MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 15

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

**BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA**

In the matter of the adoption of new Rules I through VIII concerning state vehicle use) NOTICE OF PUBLIC HEARING) ON PROPOSED ADOPTION)

TO: All Concerned Persons

1. On August 30, 2001, at 9:00 a.m., a public hearing will be held in room 160 of the Mitchell Building, 125 Roberts Street, Helena, Montana, to consider the adoption of new Rules I through VIII, concerning state vehicle use.

2. The Department of Administration, Risk Management and Tort Defense Division, will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on August 20, 2001, to advise us of the nature of the accommodation that you need. Please contact Brett Dahl, Administrator, Risk Management and Tort Defense Division, Department of Administration, P.O. Box 200124, Helena, MT 59620-0124; telephone (406) 444-2421; TDD (406) 444-1421; FAX (406) 444-2592.

3. The proposed new rules provide as follows:

RULE I INTRODUCTION (1) The following rules define acceptable uses for state-owned or leased motor pool vehicles as provided in 2-17-424, MCA. State employees or authorized individuals may be subject to additional guidelines, policies, insurance coverage exclusions, or regulations for vehicle/equipment fleet operations, provided that they do not conflict with these rules.

(2) Drivers and passengers must use installed seat belts at all times.

AUTH: 2-17-424, MCA
IMP: 2-9-201 and 2-9-305, MCA

RULE II DEFINITIONS As used in this sub-chapter, the following definitions apply:

(1) "State" as defined in 2-9-101, MCA.

(2) "State employee" as defined in 2-9-101, MCA.

(3) "State vehicle" means a motor vehicle, semi-trailer, snowplow, or other vehicle designed for travel on public roads that is subject to motor vehicle registration, including any machinery or apparatus attached to the vehicle. The term includes the following:

(a) a "leased vehicle" obtained by the state through an open-ended lease or lease with an option to buy contract;

(b) a "loaned vehicle" provided to the state as a gratuity;

(c) an "owned vehicle" to which the state has title; and

(d) a "rented vehicle" rented by the state for a fee, typically for short-term use in Montana or for out-of-state travel.

AUTH: 2-17-424, MCA
IMP: 2-9-201 and 2-9-305, MCA

RULE III AUTHORIZED DRIVERS AND USES (1) Except as otherwise provided in this rule, the following individuals may operate a state vehicle if the driver possesses a valid driver's license appropriate to the type of vehicle to be driven, meets driver requirements set out in [Rule V], and the uses are as provided below:

(a) a state employee to conduct business on behalf of the state;

(b) a state employee in travel status to obtain food and lodging and to respond to medical emergency situations;

(c) a state employee required to conduct state business to obtain items needed while in travel status;

(d) a state employee may park a state vehicle overnight at the employee's residence if the employee must begin or end travel outside the employee's normal work shift or if the employee is subject to emergency response, on-call, or other off-shift duty associated with state employment;

(e) a state employee required to stay overnight at a location other than the employee's established work location during nonwork time to drive to a cultural, recreational, or leisure activity or to conduct other personal business, if the activity is within 30 miles of the employee's lodging;

(f) a non-state employee enrolled and registered as a student at a university of the state to conduct university business;

(g) a non-state employee to aid or assist a disabled state employee if the aide has completed the risk management and tort defense division's (RMTD) vehicle use agreement and obtained authorization from the agency head or designee prior to the use;

(h) a non-state employee to assist a state employee or other individual during a medical emergency for transportation and related purposes. Prior approval is not required;

(i) a non-state employee who is an independent contractor or an employee of a temporary employment agency contracting with the state with prior approval from the agency head when a state employee is not available to operate the vehicle. The contractor must complete the RMTD's vehicle use agreement. The agreement must be signed by the agency head and presented to the motor pool or affected state agency prior to the use; and

(j) a non-state employee accompanying a state employee on official state business where the state employee becomes ill, fatigued, or is otherwise rendered physically or mentally incapable of driving and/or a compelling state interest is served by allowing the non-state employee to drive. Prior approval is not required.

AUTH: 2-17-424, MCA
IMP: 2-9-201 and 2-9-305, MCA

RULE IV AUTHORIZED PASSENGERS AND USES (1) Except as otherwise provided in this rule, the following individuals may ride as passengers in a state vehicle:

(a) a state employee conducting business on behalf of the state; or

(b) a non-state employee who is:

(i) an independent contractor conducting business on behalf of the state;

(ii) an aide rendering assistance to a disabled state employee;

(iii) a guest or client of the state, including a public employee, if conducting, participating in, or providing a benefit to the conduct of state business;

(iv) rendering assistance during an emergency situation; or

(v) a nursing infant if the parent is an authorized driver or passenger.

AUTH: 2-17-424, MCA
IMP: 2-9-201 and 2-9-305, MCA

RULE V DRIVER REQUIREMENTS (1) Prospective and probationary employees required to drive as part of their job who have accumulated 12 or more conviction points according to the schedule specified in 61-11-203, MCA, over the most recent 36 months are deemed not qualified and may not be hired.

(2) Non-probationary employees required to drive as part of their job who have accumulated 12 or more conviction points according to the schedule specified in 61-11-203, MCA, over the most recent 36 months may not drive a state vehicle or personal vehicle for state business until having successfully completed a certified safe driver course approved by the RMTD and received authorization to drive from their agency head and RMTD. State employee drivers who have accumulated 15 or more conviction points according to the schedule specified in 61-11-203, MCA, may not drive a state vehicle or a personal vehicle for state business until the accumulated point total is less than 12 within the past 36 months.

(3) Non-probationary employees who have accumulated 18 or more points in the immediately preceding 36 months may not drive a state vehicle or a personal vehicle for state business until two years have passed during which they have not accumulated any conviction points according to the schedule specified in 61-11-203, MCA, have successfully completed a certified safe driver course approved by RMTD, and received authorization to drive from their agency head and RMTD.

(4) A state employee required to drive as part of the employee's job shall report any single driving infraction of five or more conviction points according to the schedule in 61-11-203, MCA, accumulated while driving a state vehicle or a personal vehicle for state business to the employee's supervisor within 10 days of conviction.

(5) A state employee required to drive as part of the employee's job shall report an accumulation of conviction points of 12 or more according to the schedule in 61-11-203, MCA, for the past 36 months immediately preceding the infraction, whether accumulated while driving a state vehicle, a personal vehicle for state business or accumulated while driving a motor vehicle for any purpose within 10 days of the accumulation of 12 or more points to the employee's supervisor.

(6) Authorized drivers are responsible for promptly paying all penalties following the court procedures established for contesting citations.

(7) The above requirements also apply to those individuals authorized to drive under the conditions listed in [Rule III].

AUTH: 2-17-424, MCA
IMP: 2-9-201 and 2-9-305, MCA

RULE VI ALCOHOL AND DRUGS (1) No person under the influence of alcohol, illegal drugs, or improperly used prescription drugs may drive a state vehicle.

(2) No person may drive a state vehicle under the influence of any legally prescribed drug if that drug affects the person's ability to safely operate the vehicle.

AUTH: 2-17-424, MCA
IMP: 2-9-201 and 2-9-305, MCA

RULE VII CELL PHONE USE (1) State employees shall drive in a careful and prudent manner so as not to unduly or unreasonably endanger the life, limb, property, or rights of a person entitled to use a street or highway.

(2) State employees are strongly encouraged not to use handheld cell phones or other handheld electronic communications devices or objects while operating state vehicles or personal vehicles on state business. Exceptions to this rule are law enforcement and emergency response personnel.

AUTH: 2-17-424, MCA
IMP: 2-9-201 and 2-9-305, MCA

RULE VIII DISCIPLINE (1) Failure to comply with the requirements of these rules may result in disciplinary action, including suspension or termination. Any supervisor who becomes aware of any violation of these rules by an employee they supervise shall take appropriate disciplinary action, according to the state discipline policy set forth in ARM 2.21.6501 through 2.21.6509, 2.21.6515, and 2.21.6522.

AUTH: 2-17-424, MCA
IMP: 2-9-201 and 2-9-305, MCA

4. The adoption of the proposed rules is reasonably necessary to assure that state employee drivers and state vehicles are adequately protected by a comprehensive plan of insurance and to minimize potential liability or personal

injury that may arise from inappropriate uses of state vehicles or unqualified drivers. The requirements specified in these rules apply to conviction points received after the effective date of this rule notice.

5. Concerned 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 Brett Dahl, Risk Management and Tort Defense Division, Department of Administration, P.O. Box 200124, Helena, MT 59620-0124, faxed to the office at (406) 444-2592, e-mailed to bdahl@state.mt.us, and must be received no later than September 7, 2001.

6. Carol Berger has been designated to preside over and conduct the hearing.

7. The Department of Administration 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 that the person wishes to receive notices regarding the Risk Management and Tort Defense Division. Such written request may be mailed or delivered to Brett Dahl, Risk Management and Tort Defense Division, Department of Administration, P.O. Box 200124, Helena, MT 59620-0124, faxed to the office at (406) 444-2592, e-mailed to bdahl@state.mt.us, or may be made by completing a request form at any rules hearing held by the Department of Administration.

8. The bill sponsor requirements of 2-4-302, MCA, do not apply.

By: Barbara Ranf
BARBARA RANF, Director
Department of Administration

Dal Smilie
DAL SMILIE, Rule Reviewer

Certified to the Secretary of State July 30, 2001.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.8.505, pertaining to air quality operation fees	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT (AIR QUALITY)

TO: All Concerned Persons

1. On September 13, 2001, at 10:30 a.m., in Room 35 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, the Board of Environmental Review will hold a hearing to consider the proposed amendment of the above-captioned rule.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5 p.m., September 6, 2001, to advise us of the nature of the accommodation you need. Please contact the Board at P.O. Box 200901, Helena, Montana, 59620-0901; phone (406) 444-2544; fax (406) 444-4386.

3. The Board is proposing two alternatives for revising the air quality operation fees.

4. The rule as proposed to be amended under Alternative I would read as follows, with stricken matter interlined and new matter underlined:

ALTERNATIVE I

17.8.505 AIR QUALITY OPERATION FEES (1) As a condition of continued operation, an annual air quality operation fee must be submitted to the department by:

(a) remains the same.

(b) each source of air contaminants that will be required to obtain a permit pursuant to section ~~7661a~~ 502 of the Federal Clean Air Act, 42 USC 7401, et seq., as amended, and which does not otherwise hold an air quality permit issued by the department.

(2) through (4) remain the same.

(5) The air quality operation fee is based on the actual, or estimated actual, amount of air pollutants emitted during the previous calendar year and is an administrative fee of $400, plus ~~$21.12~~ [an amount not to exceed $21.50] per ton of PM-10, sulfur dioxide, lead, oxides of nitrogen and volatile organic compounds emitted.

(6) A separate air quality operation fee, as set forth in (5) above, is assessed for each source of air contaminants under (1), except that a source of air contaminants may not be required to pay more than one administrative fee if the facility is subject to more than one air quality permit issued by the department. The air quality operation fee charged may not

exceed ~~$250,000.00~~ $500,000.

(7) through (9) remain the same.

AUTH: 75-2-111, 75-2-220, MCA
IMP: 75-2-211, 75-2-220, MCA

5. The rule as proposed to be amended under Alternative II would read as follows, with stricken matter interlined and new matter underlined:

ALTERNATIVE II

17.8.505 AIR QUALITY OPERATION FEES (1) As a condition of continued operation, an annual air quality operation fee must be submitted to the department by:

(a) remains the same.

(b) each source of air contaminants that will be required to obtain a permit pursuant to section ~~7661a~~ 502 of the Federal Clean Air Act, 42 USC 7401, et seq., as amended, and which does not otherwise hold an air quality permit issued by the department.

(2) through (4) remain the same.

(5) The air quality operation fee is based on the actual, or estimated actual, amount of air pollutants emitted during the previous calendar year and is an administrative fee of $400, plus ~~$21.12~~ [an amount not to exceed $21.50] per ton of PM-10, sulfur dioxide, lead, oxides of nitrogen and volatile organic compounds emitted.

(6) A separate air quality operation fee, as set forth in (5) above, is assessed for each source of air contaminants under (1), except that a source of air contaminants may not be required to pay more than one administrative fee if the facility is subject to more than one air quality permit issued by the department. ~~The air quality operation fee charged may not exceed $250,000.00.~~

(7) through (9) remain the same.

