than April 25, 1998.

9. The board proposes to limit the size of the negotiated rulemaking committee to no more than 10 persons if, after the

receipt of the comments and applications, the board determines that the number of persons (or fewer) can adequately represent the interests of the persons that will be significantly affected by the proposed rules. The selected committee members will represent all identified segments of engineering and design of fire extinguisher systems. The selected committee members may represent other parties or agencies which have a significant relationship with regulated engineers or designers.

10. The board will make reasonable accommodations for persons with disabilities who wish to participate on the committee. If you require an accommodation, please advise Mary Hainlin at the above address in paragraph 7, of the nature of the accommodation you need when applying for membership on the committee.


11. Please note the following concerning the process of negotiated rulemaking:

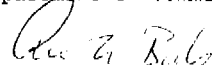
a. "Interest" for the purpose of this process means multiple parties that have a similar point of view or that are likely to be affected in a similar manner in relation to matters affected by the rules. (2-5-104(5), MCA).

b. Negotiated rulemaking is not a substitute for the public notification and participation requirements of the Montana Administrative Procedure Act, and a consensus agreement by a negotiated rulemaking committee may be modified by an agency as a result of the subsequent rulemaking process. (2-5-102, MCA).

c. The negotiated rulemaking committee may not continue to function and must be disbanded after the adoption of the final rules. (2-5-106(4), MCA).

12. The specific grant of rulemaking authority authorizing the proposed rules is found in 37-67-202, MCA. The proposed rules will implement 37-67-101(5)(a), MCA.


PETER BLOUKE, Ph.D., Director
Department of Commerce


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, March 16, 1998.

BEFORE THE BOARD OF PROFESSIONAL ENGINEERS
AND LAND SURVEYORS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the	)	NOTICE OF NEGOTIATED
establishment of a	)	RULEMAKING
negotiated rulemaking)	
committee on wastewater)	
treatment systems and the)	
need for engineering)	
services)	

TO: All Interested Persons:

1. The Montana Board of Professional Engineers and Land Surveyors intends to establish a negotiated rulemaking committee to negotiate and develop proposed rules regulating the design of experimental wastewater treatment systems with regard to the necessity of involving a professional engineer in such designs.

2. The proposed rules must take into consideration the size, type, location, and design of the experimental wastewater treatment system. The primary focus of the committee will be to determine the appropriate point in the design process when the services of a professional engineer are required.

3. Interests which are likely to be significantly affected by the proposed rules are:

a. persons or firms which engage in the "practice of engineering" as that term is defined in 37-67-101(5), MCA;

b. persons licensed as "sanitarians" as that practice is defined in 37-40-101(3)-(4), MCA;

c. persons certified by the Montana Department of Environmental Quality as having sufficient expertise in the design of experimental wastewater treatment systems in accord with department circular WQB-5, 1992 edition, adopted by the Department of Environmental Quality.

4. At this time, board chairman, Dave Bowman, has selected Dan Prill and Dr. Warren Scarrah to review applications for appointment to the rulemaking committee. The chairman will appoint board members to serve on the rulemaking committee at a later date.

5. The chairman, based upon the recommendations of the selection committee, will appoint a representative from the Montana Society of Engineers, Department of Environmental Quality, Montana Board of Sanitarians, and a qualified individual certified by the Department of Environmental Quality.

6. The proposed working schedule for the negotiated rulemaking committee is as follows:

a. On or about April 25, 1998, the selection committee will convene to review application materials received in the Board Office. This will provide interested parties the required 30 days to file their materials after this notice is published in the March 26, 1998 edition of the Montana Administrative Register.

b. The list of successful candidates will be forwarded to chairman Bowman who will proceed with appointments to the committee.

c. The negotiated rulemaking committee will convene at various times in May, June, July, and August 1998 to negotiate and develop proposed rules. The committee will establish a date in August 1998 for conclusion of the rule negotiations with the goal of reaching a consensus on the proposed rules. At the committee's option, this date may be extended no later than November 1998. The proposed rules must be submitted to the board for its consideration at the November 1998 meeting. All committee meetings will occur at sites selected by the person selected to chair the committee.

d. By August 31, 1998, and if the negotiated rulemaking committee is successful in achieving a consensus on the proposed rules, the committee will transmit to the board a report containing the proposed rules. If a consensus cannot be reached on the proposed rules, the committee will transmit to the board a report specifying the areas in which the committee has reached a consensus and the issues that remain unresolved.

e. Thereafter, and in accordance with Title 2, chapter 4, part 3, MCA, (Adoption and Publication of Rules), the department will file with the secretary of state for publication in the Montana Administrative Register the proposed rules for engineers.

f. The board may seek the assistance and advice of the negotiated rulemaking committee with respect to comments received during the formal rulemaking process.

7. Any individual or entity interested in applying for or nominating another person for membership on the committee must submit the following information in writing to Mary Hainlin, Board of Professional Engineers and Land Surveyors, Prof. & Occ. Licensing Division, P.O. Box 200513, Helena, MT 59620-0513, no later than April 17, 1998:

a. the person's name or the nominee's name, their address, and contact information including telephone or fax number or e-mail address;

b. a description of the interests the person or nominee represents;

c. a current resume or curriculum vitae outlining the person's or nominee's professional experience;

d. evidence that the person or nominee is authorized to represent parties related to the interest the person proposes to represent;

e. the relationship of the person or nominee to regulated engineers, sanitarians, or qualified persons and the name of the establishment or trade association;

f. a commitment that the person or nominee will be able to participate in the negotiated rulemaking process as contemplated in paragraph 6 and will actively participate in good faith in the development of the rules under consideration; and

g. the ability of the person or nominee to cover committee participation costs (such as telephone calls, travel and per diem expenses). Other than board members and staff, committee members will not receive reimbursement from the board.

8. Interested parties may submit their view or comments concerning the proposed negotiated rulemaking process to Perry Eskridge, Board of Professional Engineers and Land Surveyors, Prof. & Occ. Licensing Division, P.O. Box 200513, Helena, MT 59620-0513, no later than April 25, 1998.

9. The board proposes to limit the size of the negotiated rulemaking committee to no more than 10 persons if, after the receipt of the comments and applications, the board determines that the number of persons (or fewer) can adequately represent the interests of the persons that will be significantly affected by the proposed rules. The selected committee members will represent all identified segments of engineering and design of experimental wastewater treatment systems. The selected committee members may represent other parties or agencies which have a significant relationship with regulated engineers or designers.

10. The board will make reasonable accommodations for persons with disabilities who wish to participate on the committee. If you require an accommodation, please advise Mary Hainlin at the above address in paragraph 7, of the nature of the accommodation you need when applying for membership on the committee.

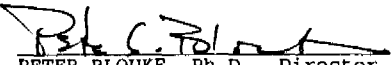
11. Please note the following concerning the process of negotiated rulemaking:

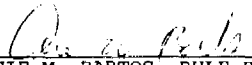
a. "Interest" for the purpose of this process means multiple parties that have a similar point of view or that are likely to be affected in a similar manner in relation to matters affected by the rules. (2-5-104(5), MCA).

b. Negotiated rulemaking is not a substitute for the public notification and participation requirements of the Montana Administrative Procedure Act, and a consensus agreement by a negotiated rulemaking committee may be modified by an agency as a result of the subsequent rulemaking process. (2-5-102, MCA).

c. The negotiated rulemaking committee may not continue to function and must be disbanded after the adoption of the final rules. (2-5-106(4), MCA).

12. The specific grant of rulemaking authority authorizing the proposed rules is found in 37-67-202, MCA. The proposed rules will implement 37-67-101(5)(a), MCA.


PETER BLOUKE, Ph.D., Director
Department of Commerce


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, March 16, 1998.

BEFORE THE LOCAL GOVERNMENT ASSISTANCE DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF A PUBLIC HEARING
amendment of a rule pertaining	)	ON THE PROPOSED AMENDMENT OF
to the administration of the	)	A RULE PERTAINING TO THE
1998 Federal Community	)	ADMINISTRATION OF THE 1998
Development Block Grant	)	FEDERAL COMMUNITY DEVELOPMENT
Program	)	BLOCK GRANT PROGRAM

TO: All Interested Persons:

1. On April 16, 1998, at 1:30 p.m., a public hearing will be held in the downstairs conference room at the Department of Commerce, 1424 Ninth, Avenue, Helena, Montana, to consider the proposed amendment of a rule pertaining to the administration of the 1998 Federal Community Development Block Grant Program.

2. The proposed amendment to ARM 8.94.3714 will read as follows: (new matter underlined, deleted matter interlined)

"8.94.3714 INCORPORATION BY REFERENCE OF RULES FOR ADMINISTERING THE 1998 CDBG PROGRAM (1) will remain the same.

(2) will remain the same.

(2)(a) the policies governing the regular, annual CDBG program and the special 1998 CDBG flood disaster recovery program;

(b) requirements for applicants for both programs described in (2)(a);

(c) procedures for evaluating applications for both programs;

(d) and (e) will remain the same;

(f) procurement of goods and services;

(f) through (i) will remain the same, but will be renumbered (g) through (j);

~~+(j)(k)~~ administrative considerations specific to public facilities, housing ~~and community revitalization~~, and economic development projects;

(k) through (m) will remain the same, but will be renumbered (l) through (n).

(3) will remain the same."

Auth: Sec. 90-1-103, MCA; IMP, 90-1-103, MCA

REASON: This reason pertains to the Flood Disaster Assistance Program. It is reasonably necessary to adopt this rule because the federal regulations governing the state's administration of the 1998 CDBG program and section 90-1-103, MCA, require the Department to adopt rules to implement the program. Local government entities must have these application guidelines before the entities may apply to the Department for financial assistance under the CDBG program. The Application Guidelines describe the federal and state requirements that local

governments must comply with in order to apply for CDBG funds. On March 5, 1998, the Department was notified that it will receive \$863,515 from the U.S. Department of Housing and Urban Development to assist families and businesses affected by last year's flooding. The funds will be available for the 23 counties within the state that were included in last summer's presidential disaster declaration as well as the Confederated Salish and Kootenai Tribe.

The Department will administer the funds in cooperation with the Disaster and Emergency Services Division of the Department of Military Affairs under the general guidelines of the CDBG program. The flood recovery program is designed to fund projects not eligible for funding through other programs. Local governments seeking these funds will determine their disaster recovery needs and submit applications for grants which will be awarded under the criteria adopted by the Department pursuant to the proposed changes to 8.94.3714(2)(a), (b), and (c), above.

This reason also pertains to the Standards for the Procurement of Goods and Services. The Grant Administration Manual is primarily a restatement and explanation of existing federal and state statutory and regulatory requirements, as well as additional Departmental requirements, which local CDBG recipients must comply with in administering their CDBG projects. The Manual includes sample forms and letters, checklists, and explanatory text to help local government officials comply with the variety of requirements that apply to economic development, housing, and public facility projects.

One of the areas that must be addressed by the Manual is the procedure by which CDBG grantees may procure goods and services. However, when the Department initially adopted 8.94.3714 it deleted its proposed procurement provisions from this rule. The Department took this action because after the public hearing had been held on 8.94.3714, the Department decided to propose an additional modification of the Manual with respect to procurement. This proposal represents a significant departure from the standards that local governments and the providers of goods and services have become accustomed to, and the Department felt it necessary to seek additional public comment before adopting the change.

The procurement rules for past years of the CDBG program have required that local government entities issue a Request for Proposal (RFP) for any service that will exceed \$10,000. The proposals elicited by such an RFP have typically included a scope of work, a statement of qualifications and related experience, and references. Estimated costs of services are sometimes included as well, although grantees have been urged to negotiate price and compensation after a tentative selection based upon qualifications has been made.

The Department is now proposing to modify its Administrative Manual to provide, generally, that the RFP process would be required only for services expected to cost more than \$100,000. Services costing a lesser amount could be obtained under HUD's small purchase procedures.

3. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Local Government Assistance Division or Economic Development Division, Department of Commerce, 1424 Ninth Avenue, Helena, Montana 59620, no later than April 23, 1998.

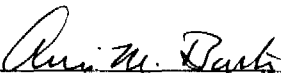
4. The Division will make reasonable accommodations for persons with disabilities who wish to participate in the public hearing. If you wish to request an accommodation, contact the Department no later than 5:00 p.m., April 9, 1998, to advise us of the nature of the accommodation that you need. Please contact Richard M. Weddle, Local Government Assistance Division, Department of Commerce, 1424 Ninth Avenue, Helena, Montana 59620; telephone (406) 444-2781; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-2903. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rulemaking process should contact Richard M. Weddle at the above-stated address.

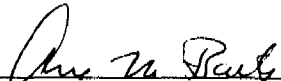
6. Persons who wish to be informed of all Local Government Assistance Division administrative rulemaking proceedings or other administrative proceedings may be placed on a list of interested persons by advising the Division at the rulemaking hearing or in writing to the Local Government Assistance Division, Department of Commerce, 1424 Ninth Avenue, Helena, Montana 59620.

7. Richard M. Weddle, attorney, has been designated to preside over and conduct this hearing.

LOCAL GOVERNMENT ASSISTANCE DIVISION
DEPARTMENT OF COMMERCE

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, March 16, 1998.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PROPOSED
amendment to 23.17.108 regarding	)	AMENDMENT OF RULE
the establishment of a tuition fee	)	ESTABLISHING A
at the Montana Law Enforcement	)	TUITION FEE FOR
Academy	)	ATTENDING THE MONTANA
	)	LAW ENFORCEMENT
	)	ACADEMY
)	
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons.

1. On April 27, 1998, the Department of Justice proposes to amend the rule regarding the establishment of a tuition fee at the Montana Law Enforcement Academy.

2. The proposed amendment of ARM 23.17.108 reads as follows (text of the rule, with stricken matter interlined, new matter underlined):

23.17.108 PROCEDURES FOR REGISTRATION, ATTENDANCE, AND FEES FOR PRE-SERVICE APPLICANTS (1) through (5) remain the same.

(6) A ~~\$1,500~~ tuition fee ~~set by the POST council~~ will be required from each pre-service applicant to be paid in full by the first day of the basic course session to be attended. Proof of tuition subsidies, grants or scholarships will be accepted in lieu of cash payment.

(7) through (9) remain the same.

AUTH: 44-10-202, MCA; IMP: 44-10-202, 44-10-301, MCA.

3. REASON: Currently, the Department of Justice must amend this rule whenever expenses associated with running the Montana Law Enforcement Academy force a tuition change. The proposed rule amendment will permit a tuition change to occur without the need of amending the rule. The POST Council, an arm of the Board of Crime Control, has the authority to set tuition fees pursuant to 44-4-301, MCA, ARM 23.14.412 and ARM 23.14.413.

4. Interested persons may present their data, views, or arguments concerning the proposed amendment in writing to Mr. Greg Moose, Administrator, Law Enforcement Academy Division, 2260 Sierra Road East, Helena, MT 59602, to be received no later than 5:00 p.m., April 23, 1998.

5. Any person directly affected by the proposed amendment who wishes to present his data, views or arguments orally or in writing at a public hearing, must make written request for a hearing and submit the request along with any comments to Mr. Greg Moose, Administrator, Law Enforcement Academy Division, 2260 Sierra Road East, Helena, MT 59602, to be received no later than 5:00 p.m., April 23, 1998.

6. If the Department receives requests for a public hearing on the proposed amendment from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendment, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or

from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 3 based on annual attendance at the Montana Law Enforcement Academy.

7. The Department of Justice maintains an interested person list so that all interested parties are informed of prospective rule changes. Persons interested in being on this list should contact Melanie Symons, 215 North Sanders, P.O. Box 201401, Helena, MT 59620.

By: 

JOSEPH P. MAZUREK
Attorney General

By: 

Melanie Symons
Assistant Attorney General
Rule Reviewer

Certified to the Secretary of State March 16, 1998.

BEFORE THE OFFICE OF THE WORKERS' COMPENSATION JUDGE
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PROPOSED AMENDMENT OF
amendment and adoption	)	ARM 24.5.101, 24.5.301,
of rules relating to the	)	24.5.303, 24.5.323, 24.5.326,
Workers' Compensation	)	24.5.330, 24.5.348, and 24.5.350
Court.	)	AND PROPOSED ADOPTION OF NEW
	)	RULE 1. NO PUBLIC HEARING IS
	)	CONTEMPLATED.

TO: All Interested Persons.

1. On April 30, 1998, the Office of the Workers' Compensation Judge proposes to amend and adopt new procedural rules of the Court.

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

24.5.101 ORGANIZATIONAL RULE (1) Remains the same.

(2) Functions of the workers' compensation court.

(a) The workers' compensation court has exclusive jurisdiction for the adjudication of disputes arising under Title 39, chapter 71 and chapter 72, MCA.