AUTH: 75-2-111, 75-2-220, MCA
IMP: 75-2-211, 75-2-220, MCA

6. Statement of reasonable necessity for Alternative I:

Pursuant to Section 75-2-220, MCA, the Department of Environmental Quality assesses air quality permit application fees and annual air quality operation fees. These fees must be sufficient to cover the Department's costs of developing and administering the permitting requirements of Title 75, chapter 2, MCA, the Clean Air Act of Montana. The structure and amount of the fees is to be determined by the Board of Environmental Review, and ARM 17.8.510 requires that the Board annually review air quality fees. The amount of money the Department needs to generate through fees depends on the legislative appropriation and the amount of carryover, if any, available from the previous fiscal year.

The legislative appropriation for the Department's air quality program for fiscal year 2002 is $2,390,602.00. This represents an increase of $102,928.00 from the $2,287,674.00 budget for fiscal year 2001.

Under Section 75-2-220, MCA, and ARM 17.8.505(1)(b), annual air quality operation fees are required for all facilities that hold an air quality permit issued by the Department, or that will be required to obtain an air quality operating permit pursuant to the federal Clean Air Act Title V air quality operating permit program. Under ARM 17.8.505(5), the present annual air quality operation fee includes both a flat administrative charge of $400 and a uniform charge of $21.12 per ton of particulate matter of 10 microns or less (PM-10), sulfur dioxide, lead, oxides of nitrogen and volatile organic compounds (VOCs) emitted.

The Board is proposing to revise the per ton charge from $21.12 to an amount not to exceed $21.50. The exact amount of the proposed revision will be determined once the Department completes its review of the annual emissions inventory for calendar year 2000. The Department will have completed the inventory by the time of the public hearing in this proceeding and will present evidence at the hearing in support of a particular fee rate that does not exceed $21.50.

The Board is also proposing to increase the maximum operation fee assessed under ARM 17.8.505(6) from $250,000 to $500,000. Currently, the Pennsylvania Power & Light Company (PP&L) is the only facility in the state that pays the maximum fee. After PP&L purchased Colstrip Units 1 through 4 from the Montana Power Company, the Department combined the two air quality permits for those facilities into one permit, decreasing the maximum fee the Department may assess for Colstrip Units 1 through 4 under the current rule from $500,000 to $250,000. The proposed increase in the maximum fee would make up for this lost revenue and maintain the relative proportion of the fee paid by each fee payer.

With the proposed increase in the maximum operation fee, the proposed revision to the per ton component of the annual air quality operation fee will be the amount necessary to generate sufficient fees to satisfy the legislative appropriation for the Department's air quality program and adequately fund the program, given the change in the emission inventory from last year.

An alternative to increasing the maximum fee by $250,000 and revising the per ton charge in an amount not exceeding $21.50 would be to retain the current maximum fee and increase the per ton charge by an amount that would result in an additional total increase in per ton fees of $250,000. Other alternatives include increasing the maximum fee and per ton charge by various different amounts, eliminating the maximum fee, and/or increasing the $400 administrative fee, to reach the total amount needed to meet the legislative appropriation. The Board is not proposing any of those alternatives, other than eliminating the maximum fee under Alternative II, because they

would place an unreasonable financial burden on small facilities.

Under Alternative I, one facility, PP&L Colstrip, would pay an additional $250,000 under the proposed increase in the maximum fee, for a total annual operation fee paid by PP&L of $500,000 for fiscal year 2002. Under the proposed increase of the maximum fee, the total paid by other facilities would be decreased by $250,000. Under the proposed revision of the per ton charge to an amount not exceeding $21.50, approximately 434 facilities other than PP&L would pay a total of approximately $1.6 million in annual air quality operation fees for fiscal year 2002, for a total of $2.1 million. This represents an increase in annual operation fees of approximately $40,000.00 from fiscal year 2001, the amount necessary to meet the legislative appropriation for fiscal year 2002.

The Board is also proposing to amend ARM 17.8.505(1)(b) to correct the citation in that subsection to a section of the Federal Clean Air Act. The current reference to "section 7661a of the Federal Clean Air Act" should, instead, refer to "section 502" of the Federal Clean Air Act. This proposed change is not intended to change the meaning of the rules.

7. Statement of reasonable necessity for Alternative II:

The statement of reasonable necessity for Alternative II is the same as for Alternative I, but is supplemented with the following statement.

Under Alternative II, there would be no maximum fee, so that all facilities would pay the same fee per ton of emissions. Approximately 434 facilities, not including PP&L Colstrip, would pay a total of approximately $1.35 million in annual air quality operation fees for fiscal year 2002, for a total of $2.1 million. This represents an increase in annual operation fees of approximately $40,000.00 from fiscal year 2001, the amount necessary to meet the legislative appropriation for fiscal year 2002.

8. Concerned persons may submit their data, views or arguments concerning the proposed action either in writing or orally at the hearing. Written data, views or arguments may also be submitted to the Board of Environmental Review, P.O. Box 200901, Helena, Montana, 59620-0901, no later than September 20, 2001. To be guaranteed consideration, the comments must be postmarked on or before that date. Written data, views or arguments may also be submitted electronically via email addressed to Leona Holm, Board Secretary, at "lholm@state.mt.us", no later than 5 p.m. September 20, 2001.

9. Kelly O'Sullivan has been designated to preside over and conduct the hearing.

10. The Board 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 that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA, underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to the Board of Environmental Review, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, or may be made by completing a request form at any rules hearing held by the Board.

11. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

BOARD OF ENVIRONMENTAL REVIEW

by: *Joseph W. Russell, M.P.H*
JOSEPH W. RUSSELL, M.P.H.
Chairperson

Reviewed by:

David Rusoff
David Rusoff, Rule Reviewer

Certified to the Secretary of State July 30, 2001.

BEFORE THE PETROLEUM TANK RELEASE COMPENSATION BOARD OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.58.336 pertaining to reimbursement of claims	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT (Petroleum Tank Release Compensation Board)

TO: All Concerned Persons

1. On August 29, 2001, at 10:00 a.m., the Petroleum Tank Release Compensation Board (Board) will hold a public hearing in the Clark Room of the Phoenix Building, 2209 Phoenix Avenue, Helena, Montana, to consider the proposed amendment of a rule pertaining to reimbursement of claims.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5 p.m., August 22, 2001, to advise us of the nature of the accommodation that you need. Contact the Board at P.O. Box 200902, Helena, Montana, 59620-0902; phone (406) 444-1420; fax (406) 444-1902.

3. The rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined.

17.58.336 REVIEW AND DETERMINATION OF CLAIMS FOR REIMBURSEMENT (1) through (6) remain the same.

(7) Except as provided in (8), claims subject to the provisions of 75-11-308(3), MCA may be paid pursuant to the following schedule:

Period of Noncompliance	Percent of allowed claim to be reimbursed
1 to 30 days	90%
31 to 60 days	75%
61 to 90 days	50%
91 to 180 days	25%
greater than 180 days	no reimbursement

(a) The period of noncompliance begins on the date the department places a notice of violation letter to an owner or operator in the mail, and the period of noncompliance ends on the date the department determines that all violations identified in the notice of violation letter are corrected.

(b) Reimbursement of claims submitted after a notice of violation letter is sent shall be suspended until all violations are corrected. Claims submitted for work performed prior to the issuance of a notice of violation letter are not suspended.

(8) The percentages of reimbursement set forth in (7) are guidelines and may be adjusted by the board based on the specific facts of a given situation.

(7) and (8) remain the same, but are renumbered (9) and (10).

AUTH: 75-11-318, MCA
IMP: 75-11-309, MCA

4. The Board proposes to amend ARM 17.58.336 to fulfill the requirements of 75-11-318, MCA, wherein the legislature authorized and required that the Board adopt rules for the criteria and reimbursement rates applicable to those owners and operators who comply with a violation letter issued by the Department of Environmental Quality (Department). The timeframes and percentages in subsection (7) are set at the lengths and levels that will generally provide an incentive for owners and operators to remain in compliance, but that will not unjustly penalize them for noncompliance. Subsection (8) is proposed to allow the Board to deviate from the schedule when, because of situation-specific factors, application of the schedule would not achieve these purposes. The proposed rule allows owners and operators to receive a substantial portion of reimbursable costs, provided they respond to a Department-issued violation letter within a reasonable time. The proposed timeframes are justified in light of the Department's policy of providing numerous opportunities for an owner or operator to correct a violation or to conduct corrective action prior to the issuance of a violation letter.

5. Concerned persons may submit their data, views or arguments concerning these proposed amendments either in writing or orally at the hearing. Written data, views or arguments may also be submitted to Paul Hicks, 2209 Phoenix Ave., P.O. Box 200901, Helena, MT 59620-0902, or electronically to phicks@state.mt.us no later than 5:00 p.m., September 6, 2001. To guarantee consideration, comments must be postmarked on or before that date.

6. Katherine Orr has been designated to preside over and conduct the hearing.

7. The Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the Board. Persons who wish to have their names added to the list shall make a written request that includes the name and mailing address of the person to receive rulemaking notices. Such written request may be mailed or delivered to Paul Hicks at the Board, 2209 Phoenix Avenue, P.O. Box 200902, Helena, Montana 59620-0902, or faxed to the office at (406) 444-1902, or may be made by completing a request form at any rules hearing held by the Board.

8. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

PETROLEUM TANK RELEASE COMPENSATION BOARD

BY: */s/ TIM HORNBACHER*
TIM HORNBACHER, CHAIR

/s/ JOHN F. NORTH
John F. North
Rule Reviewer

Certified to the Secretary of State July 30, 2001.

**BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA**

In the matter of the adoption of new rules pertaining to motor fuel definitions and late file and pay penalties when filing electronically; the amendment of ARM 18.9.101, 18.9.103, 18.9.104, 18.9.108, 18.9.118, 18.9.302, 18.9.703, 18.10.121, 18.10.404, 18.10.504, 18.10.507, 18.11.102; the amendment and transfer of ARM 18.9.324; the repeal of ARM 18.9.110 and 18.9.301; the transfer of ARM 18.9.322 and 18.9.323 pertaining to off-highway vehicle/equipment and dyed special fuel allowance	) NOTICE OF PUBLIC) HEARING ON PROPOSED) ADOPTION, AMENDMENT,) AMENDMENT AND TRANSFER,) REPEAL, AND TRANSFER

TO: All Concerned Persons

1. On August 30, 2001, at 1:00 p.m., a public hearing will be held in the auditorium of the Department of Transportation building, 2701 Prospect, Helena, Montana, to consider the adoption, amendment, amendment and transfer, repeal, and transfer of the above-referenced rules.

2. The Department of Transportation will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than August 24, 2001, to advise us of the nature of the accommodation you need. Please contact Robert Turner, Fuel Tax Management and Analysis Bureau, P. O. Box 201001, Helena, MT 59620-1001, (406) 444-7672 or TTY users can call (406)444-7696, fax (406) 444-6032, e-mail boturner@state.mt.us.

3. The proposed new rules provide as follows:

<u>NEW RULE I DEFINITIONS</u> (1) "Biodiesel" means:

(a) a fuel sold for use in vehicles operating upon the public roads and highways within the state that contains at least 20% esterified vegetable oil, at least 10% alcohol, or an equivalent mixture of both oil and alcohol, with the balance being diesel fuel or any other petroleum-based volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test and other additives; or

(b) a monoalkyl ester that:

(i) is derived from domestically produced vegetable oils, renewable lipids, rendered animal fats or any combination of those ingredients; and

(ii) meets the requirements of ASTM PS 121, also known as the Provisional Specification for Biodiesel Fuel (B100) blend stock for distillate fuels, as adopted by the American society of testing and materials.

(c) Biodiesel is also known as "B-20."

(2) "Gasohol" means a fuel blend containing at least 10% alcohol, with the balance being gasoline and other additives. Gasohol is also known as "E-10."

AUTH: 15-70-104, MCA
IMP: 15-70-204, 15-70-321, MCA

REASON: This new rule provides for a definition section and defines gasohol and biodiesel used in Chapter 568, Laws of 2001. This statute does not become effective unless certain contingencies occur. In the meantime, individuals may have plans for a gasohol or biodiesel plant. Consequently, if there are definitions the department will be able to advise individuals with questions concerning whether their facilities comply with the statutes.

NEW RULE II DEFINITIONS (1) "Bulk storage" means a container or tank holding any fuels for storage, other than the supply tank of a motor vehicle or any internal combustible engine.

AUTH: 15-70-104 and 15-70-522, MCA
IMP: 15-70-204, 15-70-205, MCA and Chapter 568, Laws of 2001

REASON: The department is proposing to adopt this rule to define bulk storage as used in the administration of motor fuels in all of the rules in which the definition may apply.

NEW RULE III LATE FILE AND PAY PENALTIES WHEN FILING ELECTRONICALLY (1) An electronic payment is considered late and is subject to the penalties under 15-70-210 and 15-70-352, MCA, when it is not received by the state's designated depository by 11:59 p.m. on the day that it is due as required under 15-70-113, MCA.

(2) If an electronic payment is initiated by the department of transportation and it arrives late through no fault of the licensed distributor, there are grounds for waiver of the penalties.

(3) A motor fuel tax return that is submitted electronically to the department of transportation is considered late if it is not received by 11:59 p.m. on the day it is due as required under 15-70-205 and 15-70-344, MCA.

(4) When an electronic payment is received late or when a payment that is initiated by the department does not have sufficient funds in the account, interest is charged from the 26th of the month.

AUTH: 15-70-104, 15-70-115, MCA

IMP: 15-70-113, 15-70-114, 15-70-115, 15-70-205, 15-70-210, 15-70-330, and 15-70-344, MCA

REASON: This new rule defines when an electronic payment of motor fuel taxes and electronic transmission of a motor fuel tax return are considered late and subject to interest, late file and late pay penalties.

4. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

18.9.101 DETERMINATION OF WHEN GASOLINE, SPECIAL FUEL, OR AVIATION FUEL DISTRIBUTED (1) through (3) remain the same.

(4) Withdrawals from a refinery, terminal or pipeline terminal, which are placed into bulk storage in this state, are deemed to be distributed at the time of delivery into the bulk storage tank.

AUTH: 15-70-104, MCA
IMP: 15-70-201, 15-70-204, 15-70-301 and 15-70-321, MCA

REASON: This amendment clarifies that motor fuel is deemed distributed and subject to the motor fuel taxes and petroleum storage cleanup fee when it is withdrawn from a refinery, terminal or pipeline and put into bulk storage.

18.9.103 DISTRIBUTOR'S STATEMENTS (1) remains the same.

~~(2) The department of transportation will accept machine tabulated data in lieu of the schedules:~~

~~(a) if the data is in the same format as on the schedules; or~~

~~(b) the distributor requests in writing and submits a copy of the format to be used. The alternative format must be approved by the department prior to usage.~~

~~(3)~~ (2) Electronic filing, ~~is accepted in lieu of the schedules provided:~~ in the format required by the department, will be accepted.

~~(a) the distributor requests in writing and submits a copy of the format to be used. The format must be approved by the department prior to usage.~~

(3) Each distributor must report the amount of gasoline and special fuel distributed and received in gross gallons on the monthly tax return that is filed with the department of transportation.

AUTH: 15-70-104 and 15-70-115, MCA
IMP: 15-70-112, 15-70-113, 15-70-114, 15-70-115, and 15-70-205, MCA

REASON: These amendments are reasonably necessary to ensure that all returns filed electronically use the Motor Fuel Uniformity standards of the Federation of Tax Administrators,

and to ensure that the Montana gasoline and special fuel tax is calculated on gross gallons and not on net gallons.

18.9.104 DISTRIBUTOR'S RECORDS (1) remains the same. (2) Every refinery and terminal in the state must submit to the department monthly a copy of each bill of lading ~~or manifest~~ issued at the time of withdrawal. The department may waive the hard copy in lieu of electronic filing format.

AUTH: 15-70-104 and 15-70-115, MCA
IMP: 15-70-112, 15-70-113, 15-70-114, 15-70-206 and 15-70-345, MCA

REASON: This amendment ensures that the information received by the department about gasoline and special fuel loads is consistent and traceable among all the licensed distributors. The bill of lading provides more information than a manifest does. Use of the bill of lading is necessary for tracing fuel loads from one licensed distributor to another. The manifest is not adequate for that purpose.

18.9.108 WHOLESALE DISTRIBUTOR (1) remains the same. (a) purchases gasoline, special fuel, or aviation fuel and subsequently sells and delivers the gasoline, special fuel, or aviation fuel to retailers in bulk quantities in this state; and

(b) elects to become licensed under 15-70-201, MCA, to assume the Montana state gasoline, special fuel, or aviation fuel tax liability and the other obligations of a "distributor" pursuant to Title 15, chapter 70, parts 2 and 3, MCA, and these rules~~, and~~.

~~(c) pays the license fee.~~

(2) through (3) remain the same.

AUTH: 15-70-104, MCA
IMP: 15-70-201 and 15-70-301, MCA

REASON: This amendment is necessary because Chapter 37, Laws of 1999, eliminated the annual license fee of $200 for wholesale distribution of gasoline in this state, effective retroactively to the 1999 license year. The cumulative amount of impact will be a reduction of approximately $8,800.00, as there are 44 wholesale Montana distributors.

18.9.118 PREPAYMENT OF MOTOR FUEL TAXES (1) A licensed distributor may overpay its known motor fuel tax liability. The overpayment must be designated as such by the distributor. The credit balance created by the overpayment will apply to future tax deficiencies if the gasoline, special fuel, or aviation fuel is reported and tax is paid within 30 days of the due date. ~~No penalty or interest will be imposed on future tax deficiencies to the extent the overpayment credit balance is sufficient to pay the deficiency. If the overpayment credit balance is not sufficient to cover the~~

~~entire deficiency, penalty and interest will be assessed on the remaining deficiency. No interest will accrue on the overpayment credit balance.~~

AUTH: 15-70-104, MCA
IMP: 15-70-210 and 15-70-352, MCA

REASON: The amendment treats all licensed distributors the same. All licensed distributors will be subject to late file and late pay penalties whether they have money deposited with the department or not.

18.9.302 SELLER'S INVOICE (1) through (h)(iii) remain the same.

(i) identification of the equipment or bulk storage that the gasoline or special fuel is placed into if it is fueled from other than a cardlock. Examples include, but are not limited to, fuel cans, slip tanks, tractors or bobcats.

AUTH: 15-70-104, MCA
IMP: 15-70-206, 15-70-207, 15-70-345 and 15-70-348, MCA

REASON: The amendment is reasonably necessary so that documentation in the form of an invoice for fuel sold or delivered at the retail level provides the necessary information for motor fuel tax refund purposes for the consumer.

~~18.9.324~~ 18.10.112 DYED SPECIAL FUEL (1) remains the same.

(a) In Montana ~~R~~red dye will be used to identify all tax-exempt special fuel, regardless of the sulfur content of that fuel. Colored special fuel from Canada will be considered tax exempt if the dye concentration has been approved by the Canadian authorities, but it may not be used on public roads.

(b) remains the same.

(2) Dyed special fuel can be purchased tax free in Montana and Canada, but it is illegal to use it on the public roads, regardless of where it was purchased, except for the movement of off-road vehicles traveling from one location to another as indicated in ARM ~~18.9.322~~ 18.10.110 and any vehicles described in ARM ~~18.9.323~~ 18.10.111.

(3) through (7) remain the same.

AUTH: 15-70-104, 15-70-330, and 60-2-201, MCA
IMP: 15-70-321, 15-70-330, and 60-2-111, MCA

REASON: It is reasonably necessary to transfer this amended rule from 18.9.324 to 18.10.112 because the rule pertains to "other fuels" rather than "gasoline." In addition, dyed fuel cannot be used on Montana public roads, regardless of where it is purchased. The use of Canadian dyed fuel on Montana's

public roads has been an issue, and this proposed amendment will make it clear that dyed fuel cannot be used.

18.9.703 PRORATION OF INTEREST AND PAYMENT APPLICATION (1) Interest charged on delinquent gasoline, ~~and~~ special fuel, compressed natural gas and liquefied petroleum gas taxes is 12% a year or 1% a month.

(2) remains the same.

(3) All payments for delinquent accounts, including credits, are first credited to tax, then any remaining excess credited to interest and then to penalty.

AUTH: 15-70-104, MCA
IMP: 15-70-210, 15-70-352, 15-70-353, 15-70-715 and 15-70-716, MCA

REASON: This amendment defines the order that motor fuel tax payments are applied against an amount owing to the department. In addition, interest is prorated daily on LPG and CNG to be consistent with gasoline and special fuels taxes. The application of payments and the proration of interest are beneficial to the taxpayer.

18.10.121 QUARTERLY REPORTS - TAX PAYMENT (1) Every special fuel user who is subject to 15-70-302, MCA, must file with the department of transportation a report showing the amount of fuel used during the calendar quarter. Calendar quarters end on the last day of March, June, September, and December. The reports are due on or before the last day of the month following the close of a calendar quarter. Reports shall accompany a payment to the department of transportation for the total amount due.

(2) remains the same.

AUTH: 15-70-104, MCA
IMP: 15-70-121, 15-70-306, 15-70-325 and 15-70-327, MCA

REASON: This amendment clarifies the meaning of "calendar quarter." It requires that the special fuel user report the amount of fuel used up through the last day of the month for the calendar quarter.

18.10.404 SELLER INVOICES~~.~~ (1) through (h)(iii) remain the same.

(i) Identification of the vehicle or equipment into which the special fuel is placed~~.~~; and

(j) Identification of the equipment or bulk storage that the gasoline or special fuel is placed into if it is fueled from other than a cardlock. Examples include, but are not limited to, fuel cans, slip tanks, tractors, bobcats.

AUTH: 15-70-104, MCA
IMP: 15-70-121, 15-70-306 and 15-70-323, MCA

REASON: The amendment is reasonably necessary so that documentation in the form of an invoice for fuel sold or delivered at the retail level meets the criteria for motor fuel tax refund purposes.

18.10.504 ~~MONTHLY~~ QUARTERLY TAX RETURNS (1) Every CNG or LPG dealer must file a tax return with the department on or before the last day of the month following the ~~month~~ close of the calendar quarter to which it relates on forms supplied by the department. The CNG return must account for all fuel received, sold, distributed, and used, and must include the amount of fuel tax collected during the ~~immediately preceding~~ calendar ~~month~~ quarter, together with any other information the department may require. The LPG tax return must account for the total taxable gallons of fuel sold, the amount of fuel tax collected during the ~~immediate proceeding~~ calendar ~~month~~ quarter, together with any other information the department may require. The tax returns must accompany a tax remittance, if any, payable to the department of transportation for the amount of tax due.

(2) Every dealer must submit the ~~monthly~~ quarterly tax return regardless of whether he has distributed fuel during the immediately preceding calendar ~~month~~ quarter. Failure to file the tax return will be considered sufficient cause for revocation of the dealer's license, and the license may be revoked as of that date.

(3) and (4) remain the same.

AUTH: 15-70-104, MCA
IMP: 15-70-706, 15-70-713 and 15-70-714, MCA

REASON: This amendment is reasonably necessary because Chapter 38, Laws of 1999, substituted the term "quarterly" for "monthly," with an effective date of July 1, 1999.

18.10.507 CNG OR LPG DEALER'S BOND (1) CNG or LPG dealers will be required to furnish the department of transportation a corporate surety bond or other collateral security or indemnity equivalent to twice the dealer's estimated ~~monthly~~ quarterly CNG or LPG tax if the dealer fails to file timely reports. Failure to timely file as used in 15-70-704, MCA, means:

(a) through (2) remain the same.

AUTH: 15-70-104, MCA
IMP: 15-70-704, MCA

REASON: This amendment is reasonably necessary because Chapter 38, Laws of 1999, substituted the term "quarterly" for "monthly," with an effective date of July 1, 1999.

18.11.102 SEIZING IMPROPERLY IMPORTED FUELS (1) If an MCS officer determines that neither the transporter, consignor, nor consignee is a licensed fuel distributor in the

state of Montana and any one of the transporters, consignors, or consignees is listed on the warning list defined above, the MCS officer shall issue a notice to appear to the transporter, consignor, and consignee for violation of ~~15-70-203~~ 15-70-233 or ~~15-70-336~~ 15-70-357, MCA, for improperly importing fuel. Upon conviction, the company's name must be placed on the seizure list.