~~(b) Recusal of workers' compensation judge. Upon the filing of a petition requesting that a settlement previously reviewed by the judge be set aside on basis of fraud, lack of capacity, mutual mistake or other matters previously reviewed by the workers' compensation judge, the workers' compensation judge shall accept jurisdiction unless an interested party, within twenty days of receipt of notice of the proceeding, shall show good cause for the judge to recuse himself. In the event of recusal, either for good cause shown by an interested party or sua sponte because the basis asserted for setting aside the settlement involves matters from the settlement documents previously reviewed, the judge shall require the parties to confer and agree on the names of three district judges or retired judges to be submitted to the workers' compensation judge within ten days of the date of recusal. The workers' compensation judge shall select one of those so named and extend an invitation to assume jurisdiction over the matter. Should the invitation be refused, it shall be extended to another judge or retired judge; on the list, and thereafter to the third judge or retired judge. The selection from the list is in the sole discretion of the compensation judge; until a judge or retired judge agrees to assume jurisdiction over the matter. Once jurisdiction of the case has been assumed under this rule, no further disqualification procedures shall be permitted except for the reasons stated in 3-1-803, MCA.~~

(3) through (5) Remain the same.

AUTH: Sec. 2-4-201, MCA IMP: Sec. 2-4-201, 39-71-2901, MCA

RATIONALE: The proposed rule excises the current call-in provision for a district court judge from the general organizational rule (24.5.101). The rule change is in response to recent difficulties with the Court's present call-in procedure. The Court is proposing a new procedural rule which specifically establishes the procedure for recusal.

24.5.301 PETITION FOR TRIAL (1) - (2) Remain the same.

(3) Any claim for attorney fees and/or penalty with respect to the benefits or other relief sought by the petitioner shall be joined and pleaded in the petition. Failure to join and plead a claim for attorney fees and/or penalty with respect to the benefits or other relief sought in the petition shall constitute a waiver and shall bar any future claim with respect to such attorney fees and/or penalty.

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

AUTH: Sec. 2-4-201, MCA **IMP:** Sec. 2-4-201, 39-71-2901, MCA

RATIONALE: The proposed amendment requires that any claim for attorney fees and/or penalty which relate to the substantive claims of the petition be joined in the petition. The rule is based on judicial economy. In several recent cases, claimants have prosecuted their underlying claims and thereafter brought separate petitions for attorney fees and penalties.

24.5.303 SERVICE AND COMPUTATION OF TIME (1) through (5) Remain the same.

(6) The court will accept fax filings provided they contain an affirmation that the original document will be mailed that date by regular mail. The signature of an attorney or party on any fax filing shall have the same effect, and carry the same representations and consequences, as a signature on an original filing.

(a) If all other requirements are met, the date of filing relates back to the date of receipt of the fax.

(b) If the original document is not received within 3 days of receipt of the fax, the fax is stricken from the record as if never filed.

(c) When the original document is received and if identical to the fax document, it is substituted for the fax.

(7) Remains the same.

AUTH: Sec. 2-4-201, MCA **IMP:** Sec. 2-4-201, 39-71-2901, MCA

RATIONALE: The proposed amendment pertains to FAX filings. It eliminates the requirement that the original document be sent to the Court. The quality of FAX filings is now good enough to eliminate the need for a separate original. The proposed change will save the time and cost of mailing and filing the original. To ensure that FAX signatures have the same effect and consequences as original signatures, the amendment provides that signature on a FAX filing have the same effect and consequences as an original signature.

24.5.323 INTERROGATORIES (1) A party may serve upon an adverse party, with the petition or at any time after the service of a petition, written interrogatories to be answered by the party served. Where a party wishes to serve interrogatories with the petition, the party shall furnish sufficient copies to the court for service with the petition. (2) ~~The answers shall be signed by the person making them; and the party upon whom the interrogatories have been served shall serve a copy of the answers on the party submitting the interrogatories within 20 days after the service of the interrogatories, unless the court lengthens or shortens the time. In no event shall answers be due in less than 30 days from the service of the petition.~~

(3) If the interrogatories are propounded upon the claimant or any other party who is a natural person, then the answers must be signed under oath by the party. If the party is the insurer or other entity which is not a natural person, then the party's attorney or other representative of the party may sign the answers and such answers need not be verified. Whether or not verified, the signature of the person signing the answers shall constitute a certification that the answers are complete and truthful to the best of the signor's knowledge.

(4) If the answers to interrogatories are on behalf of an insurer or some other party which is not a natural person, the party propounding the interrogatories may, after receiving the answers, request that the answers be verified, under oath, by the person employed by the insurer or party, other than an attorney for the insurer or party, having the most knowledge of the subject matters mentioned in the interrogatories. The request must be made in writing but need not be filed with the court. Within 10 days after the request is served, the insurer or other party shall provide the requested verification.

(2) through (6) remain the same but are renumbered (5) through (9).

AUTH: Sec. 2-4-201, MCA IMP: Sec. 2-4-201, 39-71-2901, MCA

RATIONALE: The proposed amendment clarifies who may sign answers to interrogatories. The rule is a result of recent disputes over who on behalf of an insurer may sign answers to interrogatories and the threat that if the insurer's attorney signs the answers, he or she may become a witness at trial. For the most part, answers to interrogatories are informational. The proposed amendment recognizes that fact by providing that attorneys or some other representative for an insurer or other party who is not a natural person may sign the answers. However, the proposed amendments will balance convenience with the right of the party propounding the interrogatories to accurate and truthful answers. They will do so by providing that whoever signs the answers certifies that the answers are complete and truthful to the best of the signor's knowledge and further provides that the propounding party may request, and receive, answers under oath from an employee or representative of the party with the most knowledge of the subject matters mentioned in the interrogatories.

24.5.326 FAILURE TO MAKE DISCOVERY--SANCTIONS (1) If a party fails to respond to discovery pursuant to these rules, or makes evasive or incomplete responses to discovery, or objects to discovery, the party seeking discovery may move for an order compelling responses. With respect to a motion to compel discovery, the court may, at the request of a party or upon its own motion, impose such sanctions as it deems appropriate, including, but not limited to, awarding the prevailing party attorney fees and reasonable expenses incurred in obtaining the order or in opposing the motion. Sanctions shall be imposed against the non-prevailing party unless the party's position with regard to the motion to compel was substantially justified or other circumstances make sanctions unjust. If the party shall fail to make discovery following issuance of an order compelling responses, the court may order such sanctions as it deems required and just under the circumstances. Prior to any imposition of sanctions, the court shall provide the party who may be sanctioned with the opportunity for a hearing.

AUTH: Sec. 2-4-201, MCA IMP: Sec. 2-4-201, 39-71-2901, MCA

RATIONALE: The proposed amendment is the result of recent discovery disputes. It clarifies when and how sanctions may be imposed in discovery disputes. The Court encourages discovery and encourages parties to cooperate in the discovery process. The amendments will further that policy. They expressly provide that the Court may on its own motion impose sanctions when discovery disputes are not justified. The authority to do so is already implicit from prior Court decisions. The rule will also further clarify the standard for awarding sanctions. Finally, it will adopt the Court's present policy to provide the party who may be sanctioned with a right to a hearing.

24.5.330 VACATING AND RESETTING TRIAL (1) A request to vacate and reset a trial must be in writing and be supported by good cause shown. A subsequent request to vacate and reset must be made by motion with affidavit or brief which details the efforts of the parties and necessity for an additional trial delay.

AUTH: Sec. 2-4-201, MCA IMP: Sec. 2-4-201, 39-71-2901, MCA

RATIONALE: The proposed amendment will remove the requirement of an affidavit with respect to a motion for a continuance. An attorney's signature on a motion to continue constitutes the attorney's representation that there is good cause for the motion and that the representations in the motion are truthful. A supporting affidavit is an unnecessary formality.

24.5.348 CERTIFICATION OF DECISIONS, APPEALS TO SUPREME COURT (1) and (2) Remain the same.

(3) The appellant's required filing fee shall accompany the notice of appeal when sent to the workers' compensation court. The check shall be made payable to the clerk of the supreme

court. In compliance with Rule 10(a) of the Rules of Appellate Procedure, an original and two copies of each transcript of proceedings must be lodged with the clerk of this court for filing.

(4) Remains the same.

AUTH: Sec. 2-4-201, MCA IMP: Sec. 2-4-201, 39-71-2901, MCA

RATIONALE: The Court proposes to remove the filing fee requirement for an appeal to the Supreme Court now found in ARM 24.5.348 since the filing fee is a matter within the Supreme Court's jurisdiction. The proposed amendment is a result of the recent requirement of mediation in Supreme Court appeals and an apparent conflict between the current Workers' Compensation Court rule and Supreme Court practice with respect to the filing fee. We also propose to add a requirement that transcripts be provided to this Court in compliance with Rule 10(a) of the Rules of Appellate Procedure.

24.5.350 APPEALS TO WORKERS' COMPENSATION COURT UNDER TITLE 39, CHAPTERS 71 AND 72, MCA (1) through (4) Remain the same.

(5) A motion for leave to present additional evidence must be filed no later than the time set for the last brief or, if oral argument is timely requested, then no later than the day before the argument. If the motion is granted, the court will remand the matter to the department of labor and industry for further hearing. If it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the department, then the court may remand the matter to the department and order that the additional evidence be taken before the department upon conditions determined by the court. The department may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.

(6) The court shall base its decision on the record, and additional evidence (if allowed). The court shall require briefs to be filed by the parties, and a proposed order.

(7) Remains the same.

AUTH: Sec. 2-4-201, MCA IMP: Sec. 2-4-201, 39-71-2901, MCA

RATIONALE: The proposed amendment clarifies the standards and procedures for additional evidence in appeals to the Court. The present rule provides that if a motion to present additional evidence is granted, the matter must be remanded to the Department for further proceedings. The amendments set out a standard which must be satisfied before a motion is granted and the procedure in the event the motion is granted. The amendments track the Montana Administrative Procedure Act, specifically section 2-4-703, MCA.

3. The text of the proposed new rule follows:

NEW RULE I RECUSAL (1) In all cases in which the workers' compensation judge recuses himself or herself, the judge shall designate and call in a sitting or retired district judge to preside over the cause. When a new judge has accepted jurisdiction, the clerk of the workers' compensation court shall mail a copy of the assumption of jurisdiction to each attorney or party of record. The certificate of service shall be attached to the assumption of jurisdiction form in the court file.

AUTH: Sec. 2-4-201, MCA IMP: Sec. 2-4-201, 39-71-2901, MCA

RATIONALE: The proposed revisions concern calling in of a district judge in the event of recusal. The current rule provides for calling in of another judge only in cases where the Workers' Compensation Judge recuses himself on account of prior involvement with a settlement. Under the new rule, if the Workers' Compensation Judge recuses himself for any reason, he shall designate and call in a sitting or retired district judge.

Under the old rule, the parties provided an agreed list of three judges, from which a new judge was to be selected, at least where the recusal rule applied. The old rule has proven difficult to implement. In recusal situations confronted during the last couple of years, parties have been unable to agree on three judges or have agreed on judges who preside over districts which are geographically remote from the venue where the case is to be tried. Some district judges are also reluctant to preside in workers' compensation cases.

The proposed rule will follow the statutory procedure which provides that a district judge who is disqualified or substituted shall determine and call in a new judge. It will allow the Workers' Compensation Judge to promptly designate a local judge willing to hear the case.


4. Persons who wish to be informed of all Workers' Compensation Court rulemaking proceedings, or other administrative proceedings, may be placed on a list of interested persons by advising the Court, in writing, at P.O. Box 537, Helena, MT 59624-0537 or by phone at (406) 444-7794.


5. Interested parties may submit their data, views or arguments concerning the proposed action in writing to Workers' Compensation Court, 1625 Eleventh Avenue, P.O. Box 537, Helena, MT 59624-0537 on or before April 23, 1998.

6. If a person who is directly affected by the proposed action wishes to express data, views and arguments orally or in writing at a public hearing, she/he must make written request for a hearing and submit this request along with any written comments she/he has to the Workers' Compensation Court, P.O. Box 537, Helena, MT 59624-0537, no later than April 23, 1998.

7. If the agency receives requests for a public hearing on the proposed rules from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed rules, from the Administrative Code Committee of the legislature, from a governmental subdivision or agency, or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than 25 based on the number of persons with workers' compensation claims, over 300 attorneys and innumerable insurers.

8. The Workers' Compensation Court will make reasonable accommodations for persons with disabilities who wish to participate in a public hearing or need an alternative accessible format of this notice. If you request an accommodation, contact the Court no later than 5:00 p.m. on the Friday prior to the hearing to advise us of the nature of the accommodation that you need. Please contact the Court at P.O. Box 537, Helena, MT 59624-0537; telephone (406) 444-7794; FAX (406) 444-7798.



MIKE MCCARTER
JUDGE


CLARICE V. BECK
Hearing Examiner - Rule Reviewer

CERTIFIED TO THE SECRETARY OF STATE: 3-6-98
DATE

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the proposed)	NOTICE OF PUBLIC HEARING
amendment of ARM 24.16.9003)	ON PROPOSED AMENDMENTS OF
and the proposed amendment to)	PREVAILING WAGE RULES AND
Montana's prevailing wage)	ESTABLISHING RATES FOR
rates, pursuant to)	BUILDING CONSTRUCTION
ARM 24.16.9007)	SERVICES

TO ALL INTERESTED PERSONS:

1. On April 17, 1998, at 9:30 a.m., a public hearing will be held in room 104 of the Walt Sullivan Building (Department of Labor and Industry Building), 1327 Lockey, Helena, Montana, to consider proposed amendments to prevailing wage rate rules, ARM 24.16.9003 and 24.16.9007. The Department proposes amending ARM 24.16.9003 to provide a methodology for setting rates when there is insufficient survey data. The Department proposes amending ARM 24.16.9007 to incorporate by reference 1998 building construction services rates.

The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the Department by not later than 5:00 p.m., April 13, 1998, to advise us of the nature of the accommodation that you need. Please contact the Job Service Division, Office of Research and Analysis, Attn: Ms. Kate Kahle, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-2430; TTY (406) 444-0532; fax (406) 444-2638.

2. The Department of Labor and Industry proposes to amend ARM 24.16.9003 as follows: (new matter underlined, deleted matter interlined)

24.16.9003 ESTABLISHING THE STANDARD PREVAILING RATE OF WAGES

(1) Remains the same.

(2) For Based on survey data collected by the department for each district, the commissioner will compile wage rate information for a given occupation that reflects wage rates actually paid to workers engaged in public works and in private or commercial projects. If sufficient information is unavailable for any given district, the commissioner may look to existing collective bargaining agreements in the district. Wage rates for each occupation will be set using the following procedure:

(a) If a minimum of 5,000 reported hours exists for the occupation within the district, a weighted average of the wages based on the number of hours reported will be used to calculate the district prevailing wage rate.

(b) If less than 5,000 hours for the occupation is reported, the commissioner will use collective bargaining agreement wage rates in the district for the occupation.

(c) If a collective bargaining agreement does not exist for the occupation, and a minimum of 5,000 hours are reported in the combined contiguous districts, a weighted average wage rate for the district based on hours will be computed using data submitted from all contiguous districts. Districts and their contiguous districts are as follows:

(i) District 1 (Flathead, Lincoln, Sanders, Lake counties): districts 2, 3, 4, and 5.

(ii) District 2 (Missoula, Ravalli, and Mineral counties): districts 1 and 3.

(iii) District 3 (Granite, Powell, Deer Lodge, Silver Bow, Madison, and Beaverhead counties): districts 1, 2, 5, and 6.

(iv) District 4 (Cascade, Chouteau, Toole, Liberty, Glacier, Pondera, Teton, Hill, and Blaine counties): districts 1, 5, 7, and 9.

(v) District 5 (Lewis and Clark, Broadwater, Meagher, and Jefferson counties): districts 1, 3, 4, 6, and 7.

(vi) District 6 (Gallatin, Park, and Sweet Grass counties): districts 3, 5, 7, and 8.

(vii) District 7 (Wheatland, Fergus, Musselshell, Petroleum, Golden Valley, and Judith Basin counties): districts 4, 5, 6, 8, and 9.

(viii) District 8 (Stillwater, Yellowstone, Rosebud, Treasure, Big Horn, and Carbon counties): districts 6, 7, 9, and 10.

(ix) District 9 (Valley, Phillips, Sheridan, Daniels, Garfield, McCone, Richland, and Roosevelt counties): districts 4, 7, 8, and 10.

(x) District 10 (Carter, Wibaux, Dawson, Fallon, Prairie, Custer, and Powder River counties): districts 8 and 9.

(d) If contiguous district data does not sum to a minimum of 5,000 hours, a statewide weighted average wage rate will be calculated for the occupation.

(e) If a minimum of 5,000 hours is not reported for the occupation in the entire state, then other information which the commissioner deems applicable will be used to establish the prevailing wage rate for the occupation. The commissioner shall consider:

(a) In setting a prevailing rate of wages for a craft classification or type of worker in a district, the commissioner shall consider:

(i) the established and special project rates of the previous year;

(ii) ~~valid~~ collective bargaining agreements;

(iii) ~~the~~ wage rates determined by the federal government under the Davis-Bacon Act and the Federal Service Contract Act;

(iv) ~~the~~ wage rate information compiled on a regular basis by the department;

(v) ~~the~~ appropriate information from such wage surveys as may be conducted by the department; and

(vi) ~~the~~ other pertinent information.

(3) The commissioner may request clarification, additional information or independent verification of information submitted pursuant to this rule.

~~(c) Biennially, the commissioner conducts a survey of wage rates paid to workers on construction projects in one or more districts.~~

(4) The commissioner will annually incorporate the federal Davis-Bacon Act wage rates established for Montana as the state heavy and highway construction rates. Building construction services prevailing wage rates will be updated in even-numbered years, and nonconstruction services will be updated in odd-numbered years.

(5) In the event of an incorrect prevailing wage rate being published, the commissioner will review additional data submitted to determine that the rate is incorrect. If found to be incorrect, the prevailing wage rate will revert to the last published rate that was adopted via the rulemaking and public hearing process. For temporary rates which have not been adopted via the rulemaking and the public hearing process, an amended rate will be calculated based on information collected and submitted.

~~(4) (6)~~ It is the obligation of any person having possession or knowledge of wage rate information, including collective bargaining agreements that the commissioner should consider, or it is desired that ~~he~~ the commissioner consider, to timely deliver such information to the commissioner.

~~(4) (7)~~ Wage information may be considered by the commissioner only if such information is delivered at the Office of the Commissioner, Department of Labor and Industry, Walt Sullivan Building, corner of Roberts and Lockey, P.O. Box 1728, Helena, Montana 59624, within the time set by the commissioner.

~~(3) (8)~~ Within each district, the commissioner considers current wage rate information on file and sets the standard prevailing rate of wages for each craft, trade, occupation, or type of workers covered by the provisions of the Act. Except as provided in subsection (4) of this rule (2), all rates shall be adopted in accordance with ARM 24.16.9007.

~~(4) If the commissioner receives a written request for a rate for a particular craft, trade, or occupation that is covered by the provisions of the Act, the commissioner may set an interim, advisory, rate that may be used by the public contracting agency or public contractor until the rate is published in accordance with ARM 24.16.9007. Such rates will not be established more frequently than once every three months.~~

AUTH: Sec. 18-2-431, MCA

IMP: Sec. 18-2-401, 18-2-402, 18-2-403, and 18-2-411, MCA

Reason: There is reasonable necessity to amend ARM 24.16.9003 to provide for a methodology to set prevailing wage rates even if wage surveys do not report enough statistically significant hours for a given occupation to establish a rate for a given district. Adoption of such a methodology via rulemaking is required under the terms of Sec. 1, Chap. 522, Laws of 1997 (House Bill 407), and the statement of intent for the bill.

3. The Department hereby proposes to adopt and incorporate by reference the 1998 version of the "State of

Montana Prevailing Wage Rates-Building Construction" publication which sets forth the building construction prevailing wage rates. A copy of the proposed prevailing wage rates may be obtained from Kate Kahle, Job Service Division, Office of Research and Analysis, P.O. Box 1728, Helena, MT 59624-1728.

AUTH: 18-2-431 and 2-4-307, MCA
IMP: 18-2-401 through 18-2-432, MCA

Reason: Pursuant to 18-2-402, MCA, there is reasonable necessity for the Department to update the standard prevailing wages for building construction services occupations. Prevailing wage rates are established for each wage rate district in the state. The Department updates the prevailing wages for building construction occupations every two years; the proposed amendments to ARM 24.16.9003 (above) place that schedule into rule. Prevailing wages for building construction were last updated in 1996. Use of prevailing wage rates is required in public contracts by 18-2-422, MCA.

4. Interested parties may submit their data, views, or comments, either orally or in writing, at the hearing. Written data, views, or comments may also be submitted to:

Kate Kahle
Job Service Division
Office of Research and Analysis
Department of Labor and Industry
P.O. Box 1728
Helena, Montana 59624-1728

so that they are received by not later than 5:00 p.m., April 24, 1998.

5. The Department maintains a number of mailing lists of interested persons regarding a variety of topics. For more information about the mailing lists, or to have your name and address added to any or all of the interested persons lists, please contact Mark Cadwallader, Legal/Centralized Services Division, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-4493; TTY (406) 444-0532.

6. The Department has complied with the provisions of 2-4-302, MCA, and notified the bill sponsor about the proposed action regarding these rule amendments.

7. The Department proposes to make these amendments effective July 1, 1998.

8. The Hearings Bureau of the Department's Centralized Services Division has been designated to preside over and conduct the hearing.

David A. Scott

David A. Scott
Rule Reviewer

David A. Scott

David A. Scott, CSD Administrator
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: March 16, 1998.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the proposed	) NOTICE OF PUBLIC HEARING ON
amendment of ARM 24.21.414	) THE PROPOSED AMENDMENT
by the adoption of	) OF ARM 24.21.414 BY THE
wage rates for certain	) ADOPTION OF WAGE RATES
apprenticeship programs)

TO ALL INTERESTED PERSONS:

1. On April 17, 1998, at 1:30 p.m. or as shortly as possible thereafter, a public hearing will be held in room 104 of the Walt Sullivan Building (Department of Labor and Industry Building), 1327 Lockey, Helena, Montana, to consider the amendment of ARM 24.21.414 by the adoption of wage rates related to certain apprenticeship programs in the building construction industry.

The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the Department by not later than 5:00 p.m., April 13, 1998, to advise us of the nature of the accommodation that you need. Please contact the Apprenticeship Program, Job Service Division, Attn: Mark Maki, 715 Front St., Helena, MT 59601; telephone (406) 447-3210; TTY (406) 444-0532; fax (406) 447-3224. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Mr. Maki.

2. The Department of Labor and Industry proposes to amend ARM 24.21.414 as follows: (new matter underlined, deleted matter interlined)

24.21.414 WAGE RATES TO BE PAID IN BUILDING CONSTRUCTION OCCUPATIONS (1) through (4) Remain the same.

(5) The department will publish and incorporate by reference the ~~1995~~ 1998 edition of the publication entitled "State of Montana Base Journey-Level Rates for Apprentice Wages" which sets forth the building construction industry occupations journeyman wage rates in the five regions of Montana, excluding the seven largest counties, in order to set the apprentice wage rates provided by (3) and (4). A copy of the publication is available from Kate Kahle, Office of Research and Analysis, Department of Labor and Industry, 1327 Lockey, P.O. Box 1728, Helena, MT 59624-1728.

(6) and (7) Remain the same.

AUTH: Sec. 39-6-101, MCA

IMP: Sec. 39-6-101 and 39-6-106, MCA

REASON: There is reasonable necessity for amendment of this rule in order to update the base wage rates, as contemplated by this rule. The proposed amendments are being offered as part of

the biennial updating of certain wage rates. In addition, there is reasonable necessity to amend the rates at this time because of the relationship to the proposed changes to prevailing wage rates for building construction. Noticing this hearing in conjunction with the prevailing wage rate hearing is generally more convenient for the interested parties, and allows members of the public who wish to attend both public hearings to only make a single trip to Helena.

3. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to:

Mark Maki
Apprenticeship Program
Job Service Division
Department of Labor and Industry
715 Front Street
Helena, Montana 59601

and must be received by no later than 5:00 p.m., April 24, 1998.

4. ARM 24.21.414 makes reference to the building construction prevailing wage rates adopted in ARM 24.16.9007. Persons interested in those prevailing wage rates should take notice that the Department will be conducting a public hearing on the proposed 1998 version of those rates at 9:30 a.m. on April 17, 1998, in the same room as the apprenticeship rate hearing. Persons wishing to obtain a copy of the official Notice of Public Hearing for the prevailing wage rates and/or the proposed 1998 prevailing wage rates may contact Kate Kahle, Office of Research and Analysis, Job Service Division, Department of Labor and Industry, 1327 Lockey, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-2430; TTY (406) 444-0532; fax (406) 444-2638.

5. The Department maintains a number of mailing lists of interested persons regarding a variety of topics. For more information about the mailing lists, or to have your name and address added to any or all of the interested persons lists, please contact Mark Cadwallader, Legal/Centralized Services Division, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-4493; TTY (406) 444-0532.

6. The Department is not required by 2-4-302, MCA, to notify any bill sponsor about the proposed action regarding this rule action.

7. The Department proposes to make these amendments effective July 1, 1998.

8. The Hearings Bureau of the Department's Centralized Services Division has been designated to preside over and conduct the hearing.

David A. Scott

David A. Scott
Rule Reviewer

David A. Scott

David A. Scott, CSD Administrator
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: March 16, 1998.

**BEFORE THE BOARD OF LAND COMMISSIONERS
AND THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA**

In the matter of the repeal	)	NOTICE OF PROPOSED REPEAL
of Rules 26.2.703 through)	
26.2.707 pertaining to	)	NO PUBLIC HEARING
citizen participation in	)	CONTEMPLATED
agency decisions)	

TO: All Interested Persons.

1. On May 18, 1998, the Board of Land Commissioners and the Department of Natural Resources and Conservation propose to repeal Rules 26.2.703 through 26.2.707 pertaining to citizen participation in agency decisions.

2. The proposed repeal of Rules 26.2.703 through 26.2.707 is necessary because the Department of State Lands was eliminated by Section 500, Chapter 418, Laws of Montana 1995. As a result of the reorganization of natural resource management functions the existing Department of Natural Resources and Conservation rules are deemed appropriate for coverage of the functions being transferred from the Department of State Lands. The proposed repealed rules are not necessary for the functioning of the reorganized Department of Natural Resources and Conservation.

3. Rules 26.2.703 through 26.2.707, the rules proposed for repeal, are on pages 26-81 and 26-82 of the Administrative Rules of Montana.

AUTH: 2-4-201, MCA
IMP: 2-4-201, MCA

4. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to Don MacIntyre, Department of Natural Resources and Conservation, 1625 Eleventh Avenue, Helena, Montana 59620-1601. Any comments must be received no later than April 23, 1998.

5. If a person who is directly affected by the proposed repeal 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 Don MacIntyre, Department of Natural Resources and Conservation, 1625 Eleventh Avenue, Helena, MT 59620-1601. Requests must be received no later than April 23, 1998.

6. If the agency receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed repeal; from the administrative code committee of the legislature; from a governmental subdivision or agency; or from an association

having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be greater than 25 persons based on the number of persons who participate in agency decisions.

7. The Department of Natural Resources and Conservation maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list have a right to be placed on the department's list. A person must make a written request which includes the name and mailing address of the person to receive notices and specifies whether the person wishes to receive notices of administrative rules regarding conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources or combination thereof. Such written request may be mailed or delivered to the Department of Natural Resources and Conservation, 1625 11th Avenue, P.O. Box 201601, Helena, MT 59620-1601, faxed to the office at (406) 444-2684, or may be made by completing a request form at any rules hearing held by the Department of Natural Resources and Conservation.

BOARD OF LAND COMMISSIONERS

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION



MARC RACICOT, CHAIR



ARTHUR R. CLINCH, DIRECTOR



DONALD D. MACINTYRE, REVIEWER

Certified to the Secretary of State March 16, 1998.

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

In the matter of the proposed	)	NOTICE OF PROPOSED
adoption of rules pertaining to	)	ADOPTION
marketing of water at state water)	
projects	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons.

1. On May 14, 1998, the Department of Natural Resources and Conservation proposes to adopt rules pertaining to the marketing of stored water at water projects owned by the department, specifically the negotiation of water marketing contracts.

2. The proposed rules provide as follows:

RULE I DEFINITIONS The definitions in 85-1-102, MCA, and the following definitions apply to this subchapter:

(1) "Irrigated agriculture" means the sector of the Montana economy that uses water to irrigate crops and to water stock.

(2) "Water marketing contract" means the agreement between a local water users' association and the department whereby the department agrees to sell to the water users' association available water from a project and the water users' association agrees to distribute the water to individual water users under a water purchase contract.

(3) "Water purchase contract" means the agreement among the water users' association, the water user, and the department whereby the water user agrees to purchase a definite amount of water subject to the terms and conditions of the water marketing contract and the water purchase contract. In the case of water for instream flow by a public agency, "water purchase contract" means the agreement between the department and a public agency whereby the department agrees to sell to the public agency available water from a project and the public agency agrees to maintain the water for purpose of instream flows.

AUTH: 85-1-201, MCA

IMP: 85-1-211, MCA

RULE II POLICY (1) It is the policy of the department to negotiate a water marketing contract prior to the expiration of an existing water marketing contract with the water users' association and, in the case of a public agency, to negotiate a water purchase contract with the holder of a water purchase contract for instream flow, on a project pursuant to the mandates and provisions of 85-1-211, MCA.

(2) It is the further policy of the department to recognize in its negotiations the historical importance of irrigated agriculture to the economy of Montana and the historical

purposes of the project.

(3) In recognition of the policy established in (2), it is the further policy of the department not to use competitive bidding in the negotiation of the water marketing contract or a water purchase contract.

AUTH: 85-1-201, MCA

IMP: 85-1-211, MCA

RULE III NEGOTIATION (1) Prior to the termination of a water marketing contract, or in the case of a public agency prior to termination of a water purchase contract for instream flow, the department shall enter into negotiations with the water users' association and, if applicable, the public agency, for the creation of a new water marketing contract or instream flow water purchase contract.

(2) In establishing the prices, rates, and charges at which stored water will be marketed, the department shall implement the policies established in Rule II.

(3) Prior to the termination of a water marketing contract or prior to termination of an instream flow water purchase contract held by a public agency and during negotiations for a water marketing contract with the water users' association or during negotiations for a water purchase contract with a public agency, the department may not:

(a) offer water for sale from a project using a competitive bidding process, or

(b) negotiate with any other person or entity for the sale of water from the project, except with the express written consent of the water users' association or the affected public agency.

AUTH: 85-1-201, MCA

IMP: 85-1-211, MCA

RULE IV COMPLIANCE WITH CHANGE AUTHORIZATION STATUTE (1) The department shall comply with the requirements of 85-2-402, MCA, prior to marketing water for a beneficial use at a project if stored water was not put to the proposed beneficial use prior to the effective date of this rule, at that project.

AUTH: 85-1-201, MCA

IMP: 85-1-209, and 85-1-211, MCA

3. Rules I through III are proposed to inform existing water purchase contract holders and water marketing contract holders of the policies and practices the department will use in negotiating water marketing contracts. Rule IV is proposed to inform existing and potential users of water from projects that the department will comply with the change of use statute for proposed changes in use of stored water from projects in cases where the beneficial use of water from the project was not put to that use prior to the effective date of Rule IV.

4. Interested parties may submit their data, views or arguments concerning the proposed rules in writing to Donald D. MacIntyre, Chief Legal Counsel, Department of Natural Resources


and Conservation, 1625 Eleventh Avenue, Helena, MT 59620-1601, on or before April 30, 1998. A fax may be sent to (406) 444-2684.

5. If a person who is directly affected by the proposed adoption wishes to express their data, views and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Donald D. MacIntyre, Department of Natural Resources and Conservation, 1625 Eleventh Avenue, Helena, MT 59620-1601. The comments must be received on or before April 30, 1998. A fax may be sent to (406) 444-2684.

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

7. The Department of Natural Resources and Conservation maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list have a right to be placed on the Department's list. A person must make a written request which includes the name and mailing address of the person to receive notices and specifies whether the person wishes to receive notices of administrative rules regarding conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources or combination thereof. Such written request may be mailed or delivered to the Department of Natural Resources and Conservation, 1625 Eleventh Avenue, P.O. Box 201601, Helena, MT 59620-1601, faxed to the office at (406) 444-2684, or may be made by completing a request form at any rules hearing held by the Department of Natural Resources and Conservation.

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION



ARTHUR R. CLINCH, DIRECTOR



DONALD D. MACINTYRE, RULE REVIEWER

Certified to the Secretary of State March 16, 1998

BEFORE THE BOARD OF LAND COMMISSIONERS
AND THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PUBLIC
adoption of Rule I, pertaining to	)	HEARING ON
the grazing of domestic sheep on	)	PROPOSED ADOPTION
state tracts within or adjacent)	
to occupied bighorn ranges.)	

TO: All Interested Persons.

1. On April 16, 1998, at 7:00 p.m., a public hearing will be held in the auditorium at the Department of Public Health and Human Services, 111 North Sanders (north entrance), Helena, Montana, to consider the adoption of rule I pertaining to the grazing of domestic sheep on state tracts within or adjacent to occupied bighorn ranges.

2. The proposed new rule provides as follows:

RULE I DOMESTIC SHEEP GRAZING IN BIGHORN SHEEP HABITAT (1)
If a lessee/licensee has not grazed domestic sheep on the state tract at any time during the previous 10 years, and if the lessee/licensee requests a change to domestic sheep, then the department shall prepare a Montana Environmental Protection Act (MEPA) document at the appropriate level of review to examine the environmental impacts. In preparing the document, the department shall consult with the department of fish, wildlife and parks and the lessee/licensee and shall seek comments and interface as necessary with surrounding landowners and any interested public groups to design appropriate measures under the law.