(2) through (4) remain the same.

AUTH: 15-70-104, MCA
IMP: 15-70-233 and 15-70-357, MCA

REASON: The rule was amended because 15-70-203, MCA, was repealed and the reference to 15-70-336, MCA, was incorrect. Section 15-70-233, MCA, is being added because it was inadvertently left out when the rule was adopted.

5. ARM 18.9.110 (AUTH: 15-70-104, MCA; IMP: 15-70-201, 15-70-202, 15-70-301, 15-70-341, MCA) and 18.9.301 (AUTH: 15-70-104, MCA; IMP: 15-70-203, 15-70-342, MCA), which can be found on pages 18-1013 and 18-1701, respectively, of the Administrative Rules of Montana, are proposed to be repealed because Chapter 37, Laws of 1999, eliminated the annual license fee of $200 for wholesale distribution of gasoline in this state, effective retroactively to the 1999 license year and eliminated the refundable fuel seller's license requirement, thereby eliminating the need for these rules. The cumulative amount of impact will be a reduction of approximately $8,800.00, as there are 44 wholesale Montana distributors.

6. The department is proposing to transfer rules 18.9.322 to 18.10.110 (AUTH: 15-70-104 and 15-70-330, MCA; IMP: 15-70-330, MCA) and 18.9.323 to 18.10.111 (AUTH: 15-70-104 and 15-70-330, MCA; IMP: 15-70-301 and 15-70-330, MCA), from Chapter 9 to Chapter 10 of the department’s administrative rules, because the rules pertain to "other fuels" rather than "gasoline." The text of the rules remains the same.

7. Concerned 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 Robert Turner, Fuel Tax Management and Analysis Bureau, Department of Transportation, P.O. Box 201001, Helena, MT 59620-1001, and must be received no later than September 7, 2001, at 5:00 p.m.

8. Tim Reardon, Chief Legal Counsel, Department of Transportation, P.O. Box 201001, Helena, MT 59620-1001, (406) 444-6302, has been designated to preside over and conduct the hearing.

9. The Department of Transportation maintains a list of interested persons who wish to receive notices of the 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 the subject area or areas of interest of the person requesting notice, including, but not limited to, rules proposed by the Administration Division, Aeronautics Division, Highways and Engineering Division, Maintenance Division, Motor Carrier Services Division, and Rail, Transit and Planning Division. Such written request may be mailed or delivered to the Montana Department of Transportation, Legal Services, P.O. Box 201001, Helena, MT 59620-1001, faxed to the office at (406)444-7206, e-mailed to lmanley@state.mt.us, or may be made by completing a request form at any rules hearing held by the department.

10. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

MONTANA DEPARTMENT OF TRANSPORTATION

By: *David A. Galt*
Director, Department of Transportation

By: *Lyle R. Manley*
Rule Reviewer

Certified to the Secretary of State July 30, 2001.

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

In the matter of the proposed amendment of ARM 8.6.405, 8.6.407, 8.6.410 and 8.6.413 pertaining to licensure of applicants who are registered in another state, examinations, renewals and fees	) NOTICE OF PUBLIC HEARING) ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On September 10, 2001, at 10:30 a.m., a public hearing will be held in the Business Standards Division conference room #487, 4th Floor, Federal Building, 301 South Park Avenue, Helena, Montana to consider the proposed amendment of the above-stated rules.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Architects no later than 5:00 p.m., on August 30, 2001, to advise us of the nature of the accommodation that you need. Please contact Lorri Sandrock, Board of Architects, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2386; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail DLIBSDARC@state.mt.us.

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

8.6.405 LICENSURE OF APPLICANTS WHO ARE REGISTERED IN ANOTHER STATE (1) Remains the same.

(a) The address of the office ~~of the NCARB~~ is NCARB, ~~1735 New York Avenue, North West Suite 700 Washington, DC 20006~~ 1801 K Street NW, Suite 1100, Washington, DC 20006-1310.

(2) ~~Each applicant shall provide a license verification from the states or jurisdictions in which the applicant has been licensed as to the current status of the license and whether it is in good standing.~~

~~(3)~~ All applicants who are registered in another state or any foreign jurisdiction approved by the board and who were licensed in their respective jurisdiction prior to January 1, 1966, shall submit evidence of having successfully completed an NCARB-approved seismic exam or other board approved component.

(3) An applicant who is registered in another state or any foreign jurisdiction approved by the board and who meets all reciprocal licensure requirements except the seismic force

exam, must successfully complete only that exam to satisfy licensure requirements.
AUTH: 37-1-131, 37-65-204, MCA
IMP: 37-65-304, MCA

REASON: The Board finds it is reasonable and necessary to update addresses that have recently changed, clarify language and eliminate rule language that is addressed in statute. This amendment has no effect on licensees.

8.6.407 EXAMINATION (1) Licensure may be granted to an applicant who has successfully passed the architectural registration examination (ARE). To be admitted to the national architectural examination, an applicant shall have completed the ~~national counsel of architectural registration boards (~~NCARB~~)~~ education and training requirements and have obtained a council record.

(2) through (3)(a) remain the same.

(b) meet the alternate education criteria outlined in the NCARB education standards. The handbook is available through the National Council of Architectural Registration Boards, 1801 K Street NW, Suite 1100, Washington, D.C. ~~2006~~ 20006-1310, or the Montana board of architects.

(4) through (7) remain the same.
AUTH: 37-1-131, 37-65-204, 37-65-303, MCA
IMP: 37-65-303, MCA

REASON: The Board finds it reasonable and necessary to correct misspelled words and incorrect zip codes. This amendment has no effect on licensees.

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

(2) The renewal fee shall be due ~~by July 1~~ on the date set forth in ARM 8.2.208. However, a one-month grace period thereafter is provided by statute. A late renewal fee will be imposed upon any license which has not been renewed by July 31. Both a renewal fee and late renewal fee will be imposed for each year a license is lapsed.

(3) A license that has lapsed for three successive years automatically terminates and may not be reinstated, and a new license must be obtained, and appropriate fees must be paid. ~~This is in conformity with 37-1-141, MCA.~~
AUTH: 37-1-131, 37-1-141, 37-65-204, MCA
IMP: 37-1-131, 37-1-141, 37-65-306, MCA

REASON: The Board finds that it is reasonable and necessary to amend this rule to add a new paragraph to separate and help clarify the different subjects that are addressed within the rule and delete unnecessary language. This will have no effect on the licensees.

8.6.413 FEE SCHEDULE (1) Remains the same.
(2) Biennial renewal (if paid by July 31st) ~~80~~ 110
(3) through (8) remain the same.
AUTH: 37-1-134, 37-65-204, 37-65-307, MCA
IMP: 37-1-134, 37-65-201, 37-65-304, 37-65-306, 37-65-307, MCA

REASON: The Board has reviewed the current fees, projected income and expenditures and has determined that it is both reasonable and necessary to increase fees in order to maintain the board and its budgetary responsibility. The Board is required by statute to set fees commensurate with program costs. During the last several years reserved funds have been used for computer database updates, a move to a new building, and increased rent costs. Fees need to be adjusted to meet the needs of all of these budgetary issues. The Board currently has a fund balance of $95,815.66. The estimated revenue for the biennium without the fee increase is $111,370 with expenditures for the biennium estimated at $149,224. The Board estimates that it will receive an additional $33,960 biennially as a result of this fee increase for total revenue of $145,330. This increase will affect all 1,032 licensees.

4. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at http://discoveringmontana.com/dli/bsd under the Board of Architects rule notice section. The Department strives to make the electronic copy of this Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered.

5. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Architects, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to DLIBSDARC@state.mt.us and must be received no later than 5:00 p.m., September 6, 2001. If comments are submitted in writing, the Board requests that the person submit six copies of their comments.

6. Lewis Smith, attorney, has been designated to preside over and conduct this hearing.

7. The Board of Architects maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. 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 that the person wishes to receive notices regarding all Board of Architects

administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Architects, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to DLIBSDARC@state.mt.us or may be made by completing a request form at any rules hearing held by the agency.

8. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

BOARD OF ARCHITECTS
EUGENE VOGL, CHAIRMAN

By: /s/ MIKE FOSTER
Mike Foster, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

By: /s/ KEVIN BRAUN
Kevin Braun
Rule Reviewer

Certified to the Secretary of State, July 30, 2001.

BEFORE THE BOARD OF HEARING AID DISPENSERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed amendment of ARM 8.20.402, 8.20.403 and 8.20.412 pertaining to fees, examination - pass/fail point and minimum testing and recording procedures	)))))))	AMENDED NOTICE OF PUBLIC HEARING

TO: All Concerned Persons

1. On May 24, 2001 the Board of Hearing Aid Dispensers published a notice at page 819 of the 2001 Montana Administrative Register, Issue Number 10, of the proposed amendment of the above stated rules. The notice of proposed agency action is being amended because some persons were advised that the hearing scheduled for June 27, 2001 had been cancelled.

2. On September 12, 2001 at 10:00 a.m. a public hearing will be held in the conference room on the 4th Floor of the Federal Building, 301 South Park Avenue, Helena, Montana, to consider the amendment of the above noted rules.

3. The Board of Hearing Aid Dispensers will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Hearing Aid Dispensers no later than 5:00 p.m. on September 4, 2001 to advise us of the nature of the accommodation that you need. Please contact Linda Grief, Board of Hearing Aid Dispensers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2395; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail DLIBSDHAD@state.mt.us.

4. Concerned persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Board of Hearing Aid Dispensers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, and must be received no later than the close of the hearing on September 12, 2001.

5. F. Lon Mitchell, attorney, has been designated to preside over and conduct the hearing.

6. The Board of Hearing Aid Dispensers maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. 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 that the person wishes to receive notices regarding the Board of Hearing Aid Dispensers. Such written request may be mailed or delivered to the Board of Hearing Aid Dispensers, 301 South Park Avenue,

P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to DLIBSDHAD@state.mt.us or may be made by completing a request form at any rules hearing held by the agency.

BOARD OF HEARING AID DISPENSERS
DAVID KING, CHAIRMAN

By: /s/ MIKE FOSTER
Mike Foster, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

By: /s/ KEVIN BRAUN
Kevin Braun
Rule Reviewer

Certified to the Secretary of State July 30, 2001.

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

In the matter of the proposed amendment of ARM 8.32.302, 8.32.425, 8.32.806, 8.32.807, 8.32.1503, 8.32.1702, and 8.32.1709 pertaining to nurse-midwifery practice, fees, nursing tasks that may be delegated and general nursing tasks that may not be delegated and the adoption of new rule I pertaining to executive director qualifications	) NOTICE OF PUBLIC HEARING) ON PROPOSED AMENDMENT) AND ADOPTION

TO: All Concerned Persons

1. On September 17, 2001, at 9:00 a.m., a public hearing will be held in the Business Standards Division conference room #487, 4th Floor, Federal Building, 301 South Park Avenue, Helena, Montana to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Nursing no later than 5:00 p.m., on September 10, 2001 to advise us of the nature of the accommodation that you need. Please contact Barbara Swehla, Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2341; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2343; e-mail DLIBSDNUR@state.mt.us.

3. The rules as proposed to be amended provide as follows: (new matter underlined, deleted matter interlined)

8.32.302 NURSE-MIDWIFERY PRACTICE (1) Nurse-midwifery practice means the independent management of care of essentially normal newborns and women, antepartally, intrapartally, postpartally and/or gynecologically. This occurs within a health care system which provides for medical consultation, collaborative management, and referral and is in accord with the ~~"Functions, Standards and Qualifications for Nurse-Midwifery Practice"~~ Standards for the Practice of Nurse-Midwifery, 1993 as defined by the American College of Nurse-Midwives, which is hereby incorporated by reference. ~~1522 K. Street NW, Suite 1120, Washington, D.C. 20005.~~ Copies may be obtained from the American College of Nurse-Midwives at 818 Connecticut Ave. NW, Suite 900, Washington, DC 20006 ~~the above address or at the board office, Federal Building, 301 South~~

~~Park, P.O. Box 200513, Helena, Montana 59620-0513~~.
AUTH: 37-8-202, MCA
IMP: 37-8-202, 37-8-409, MCA

REASON: The amendments to this rule are reasonable and necessary because the title of the standards the American College of Nurse Midwives (ACNM) uses has recently changed. Because the standards are changed by that group the Board office will no longer keep a copy on file. The current standards are available on the ACNM web site, as well as by calling or writing the ACNM. This rule will affect all Montana nurse midwives as well as those interested in the scope of nurse-midwife practice.