(2) The department may allow grazing of domestic sheep on state lands within or adjacent to officially identified bighorn sheep ranges if bighorns are separated by a protective geographic buffer or if other applicable mitigation measures to minimize contact are negotiated and implemented.

AUTH: 77-1-209, MCA

IMP: 77-1-203, MCA

3. Adoption of the new rule I is necessary because the board of land commissioners has determined that the intermingling of domestic sheep and bighorn sheep may result in loss of bighorn sheep. Therefore, in order to avoid a situation of intermingling on state trust lands, the proposed rule is necessary.

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 Arthur R. Clinch, Director, Department of Natural Resources and Conservation, 1625 11th Avenue, P.O. Box 201601, Helena,

Montana, 59620-1601, and must be received no later than April 23, 1998. A fax may be sent to (406) 444-2684.

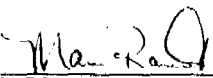
5. Arthur R. Clinch, director of the department, has been designated to preside over and conduct the hearing.

6. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the department no later than one week before the date of the hearing you plan to attend to advise us of the nature of the accommodation that you need. Providing an interpreter for the deaf or hearing impaired may require more time. Please contact Patty Greene, Department of Natural Resources and Conservation, 1625 11th Avenue, Helena, Montana, 59620-1601, telephone (406) 444-2074, no later than April 8, 1998.

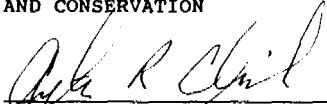
7. The Department of Natural Resources and Conservation maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list have a right to be placed on the department's list. A person must make a written request which includes the name and mailing address of the person to receive notices and specifies whether the person wishes to receive notices of administrative rules regarding conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources or combination thereof. Such written request may be mailed or delivered to the Department of Natural Resources and Conservation, 1625 11th Avenue, P.O. Box 201601, Helena, MT 59620-1601, faxed to the office at (406) 444-2684, or may be made by completing a request form at any rules hearing held by the Department of Natural Resources and Conservation.

BOARD OF LAND COMMISSIONERS

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION



MARC RACICOT, CHAIR



ARTHUR R. CLINCH, DIRECTOR



DONALD D. MACINTYRE, REVIEWER

Certified to the Secretary of State March 16, 1998.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE REPEAL) NOTICE OF THE PROPOSED REPEAL
OF ARM 42.31.331 relating to)
Tobacco Rules) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On May 15, 1998, the Department of Revenue proposes to repeal ARM 42.31.331 relating to Tobacco Rules.
2. The Department proposes to repeal the following rule:

42.31.331 SALES FROM VENDING MACHINES found at page 42-3145 of the Administrative Rules of Montana.

Auth: Sec. 16-11-312, MCA; IMP: Sec. 16-11-306, MCA.

3. The Department is proposing to repeal ARM 42.31.331 because House Bill 331 amended 16-11-306, MCA, which regulates the type of business that can have tobacco vending machines on their premises. The amended law allows the use of tobacco vending machines only in businesses where alcoholic beverages are sold and consumed on the premises. The new language in the law is clear and this rule is no longer necessary.


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


Cleo Anderson
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620
no later than April 24, 1998.

5. If a person who is directly affected by the proposed repeal 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 April 24, 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 repeal; from the Administrative Code Committee of the Legislature; from a governmental subdivision, or agency; or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be greater than 25.

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


CLEO ANDERSON
Rule Reviewer


MARY BRYSON
Director of Revenue

Certified to Secretary of State March 16, 1998

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of)
of a rule establishing a fee)
schedule for the centralized)
voter file)

NOTICE OF PUBLIC
HEARING ON
PROPOSED ADOPTION

TO: All Interested Persons

1. On April 16, 1998, at 9:30 a.m., a public hearing will be held in the conference room of the Secretary of State's Office, Room 225, State Capitol Building, Helena, Montana, to consider the adoption of new RULE I.

2. The proposed new rule provides as follows:

RULE I SCHEDULE OF FEES FOR THE CENTRALIZED VOTER FILE

(1) Upon written request, the secretary of state shall furnish, for noncommercial use, a list of registered electors as compiled and maintained in its centralized voter file. The fee schedule is as follows:

Fees	Price per thousand voters:		
Quantity of Product	CD-ROM Diskette	Paper	
Over 400,000	\$8	\$12	\$60
300,000 - 399,999	\$10	\$16	\$60
200,000 - 299,999	\$12	\$20	\$60
100,000 - 199,999	\$14	\$24	\$60
0 - 99,999	\$16	\$28	\$60
Minimum Charge	\$60	\$60	\$60

AUTH: 2-15-404, MCA; IMP: 13-2-115(2), MCA

3. The proposed rule is necessary to establish a fee schedule to charge a fee commensurate with the cost of compiling and maintaining the list and of reproducing the list in the format requested.

4. Interested persons may submit their data, views or arguments either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Joe Kerwin, Election Bureau, Secretary of State, P.O. Box 202801, Helena, MT 59620-2801 and must be received no later than April 23, 1998.

5. The Secretary of State's office will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the Secretary of State no later than

5:00 p.m. on April 10, 1998 to advise us as to the nature of the accommodation needed. Please contact Joe Kerwin, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 444-4732; FAX (406) 444-3976.

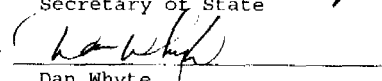
6. Joe Kerwin has been designated to preside over and conduct the hearing.

7. The Secretary of State maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies whether the person wishes to receive notices regarding administrative rules, corporations, elections, notaries, records, uniform commercial code or combination thereof. Such written request may be mailed or delivered to the Secretary of State's Office, Administrative Rules Bureau, 1236 Sixth Avenue, P.O. Box 202801, Helena, MT 59620-2801, faxed to the office at (406) 444-5833, or may be made by completing a request form at any rules hearing held by the Secretary of State's Office.

By


Mike Cooney
Secretary of State

By


Dan Whyte
Rule Reviewer

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of amendment of)	NOTICE OF PUBLIC
Rules 44.9.101, 44.9.313,)	HEARING ON PROPOSED
44.9.401, 44.9.402 pertaining)	AMENDMENT
to mail ballot elections)	

TO: All Interested Persons.

1. On April 16, 1998, at 9:00 a.m., a public hearing will be held in the conference room of the Secretary of State's Office, Room 225, State Capitol Building, Helena, Montana, to consider the amendment of rules 44.9.101, 44.9.313, 44.9.401 and 44.9.402 pertaining to mail ballot elections.

2. The proposed rule amendments are as follows (new material is underlined and deleted material is interlined):

44.9.101 INTRODUCTION, SCOPE AND INTENT Subsections (1) and (2) remain the same.

(3) The mail ballot option is not authorized only for those elections specifically enumerated in the Act. It is intended that the option be used only for those elections for which special circumstances make it potentially the most desirable of the available options.

AUTH: 13-1-202, MCA IMP: 13-19-101, MCA

44.9.313 RECORD OF QUESTIONED BALLOTS (1) In each case where a returned ballot (other than those returned by the post office as undeliverable) is not validated for counting, whether because the signature cannot be verified, because of failure to verify address by elector, a procedural mistake has been made by the elector, or some other reason, the election administrator shall enter in a log he maintains for that purpose, the following information:

Subsections (1)(a) through (1)(d) remain the same.

AUTH: 13-1-202, MCA IMP: 13-19-105, MCA

44.9.401 TRANSMITTAL ENVELOPE Subsection (1) remains the same.

(2) The words "OFFICIAL BALLOT - DO NOT DELAY", ~~"DO NOT FORWARD - RETURN TO SENDER"~~ and the full official return address of the election administrator conducting the election shall appear on the face of the envelope. The flap side of the envelope may have "VOTE AND RETURN PROMPTLY" printed in large type.

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

AUTH: 13-1-202, MCA IMP: 13-19-105, MCA

44.9.402 RETURN/VERIFICATION ENVELOPE

Subsections (1) through (4) remain the same.

(5) Beside this space an affidavit shall be printed ~~in~~ substantially in one of the following forms:

(a)

Voter's Affidavit

"I, the undersigned, hereby swear/affirm that I am registered to vote in Montana or that I am entitled to vote in this election because of special provisions; that I have not voted another ballot; ~~and~~ that I have completed this ballot in secret; and that the address listed on this envelope is my correct address (or if it is not, my correct mailing address is: _____). I understand that attempting to vote more than once is a violation of Montana election laws. I further understand that failure to complete the information below will invalidate my ballot."

(Signature of Elector)

(Today's Date)

or

(b)

Voter's Affidavit

I, the undersigned, hereby swear/affirm that I am registered to vote in Montana or that I am entitled to vote in this election because of special provisions; that I have not voted another ballot; that I have completed this ballot in secret; and that the address listed on this envelope is my correct address (or if the address is not correct, I have completed a change of address form which I have enclosed in this envelope). I understand that attempting to vote more than once is a violation of Montana election laws. I further understand that failure to complete the information below will invalidate my ballot.

(Signature of Elector)

(Today's Date)

AUTH: 13-1-202, MCA

IMP: 13-19-105, MCA

3. The proposed amendments to the existing mail ballot rules are necessary due to two legislative enactments. In the regular 1997 session, HB 550 and HB 74 were passed to allow more elections to be held by mail ballot and to allow the ballots to be forwarded, respectively.

4. Interested persons may submit their data, views or arguments either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Faira Sheppard, Election Bureau, Secretary of State, P.O. Box 202801, Helena, MT 59620-2801 and must be received no later than April 23, 1998.

5. The Secretary of State's office will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the Secretary of State no later than 5:00 p.m. on April 10, 1998 to advise us as to the accommodation needed. Please contact Faira Sheppard, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 444-2034; FAX (406) 444-3976.

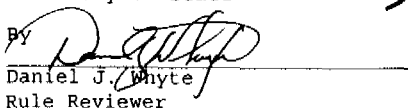
6. Faira Sheppard has been designated to preside over and conduct the hearing.

7. The Secretary of State maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies whether the person wishes to receive notices regarding administrative rules, corporations, elections, notaries, records, uniform commercial code or combination thereof. Such written request may be mailed or delivered to the Secretary of State's Office, Administrative Rules Bureau, 1236 Sixth Avenue, P.O. Box 202801, Helena, MT 59620-2801, faxed to the office at (406) 444-5833, or may be made by completing a request form at any rules hearing held by the Secretary of State's Office.

By


Mike Cooney
Secretary of State

By


Daniel J. Whyte
Rule Reviewer

BEFORE THE BOARD OF OUTFITTERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the adoption) NOTICE OF ADOPTION OF NEW
of a new rule pertaining to) RULE I (8.39.419) WATERCRAFT
watercraft identification) IDENTIFICATION

TO: All Interested Persons:

1. On December 15, 1997, the Board of Outfitters published a notice of proposed adoption of the above-stated rule at page 2224, 1997 Montana Administrative Register, issue number 24.

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

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

Comment 1: Commentor states that if the purpose of the rule is to allow the board to better track complaints regarding outfitter conduct on public waters, the rule should explain the nature and number of the complaints received and justification of whether those statistics justify the rule.

Response: The Board rejects the comment as such information is inappropriate for inclusion in an administrative rule. It is appropriate in the Reason section of the rulemaking notice and the board will include such information in the future. At this point, the reason for the rule was to allow members of the public to readily identify watercraft utilized by outfitters by license number to expedite the complaint process and, in situations where an outfitter is not involved, permit the board office to assist the public with referrals to appropriate agencies. Regarding the number of complaints received, the exact number is difficult to ascertain as no identifying marks are available at this point to determine whether the person complained against is an outfitter or a member of the public. Therefore, it is almost impossible for the board to pursue any complaints with a reasonable degree of accuracy.

Comment 2: Commentor states that the rule should include a sunset date.

Response: The board rejects the comment as it is the board's intention to allow the rule to remain in effect perpetually. Given the increased interest in outfitting within the state, as well as the increased pressure on recreational water resources, the need to properly identify those commercial outfitters and accurately track the number of outfitters adding to the increased utilization will become more crucial. However, should the board determine that this identification program is not effective, it will review the rule with a view toward revision or repeal.

Comment 3: Commentor states that the identification tag is too small.

Response: The Board rejects the comment as the bright color of the tag as well as the white space for marking the outfitter's license number in a contrasting color will make identification easier.

Comment 4: Commentor states that the board should add language that upon purchase of new boats as well as lost, stolen and damaged tags will be replaced by the board at no charge.

Response: The board accepts the comment, however, rejects placing such language in the body of the rule.

Comment 5: Commentor voices concern that while the original intent of the rule was to simply identify outfitters and guides as a class, the rule as proposed apparently makes it easier to identify individual outfitters and guides subjecting them to scrutiny for license discipline.

Response: The board rejects the comment on the basis that the board's intent has always been to allow identification of individual outfitters. The board does not consider complaints against outfitters as a class, therefore, the public must have a means to identify the individual allegedly engaged in unprofessional conduct.

Comment 6: Commentor states that it appears the board invites frivolous complaints against licensed outfitters and that now the board has made it easier to identify these individuals.

Response: The board intends to make it easier for the public to identify licensed individuals so that members of the public are not required to engage in an investigation prior to making a complaint.

Comment 7: Commentor states that the board should not use limited investigative resources to conduct license inspections on public waterways.

Response: The board rejects the comment as the intent is to readily identify the equipment which is to be inspected by the investigative staff. These inspections have been routinely conducted at the time of initial licensure for the past several years with no significant impact on the investigative capacity of the investigators. Therefore, there is no impact which will result from the implementation of the rule.

Comment 8: Two commentors state that the rule is inappropriate as it constitutes additional regulation and costs. Furthermore, the need for such a rule is questionable.

Response: The board rejects the comment as the need for the rule has been demonstrated in complaints to board members regarding the increased use of public waterways by commercial

outfitters without an identifiable manner in which to identify outfitters operating on such waterways. Additionally, the program is being implemented with no change to the board's present budget.

Comment 9: Commentor states that the rule does nothing to provide outfitters with a means by which to report unlawful actions by members of the public while engaging in activities on public waterways. The rule, therefore, results in prosecution of only outfitters.

Response: The board rejects the comment. The board's jurisdiction only runs to licensed outfitters and guides. The board is without any authority to prosecute the general public for conduct which may occur while those individuals are engaged in recreational activities. Therefore, although it is correct that outfitters are being singled out in this rule, the intent is to not only be able to identify outfitters engaged in unprofessional conduct, but to also prevent outfitters from being blamed for conduct which does not involve them.

Comment 10: Commentor states that the appropriate agency to implement such a rule would be the Montana Department of Fish, Wildlife & Parks.

Response: The board accepts the comment and the information has been provided to the Fish, Wildlife & Parks representative on the board.

Comment 11: Two commentors state that all commercial watercraft (i.e. white water and scenic trips) should bear identification as a commercial craft.

Response: The board has jurisdiction solely over outfitters and the equipment provided by outfitters. Therefore, the board is without authority to implement such a rule.

Comment 12: Commentor states that decals should be removable if the craft is used personally and commercially.

Response: Subsection (5) of the rule states that the decal must be applied to a plaque that shall be removed when the craft is not used for commercial purposes. This should be sufficient for Commentor's purposes.

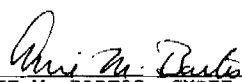
Comment 13: Commentor states that different colored tags should be used for resident outfitters and non-resident outfitters so that the public may readily identify whether the outfitter is a Montana resident.

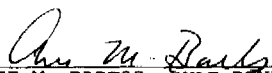
Response: The board rejects the comment. The public does not distinguish between resident outfitters and non-resident outfitters when making complaints about crowding and behavior

on the state's waterways. Therefore, it is not equitable to cast dispersion upon non-residents for a problem with which the entire industry must contend.

BOARD OF OUTFITTERS
ROBIN CUNNINGHAM, CHAIRMAN

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, March 16, 1998.

BEFORE THE BOARD OF REAL ESTATE APPRAISERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment	)	NOTICE OF AMENDMENT OF
of rules pertaining to qualifying)		RULES PERTAINING TO REAL
education requirements for	)	ESTATE APPRAISERS
licensed appraisers, residential)	
certification and general certi-)	
fication, continuing education)	
and ad valorem tax appraisal)	
experience)	

TO: All Interested Persons:

1. On January 29, 1998, the Board of Real Estate Appraisers published a notice of public hearing on the proposed amendment of rules pertaining to real estate appraisers at page 238, 1997 Montana Administrative Register, issue number 2.

2. The Board has amended ARM 8.57.407 through 8.57.409 and 8.57.411 exactly as proposed. The Board has amended ARM 8.57.417 as proposed, but with the following changes:

"8.57.417 AD VALOREM TAX APPRAISAL EXPERIENCE

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

(3) The applicant shall provide proper documentation as follows: ~~The documentation shall include an experience log which is provided by the board, completed by the applicant and attested to by the applicant's supervisor. This form will indicate the type of experience and hours applicable to ad valorem necessary to confirm the necessary experience hours for the designation sought by the applicant including individual property appraisals, tax appeals, model specifications and model calibrations.~~

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

Auth: Sec. 37-1-131, 37-54-105, MCA; IMP, Sec. 37-1-131, 37-54-105, MCA

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

COMMENT NO. 1: One comment was received suggesting that all appraiser applicants appear before the Board for a personal interview.

RESPONSE: The Board concurs with the comment and will propose an amendment to the appropriate rule at a later date.

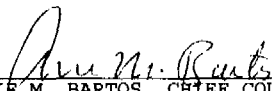
COMMENT NO. 2: One comment was received stating that the Board should allow a "boiler plate" stamp identifying a current mass appraisal card as a summary report.

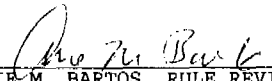
RESPONSE: The board rejects this comment as a mass appraisal, without more work, will not suffice as a summary report. By simply adding a "boiler plate" stamp, it will not

be a summary report and ad valorem appraisers must develop the report without relying solely on the mass appraisal format.

BOARD OF REAL ESTATE APPRAISERS
A. FARRELL ROSE, CHAIRMAN

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, March 16, 1998.

BEFORE THE CONSUMER AFFAIRS DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the adoption) NOTICE OF ADOPTION OF RULES
of rules pertaining to the New) PERTAINING TO THE NEW MOTOR
Motor Vehicle Warranty Act) VEHICLE WARRANTY ACT

TO: All Interested Persons:

1. On January 15, 1998, the Consumer Affairs Division of the Department of Commerce published a notice of public hearing on the proposed adoption of rules pertaining to the New Motor Vehicle Warranty Act, at page 68, 1998 Montana Administrative Register, issue number 1.

2. The Division has adopted Rule I (8.78.501), Rule II (8.78.502), Rule III (8.78.503), Rule IV (8.78.504), Rule VI (8.78.506), Rule VII (8.78.507), Rule X (8.78.510), Rule XI (8.78.511), Rule XII (8.78.512), Rule XIII (8.78.513), Rule XIV (8.78.514), Rule XV (8.78.515), Rule XVI (8.78.516), Rule XVII (8.78.517), Rule XIII (8.78.518) and Rule XIX (8.78.519) exactly as proposed. The Division is not adopting Rule XX. Rule V (8.78.505), Rule VIII (8.78.508) and Rule IX (8.78.509) are adopted as proposed, with the following changes: (authority and implementing sections will remain the same as proposed)

"8.78.505 MANUFACTURER'S INFORMAL DISPUTE SETTLEMENT
PROCEDURE - AUDIT (1) will remain the same as proposed.

(2) The audit shall be based on the calendar year and shall be filed by January ~~October~~ 20th following the year for which the audit applies.

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

(b) the names, addresses and phone numbers of all persons ~~Montana residents~~ who have notified the manufacturer that a new vehicle does not conform to all applicable warranties, including:

(i) through (c)(iii) will remain the same as proposed."

"8.78.508 POWERS AND DUTIES OF ARBITRATORS

(1) Arbitrators shall have the duty to appoint a time and place of hearing at a convenient location in the state of Montana and provide reasonable notice to the manufacturer and consumer of such time and place, to conduct fair and impartial hearings, to take all necessary actions to avoid delay in the disposition of proceedings, to maintain order and to render a final decision no later than 60 days after the department has accepted a request for arbitration. The decision must comply with Title 61, chapter 4, part 5 and Title 27, chapter 15, MCA. The arbitrators shall have all powers necessary to meet these ends including, but not limited to, the following:

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

"8.78.509 CONSUMER'S REQUEST FOR ARBITRATION (1) through (1)(q)(i) will remain the same as proposed.

- (ii) the date and mileage when the ~~defect(s)~~ non-conformity(ies) first occurred;
- (iii) and (iv) will remain the same as proposed.
- (v) the mileage when the ~~defect(s)~~ non-conformity(ies) was ~~were~~ so reported;
- (vi) through (3) will remain the same as proposed."

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

COMMENT NO. 1: This written comment, along with several others, was offered by Mr. John Flintosh, Regulatory Compliance Manager with the Ford Motor Company, and received by the Department of Commerce on February 17, 1998. He commented on the requirement in proposed rule 8.78.505(2), that a manufacturer file an annual audit of its dispute resolution procedure with the Department "by January 20 following the year for which the audit applies", Mr. Flintosh notes that such a deadline does not allow sufficient time to complete audits of this nature.

RESPONSE: The Department, after speaking with representatives who conduct such audits, agrees that the timeline is not realistic. The Department will amend the proposed rule to require the audit be submitted "by October 20 following the year for which the audit applies."

COMMENT NO. 2: Mr. Flintosh also submitted a written comment addressing proposed rule 8.78.505(3)(b). He states that the request for information is too broad and suggests that the request for information be limited to Montana consumers, rather than those found nation-wide. He notes that "taken literally, you are asking for detailed information on virtually every consumer complaint to a manufacturer about a vehicle under warranty."

RESPONSE: Mr. Flintosh's comment is well taken. The Department agrees that this reporting requirement is likely to result in more information than can be usefully assimilated by the Department in assessing a manufacturer's dispute resolution procedure. As suggested by Mr. Flintosh, the Department will amend the proposed rule 8.78.505(3)(b), to request the information only of Montana residents. The Department believes this information is sufficient to assess a manufacturer's overall performance in addressing the complaints of Montana consumers.

COMMENT NO. 3: Mr. Flintosh submitted a written comment regarding proposed rule 8.78.509, use of the word "defect." He contends that the word defect carries "detrimental implications not related to lemon law litigation." He suggests the substitution of the word "non-conformity."

RESPONSE: The Department agrees that the use of the word "non-conformity" is more appropriate. Although the New Motor Vehicle Warranty Act uses both the term "defect", see section

61-4-503, MCA, and "non-conformity", see section 61-4-504, MCA (1997), the Department agrees that non-conformity is more appropriate. Regardless of the term, the question confronting an arbitration panel is whether the condition "substantially impairs the use and market value or safety of the motor vehicle." Section 61-4-503, MCA (1997). A non-conformity may exist which forms the basis of a claim under the above standard which is not considered a "defect" as the term is commonly understood. The Department will amend proposed rule 8.78.505 to use the term "non-conformity" rather than "defect."

COMMENT NO. 4: Mr. Flintosh notes in his written comments that the word "manufactured" in paragraph 2, line 3 of the reason accompanying proposed rule 8.78.510 should read "manufacturer."

RESPONSE: The Department acknowledges the typographical error. The error was corrected prior to publication in the Montana Administrative Register, however, apparently remained in the copy of the rules sent to Mr. Flintosh. No changes are proposed as the error was contained in the reason accompanying proposed rule 8.78.510, rather than the rule itself and, further, did not render the reason ambiguous.

COMMENT NO. 5: Mr. Flintosh submitted a written comment regarding proposed rule 8.78.512. He comments that the rule does not have a requirement that the Department provide notification of the time and place of hearing. He suggests that a specific provision for "a reasonable notification in advance of the hearing date would add clarity to the rules."

RESPONSE: The Department does not dispute that reasonable notification in advance of the hearing date is necessary. As stated in proposed rule 8.78.508, however, it is the arbitrators chosen by the consumer and manufacturer who set the time and place of hearing. In order to ensure that reasonable notice is given the consumer and manufacturer as suggested by Mr. Flintosh, the Department has amended proposed rule 8.78.508 to require that the arbitrators provide to the consumer and the manufacturer reasonable notification of the time and place of hearing. In addition, the Department will amend proposed rule 8.78.508 to remedy an incorrect citation to the Uniform Arbitration Act. The Department will adopt proposed rule 8.78.512 as written.

COMMENT NO. 6: Mr. Flintosh submitted a written comment regarding proposed rule 8.78.517, noting that a records retention rule may be a "useful addition."

RESPONSE: The present Department policy is to retain litigation files indefinitely. At this time the Department does not know the volume of cases that will be generated through the arbitration program. If the volume of cases becomes burdensome to retain, or the Department feels long term retention of records is unnecessary, the rule may be revised to reflect this concern. Until such information is available, however, the Department will retain files indefinitely. Accordingly, the Department will adopt proposed rule 8.78.517 as written.

COMMENT NO. 7: Mr. Flintosh submitted a written comment regarding proposed rule 8.78.518(5)(b)(ii). Regarding language in the rule addressing consumer remedies, he suggests substitution of the word "substantially identical vehicle" rather than "identical vehicle" is appropriate.

RESPONSE: The Department notes that section 61-4-519, MCA (1997), states that an arbitration decision "shall provide appropriate remedies, including but not limited to . . . replacement of the vehicle with an identical vehicle or a comparable vehicle acceptable to the consumer." Given the language in the statute, the Department feels the language in the rule is appropriate. The Department will adopt rule 8.78.518 as proposed.

COMMENT NO. 8: Mr. Flintosh submitted a written comment regarding proposed rule 8.78.518(5)(b)(v). He suggests that the terms "expenses and costs" should be clearly delineated or referenced.

RESPONSE: The Department notes that this language tracks that of section 61-4-519, MCA. Further, the appropriate award may vary in different cases. Rather than limit the authority of the arbitrator, the Department feels it is appropriate to rely on the judgment of the arbitrator. The Department will adopt rule 8.78.518 as proposed.

COMMENT NO. 9: Mr. Flintosh submitted a written comment noting that in paragraphs 3, 4, and 5 of the last page of the proposed rule notice, the ZIP code listed for the Department was 59620-0546, rather than 59620-0501.

RESPONSE: The Department appreciates Mr. Flintosh's comment, however, is confident the error was harmless. If mail was sent to the zip code address listed on the proposed rule notice, it would reach the Department and then be forwarded to the appropriate party.

COMMENT NO. 10: Ms. Brenda Nordlund, Attorney for the Motor Vehicle Division of the Montana Department of Justice, commented on proposed rule XX at the hearing. She voiced concern that the Department of Justice had not yet had an opportunity to fully consider the content of the disclosure form required under the rule. She requested that the Department of Commerce delay adoption of proposed rule XX to allow the Department of Justice sufficient time to propose its own rule consistent with section 61-4-525, MCA.

RESPONSE: Ms. Nordlund correctly notes that the Department of Justice, pursuant to section 61-4-525, MCA, may proscribe by rule the form and content of the disclosure notice. The Department will delay adoption of rule XX, within the APA Guidelines, to allow the Department of Justice time to consider this issue.

COMMENT NO. 11: Ms. Mona Jamison, an Attorney representing General Motors Corporation provided a comment on the rules at the hearing. She noted that General Motors is

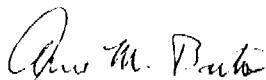
neutral on the proposed rules.

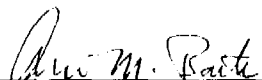
RESPONSE: The Department appreciates General Motors interest in the rule adoption process.

COMMENT NO. 12: Mr. Steve Turkiewicz of the Montana Automobile Dealer's Association provided a comment regarding the rules at the hearing. He noted that the Montana Automobile Dealer's Association supported the Department of Justice relative to rule XX and was neutral on the remaining rules.

RESPONSE: The Department appreciates the Montana Automobile Dealer's Association's interest in the rule adoption process. Regarding proposed rule XX, see response to Comment Number 10.

CONSUMER AFFAIRS DIVISION

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


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, March 16, 1998.

BEFORE THE LOCAL GOVERNMENT ASSISTANCE DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the repeal	)	NOTICE OF REPEAL OF THE RULE
of the rule pertaining to the	)	PERTAINING TO THE 1991
1991 Federal Community	)	FEDERAL COMMUNITY
Development Block Grant	)	DEVELOPMENT BLOCK GRANT
Program and adoption of a rule	)	PROGRAM AND ADOPTION OF A
pertaining to the	)	RULE PERTAINING TO THE
administration of the 1998	)	ADMINISTRATION OF THE 1998
Federal Community Development	)	FEDERAL COMMUNITY DEVELOPMENT
Block Grant Program	)	BLOCK GRANT PROGRAM

TO: All Interested Persons:

1. On December 15, 1997, the Local Government Assistance Division of the Department of Commerce published a notice of public hearing on the proposed amendment of rules pertaining to the 1991 Federal Community Development Block Grant Program and the administration of the 1998 Federal Community Development Block Grant Program, at page 2230, 1997 Montana Administrative Register, issue number 24.

2. The Department has repealed 8.94.3707 exactly as proposed. Rule I (8.94.3714) is adopted as proposed, with the following changes: (authority and implementing sections will remain the same as proposed)

"8.94.3714 INCORPORATION BY REFERENCE OF RULES FOR ADMINISTERING THE 1998 CDBG PROGRAM (1) will remain the same as proposed.

(2) through (2) (e) will remain the same as proposed.

~~(f) — procurement of goods and services;~~

(g) through (o) will remain the same as proposed, but will be renumbered (f) through (n).

(3) will remain the same as proposed."

3. The reason for the deletion noted above is that after the public hearing was held, the Department decided to propose an additional modification of the "Montana Community Development Block Grant Program 1998 Grant Administration Manual." This proposal would significantly alter the Manual's requirements regarding the procurement of goods and services for the CDBG Program's public facilities, housing, and economic development components. Consequently, the Department has deleted this subject area from the rule it is adopting at this time. At a later date the Department will seek public comment on the procurement proposal both informally and in accordance with the procedures prescribed by the Administrative Procedure Act.

4. The Department received a number of comments regarding matters other than procurement. The Department has thoroughly considered suggestions for changes, and its responses to them follow. These comments and responses fall into two general

categories - those concerning the economic development component of the CDBG program and those addressing the program's housing and public facilities components:

COMMENT NO. 1: This comment is regarding the economic development component of the CDBG program. The Department proposed a maximum annual grant amount of \$400,000 per community for individual loans to businesses.

RESPONSE: The Department's purpose in setting the maximum at this amount is to avoid undue concentration of funds in one part of the state and to disburse the funds for as many projects as possible while assuring that grants and loans are large enough to make a significant impact. The Department has decided to adopt the grant and loan limits as proposed.

COMMENT NO. 2: This comment is regarding the economic development component of the CDBG program. The maximum grant award per funding year under the revolving loan fund capacity building grant program should not be reduced from the current \$500,000 to \$400,000.

RESPONSE: Due to the high demand for projects, the maximum grant amount will be reduced to \$400,000. The funding allocation for 1998 will be \$2,625,827. This compares to \$2,697,863 for FY 1997, a difference of \$232,036. When \$150,000 is subtracted for technical assistance activities, that amount is reduced to \$2,465,827 for funding businesses. This reduction in maximum grant amounts will allow more projects to be funded.

COMMENT NO. 3: This comment is regarding the economic development component of the CDBG program. Applicants should be recertified as Revolving Loan Funds (RLF's) at the time of application per program funding year. The certification process is too demanding and costly for small communities.

RESPONSE: The certification process might be burdensome, but it is the Department's only assurance that the local government grantee has available to it an entity set up to evaluate and manage the small loans to be made with this funding the certification criteria are similar to Economic Development Administration's (EDA's) requirements for capitalizing an RLF.

COMMENT NO. 4: This comment is regarding the economic development component of the CDBG program. The Department has proposed to reduce from 18% to 10% the portion of a grant that the grantee could be reimbursed for administrative costs. The Department should abandon this proposal or adopt a compromise allowance of 14%.

RESPONSE: The Department has decided to establish an administration cap of 12% for revolving loan fund capacity building grants. The Department believes that it should provide a monetary incentive for establishing and managing these funds. Total budgeted administrative costs for local administration of economic development, public facilities, and housing projects averaged 6% for funding years 1994 through

1997. Budgeted local administration costs for economic development grants for 1997 averaged 12% even though a maximum administrative cost of 18% was allowed for RLF capacity building grants. The Department had decided that there is enough leeway to allow for higher administrative costs and still stay under the 20% planning and administrative cap established by HUD.

COMMENT NO. 5: This comment is regarding the economic development component of the CDBG program. The Department has proposed that, contrary to past requirements, an applicant for a grant would have to demonstrate that at least one lead project, rather than all projects, meets all CDBG thresholds. Commentors stated that all projects should be required to meet all thresholds.

RESPONSE: The CDBG staff's experience in processing these applications indicates that it is much too difficult administratively to assure that thresholds are met for the entire portfolio over the two-year period. This becomes a particular concern where the applicant is new to the CDBG program or is establishing a new Revolving Loan Fund. Thresholds were established so all applications would meet criteria to ensure limited CDBG funds are being used for businesses that otherwise would not be able to secure funding. This process also assumes due diligence through the evaluation process in meeting thresholds. Most importantly, it will ensure that jobs will be created or retained, a keystone of the program.

COMMENT NO. 6: This comment is regarding the economic development component of the CDBG program. The Department should not require that a public hearing be held for each specific business before the application is submitted for funding.