8.32.425 FEES (1) through (4) remain the same.

(5) The license (RN or LPN) renewal fee is $~~40~~ 50 per year.

(6) The fee to reactivate a license (RN or LPN) is $~~40~~ 50.

(7) through (10) remain the same.

(11) The fee for a duplicate renewal certificate is $~~10~~ 20.

(12) Remains the same.

(13) The fee for a duplicate renewal application is $20.

(14) The fee for checks issued with non-sufficient funds as notified by the department's management services, is $50.

(15) The fee for a copy of the laws and rules book is $20, with no restrictions on making duplicate copies from the original copy ordered.

AUTH: 37-1-319, 37-8-202, MCA
IMP: 37-1-134, 37-8-202, MCA

REASON: The Board believes that the amendments to this rule are reasonable and necessary because the Board's costs of issuing licenses, duplicate licenses and copies of the laws and rules relating to nursing have increased. Laws and rules are available on the internet and may be copied freely. Laws and rules will be e-mailed at no cost to anyone making a request. The Board is proposing to add a fee for non-sufficient funds checks because they do not feel that this cost should be passed on to other licensees.

The Board of Nursing is funded solely by license fees. The Board is required by statute to set fees commensurate with costs. The proposed amendments are reasonable and necessary in order to meet budgetary requirements and avoid a deficit. The Board has experienced an increase in expenditures, including but not limited to a more than 300% increase in compliance cases; increased need for internal and contract attorney work; increase in contested case hearings, including the cost for hearing examiners and court reporters; increase in numbers of declaratory rulings and rules hearings which require court reporters and attorney time; increased number of investigations; 4% pay increase authorized by the 2001

legislature; increases in mailing costs and printing costs; and increased costs relating to web site development and the Oracle database.

The appropriation for the current fiscal year is $717,898. The Board anticipates that it would receive $669,748 in revenue under the current fee schedule. This would result in a deficit of $48,150 for FY2002. The Board estimates that it would receive an additional $155,000 in revenue during fiscal year 2002 if the fees are amended as proposed. The proposed fee increases will affect all 14,047 licensees.

8.32.806 ANNUAL REPORT (1) An annual report for the preceding academic year shall be submitted by ~~October~~ June 1 of each year. ~~Six~~ Four copies will be submitted to the board office.

(2) Remains the same.

(a) progress toward achievement of the school's stated ~~objectives for the past year~~ goals;

(b) Remains the same.

(c) ~~any changes since the last annual report in qualifications or major responsibilities of the dean or director and faculty members~~ any special reports and board communications submitted during the last year;

(d) ~~a report of faculty members' professional development for the two years preceding the report only~~ any changes during the last year in the following areas~~;~~:

(i) qualifications or major responsibilities of the dean or director;

(ii) qualifications or major responsibilities of faculty members;

(iii) policies or practices used for selection, promotion and graduation of students;

(iv) practices followed in safeguarding the health and well-being of the students;

(v) curriculum plan;

(vi) course descriptions;

(vii) resources; and

(viii) facilities.

(e) ~~any changes since last annual report in policies used for selection, promotion and graduation of students~~ clinical agency contractual arrangements, to include a full list of all current agencies used for placement of students, approximate number of students per agency per semester, and any potential difficulties related to over-utilization by nursing students in any listed agency. Agencies new to the program must be identified on a form furnished by the board;

(f) ~~any changes since last annual report in practices followed in safeguarding the health and well-being of the students;~~ a list of current faculty, including identification of those faculty members who are on waiver (those who do not meet required faculty qualifications), to include:

(i) the date of the board approved waiver for each faculty member on waiver; and

(ii) the current number and percentage of faculty on waiver to the total FTE's in the nursing program.

(g) report of faculty members' professional development (major activities to maintain expertise) for the past year;

(h) current enrollment by ~~class~~ course, including student-teacher ratios for clinical experiences;

~~(h)~~ (i) ~~number of admissions to school per~~ enrollment in nursing program each year for past five years;

~~(i)~~ (j) number of graduations from ~~school per~~ nursing program each year for past five years;

~~(j)~~ (k) performance of students on state board examinations for the past five years (using data provided by the board office);

~~(k) any changes since last annual report in curriculum plan;~~

~~(l) any changes since last annual report in course descriptions;~~

~~(m) descriptions of resources and facilities, clinical areas, and contractual arrangements which reflect upon the academic program. List current agencies in which students are placed, and approximate number of students in each agency per semester/quarter. Difficulties or potential problems related to over utilization by nursing students of specific clinical sites should be noted here.~~

~~(n) a copy of the nursing program's budget, including a statement of income and expenditures and the most recent audited financial report for the parent institution;~~

(l) a statement from the program director indicating that the nursing program's budget is sufficient to meet program needs (included on cover sheet of annual report form provided by board office);

~~(o)~~ (m) ~~six~~ four current copies of the school catalog; and

(p) Remains the same but is renumbered (n).

AUTH: 37-8-202, 37-8-301, MCA
IMP: 37-8-301, 37-8-302, MCA

REASON: The Board believes that it is reasonable and necessary to amend this rule to clarify the process the Board uses in accepting the annual reports of schools of nursing. The process has become cumbersome and ineffective for the schools and the Board. The proposed amendments streamline the process and will expedite the preparation of the reports as well as the work of the Board. The Board cannot quantify the amount of expected savings, as it likely will only affect the programs in copying costs. Those affected will be the schools of nursing in Montana as well as the Board members. There will be no financial impact as a result of these proposed amendments. The proposed amendments will affect Montana approved schools of nursing.

8.32.807 SPECIAL REPORTS (1) ~~Changes which significantly affect the administration, curriculum, students, faculty, clinical or education facilities will be submitted in~~

~~a special written report to the board prior to initiation. Twelve copies will be sent to the board office.~~ A special written report to the board must be submitted prior to initiation regarding:

(a) substantive changes that significantly affect the administration, curriculum, students, faculty, clinical or education facilities;

(b) the program's planned response to the changes;

(c) any potential difficulties related to over-utilization by nursing students in any listed agency.

(2) ~~Such other reports as may be requested by the board for information will be provided by the schools.~~ Fourteen copies will be sent to the board office for distribution to board members and staff.

(3) The board must approve, accept or deny the changes submitted prior to initiation of the change, unless the program is instructed otherwise by the board.

(4) Other reports as may be requested by the board for information will be provided by the schools.

AUTH: 37-8-202, 37-8-301, MCA
IMP: 37-8-301, 37-8-302, MCA

REASON: The Board believes that it is reasonable and necessary to amend this rule to clarify the process the Board uses in accepting the annual reports of schools of nursing. The process has become cumbersome and ineffective for the schools and the Board. The proposed amendments streamline the process and will expedite the preparation of the reports as well as the work of the board. The Board cannot quantify the amount of expected savings. Those affected will be the schools of nursing in Montana as well as the Board members. There will be no financial impact as a result of these proposed amendments.

8.32.1503 PRESCRIPTIVE AUTHORITY COMMITTEE (1) There will be a prescriptive authority committee~~.~~

~~(1) The committee will be~~ composed of three members of the board of nursing, two of whom will be RNs~~, one physician from the board of medical examiners and one pharmacist from the board of pharmacy~~.

(2) through (5) remain the same.

AUTH: 37-8-202, MCA
IMP: 37-8-202, MCA

REASON: The Board believes that it is reasonable and necessary to amend this rule because the Board of Medical Examiners initiated an amendment to 37-8-202, MCA eliminating the need for a member of the Board of Medical Examiners to be on the prescriptive authority committee. (HB 120, Chapter 492, L. 2001)

8.32.1702 NURSING TASKS THAT MAY BE DELEGATED

(1) and (1)(a) remain the same.

~~(b) administration of a gastrostomy tube feeding by way~~

~~of a nonacute, well healed, patent, percutaneous insertion site older than 2 months as provided in this subchapter.~~
AUTH: 37-8-202, MCA
IMP: 37-8-202, MCA

REASON: The Board believes that it is reasonable and necessary to amend this rule because the 2001 Legislature removed gastrostomy tube feedings from the scope of nursing practice. This amendment will affect all licensed nurses in Montana as well as all residents who receive gastrostomy tube feedings. (HB 510, Chapter 454, L. 2001)

8.32.1709 GENERAL NURSING TASKS THAT MAY NOT BE DELEGATED (1) through (1)(b) remain the same.

(c) invasive procedures such as inserting tubes in a body cavity or instilling or inserting substances into an indwelling tube except administration of a gastrostomy tube feeding ~~by way of a nonacute, well healed, patent, percutaneous insertion site older than 2 months~~;

(d) and (e) remain the same.
AUTH: 37-8-202, MCA
IMP: 37-8-202, MCA

REASON: The Board believes that it is reasonable and necessary to amend this rule because the 2001 Legislature removed gastrostomy tube feedings from the scope of nursing practice. (HB 510, Chapter 454, L. 2001) This amendment will affect all licensed nurses in Montana as well as all residents who receive gastrostomy tube feedings.

4. The proposed new rule provides as follows:

NEW RULE I EXECUTIVE DIRECTOR - QUALIFCATIONS (1) An executive director shall provide administrative services to the board to ensure:

(a) that policies and board processes are consistent with state and federal laws and regulations;

(b) that nursing education curricula and programs are consistent with Montana nursing statutes and rules and national education standards through oversight of periodic and ongoing approval processes;

(c) that licensure and related processes are efficient and effective;

(d) oversight of licensee compliance with nursing statutes and rules, including administrative direction of staff and board member compliance activities; and

(e) that necessary resources and support are provided to nursing board members and staff to enable those individuals or groups to perform their functions effectively.

(2) The executive director must be:

(a) a citizen of the United States;

(b) a graduate of an approved school of nursing;

(c) a holder of at least a master's degree with postgraduate courses in nursing;

(d) a registered professional nurse with at least three years experience in teaching or administration in an approved school of nursing; and

(e) licensed as a registered professional nurse in Montana.

AUTH: 37-8-204, 37-8-319, MCA
IMP: 37-8-204, MCA

REASON: The proposed rule is reasonable and necessary to establish the qualifications of the Executive Director for the Board of Nursing. The qualifications were previously in statute, 37-8-204, MCA that was repealed during the 2001 legislative session. (HB 120, Chapter 492, L. 2001) The Department of Commerce sought repeal of the statute with the intent that the language would be placed in rule. This was done so that the qualifications would be easier to alter if necessary. The rule will affect any person applying for the position of Executive Director of the Board of Nursing.

5. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at http://discoveringmontana.com/dli/bsd under the Board of Nursing rule notice section. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered.

6. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2343, or by e-mail to DLIBSDNUR@state.mt.us and must be received no later than the close of the hearing on September 17, 2001. If comments are submitted in writing, the Board requests that the person submit 11 copies of their comments.

7. F. Lon Mitchell, attorney, has been designated to preside over and conduct this hearing.

8. The Board of Nursing maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. Persons who wish to have their name added to the list shall make a written request to the board which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Nursing administrative rulemaking or other administrative proceedings. Such written request may be mailed or delivered to the Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-

0513, faxed to the office at (406) 841-2343, e-mailed to DLIBSDNUR@state.mt.us or may be made by completing a request form at any rules hearing held by the agency.

9. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

BOARD OF NURSING
JACK BURKE, PRESIDENT

By: /s/ MIKE FOSTER
Mike Foster, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

By: /s/ KEVIN BRAUN
Kevin Braun
Rule Reviewer

Certified to the Secretary of State, July 30, 2001.