RESPONSE: There was confusion about what this requirement meant. This provision is intended to assure that two public hearings will be held as required by CDBG Title I regulations. Under the RLF Capacity Building Grants, communities were not holding the required two public hearings for the specific project being submitted due to the mix of projects submitted in the application.

COMMENT NO. 7: This comment is regarding the economic development component of the CDBG program. The Department had proposed to exempt projects involving loans of less than \$100,000 from review by the Department of Commerce loan review committee.

RESPONSE: There was confusion as to the purpose of this proposal, but the Department has adopted it to allow decisions on smaller loans to be made without involving the loan review committee. This procedure will expedite the making of loans to businesses and allow for making smaller loans in communities that might not attract large businesses.

COMMENT NO. 8: This comment is regarding the economic development component of the CDBG program. The Department has proposed to set aside approximately \$150,000 from the regular allocation to nonprofits for technical assistance, rural outreach and training for Small Business Development Centers (SBDC's) and Microbusiness Development Corporations (MBDC's).

RESPONSE: The Department has adopted its proposal because the MBDC's and SBDC's desperately need funding for technical assistance, rural outreach, and training to assist them in their microlending activities. Each of the 12 MBDC's would receive \$5,000 in technical assistance funding for a total of \$60,000, and the 10 SBDC's would each receive \$5,000, for a total of \$50,000. A local government would have to apply on behalf of a local development corporation as they do under SBA regulations. CDBG funds cannot be used to match SBDC funds. \$40,000 would be available for the Small Business Innovation Research (SBIR) and Small Business Technical Transfer (STTR) programs, or some of this funding could be used for planning activities related to business development.

COMMENT NO. 9: This comment is regarding the economic development component of the CDBG program. The Department has proposed to maintain the interest rate for loans at 6% which is what it was last year. Instead the Department should negotiate an interest rate or deferral period based on the assisted business's financial projections.

RESPONSE: The Department will keep the interest rate at 6%, which is lower than available bank financing.

COMMENT NO. 10: This comment is regarding the economic development component of the CDBG program. The Department had proposed that for economic development grants local governments would be given the option of retaining private nonprofit corporations to provide grant management services for revolving loan fund capacity building projects without following the usual RFP procedures if the nonprofit is developing and anticipates managing the project. Commentors were confused and unclear on what this proposal meant, which is reflected in the comments. This approach would deprive local governments of the option to go through a procurement process if it chose to and would have the effect of excluding for-profit consultants from the administration of CDBG grants.

RESPONSE: There was obviously so much confusion as to the purpose and consequences of this proposed policy that the Department has decided not to adopt the change at this time but, rather to develop a single procurement policy for all of the Department's HUD-funded programs and its one state-funded infrastructure financing program -- the Treasure State Endowment Program. This policy would allow for free and open competition while providing more flexibility for local governments and nonprofits. The Department will hold another public hearing and seek public comment on this proposal which, if adopted, would be in effect for the 1998 program year.

COMMENT NO. 11: This comment is regarding the economic

development component of the CDBG program. The Department had proposed that if a private nonprofit were to be retained to administer a revolving loan fund, the nonprofit could reloan the funds without adhering to all CDBG program requirements. This arrangement would deprive the local government of control over RLF activities and would give an unfair advantage to nonprofits in competing with for-profit consultants for contracts to administer the revolving loan funds.

RESPONSE: Under the Community Development Act the local government is the only eligible applicant for, and must maintain control over, the CDBG grant. However, under Section 105(a)(15) of the Act, they may contract with third parties to perform certain of their duties under the grant. Reducing the federal requirements on the secondary lending activities under a local RLF would relieve the Department and local governments of the responsibility to oversee various CDBG compliance matters.

COMMENT NO. 12: This comment is regarding the economic development component of the CDBG program. The Department has proposed to modify the language in the CDBG Grant Administration Manual to indicate that under certain circumstances the audit required by CDBG could no longer be paid for with CDBG funds.

RESPONSE: This change simply reflects changes made to the Single Audit Act and OMB Circular A-133. Under this change, over which the Department has no control, in a fiscal year in which a local government entity expends less than \$300,000 in federal funds from all sources, the entity is not subject to an audit under the federal single audit act, and may not use federal funds to conduct an audit.

COMMENT NO. 13: This comment is regarding the housing and public facilities component of the CDBG program.

The Department proposed that applicants in either the Housing or Public Facilities category be allowed the option of setting aside up to 10% of a grant request (\$40,000 out of a \$400,000 CDBG) for activities that would either complement the primary activity (such as neighborhood revitalization activities for a housing rehabilitation project) or respond to high priority community needs identified through a needs assessment process. The CDBG funds requested for the community revitalization component of a proposed CDBG project would have to be matched by the applicant. One-half of the required match for the CDBG community revitalization funds could also be matched by "in kind" or "soft" match. Although most comments were supportive of these proposals, concern was expressed regarding the danger of relying too heavily on volunteer efforts because of possible time delays and liability issues. Also it was noted that small towns would face particular difficulty in providing matching funds.

RESPONSE: For the 1998 CDBG Program, the Department has decided to implement a modified version of the Community Revitalization proposal, as follows:

An applicant may set aside either:

a. up to 5% of their grant request for Community Revitalization activities without providing local matching funds (up to \$20,000 out of a \$400,000 CDBG); or

b. up to 10% of their grant request for Community Revitalization activities by providing local cash match equal to 25% of the Community Revitalization funds requested. Thus, an applicant could request up to \$40,000 out of a \$400,000 CDBG, but would have to provide \$10,000 in matching funds to share in the cost of the proposed Community Revitalization activities.

Eligible local match for Community Revitalization activities would include loan or grant funds from public or private sources, entitlement or formula-based funds such as transportation funds or payments in lieu of taxes, or other cash which is available to help finance the proposed Community Revitalization activities.

Donated land or materials or labor volunteered by city crews, volunteer fire departments, business organizations, or service clubs are not eligible as match but are encouraged to increase the impact of Community Revitalization activities.

The ranking criteria for housing applications will be weighted as follows:

1. Needs Assessment and Project Selection
125 Points
2. Need for Project
125 Points*
3. Project Strategy and Impact
150 Points
4. Community Efforts
125 Points*
5. Benefit to Low and Moderate Income
150 Points
6. Implementation and Management
125 Points

TOTAL: 800 Points

*Indicates adjustment from 1997 Guidelines

COMMENT NO. 14: This comment is regarding the housing and public facilities component of the CDBG program. The Disaster and Emergency Services Division (DES) of the Montana Department of Military Affairs had requested that Department of Commerce establish a \$500,000 "set aside" for local governments to assist families and businesses impacted by disasters. The overwhelming response to this proposal by local government representatives and interested individuals was that scarce CDBG funds should not be diverted from their traditional use.

RESPONSE: Because of the significant opposition to the

proposal, the Department will not set aside a portion of the regular CDBG allocation for disaster assistance. However, in a related development, the Department was recently notified that it will receive \$863,515 from the U.S. Department of Housing and Urban Development to assist families and businesses impacted by last year's flooding. The funds will be available for 23 counties within the state and the Confederated Salish and Kootenai Tribe which were included in the Presidential Disaster Declaration for Montana last summer.

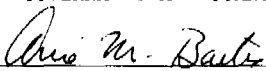
COMMENT NO. 15: This comment is regarding the housing and public facilities component of the CDBG program. As a result of the increased number of applications received in the housing category in 1996 and 1997, the Department proposed to apportion funding for the 1998 grant year equally between the Housing and the Public Facilities category. As part of this proposal, the CDBG program also proposed to move short-term housing facilities (such as homeless shelters and transitional housing), which provide occupancy for less than one year, from the Public Facilities category to the Housing category. Commentors generally stressed the importance of basing the new year's apportionment on past demand, and two respondents opposed changing the allocation at all.

RESPONSE: The Department has decided that the 1998 allocations for the Housing and Public Facilities categories will be established at 45% and 55%, respectively, of the available funding. This represents the approximate proportion that each category represented of total funding requests for 1996 and 1997.

In the future, funding allocations for the Housing and Public Facilities categories will be based on the approximate percentage of applications requested for the previous two year period. In this way, the funding reserved for each category will be responsive to changing levels of demand for CDBG Housing and Public Facilities grants over time.

LOCAL GOVERNMENT ASSISTANCE DIVISION

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, March 16, 1998

BEFORE THE LOCAL GOVERNMENT ASSISTANCE DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the adoption	)	NOTICE OF ADOPTION OF A NEW
of a new rule pertaining to	)	RULE PERTAINING TO
administration of the 1998	)	ADMINISTRATION OF THE 1998
Treasure State Endowment	)	TREASURE STATE ENDOWMENT
(TSEP) Program	)	(TSEP) PROGRAM

TO: All Interested Persons:

1. On December 15, 1997, the Local Government Assistance Division of the Department of Commerce published a notice of public hearing on the proposed amendment of rules pertaining to the administration of the 1998 Treasure State Endowment (TSEP) Program, at page 2228, 1997 Montana Administrative Register, issue number 24.

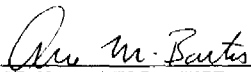
2. The Department has adopted Rule I (8.94.3804) exactly as proposed. The comments and the Division's responses thereto, are as follows:

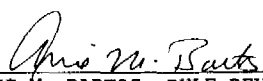
COMMENT NO. 1: The Division had originally proposed to modify its guidelines so that local government entities with severe financial need or that were undertaking projects to benefit multiple eligible local governments could request, or the Division could recommend, grants in excess of the normal \$500,000 ceiling. Several commentators said that this change should not be made, because, among other things, TSEP grant funds are limited and there will never be enough to address all of the needs.

RESPONSE: The Division concurs and has not included this proposed change in the final application guidelines.

LOCAL GOVERNMENT ASSISTANCE DIVISION
DEPARTMENT OF COMMERCE

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, March 16, 1998.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the) NOTICE OF AMENDMENT OF
amendment of ARM 24.29.1425,) ARM 24.29.1425 AND
and the adoption of three) ADOPTION OF THREE NEW RULES
new rules related to hospital)
rates payable in workers')
compensation cases)

TO ALL INTERESTED PERSONS:

1. On February 12, 1998, the Department published notice at pages 433 through 438 of the Montana Administrative Register, Issue No. 3, to consider the amendment of the above-captioned rule and the adoption of new rules I through III.

2. On March 5, 1998, a public hearing was held in Helena concerning the proposed amendments and new rules. No oral and written comments were offered at that time by any members of the public. No written comments were received prior to the closing date of March 12, 1998.

3. The Department has amended ARM 24.29.1425 exactly as proposed.

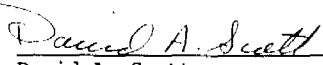
4. The Department has adopted the new rules exactly as proposed:

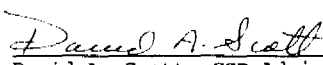
NEW RULE I (24.29.1426) HOSPITAL SERVICE RULES

NEW RULE II (24.29.1428) HOSPITAL RATES FOR JULY 1, 1997, THROUGH JUNE 30, 1998

NEW RULE III (24.29.1430) HOSPITAL RATES BEGINNING JULY 1, 1998

5. The new rules and amendments are effective April 1, 1998.


David A. Scott
Rule Reviewer


David A. Scott, CSD Administrator
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: March 16, 1998.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF AMENDMENT OF
amendment of ARM 24.30.1302,	)	ARM 24.30.1302
related to safety standards)	
for coal mines)	

TO ALL INTERESTED PERSONS:

1. On February 12, 1998, the Department published notice at pages 443 through 446 of the Montana Administrative Register, Issue No. 3, to consider the amendment of the above-captioned rule.

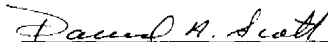
2. On March 6, 1998, a public hearing was held in Helena concerning the proposed amendments and new rules. No oral and written comments were offered at that time by any members of the public. No written comments were received prior to the closing date of March 13, 1998.

3. The Department has amended ARM 24.30.1302 exactly as proposed.

4. The amendments are effective April 1, 1998.



David A. Scott
Rule Reviewer



David A. Scott, CSD Administrator
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: March 16, 1998.

BEFORE THE MONTANA BOARD OF LAND COMMISSIONERS
AND THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

In the matter of the transfer of) NOTICE OF
Rule 26.5.101 pertaining to governing) TRANSFER
the resource development division and)
Rules 26.5.201 through 26.5.211)
pertaining to governing the)
establishment, administration and)
management of state natural areas)


TO: All Interested Persons.

1. Pursuant to Section 500, Chapter 418, Laws of Montana 1995, effective July 1, 1995, policies and objectives pertaining to surface management, the issuance of oil and gas leases, coal leasing, and geothermal resources, relating to the department of state lands programs was transferred from the Department of State Lands to the Department of Natural Resources and Conservation. In order to implement that legislation, the above referenced rules are being transferred to the administrative rules of the Department of Natural Resources and Conservation.

2. The Department of Natural Resources and Conservation has determined that the transferred rules will be numbered as follows:

<u>OLD</u>	<u>NEW</u>	
26.5.101	36.27.101	RESOURCE DEVELOPMENT
26.5.201	36.27.201	DEFINITIONS
26.5.202	36.27.202	APPLICABILITY AND SCOPE OF RULES
26.5.203	36.27.203	DUTIES OF THE DEPARTMENT
26.5.204	36.27.204	DUTIES OF THE MANAGING ENTITY
26.5.205	36.27.205	MASTER PLAN
26.5.206	36.27.206	WATER AND MINERAL RIGHTS
26.5.207	36.27.207	PUBLIC MEETINGS
26.5.208	36.27.208	BOARD MEETINGS
26.5.209	36.27.209	DESIGNATION OF A STATE NATURAL AREA
26.5.210	36.27.210	PUBLICATIONS
26.5.211	36.27.211	REMOVAL OF STATE NATURAL AREA
		DESIGNATION

BOARD OF LAND COMMISSIONERS


MARC RACICOT, CHAIR

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION


ARTHUR R. CLINCH, DIRECTOR


DONALD D. MACINTYRE, RULE REVIEWER

Certified to the Secretary of State March 16, 1998.

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

In the matter of the) NOTICE OF AMENDMENT
amendment of rule 16.24.414)
pertaining to health)
supervision and maintenance)
for day care centers)
)
)

TO: All Interested Persons

1. On December 15, 1997, the Department of Public Health and Human Services published notice of the proposed amendment of rule 16.24.414 pertaining to health supervision and maintenance for day care centers at page 2254 of the 1997 Montana Administrative Register, issue number 24.

2. The Department has adopted the following rule as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

16.24.414 HEALTH SUPERVISION AND MAINTENANCE (1) remains as proposed.

(2) A day care center must exclude from enrollment any child whose parent or guardian has not provided the center, within 30 days after admission, with a health record form documenting the results of a current health assessment performed by one of the following:

(a) a physician licensed to practice medicine in Montana pursuant to Title 37, chapter 3, MCA;

(2)(b) through (8) remain as proposed.

AUTH: Sec. 52-2-735 and 53-4-506, MCA

IMP: Sec. 52-2-735 and 53-4-506, MCA

3. The Department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

COMMENT #1: The department received four comments supporting expansion of the list of health care professionals approved to do health assessments of children in day care centers, in order to make it easier for parents to get the exams, especially in rural areas.

RESPONSE: The department agreed with the reasons given for supporting the list and adopted it in the final rule.

COMMENT #2: A representative of the department's Medicaid program suggested that, instead of individually listing

physician assistants, nurse practitioners and clinical nurse specialists, the rule should incorporate by reference the definition of "mid-level practitioner" contained in the Medicaid rules.

RESPONSE: The department did not make the suggested change for two reasons. First, while day care centers will logically have and utilize copies of the department's day care-related rules in order to determine for themselves and to advise parents what requirements must be met, center staff will almost certainly not have ready access to the separate Medicaid rule containing the definition of "mid-level practitioner". Second, the Medicaid definition includes two categories of practitioners that the department does not plan to approve to do day care child health assessments; if the term "mid-level practitioner" were used in 16.24.414, it would have to contain an exception for those two types of professionals. Therefore, because the specific list of approved professionals is clear, simple, and most easily understood by those using the rule, it was retained.

COMMENT #3: One commentor supported the addition of a nurse practitioner to the approved list, but not physician assistants or clinical nurse specialists on grounds that they may not have adequate training to do day care health assessments of children.

RESPONSE: Both types of practitioners remain approved for doing health assessments because the state boards charged with licensing them -- the Board of Medical Examiners for physician assistants and the Board of Nursing for clinical nurse specialists -- have affirmed that the scope of practice of both ordinarily includes performing the kind of health assessments of children needed for the day care setting. Therefore, so long as a physician assistant or clinical nurse specialist is approved by the licensing board to whom he or she is responsible, the department will rely on the expertise of the boards and approve those physician assistants and clinical nurse specialists licensed by the boards to do child health assessments.

COMMENT #4: One commentor took issue with a statement included in the original notice's rationale section that the scope of practice of nurse midwives and nurse anesthetists does not include doing health assessments. However, the same commentor also acknowledged that, while such professionals may be doing health assessments within the scope of their specialized practices, the statement would be accurate within the context of the rule, which concerns health assessments of children going into day care centers, since those two types of specialized professionals indeed would only rarely be doing health assessments of children.

RESPONSE: The comment was, in effect, in support of the rule as proposed; nurse midwives and nurse anesthetists remain

unapproved to do day care center health assessments.

COMMENT #5: Two commentors stated that the department should not use the inability of low income people to pay for health care as grounds for limiting their freedom to choose alternative health care providers to do health assessments of their children when they need the services of a day care center.

RESPONSE: One of the reasons the department is expanding the list of health professionals that can perform health assessments for children enrolling in day care centers is to decrease the cost of the assessment for low income families. For this reason, it was appropriate for the department to include as one reason for the exclusion the fact that the Medicaid program excludes payment for services performed by practitioners licensed by the Alternative Health Care Board.

COMMENT #6: Several naturopathic physicians challenged their exclusion from the approved list on grounds that health assessments are within their scope of practice and that the inability to give followup treatment, if needed, with legend drugs should not be used to justify the exclusion. Given legislative changes made by the 1997 Legislature, their authority to prescribe legend drugs has been expanded. One stated that the exclusion did not serve the desire of the public for alternative health care choices and was politically motivated, and two felt that, if necessary treatment was outside the scope of a naturopath, the normal practice of health professionals to refer to others for appropriate treatment would solve the problem of not being able to provide the treatment themselves.

RESPONSE: Although the department notes that the Board of Alternative Health Care adopted an expanded formulary list for naturopaths that went into effect on February 27, 1998, the department has retained the exclusion for the following reasons.

The department's authority for requiring health assessments of children as a condition of their attendance at day care centers stems from 52-2-735, MCA, which requires the department to adopt rules for the protection of such children from the "health hazards of...communicable diseases". One of the primary control measures recognized by the American Public Health Association and expressed in their official report, "Control of Communicable Diseases Manual", to prevent the spread of any communicable disease and to alleviate its effect is the immediate application of the specific and best current treatment for the disease in question. If a given professional cannot, within the scope of their practice, provide such therapy themselves, even though referral for treatment is always possible, it also necessitates a delay in treatment, which is particularly dangerous to children in the day care setting.

The specific therapeutic measures used to treat an infected individual and his or her family and other close contacts usually involve the use of legend drugs, including antibiotics, vaccines, antivirals, antifungals and immune globulin, antiprotozoans, and antiparasitic preparations. Medical doctors and doctors of osteopathy licensed pursuant to Title 37, chapter 3, MCA, physician assistants-certified, nurse practitioners, and clinical nurse specialists are all legally able to prescribe and administer all of the above-mentioned legend drugs in treatment of communicable diseases. Naturopaths, however, while able to prescribe and administer some antibiotics and vaccine, still may not prescribe and administer the primary antibiotics used in the treatment of tuberculosis; or antiviral, immune globulin, antiprotozoan, or antiparasitic preparations. Therefore, they are unable to themselves respond appropriately to all communicable diseases, but, in such cases, must refer the patient to a health professional that can. Because the department regards the immediate treatment of any communicable disease discovered in a child as a result of a day care health assessment as fundamental to good public health practice, it has retained the exclusion of naturopaths from the list of those approved to do the assessments.

COMMENT #7: A naturopathic physician commented that the rationale contained in the original notice apparently equated naturopaths and acupuncturists, which is unjustified since acupuncturists do not have the authority or responsibilities of naturopathic physicians.

RESPONSE: The department agrees that the two professional categories are not equivalent, and the statement in the rationale was not intended to imply that they were. The department is required to discuss, in the initial notice, alternatives to the rules as proposed and why the alternatives were rejected. Therefore, in the discussion of alternatives, acupuncturists and naturopaths were listed together as examples of types of health professionals that the department felt should not be approved to do health assessments of children for day care purposes.

COMMENT #8: A naturopathic physician also pointed out that the language "physician licensed to practice medicine in Montana", as used in ARM 16.24.414(2)(a), can be interpreted to include naturopaths, given language in the statutes governing naturopaths.

RESPONSE: The department disagrees, but, in order to be absolutely clear, added language indicating that the physician in question had to be licensed to practice medicine pursuant to Title 37, chapter 3, MCA, the chapter governing licensure of M.D.'s and most osteopaths, rather than Title 37, chapter 26, MCA, governing licensure of naturopaths.

COMMENT #9: A public health nurse asked what type of documentation is required to indicate that a health assessment has been performed for a child enrolled in a day care center.

RESPONSE: The rule does not specify what, if any, documentation is required. Since the department agrees that some type of documentation is advisable, it is currently considering what documentation to require, which will be the subject of future rulemaking.


Rule Reviewer


Director, Public Health and
Human Services

Certified to the Secretary of State March 16, 1998.

BEFORE THE BOARD OF NURSING
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the petition for) NOTICE OF PETITION FOR
declaratory ruling on the) DECLARATORY RULING
management of continuous infusion)
of epidural catheters for analgesia)
in the obstetric setting)

1. On April 30, 1998 at 4:00 p.m., in the conference room of the Professional and Occupational Licensing Bureau, 111 North Jackson, Arcade Building, Lower Level, Helena, Montana, the Board of Nursing will consider a petition for declaratory ruling on the management of continuous infusion of epidural catheters for analgesia in the obstetric setting.

2. This petition is filed by Susan R. Hall, RN, BSN, Kathleen Harrington, RN, BSN, and Cathy Powell, RN, BSN (Petitioners), Staff RNs at Community Medical Center, 2827 Fort Missoula Rd., Missoula, MT 59804.

3. Petitioner relies extensively on a position statement prepared by the Association of Women's Health, Obstetric, and Neonatal Nurses (AWHONN). Accordingly, Petitioner alleges that the management of continuous infusion of epidural catheters for analgesia in the obstetric setting is not within the scope of practice for a licensed professional nurse unless qualified as a credentialed, licensed anesthesia care provider. Petitioner cites to section 37-8-102(5)(b), MCA.

Petitioner alleges that at this time, professional nurses at Community Medical Center are assigned approximately 9 cases involving management of continuous infusion epidural analgesia catheters in the obstetric setting each month. In discussions with the medical center's risk management division, Petitioners were advised to follow current procedure guidelines. Petitioners point out, however, that under the board's recent declaratory ruling that RNs may administer epidural analgesia, the board should have limited the practice to settings other than obstetrics.

4. The statute upon which Petitioner requests the declaratory ruling is section 37-8-102(5)(b), MCA, which provides:

"Practice of professional nursing" means the performance for compensation of services requiring substantial specialized knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing theory as a basis for the nursing process. The nursing process is the assessment, nursing analysis, planning, nursing intervention, and evaluation in the promotion and maintenance of health; the prevention, casefinding,

and management of illness, injury, or infirmity; and the restoration of optimum function. The term also includes administration, teaching, counseling, supervision, delegation, and evaluation of nursing practice and the administration of medications and treatments prescribed by physicians, advanced practice registered nurses, dentists, osteopaths, or podiatrists authorized by state law to prescribe medications and treatments. Each registered nurse is directly accountable and responsible to the consumer for the quality of nursing care rendered. As used in this subsection (5)(b):

- (i) "nursing analysis" is the identification of those client problems for which nursing care is indicated and may include referral to medical or community resources;
- (ii) "nursing intervention" is the implementation of a plan of nursing care necessary to accomplish defined goals.

5. The Petitioner requests that the Board of Nursing declare that the management of continuous infusion of epidural catheters for analgesia in the obstetric setting is not within the scope of practice for a licensed professional nurse.

6. 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 Nursing, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., April 23, 1998.

7. 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., April 27, 1998, to advise of the nature of the accommodation that you need. Please contact Dianne Wickham, RN, MN, Board Executive Director, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 444-2071; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-7759.

Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Dianne Wickham.

BOARD OF NURSING
RITA M. HARDING, RN, MN, CS

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, March 16, 1998.

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

In the matter of the petition) DECLARATORY RULING
for declaratory ruling on the)
performance of pelvic)
examinations by a professional)
nurse.)

1. On September 8, 1997, the Board of Nursing published a Notice of Petition for Declaratory Ruling in the above-entitled matter at page 1606, 1997 Montana Administrative Register, issue number 17.

2. On November 6, 1997, R. Perry Eskridge, Hearing Examiner, presided over a hearing in this matter. Immediately following the hearing which was attended by all Board members, the Board met to consider the written and oral testimony from interested individuals.

3. On November 6, 1997, the Board moved to issue this declaratory ruling.

Issue

4. Petitioners requested a ruling clarifying whether the performance of pelvic examinations utilizing a speculum is within the scope of practice for licensed professional nurses as the practice is defined at Section 37-8-102(5)(b), MCA, and interpreted by the Board.

Summary of Comments

5. The Board accepted written comments on the issue. The Board received nine comments opposing the petition. The majority of the comments expressed concern about an "entry-level" professional nurse's ability to perform pelvic examinations, stating that the level of education received by a professional nursing student does not adequately prepare a professional nurse to perform these examinations.

6. One commentor cautioned the Board not to prohibit professional nurses from removing foreign objects, such as condoms or tampons, from the pelvic area with appropriate referrals for follow-up care.

7. Several commentors stated that the performance of pelvic examinations was appropriate for those professional nurses who have received additional training resulting in recognition as an Advanced Practice Registered Nurse.

8. It should be noted that petitioner, Judy Jacoby, RN, BSN, submitted a comprehensive course of study developed by the Mayo Clinic of Rochester, Minnesota, designed to train professional nurses in proper pelvic examination techniques. Accordingly, information submitted by the petitioner was in favor of the petition and supported a favorable ruling.

Analysis

9. Pursuant to Section 2-4-501, MCA, the Board is authorized to issued declaratory rulings "as to the applicability of any statutory provision."

10. The Notice of Petition was filed in accordance with Section 2-4-501, MCA, and appeared at page 1606-1608 of issue number 17, 1997 Montana Administrative Register.

11. Section 37-8-102(5)(b), MCA, defines the scope of practice for professional nurses as "performance . . . of services requiring substantial specialized knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing theory as a basis for the nursing process." (Emphasis added.)

12. The term "nursing process" is further defined as "assessment, nursing analysis, planning, nursing intervention, and evaluation in the promotion and maintenance of health; the prevention, casefinding, and management of illness, injury, or infirmity; . . ." Section 37-8-102(5)(b), MCA.

13. Petitioner presented materials prepared by the Mayo Clinic in Rochester, Minnesota, which clearly demonstrate the merits of that particular provider's program. However, the mere fact that the petitioner presents the advanced training materials demonstrates that additional training is required before a professional nurse would be adequately qualified to perform this type of examination. The Board recognizes that the scope of practice for professional nurses is essentially delineated by the minimum competency, entry level, minimally prepared licensee.

14. Section 37-8-102(1), MCA, defines an advanced practice registered nurse as "a registered professional nurse who has completed educational requirements related to the nurse's specific practice role, in addition to basic nursing, as specified by the board pursuant to 37-8-202(5)(a), MCA.

15. Ms. Eleanor Hardy, an advanced practice registered nurse, testified that it was her belief "that the training necessary to perform [pap smears and pelvic exams] within the nursing process is the training and preparation as required by the Montana Board of Nursing to be recognized as an advanced practice registered nurse." Transcript, pg 23, lns 15-19. She further stated that the knowledge and skills necessary to perform pap smears and pelvic examinations is akin to masters degree preparation and requires "in-depth knowledge and complex skills and increased status synthesis."

CONCLUSION

16. The issue presented for the Board's consideration was whether the performance of pap smears and pelvic examinations were within the scope of practice for professional nurses as defined at section 37-8-102(5)(b), MCA.

17. After consideration of the comments in support and in opposition to the Petition; and upon review of the applicable statutes; the Board of Nursing makes the following declaratory ruling.

18. The performance of pap smears and pelvic examinations using a speculum is not within the scope of practice of licensed professional nurses. This does not, in any way, infringe on the scope of advanced practice registered nurses performing these procedures as part of the scope of practice for that recognition category.

BOARD OF NURSING

BY: *Rita Harding*
RITA HARDING, RN, MN, CS
PRESIDENT

Certified to Secretary of State, March 16, 1998.

BEFORE THE BOARD OF NURSING
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the petition)
for declaratory ruling on the)
performance of mixed venous) DECLARATORY RULING
O₂ saturation and hemoglobins)
by a licensed professional)
nurse using an AVOXimeter.)

1. On September 8, 1997, the Board of Nursing published a Notice of Petition for Declaratory Ruling in the above-entitled matter at page 1609, 1997 Montana Administrative Register, issue number 17.

2. On November 6, 1997, R. Perry Eskridge, Hearing Examiner, presided over a hearing in this matter. Immediately following the hearing which was attended by all Board members, the Board met to consider the written and oral testimony from interested individuals.

3. On November 6, 1997, the Board moved to issue this declaratory ruling.

Issue

4. Petitioners requested a ruling on whether it is within the scope of practice of licensed professional nurses to perform mixed venous O₂ saturation and hemoglobins using an AVOXimeter as the scope of practice is defined in section 37-8-102(5)(b), MCA.

Summary of Comments

5. In addition to the written petition for declaratory ruling, the Board received one written comment from Ms. Sami Butler, RN. Ms. Butler's comments supported the petition stating that the cardiologist responsible for drawing the blood, is present during the AVOXimeter performance, and is responsible for evaluating the results. By allowing the licensed professional nurse to perform the blood draw, insert the sample into the AVOXimeter, and obtain the results, the process becomes cost effective for the patient and increases the efficiency of cardiac catheter lab personnel.

Analysis

6. Pursuant to section 37-34-301, MCA, "A person may not engage in the practice of clinical laboratory science or hold out to the public that the person is a clinical laboratory science practitioner in this state unless the person is licensed pursuant to this chapter."

7. Under the provisions of section 37-34-302(2), MCA, other professions licensed under Title 37 are exempt from the clinical laboratory licensing act if the performance of the

clinical laboratory test is within the scope of practice for the particular profession.

8. Section 37-8-102(5)(b), MCA, defines the practice of professional nursing as "services requiring substantial specialized knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing theory as a basis for the nursing process."

9. The term "nursing process" is defined at section 37-8-102(5)(b), MCA, as "assessment, nursing analysis, planning, nursing intervention, and evaluation in the promotion and maintenance of health; the prevention, casefinding, and management of illness, injury, or infirmity; . . ."

10. Use of the AVOXimeter is considered "moderately complex" by the federal Food and Drug Administration. In essence, the skills necessary to perform tests utilizing the AVOXimeter are blood drawing, properly preparing a cuvette, proper insertion of the cuvette, and proper responses to menu driven machine operation via an alphanumeric display and keypad. Accompanying the AVOXimeter is a one page instruction sheet which sets out the brief instructions for inserting the cuvette into the machine and proper calibration of the machine. While the skills involved in the operation may appear "moderately complex" for the AVOXimeter, it is the Board's interpretation that the minimally trained professional nurse possesses these basic skills upon graduation from a Board approved program and, with minimal manufacturer training, is competent to operate the AVOXimeter.

11. The skills necessary to operate the AVOXimeter are clearly within the scope of practice for a professional nurse as part of the basic skills that all minimally qualified professional nurses must possess.

12. Because the skills necessary to properly operate the AVOXimeter are within the scope of practice for professional nurses, professional nurses are, therefore, exempt from the licensing procedures set forth in the clinical laboratory science practitioner licensing act.

Conclusions

13. After consideration of the comments in support of the Petition, and upon review of the applicable statutes, the Board of Nursing makes the following declaratory ruling.

14. Performance of O₂ saturation and hemoglobins performed on an AVOXimeter within the cardiac catheter lab are within the scope of practice for licensed professional nurses receiving the appropriate manufacturer training pertaining to the proper use of the machine.

BOARD OF NURSING

BY: 

RITA HARDIG, RN, MN, CS
PRESIDENT

Certified to the Secretary of State, March 16, 1998.

6-3/26/98

Montana Administrative Register

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 December 31, 1997. This table includes those rules adopted during the period January 1, 1998 through March 31, 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 December 31, 1997, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1996, 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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BOARD APPOINTEES AND VACANCIES

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

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

In this issue, appointments effective in February 1998, appear. Vacancies scheduled to appear from April 1, 1998, through June 30, 1998, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

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

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of March 6, 1998.