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

In the matter of the proposed amendment of ARM 8.40.401 through 8.40.404, 8.40.407, 8.40.408A, 8.40.413, 8.40.416, 8.40.417, 8.40.502, 8.40.601, through 8.40.607, 8.40.901 through 8.40.907, 8.40.909, 8.40.1001, 8.40.1003, 8.40.1004, 8.40.1203, 8.40.1207, 8.40.1208, 8.40.1213, and 8.40.1215 pertaining to substantive pharmacy rules, automated data processing, certified pharmacies, internship regulations, continuing education for pharmacists, the dangerous drug act and the adoption of new rule I pertaining to collaborative practice agreement requirements, new rule II pertaining to security of certified pharmacy, and new rule III pertaining to the administration of vaccines by pharmacists and the repeal of ARM 8.40.405 and 8.40.408 pertaining to explosive chemicals and prescription copies for legend drugs	) NOTICE OF PUBLIC HEARING) ON PROPOSED AMENDMENT,) ADOPTION AND REPEAL

TO: All Concerned Persons

1. On September 4, 2001, at 10:30 a.m., a public hearing will be held in the Business Standards Division conference room #487, 4th Floor, Federal Building, 301 South Park Avenue, Helena, Montana to consider the proposed amendment, adoption and repeal of the above-stated rules.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Pharmacy no later than 5:00 p.m., on August 29, 2001 to advise us of the nature of the accommodation that you need. Please contact Cami Robson, Board of Pharmacy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2356, Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail DLIBSDPHA@state.mt.us.

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

8.40.401 DEFINITIONS In addition to the terms defined in 37-7-101, MCA, the following definitions apply to the rules in this chapter.

~~(1) "Confidential information" means information maintained by the pharmacist in the patient's records, which is privileged and released only to the patient or, as the patient directs, to those health care professionals where, in the pharmacist's professional judgment, such release is necessary to protect the patient's health and well being, and to such other persons or governmental agencies authorized by law to receive such confidential information.~~

(2) Remains the same but is renumbered (1).

~~(3)~~ (2) "Device" is defined in 37-2-101, MCA and ~~means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar or related article, including any component part or accessory, which~~ is required under federal law to bear the label "Caution: Federal law requires dispensing by or on the order of a physician" or "Rx only."

~~(4) "Dispense" means the issuing of one or more doses of a drug for use by a patient for a legitimate medical purpose on the order of a physician, dentist, podiatrist, veterinarian or other registered practitioner who is authorized to prescribe by the jurisdiction in which he or she is licensed to practice the profession, and acting in the usual course of his or her profession. Dispense includes receiving an oral order, reducing it promptly to writing and placing it on file. Dispense shall also include the refilling of an order if so authorized.~~

~~(5) "Distribute" means the delivery of a drug other than by administering or dispensing.~~

(3) "Electronic signature" means a confidential personalized method of affixing a signature to an electronic document that will guarantee the identity of the prescriber.

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

~~(7)~~ (5) "Non-prescription drug" means a drug which may be sold without a prescription and which is labeled for consumer use ~~by the consumer~~ in accordance with the requirements of the laws and rules of Montana and the federal government.

~~(8)~~ (6) "Pharmacist-in-charge" means a pharmacist licensed in Montana who accepts responsibility for the operation of a pharmacy in conformance with all laws and rules pertinent to the practice of pharmacy ~~and the distribution of drugs,~~ and who is personally in full and actual charge of such pharmacy.

(7) "Security" or "secure system" means a system to maintain the confidentiality and integrity of patient records which are being sent electronically.

~~(9) "Prescription drug" or "legend drug" means:~~

~~(a) a drug which, under Federal law, is required, prior~~

~~to being dispensed or delivered, to be labeled with either of the following statements:~~

~~(i) "Caution: federal law prohibits dispensing without prescription;"~~

~~(ii) "Caution: federal law restricts this drug to use by, or on the order of, a licensed veterinarian."~~

~~(b) or a drug which is required by any applicable federal or state law or rule to be dispensed on prescription only or is restricted to use by practitioners only.~~

AUTH: 37-2-101, 37-7-101, 37-7-201, MCA
IMP: 37-2-101, 37-7-101, 37-7-102, 37-7-201, 37-7-301, 37-7-406, MCA

REASON: The Board has determined that it is reasonable and necessary to amend this rule to comply with HB 279 (Chapter 388, Sections 2 & 3, L. 2001) and to eliminate subsections (1), (4), (5) and (9) as these terms are already defined in statute; to modify (2) and (3) as these terms are defined in statute but require additional clarification; and to amend (7) and (8) for clarification purposes.

8.40.402 ~~PHARMACIST~~ CHANGE IN ADDRESS AND/OR EMPLOYMENT

(1) All ~~registered pharmacists~~ licensees must notify the board within 10 days of any change in location of their employment, together with the change of address.

AUTH: 37-7-201, MCA
IMP: 37-7-303, MCA

REASON: The Board has determined that it is reasonable and necessary to amend this rule and catchphrase to have the requirement to notify the board of a change in employment pertain to all licensees, not just pharmacists.

8.40.403 EXAMINATION FOR LICENSURE AS A REGISTERED PHARMACIST (1) ~~The examination for licensure under 37-7-302, MCA, shall be given at least two times during each fiscal year of the state. The board shall determine the content and subject matter of each exam, the place, time and date of administration, and those persons who have successfully passed the examination.~~ The board has selected the national association of boards of pharmacy (NABP) licensure examination (NAPLEX) to be administered to candidates for licensure in Montana.

~~(2)~~ The examination shall be prepared to measure the competence of the applicant to engage in the practice of pharmacy. ~~The board may employ and cooperate with any organization or consultant in the preparation and grading of an appropriate examination, but shall retain the sole discretion and responsibility of determining which applicants have successfully passed such an examination.~~

~~(3) The board has selected the national association of boards of pharmacy Standard Examination for Licensure to be administered in Montana for candidates for licensure in pharmacy.~~ A score of 75 shall be a passing score for this

~~standardized~~ examination.

~~(4)~~ A candidate who does not attain this score ~~has the option of retaking~~ may retake the examination ~~at the next scheduled testing date~~ after a 90-day waiting period from the date of the exam.

~~(5)~~ (2) In addition the ~~board~~ NABP shall administer a multi-state pharmacy jurisprudence examination (MPJE). This examination shall be prepared to measure the competence of the applicant regarding the statutes and rules governing the practice of pharmacy. A score of not less than 75 shall be a passing score for this examination. A candidate who does not attain this score may retake the examination after a 30-day waiting period from the date of the exam.

AUTH: 37-7-201, MCA
IMP: 37-7-201, 37-7-302, MCA

REASON: The Board has determined that it is reasonable and necessary to amend this rule to comply with the Board's current practice and for clarification of the examination requirements.

8.40.404 FEE SCHEDULE

(1) through (9) remain the same.

(10) Remains the same but is renumbered (22).

(11) Remains the same but is renumbered (23).

~~(12)~~ (10) NAPLEX examination fee (paid directly to exam service)	~~250~~ 300
(13) Remains the same but is renumbered (11).	
~~(14)~~ (12) Multi-state pharmacy jurisprudence examination (MPJE) exam fee (NABP - ~~$85~~ 130; board - $15)	~~100~~ 145
(15) Remains the same but is renumbered (13).	
(16) Remains the same but is renumbered (14).	
(15) Pharmacy technician & technician-in-training registration fee	40
(16) Pharmacy technician renewal fee	25
(17) through (19) remain the same.	
(20) Out-of-state mail service pharmacy/telepharmacy initial license	200
(21) Out-of-state mail service pharmacy/telepharmacy renewal	100

AUTH: 37-1-134, 37-7-201, MCA
IMP: 37-1-134, 37-7-201, 37-7-302, 37-7-303, 37-7-321, 37-7-703, MCA

REASON: The Board has determined that it is reasonable and necessary to amend this rule to show the increase in the NAPLEX and NPJE exam fees. This fee increase does not result in any additional revenue to the board as the fees that increased are payable directly to the exam service or NABP. Subsections (15) and (16) have been added to provide for pharmacy technician registration and renewal fees as a result of HB 279 (Chapter 388, Section 4, L. 2001). The fees have been set commensurate with program costs and are reasonably necessary for the operation of the Board. These fees will

result in anticipated increased revenue to the board of $12,000 from the initial application fees of an estimated 300 pharmacy technicians. Renewal fees in subsequent years will generate $7,500 in renewals on an annual basis. HB 279 has authorized the registration of telepharmacy sites (Chapter 388, Section 4, L. 2001). The application and renewal fees have been added as (20) and (21). The board anticipates that it will be licensing approximately 12 telepharmacies the first year for anticipated additional revenue of $2,400 and will have renewal fees in subsequent years resulting in increased revenue to the board of $1,200 on annual basis.

8.40.407 COPY OF PRESCRIPTION (1) Remains the same.

(2) It shall be unlawful for any pharmacist or other person to fill a copy of a prescription for a legend drug.

AUTH: 37-7-201, MCA
IMP: 37-7-101, 37-7-102, 37-7-201, MCA

REASON: The Board has determined that it is reasonable and necessary to amend this rule to bring it up to date with the standard of practice.

8.40.408A TRANSFER OF PRESCRIPTIONS (1) and (2) remain the same.

(3) Pharmacies accessing a common electronic file or database used to maintain required dispensing information are not required to transfer prescription drug orders or information for dispensing purposes between or among pharmacies participating in the common prescription file, provided, however, that any such common file shall contain complete records of each prescription drug order and refill dispensed, and further, that a hard copy record of each prescription drug order transferred or accessed for purposes of refilling shall be generated and maintained at the pharmacy refilling the prescription drug order or to which the prescription drug order is transferred.

(a) Any pharmacy which establishes an electronic file for prescription records, which is shared with or accessible to other pharmacies, shall post in a place conspicuous to and readily readable by prescription drug consumers a notice in substantially the following form:

"NOTICE TO CONSUMERS:

This pharmacy maintains its prescription information in an electronic file which is shared by or accessible to the following pharmacies: (list names of pharmacies which share the prescription information).

By offering this service, your prescriptions may also be refilled at the above locations. If for any reason you do not want your prescriptions to be maintained this way, please notify the pharmacist-in-charge."

(b) Whenever a consumer objects to their prescription records being made accessible to other pharmacies through the use of electronic prescription files, it is the duty of the pharmacy to assure that the consumer's records are not shared

with or made accessible to another pharmacy except as provided in (1), (2) and (4) of this rule. The pharmacist to whom the consumer communicated the objection shall ask the consumer to sign a form which reads substantially as follows: "I hereby notify (name of pharmacy) that my prescription drug records may not be made accessible to other pharmacies through a common or shared electronic file." The pharmacist shall date and co-sign the form and shall deliver a copy thereof to the patient. The original shall be maintained by the pharmacy for three years from the date of the last filling or refilling of any prescription in the name of the consumer.

(4) In an emergency, a pharmacy may transfer original prescription drug order information for a non-controlled substance to a second pharmacy for the purpose of dispensing up to seven days supply without voiding the original prescription drug order.

(3) and (4) remain the same but are renumbered (5) and (6).

AUTH: 37-7-201, MCA
IMP: 37-7-201, MCA

REASON: The board is proposing the amendments to this rule because it has determined that it is reasonable and necessary for the consumer's convenience in obtaining refills from pharmacies linked to a common database. Subsection (4) has been added for the consumer's convenience in the event that medication has been forgotten or the consumer has been detained while on a trip and avoids the necessity of transferring the prescription for a one-time refill or partial refill.

8.40.413 ~~VENDING~~ ALTERNATE DELIVERY OF PRESCRIPTIONS

(1) and (1)(a) remain the same.

(b) Nothing in this rule shall prohibit a registered pharmacist from installing an appropriate secure device as an alternate delivery system, which system must have the prior approval of the board or its designee.

AUTH: 37-7-201, MCA
IMP: 37-7-301, MCA

REASON: The Board is proposing the addition of (b) because it has determined that it is reasonable and necessary to allow a pharmacy to install a device whereby prescriptions can be delivered to the consumer after the pharmacy has closed if the device can be secured and has the prior approval of the board or its designee. The pharmacist will be required to use his or her own professional judgment to determine what prescriptions can be delivered via this method depending on temperature, time of pickup, etc.

8.40.416 TRANSMISSION OF PRESCRIPTIONS BY ~~FACSIMILE~~ ELECTRONIC MEANS (1) A pharmacist may dispense directly any legend drug which requires a prescription to dispense (except as provided in (2) and (3) below for Schedule II, III, IV and

V controlled substances), only pursuant to either a written prescription signed by a practitioner or a ~~facsimile of a written, signed~~ prescription transmitted by the practitioner or the practitioner's agent to the pharmacy by electronic means or pursuant to an oral prescription made by an individual practitioner and promptly reduced to ~~writing~~ hard copy by the pharmacist containing all information required ~~except for the signature of the practitioner~~. The prescription shall be maintained in accordance with ARM ~~8.40.410~~ 8.40.406A.

(2) A pharmacist may dispense directly a controlled substance in Schedule II, which is a prescription drug as determined by the Federal Food, Drug and Cosmetic Act, only pursuant to a written prescription signed by the practitioner. A prescription for a Schedule II controlled substance may be transmitted by the practitioner or the practitioner's agent to a pharmacy ~~via facsimile equipment~~ by electronic means, provided the original written, signed prescription is presented to the pharmacist for review prior to the actual dispensing of the controlled substance. The original prescription shall be maintained in accordance with ARM ~~8.40.410~~ 8.40.406A.

(a) A signed prescription ~~written~~ for a Schedule II narcotic substance to be compounded for the direct administration to a patient by parenteral, intravenous, intramuscular, subcutaneous or intraspinal infusion may be transmitted by the practitioner or the practitioner's agent to the home infusion pharmacy by ~~facsimile~~ electronic means. The ~~facsimile~~ electronic transmission serves as the original written prescription for the purpose of this ~~paragraph~~ rule and it shall be maintained in accordance with ARM ~~8.40.410~~ 8.40.406A.

(b) A signed prescription ~~written~~ for a Schedule II substance for a resident of a long term care facility may be transmitted by the practitioner or the practitioner's agent to the dispensing pharmacy by ~~facsimile~~ electronic means. The ~~facsimile~~ electronic transmission serves as the original written prescription for purposes of this ~~paragraph~~ rule and it shall be maintained in accordance with ARM ~~8.40.410~~ 8.40.406A.

(3) A pharmacist may dispense directly a controlled substance listed in Schedule III, IV or V which is a prescription drug as determined under the Federal Food, Drug and Cosmetic Act, only pursuant to either a written prescription signed by a practitioner or a ~~facsimile~~ copy of a written, signed prescription transmitted by the practitioner or the practitioner's agent to the pharmacy by electronic means or pursuant to an oral prescription made by an individual practitioner and promptly reduced to ~~writing~~ hard copy by the pharmacist containing all information required ~~except for the signature of the practitioner~~. The prescription shall be maintained in accordance with ARM ~~8.40.410~~ 8.40.406A.

(4) Prescriptions may be transmitted electronically

directly from an authorized prescriber or his/her authorized agent to the pharmacy of the patient's choice without intervention by a third party, providing the following requirements are met:

(a) Both prescriber and pharmacist must have a secure (encrypted or encoded) system for electronic transmission from computer to computer;

(b) The receiving electronic device shall be located within the pharmacy department to ensure security and confidentiality;

(c) An electronically transmitted prescription shall contain all information required by state and federal law, including the date and time of transmission, the prescriber's telephone number for verbal confirmation and the name of the prescriber's agent transmitting the order, if other than the prescriber;

(d) The prescriber's electronic signature or other secure (encrypted or encoded) method of validation shall be provided with the electronically transmitted order. Faxed prescription orders shall contain the identifying number of the sending fax machine;

(e) A printed, non-fading copy of an electronically transcribed prescription will be maintained in the pharmacy for a period of two years;

(f) The prescription shall be marked "electronically transmitted prescription";

(g) The electronic transmission shall maintain patient confidentiality;

(h) An electronically transmitted prescription shall be transmitted only to the pharmacy of the patient's choice; and

(i) The pharmacist is responsible for assuring the validity of the electronically transmitted prescription.

(5) Two or more pharmacies sharing common electronic files to maintain dispensing information are not required to transfer prescription information between these pharmacies, providing all common electronic files maintain complete and accurate records of each prescription and refill dispensed, and the total number of refills authorized is not exceeded.

(a) Any pharmacy sharing a common electronic file for prescription records shall post the following notice in readily readable form in a conspicuous place within the pharmacy:

"This pharmacy maintains its prescription information in a secure electronic file that is shared by the following pharmacies: (list names of pharmacies which share the prescription information). If refills are authorized, your prescriptions may be refilled at any of the above locations. If you do not want your prescriptions to be maintained in this way, please notify the pharmacist at the time of filling."

(b) Pharmacies sharing common electronic files will have policies and procedures in place for handling these exceptions.

AUTH: 37-7-201, 50-32-103, MCA
IMP: 37-7-102, 37-7-201, 50-32-208, MCA

REASON: The board is proposing these amendments because it feels it is reasonable and necessary to update the requirements to provide for transmission of prescriptions via computer, palm pilot or other electronic means and is correcting the reference to 8.40.410 which has been repealed.

8.40.417 TRANSFER OF LICENSE FROM ANOTHER STATE

(1) Remains the same.

(2) In addition to the above, the applicant will be required to pass ~~a jurisprudence examination designated by the board~~ the MPJE, to measure the competence of the applicant regarding the statutes and rules governing the practice of pharmacy. A score of not less than 75 shall be a passing score for this examination.

(3) The applicant has one year from the date of NABP application in which to complete the licensure process. An applicant who does not obtain a license in one year will be required to file a new application and pay the appropriate fees.

AUTH: 37-7-201, MCA
IMP: 37-1-304, MCA

REASON: The board is proposing these amendments because the board believes it is reasonable and necessary to update the actual testing information and to establish a policy for expiration of existing application files.

8.40.502 AUTOMATED ~~DATA PROCESSING~~ RECORD KEEPING SYSTEMS (1) An automated ~~data processing~~ system may be employed for the record keeping system, if the following conditions have been met:

(a) The system shall have the capability of producing ~~sight-readable~~ legible documents of all original and refilled prescription information. ~~The term sight-readable means that a regulatory agent shall be able to examine the record and read the information.~~ During the course of an on-site inspection~~,~~ the record~~s~~ ~~may be read from the CRT, microfiche, microfilm, printout or other method acceptable to the board. In the case of administrative proceedings before the board, records must be provided in a paper printout form~~ must be accessible for viewing or printing.

(b) Remains the same.

(c) An auxiliary record keeping system shall be established for the documentation of refills if the automated ~~data processing~~ system is inoperative for any reason. The auxiliary system shall insure that all refills are authorized by the original prescription and that the maximum number of refills is not exceeded. When this automated ~~data processing~~ system is restored to operation, the information regarding prescriptions filled and refilled during the inoperative period shall be entered into the automated ~~data processing~~ system within 96 hours. However, nothing in this section shall preclude the pharmacist from using his professional judgment for the benefit of a patient's health and safety.

(d) Any pharmacy using an automated ~~data processing~~ system must comply with all applicable state and federal laws and regulations.

~~(e) A pharmacy shall make arrangements with the supplier of data processing services or materials to assure that the pharmacy continues to have adequate and complete prescription and dispensing records if the relationship with such supplier terminates for any reason. A pharmacy shall assure continuity in the maintenance of records.~~

AUTH: 37-7-201, MCA
IMP: 37-7-201, MCA

REASON: The board is proposing the amendments to this rule because the board believes it is reasonable and necessary to update the language to current terminology. Subsection (e) was removed because it is implied with the pharmacy being required to maintain records.

8.40.601 GENERAL LICENSE REQUIREMENTS (1) and (1)(a) remain the same.

(b) the manager or supervisor of the pharmacy is a registered pharmacist in good standing in the state of Montana and that ~~he/she~~ the pharmacist will be actively and regularly engaged and employed in, and responsible for the management, supervision and operation of such pharmacy.

(2) The license registers the pharmacy to which it is issued and is not transferable. It is issued on the application of the ~~owner, or the~~ registered pharmacist in charge, ~~on~~ and which contains the sworn statement that the pharmacy will be ~~conducted~~ operated in accordance with the provisions of the law.

(3) ~~If it is desired t~~To operate, maintain, open or establish more than one pharmacy, separate applications shall be made and separate licenses issued for each.

(4) Upon closure of a certified pharmacy, the original license becomes void and must be surrendered to the board within 10 days.

AUTH: 37-7-201, MCA
IMP: 37-7-321, MCA

REASON: The Board has determined that it is reasonable and necessary to amend this rule to eliminate gender specific language and for clarification purposes. Subsection (4) is being added to clarify that upon closure of a pharmacy the original license is void and must be returned to the Board.

8.40.602 SANITATION AND EQUIPMENT REQUIREMENTS

(1) Remains the same.

(2) Pharmacies shall have adequate space where prescriptions are filled or drugs compounded, ~~and~~ containing suitable equipment in order to provide for an efficient ~~compounding operation~~ pharmacy operation.~~;~~

~~(a) with an entrance which affords the public access and can be locked when a registered pharmacist is not present.~~

(3) Pharmacies shall contain and have ready for use all up-to-date items which are ~~necessarily used~~ necessary in ~~the~~ filling ~~of~~ prescriptions, ~~the~~ compounding ~~of~~ drugs and the efficient operation of the pharmacy~~., including at least the following:~~

~~(a) one prescription balance capable of weighing 65 mg. or less;~~

~~(b) one set of accurate metric weights from 30 mg. to 20 gm;~~

~~(c) graduates - capable of accurately measuring volumes from 1 cc to at least 500 cc;~~

~~(d) mortars and pestles - at least one glass 60 mls, and at least one glass 240 mls;~~

~~(e) spatulas - stainless steel, at least three assorted sizes, and one nonmetallic medium size;~~

~~(f) funnel, glass;~~

~~(g) stirring rods;~~

~~(h) pill tile, or ointment slab, or ointment papers;~~

~~(i) one prescription counter with sufficient drawers and/or storage space;~~

~~(j) suitable refrigeration (if biologicals are stocked); and~~

~~(k) reference text.~~

AUTH: 37-7-201, MCA
IMP: 37-7-201, MCA

REASON: The Board is proposing the amendments to this rule because the Board feels that it is reasonable and necessary to update the same to reflect current practice. The provisions of (3) have been moved to a new rule entitled "Security of Certified Pharmacy."

8.40.603 NEW PHARMACY (1) ~~A~~ Prior to conducting business, a pharmacy ~~opening for business~~ must ~~first~~ secure a license and be registered with the board ~~before it may be lawfully conducted~~. Application ~~for license to operate a new pharmacy, accompanied by the required fee, should be made at least 30 days before such pharmacy is to be opened for business so that the same can be reviewed by the board.~~ for a license to operate a new pharmacy must be reviewed by the board or its designee before the license may be issued.

~~(a) In the case where a pharmacy is owned and operated by a person who is a registered pharmacist and is in active charge of same, the license will be issued in his or her name and the pharmacy will be operated in accordance with the provisions of the law.~~

(b) Remains the same but is renumbered (2).

(3) All new pharmacies shall be in compliance with [NEW RULE II] at the time the pharmacy is opened for business.

AUTH: 37-7-201, MCA
IMP: 37-7-321, MCA

REASON: The Board believes it is reasonable and necessary to amend this rule for clarification and simplification purposes.

8.40.604 CHANGE IN LOCATION (1) Whenever a pharmacy changes its physical location, including within the existing business location, it shall submit a new schematic or floor plan, for board approval.

(2) Whenever a pharmacy changes its physical location outside of its then existing business location, its ~~the~~ original license becomes void and must be surrendered ~~to the board~~. The pharmacy shall submit a new license ~~An~~ application, including a new schematic and floor plan of the new location, for the board's approval ~~for original certificate, accompanied by the required fee, should be made~~ at least 30 days before such change occurs ~~so that the same can be reviewed by the board~~.

AUTH: 37-7-201, MCA
IMP: 37-7-321, MCA

REASON: The Board believes it is reasonable and necessary to amend this rule for clarification purposes and to provide that a new schematic and floor plan needs to be submitted when remodeling or changing the location of the pharmacy.

8.40.605 CHANGE IN OWNERSHIP (1) When a pharmacy changes ownership, the original license becomes void and must be surrendered to the board, and a new license ~~secured~~ obtained by the new owner or owners. The ~~A~~application ~~should be made at least 30 days before such change occurs so that the same can~~ must be reviewed by the board or its designee before the license may be issued.

AUTH: 37-7-201, MCA
IMP: 37-7-321, MCA

REASON: The Board believes it is reasonable and necessary to amend this rule for updating and clarification purposes.

8.40.606 CHANGE OF PHARMACIST-IN-CHARGE ~~CHANGE~~

(1) When the ~~registered~~ pharmacist-in-charge ~~charged with the management~~ of a pharmacy leaves the employment of such pharmacy, the pharmacist will be held responsible for the proper notification to the board of such termination of services.