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

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY, 1998

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Crime Control (Justice)			
Mayor Laurel Hegstad-Deschamps	Governor	Brown	2/10/1998
Hamilton			1/1/1999
Qualifications (if required): representative of local government			
Board of Investments (Commerce)			
Mr. Tim Ryan	Governor	Cowan	2/26/1998
Great Falls			1/1/2001
Qualifications (if required): representative of the Teachers' Retirement Board			
Capital Finance Advisory Council (Administration)			
Mr. Peter Blouke	Governor	not listed	2/25/1998
Helena			2/25/2000
Qualifications (if required): Director of the Department of Commerce			
Sen. Delwyn Gage			
Cut Bank	Governor	not listed	2/25/1998
Qualifications (if required): State Senator			2/25/2000
Mr. Jim Kaze			
Havre	Governor	not listed	2/25/1998
Qualifications (if required): member of the Board of Regents			2/25/2000
Mr. Dave Lewis			
Helena	Governor	not listed	2/25/1998
Qualifications (if required): Director of the Office of Budget and Program Planning			2/25/2000
Dr. Amos R. Little, Jr.			
Helena	Governor	not listed	2/25/1998
Qualifications (if required): member of the Health Facility Authority			2/25/2000

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY, 1998

Appointee	Appointed by	Succeeds	Appointment/End Date
Capital Finance Advisory Council (Administration) cont.			
Ms. Lois A. Menzies	Governor	not listed	2/25/1998
Helena			2/25/2000
Qualifications (if required):	Director of the Department of Administration		
Rep. Ray Peck	Governor	not listed	2/25/1998
Havre			2/25/2000
Qualifications (if required):	State Representative in the Montana Legislature		
Mr. Bob Thomas	Governor	not listed	2/25/1998
Stevensville			2/25/2000
Qualifications (if required):	member of the Board of Housing		
Mr. Marvin Dye	Governor	not listed	2/25/1998
Helena			2/25/2000
Qualifications (if required):	Director of the Department of Transportation		
Mr. Mark A. Simonich	Governor	not listed	2/25/1998
Helena			2/25/2000
Qualifications (if required):	Director of the Department of Environmental Quality		
Mr. W. Ralph Peck	Governor	not listed	2/25/1998
Helena			2/25/2000
Qualifications (if required):	Director of the Department of Agriculture		
Mr. Bud Clinch	Governor	not listed	2/25/1998
Helena			2/25/2000
Qualifications (if required):	Director of the Department of Natural Resources and Conservation		

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY, 1998

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Capital Finance Advisory Council (Administration) cont.			
Mr. Warren Vaughn	Governor	not listed	2/25/1998
Billings			2/25/2000
Qualifications (if required):	member of the Board of Investments		
Developmental Disabilities Planning and Advisory Council (Public Health and Human Services)			
Ms. Joan Reed Kimball	Governor	Massey	2/9/1998
Billings			1/1/2003
Qualifications (if required):	representing Region III		
Governor's Council on Organ Donor Awareness (Public Health and Human Services) (new council)			
Mr. Lowell Bartels	Governor		2/12/1998
Helena			2/12/2000
Qualifications (if required):	representative of business		
Ms. Nancy Ellery	Governor		2/12/1998
Helena			2/12/2000
Qualifications (if required):	representative of the Department of Public Health and Human Services		
Lt. Governor Judy Martz	Governor		2/12/1998
Helena			2/12/2000
Qualifications (if required):	representative of state government and donor families		
Mr. Ted Marchion	Governor		2/12/1998
Anaconda			2/12/2000
Qualifications (if required):	representative of donor recipients		

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY, 1998

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Governor's Council on Organ Donor Awareness (Public Health and Human Services) cont.			
Dr. Charlotta Eaton	Governor		2/12/1998
Billings			2/12/2000
Qualifications (if required): representative of physicians			
Mr. Dan Dixon	Governor		2/12/1998
Missoula			2/12/2000
Qualifications (if required): representative of clergy			
Mr. Ron Davis	Governor		2/12/1998
Butte			2/12/2000
Qualifications (if required): representative of the media			
Ms. Ashby M. Jones	Governor		2/12/1998
Helena			2/12/2000
Qualifications (if required): representative of the public			
Mr. Larry Pitts	Governor		2/12/1998
Poison			2/12/2000
Qualifications (if required): representative of Native Americans			
Mr. Paul Buck	Governor		2/12/1998
Missoula			2/12/2000
Qualifications (if required): ex-officio member			
Ms. Jan Hendrix	Governor		2/12/1998
Kalispell			2/12/2000
Qualifications (if required): ex-officio member			

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY, 1998

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Governor's Council on Organ Donor Awareness (Public Health and Human Services) cont.			
Ms. Joyce Kramer	Governor		2/12/1998
Billings			2/12/2000
Qualifications (if required): ex-officio member			
Ms. Sandi Stroot	Governor		2/12/1998
Superior			2/12/2000
Qualifications (if required): ex-officio member			
Montana Abstinance Education Advisory Council (Public Health and Human Services) (new council)			
Rep. Bea McCarthy	Governor		2/13/1998
Anaconda			2/13/2000
Qualifications (if required): public member			
Rep. Loren Soft	Governor		2/13/1998
Billings			2/13/2000
Qualifications (if required): state legislator			
Dr. Stephen Duncan	Governor		2/13/1998
Bozeman			2/13/2000
Qualifications (if required): public member			
Ms. Peggy Beltrone	Governor		2/13/1998
Great Falls			2/13/2000
Qualifications (if required): public member			
Ms. Tara Andrews	Governor		2/13/1998
Miles City			2/13/2000
Qualifications (if required): public member			

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY, 1998

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Abstinence Education Advisory Council		(Public Health and Human Services) cont.	
Ms. Helena M. Beausoleil	Governor		2/13/1998
Helena			2/13/2000
Qualifications (if required):	public member		
Ms. Elaine Collins	Governor		2/13/1998
Dillon			2/13/2000
Qualifications (if required):	public member		
Mr. D.R. Edmonds	Governor		2/13/1998
Helena			2/13/2000
Qualifications (if required):	public member		
Ms. Jill Flynn	Governor		2/13/1998
Townsend			2/13/2000
Qualifications (if required):	public member		
Mr. Bill Hodges	Governor		2/13/1998
Hardin			2/13/2000
Qualifications (if required):	public member		
Ms. Betty Jagiello	Governor		2/13/1998
Glasgow			2/13/2000
Qualifications (if required):	public member		
Mr. Myron Littlebird	Governor		2/13/1998
Lame Deer			2/13/2000
Qualifications (if required):	public member		

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY, 1998

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeded</u>	<u>Appointment/End Date</u>
Montana Abstinance Education Advisory Council	(Public Health and Human Services) cont.		
Ms. Mikayla Martinelli	Governor		2/13/1998
Heleena			2/13/2000
Qualifications (if required):	public member		
Ms. Janet Meissner	Governor		2/13/1998
Belt			2/13/2000
Qualifications (if required):	public member		
Ms. Karen S. Sloan	Governor		2/13/1998
Havre			2/13/2000
Qualifications (if required):	public member		
Ms. Jessie Stinger	Governor		2/13/1998
Polson			2/13/2000
Qualifications (if required):	public member		
Mr. Gary Swant	Governor		2/13/1998
Deer Lodge			2/13/2000
Qualifications (if required):	public member		
Mr. James Vollbracht	Governor		2/13/1998
Bozeman			2/13/2000
Qualifications (if required):	public member		
Montana Arts Council (Education)			
Ms. Ann Cogswell	Governor	reappointed	2/5/1998
Great Falls			2/1/2003
Qualifications (if required):	public member		

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY, 1998

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Arts Council (Education) cont.			
Mr. Richard Halmes	Governor	reappointed	2/5/1998
Great Falls			2/1/2003
Qualifications (if required):	public member		
Ms. Sody Jones	Governor	reappointed	2/5/1998
Billings			2/1/2003
Qualifications (if required):	public member		
Ms. Jackie Parsons	Governor	reappointed	2/5/1998
Browning			2/1/2003
Qualifications (if required):	public member		
Ms. Diane Klein	Governor	reappointed	2/5/1998
Kalispell			2/1/2003
Qualifications (if required):	public member		
Peace Officers Standards and Training Advisory Council (Justice)			
Ms. Surry Latham	Governor	not listed	2/13/1998
Helena			2/13/2000
Qualifications (if required):	representing Montana communications officers		
Commissioner Mike Mathew	Governor	not listed	2/13/1998
Billings			2/13/2000
Qualifications (if required):	representing Montana Association of Counties		
Mr. Chris Miller	Governor	not listed	2/13/1998
Deer Lodge			2/13/2000
Qualifications (if required):	representing Montana Attorney's Association		

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY, 1998

Appointee	Appointed by	Succeeds	Appointment/End Date
Peace Officers Standards and Training Advisory Council (Justice) cont.			
Chief Robert Jones	Governor	not listed	2/13/1998
Great Falls			2/13/2000
Qualifications (if required):	representing Montana Chief's Association		
Mr. Greg Moose	Governor	not listed	2/13/1998
Helena			2/13/2000
Qualifications (if required):	representing Montana Law Enforcement Academy		
Mr. Dennis McCave	Governor	not listed	2/13/1998
Billings			2/13/2000
Qualifications (if required):	representing Montana detention officers		
Mr. Donald R. Houghton	Governor	not listed	2/13/1998
Bozeman			2/13/2000
Qualifications (if required):	representing Montana Deputy Sheriff's Association		
Sheriff Lee Edmisten	Governor	not listed	2/13/1998
Virginia City			2/13/2000
Qualifications (if required):	representing Montana Sheriff's Association		
Mr. Gary Boyer	Governor	not listed	2/13/1998
Great Falls			2/13/2000
Qualifications (if required):	representing criminal justice educators		
Colonel Craig Reap	Governor	not listed	2/13/1998
Helena			2/13/2000
Qualifications (if required):	representing Montana Highway Patrol		

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY, 1998

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Peace Officers Standards and Training Advisory Council (Justice) cont.			
Mr. Thomas Bivins	Governor	not listed	2/13/1998
Helena			2/13/2000
Qualifications (if required):	representing the Department of Fish, Wildlife and Parks		
Mr. Jack Lynch	Governor	not listed	2/13/1998
Butte			2/13/2000
Qualifications (if required):	representing Montana League of Cities and Towns		
Sen. Debbie Shea	Governor	not listed	2/13/1998
Butte			2/13/2000
Qualifications (if required):	representing Montana Board of Crime Control		
Mr. Mark Lerum	Governor	not listed	2/13/1998
Helena			2/13/2000
Qualifications (if required):	representing Montana Police Protective Association		
Mr. Raymond C. Murray	Governor	not listed	2/13/1998
Missoula			2/13/2000
Qualifications (if required):	representing citizens at large		
Prison Ranch Advisory Council (Corrections)			
Rep. Francis Bardonoue	Director	not listed	2/1/1998
Harlem			2/1/2000
Qualifications (if required):	rancher		
Mr. Don Davis	Director	not listed	2/1/1998
Deer Lodge			2/1/2000
Qualifications (if required):	rancher		

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY, 1998

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Prison Ranch Advisory Council (Corrections) cont.			
Sen. Francis Koehnke	Director	not listed	2/1/1998
Townsend			2/1/2000
Qualifications (if required):	rancher		
Mr. Ray Lybeck	Director	not listed	2/1/1998
Kalispell			2/1/2000
Qualifications (if required):	dairyman		
Rep. Robert Thoft	Director	not listed	2/1/1998
Stevensville			2/1/2000
Qualifications (if required):	rancher		
Sen. Thomas Beck	Director	not listed	2/1/1998
Deer Lodge			2/1/2000
Qualifications (if required):	rancher		
Rep. Edward (Ed) J. Grady	Director	not listed	2/1/1998
Canyon Creek			2/1/2000
Qualifications (if required):	rancher		
Rep. Bill Tash	Director	not listed	2/1/1998
Dillon			2/1/2000
Qualifications (if required):	rancher		
Teachers' Retirement Board (Administration)			
Mr. Tim Ryan	Governor	Cowan	2/26/1998
Great Falls			7/1/2000
Qualifications (if required):	public member		

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY, 1998

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Vocational Rehabilitation Advisory Council (Public Health and Human Services)			
Ms. Betty Van Tighem	Director	Ellesch	2/10/1998
Great Falls			2/10/2000
Qualifications (if required):	none specified		

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 1998 through JUNE 30, 1998

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Athletics (Commerce) Mr. Gary Langley, Helena Qualifications (if required): public member	Governor	4/25/1998
Board of Hail Insurance (Agriculture) Mr. Keith Arntzen, Halger Qualifications (if required): public member	Governor	4/18/1998
Board of Nursing Home Administrators (Commerce) Mr. Douglas Faus, Chester Qualifications (if required): nursing home administrator	Governor	5/28/1998
Board of Plumbers (Commerce) Mr. Duane Steinmetz, Billings Qualifications (if required): journeyman plumber	Governor	5/4/1998
Mr. Richard Grover, Missoula Qualifications (if required): master plumber	Governor	5/4/1998
Board of Real Estate Appraisers (Commerce) Ms. Cheryl Van Every, Sidney Qualifications (if required): public member	Governor	5/1/1998
Mr. William Northcutt, Joliet Qualifications (if required): real estate appraiser	Governor	5/1/1998
Board of Realty Regulation (Commerce) Mr. Jack K. Moore, Great Falls Qualifications (if required): public member and a Republican	Governor	5/9/1998

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 1998 through JUNE 30, 1998

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Regents of Higher Education (Education) Mr. Jason Thielman, Missoula Qualifications (if required): student representative	Governor	6/1/1998
Board of Veterans' Affairs (Military Affairs) Ms. Karen Furu, Bozeman Qualifications (if required): veteran	Governor	5/18/1998
Executive Board of Montana State University (Education) Mr. Richard Roehm, Bozeman Qualifications (if required): public member	Governor	4/15/1998
Ms. Carol Willis, Billings Qualifications (if required): public member	Governor	4/15/1998
Executive Board of Montana Tech College Advisory Council Mr. Truxton Fisher, Butte Qualifications (if required): public member	(Education) Governor	4/15/1998
Executive Board of Northern Montana College (Education) Mr. Doug Ross, Havre Qualifications (if required): public member	Governor	4/15/1998
Executive Board of University of Montana (Education) Ms. Arlene Breum, Missoula Qualifications (if required): public member	Governor	4/15/1998
Executive Board of Western Montana College (Education) Ms. Patricia J. Blade, Dillon Qualifications (if required): public member	Governor	4/15/1998

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 1998 through JUNE 30, 1998

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Governor's Council on Families (Public Health and Human Services) Rep. Loren Soft, Billings Qualifications (if required): public member	Governor	6/25/1998
Rep. Betty Lou Kasten, Brockway Qualifications (if required): public member	Governor	6/25/1998
Mr. Kirk Astroth, Bozeman Qualifications (if required): public member	Governor	6/25/1998
Judge Katherine "Kitty" Curtis, Columbia Falls Qualifications (if required): public member	Governor	6/25/1998
Dr. Stephen Duncan, Bozeman Qualifications (if required): public member	Governor	6/25/1998
Ms. Bonnie Bowman McGowan, Highwood Qualifications (if required): public member	Governor	6/25/1998
Mr. Wade Riden, Chinook Qualifications (if required): public member	Governor	6/25/1998
Ms. Kathleen Jensen, Westby Qualifications (if required): public member	Governor	6/25/1998
Mr. John Vincent, Gallatin Gateway Qualifications (if required): public member	Governor	6/25/1998
Mr. Peter Bruno, Glendive Qualifications (if required): public member	Governor	6/25/1998

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 1998 through JUNE 30, 1998

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Governor's Council on Families (Public Health and Human Services) cont.		
Mr. Stanley Rathman, Choteau	Governor	6/25/1998
Qualifications (if required): public member		
Mr. Bill Pena, Seeley Lake	Governor	6/25/1998
Qualifications (if required): public member		
Mr. Michael McCarvel, Helena	Governor	6/25/1998
Qualifications (if required): public member		
Judge Gary Acevedo, Ronan	Governor	6/25/1998
Qualifications (if required): public member		
Ms. Kathy Peoples, Butte	Governor	6/25/1998
Qualifications (if required): public member		
Ms. M.J. Fors, Great Falls	Governor	6/25/1998
Qualifications (if required): public member		
Ms. Kim Visser, Missoula	Governor	6/25/1998
Qualifications (if required): public member		
Ms. Kathleen Heiser, Billings	Governor	6/25/1998
Qualifications (if required): public member		
Petroleum Tank Release Compensation Board (Health and Environmental Sciences)		
Ms. Laura Nordahl, Helena	Governor	6/30/1998
Qualifications (if required): representative of the industry		
Mr. Gary Basso, Billings	Governor	6/30/1998
Qualifications (if required): representative for the insurance industry		

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 1998 through JUNE 30, 1998

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Petroleum Tank Release Compensation Board (Health and Environmental Sciences) cont. Mr. Dallas Herron, Kalispell Qualifications (if required): representative of the petroleum services industry	Governor	6/30/1998
Public Employees' Retirement Board (Administration) Mr. Troy W. McGee, Sr., Helena Qualifications (if required): retired public employee	Governor	4/1/1998
Mr. Fred J. Flanders, Helena Qualifications (if required): member at large	Governor	4/1/1998
State Library Commission (Education) Ms. Mary Doggett, White Sulphur Springs Qualifications (if required): public member	Governor	5/22/1998
Western Interstate Commission on Higher Education (Education) Rep. Emily Swanson, Bozeman Qualifications (if required): legislator	Governor	6/19/1998