(2) ~~When the registered pharmacist charged with the management of a pharmacy, for any reason ceases to be actually the registered pharmacist who has responsible supervision over said pharmacy, a new affidavit must be filed, the same to be executed by the new pharmacist in charge.~~ Within 72 hours of termination of services of the pharmacist-in-charge, a new pharmacist-in-charge must be designated and an affidavit filed with the board. The license ~~should~~ will then be updated to indicate the name of the new pharmacist-in-charge.

AUTH: 37-7-201, MCA
IMP: 37-7-321, MCA

REASON: The Board believes it is reasonable and necessary to amend this rule to better outline the responsibilities of the

pharmacists when there is a change in the pharmacist-in-charge.

8.40.607 LICENSES TO BE POSTED (1) ~~All~~ The certified pharmacy licenses~~s~~ must be posted in a conspicuous place in the pharmacy ~~for which it is issued~~.
AUTH: 37-7-201, MCA
IMP: 37-7-302, 37-7-321, MCA

REASON: The Board believes it is reasonable and necessary to amend this rule for clarification purposes.

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

(a) through (c) remain the same.
AUTH: 37-7-201, MCA
IMP: 37-7-201, MCA

REASON: The Board believes it is reasonable and necessary to amend this rule for updating and clarification purposes and to eliminate gender specific language.

8.40.902 INTERNSHIP PROGRAM DEFINITIONS

(1) through (6) remain the same.

(7) "Preceptor" means a pharmacist or other approved individual who meets those requirements for the supervision and training of an intern.

(8) "Reporting period" means at the completion of internship or externship experience in a given site or after 500 hours, whichever comes first, or at the completion of the clerkship experience.

(9) "Supervision" means that ~~the preceptor shall maintain personal contact with the intern and shall be responsible for the required training at all times of the intern during the training period~~ all drug distribution or dispensing activities shall be performed by the intern under the direction of a registered pharmacist and that the preceptor shall have overall responsibility for the required training of the intern.
AUTH: 37-7-201, MCA
IMP: 37-7-201, MCA

REASON: The Board believes it is reasonable and necessary to amend (7) of this rule to allow someone other than a pharmacist to be a preceptor upon approval by the board. Subsection (8) is being to amended to specify reporting periods for the internship or externship experience. Subsection (9) is being amended to clarify that the preceptor has overall responsibility for the intern's activities and

training.

8.40.903 INTERNSHIP REQUIREMENTS (1) The experience required for licensure shall be that instruction period composed of computed time obtained under the supervision of the preceptor in an approved ~~pharmacy~~ site. An intern may not work alone and assume the responsibility of a registered pharmacist.

(2) Application shall be made on the intern application form prescribed by the board. Certification must be obtained prior to commencing work as an intern.

(3) The intern shall receive instruction in only one approved area and under only one preceptor concurrently, except in unusual and extenuating circumstances approved by the board upon written request.

(4) and (5) remain the same.

(6) The intern shall be responsible for ~~ascertaining~~ ensuring that the preceptor has proper certification ~~for himself/herself, the preceptor and the properly certified submittal of all forms, reports, note-books or assignments under the approved program~~.

(7) The intern is responsible for properly submitting all forms and hour reports under the approved program.

(8) Employment and the intern training periods are not to be interpreted as being the same. An intern may work in excess of his computed time.

(8) through (10) remain the same but are renumbered (9) through (11).

~~(11)~~ (12) An intern will be allowed six months after taking the ~~NABPLEX~~ NAPLEX examination to complete ~~his or her internship~~ requirements for licensure. The above time may be extended, subject to the approval of the board, if extenuating circumstances prohibit completion in the above prescribed time.

AUTH: 37-7-201, MCA
IMP: 37-7-201, MCA

REASON: The Board believes it is reasonable and necessary to amend this rule to eliminate gender specific language, and for updating, clarification and simplification of the rule.

8.40.904 PRECEPTOR REQUIREMENTS (1) and (1)(a) remain the same.

(b) have been actively engaged in:

(i) the practice of pharmacy for two years unless otherwise approved by the board; or

(ii) other approved disciplines;

(c) through (i) remain the same.

(2) ~~A preceptor shall be in direct supervision of all~~ The repackaging, labeling and dispensing of drugs for distribution shall be under the supervision of a registered pharmacist or preceptor.

(3) remains the same.

AUTH: 37-7-201, MCA

IMP: 37-7-201, MCA

REASON: The Board believes that it is reasonable and necessary to amend this rule to allow someone other than a pharmacist to be a preceptor upon approval by the board and to allow a pharmacist who has practiced less than two years to apply to the board for approval. Subsection (2) was amended for clarification.

8.40.905 APPROVED ~~INSTRUCTION~~ TRAINING AREAS

(1) Approved ~~instruction~~ training areas will include ~~a retail or hospital pharmacy, state and county institutions, agencies and clinics~~ licensed pharmacy settings plus other health care and research settings approved by the board.

~~(2) General requirements include:~~

~~(a) current certified pharmacy license;~~

~~(b) no deficiencies relevant to the observance of all federal, state and municipal laws and regulations governing any phase of activity in which the pharmacy is engaged.~~

~~(3) Other pharmacy related areas, which may include public health services, veterans hospitals or other private government areas will be evaluated upon written request to the board.~~

AUTH: 37-7-201, MCA
IMP: 37-7-201, MCA

REASON: The Board believes it is reasonable and necessary to amend this rule to simplify the Board's intent for allowing training areas other than licensed pharmacies.

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

~~(a) The "internship record" is the current record of individual intern for board use.~~

~~(b)~~ (a) The "intern application" must be filed by the intern before computed time is credited ~~and to receive intern certificate of registration~~.

~~(c)~~ (b) The "~~record of hours~~ internship experience affidavit", provided by the board, must be filed by the intern at the end of the internship experience in a given site~~, or at the end of the academic experience for those courses which are approved for internship credit~~ or after 500 hours, whichever comes first.

~~(d)~~ (c) The "~~progress report of internship period~~ evaluation of internship site" must be filed by the intern at the completion of internship or externship experience in a given site or after 500 hours, whichever comes first.

(d) The "clerkship experience affidavit", provided by the board, must be filed by the intern at the end of the academic year.

~~(e) The "preceptor's evaluation of internship" must be filed by the preceptor at the completion of internship or externship experience in a given site.~~

~~(2) Forms are available from the board office, 301 South Park, P.O. Box 200513, Helena, Montana 59620-0513.~~

AUTH: 37-7-201, MCA
IMP: 37-7-201, MCA

REASON: The Board believes that it is reasonable and necessary to amend this rule to reflect the current standards or practice and for clarification purposes.

8.40.907 OUT-OF-STATE INTERNSHIP (1) Written request by the intern must be made prior to commencing training at an out-of-state site.

(2) Remains the same.

(3) The intern must obtain ~~C~~certification of the training area and the preceptor ~~shall be made to the board by that~~ from the out-of-state's board of pharmacy and submit the same directly to the Montana board of pharmacy.

AUTH: 37-7-201, MCA
IMP: 37-7-201, MCA

REASON: The board believes that it is reasonable and necessary to amend this rule for updating and clarification purposes.

8.40.909 REVOCATION OR SUSPENSION OF CERTIFICATE

(1) An intern certificate may be suspended or revoked by the board for violation of any statute or rule, or failure to comply with the approved program after due notice.

(2) Suspension of an intern from university or college attendance concurrently suspends an intern's certificate of registration.

AUTH: 37-7-201, MCA
IMP: 37-7-201, MCA

REASON: The Board believes that it is reasonable and necessary to amend this rule for updating and clarification purposes.

8.40.1001 REQUIREMENTS (1) through (2)(a) remain the same.

(b) ~~Beyond the requirement,~~ ~~o~~Only an additional 1.5 CEU may be accumulated and ~~may be~~ applied ~~only~~ to the following year.

(c) through (3) remain the same.

AUTH: 37-1-319, MCA
IMP: 37-1-306, MCA

REASON: The Board believes it is reasonable and necessary to amend this rule for updating and clarification purposes.

8.40.1003 APPROVED PROGRAMS (1) Remains the same.

(2) Pharmacists may receive CEU for programs other than those on the ACPE list of providers by applying for prior approval by the board or its designee. The forms and

guidelines for applying for approval are available from the board office.

(3) Remains the same.

AUTH: 37-1-319, MCA
IMP: 37-1-306, MCA

REASON: The board believes it is reasonable and necessary to amend this rule for updating and clarification purposes.

8.40.1004 RENEWAL NOTICE AND APPLICATION (1) The board will mail an appropriate annual renewal notice to all licensed Montana pharmacists ~~30~~ 60 days prior to the renewal date set forth in ARM 8.2.208. Failure to receive such notice shall not relieve the licensee of the licensee's obligation to file the renewal and pay the renewal fees in such a manner that they are received by the board on or before the renewal date or a late fee will be assessed.

(a) through (c) remain the same.

(2) The annual renewal notice shall be returned to the board with the appropriate fee and ~~with the listing of~~ a representation of having satisfactorily completed continuing education requirements signed by the licensee. ~~The completed form shall identify the approved continuing education program or programs completed, CEUs, date completed and location.~~ Incomplete renewal applications will not be processed and will be returned to the applicant.

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

AUTH: 37-1-319, MCA
IMP: 37-1-306, MCA

REASON: The board believes it is reasonable and necessary to amend this rule to increase the time frame for mailing and return of renewals and for updating and clarification purposes.

8.40.1203 REQUIREMENTS FOR REGISTRATION (1) The board shall register a person to manufacture dangerous drugs (as defined in 50-32-101, MCA) included in schedules I through V upon the following conditions:

(a) through (2) remains the same.

(a) applicant is registered for such purpose pursuant to the Federal Controlled Substances Act of 1970; ~~and~~

(b) through (4) remains the same.

AUTH: 50-32-103, MCA
IMP: 50-32-306, 50-32-308, MCA

REASON: The Board believes it is reasonable and necessary to amend this rule for clarification purposes.

8.40.1207 APPLICATION FOR REGISTRATION OR ~~RE-REGISTRATION~~ RENEWAL (1) Remains the same.

(2) Forms for renewal will be mailed to each registered person or entity ~~30~~ 60 days before the expiration date of the registration at the last known address. The applicant is

required to notify the board of current changes of address within 10 days.

(3) Remains the same.

AUTH: 50-32-103, MCA
IMP: 50-32-301, MCA

REASON: The Board believes it is reasonable and necessary to amend this rule to update the catchphrase and to provide additional time for the board staff to send the renewal applications.

8.40.1208 APPLICATION FORMS (1) ~~New applications:~~

~~(a)~~ If any person is required to be registered and is not so registered and is applying for registration to manufacture or distribute dangerous drugs in schedules I through V, ~~he~~ the person shall apply on a form ~~#DDA 1~~ prescribed by the board.

~~(b)~~ (2) If any person is required to be registered and is not so registered and is applying for registration to dispense dangerous drugs in schedules II through V, ~~he~~ the person shall apply on a form ~~#DDA 2~~ prescribed by the board.

~~(c)~~ (3) If any person is required to be registered and is not so registered and is applying for registration to analyze or conduct research with dangerous drugs in schedules I through V, ~~he~~ the person shall apply on a form ~~#DDA 3~~ prescribed by the board.

~~(2) Applications for renewal:~~

~~(a)~~ (4) ~~If any person is registered and~~ Any licensee applying for ~~re-registration~~ renewal of registration to manufacture or distribute dangerous drugs in schedules I through V~~, he~~ shall apply on a form ~~#DDA 4~~ prescribed by the board.

~~(b)~~ (5) ~~If any person is registered and~~ Any licensee applying for ~~re-registration~~ renewal to dispense dangerous drugs in schedules II through V~~, he~~ shall apply on a form ~~#DDA 5~~ prescribed by the board.

~~(c) If any person is registered and applying for re-registration to analyze or conduct research with dangerous drugs in schedules I through V, he shall apply on form #DDA 6.~~

AUTH: 50-32-103, MCA
IMP: 50-32-306, 50-32-308, MCA

REASON: The Board believes it is reasonable and necessary to amend this rule for updating and clarification and to remove the reference to specific forms which have been changed.

8.40.1213 SECURITY REQUIREMENTS (1) ~~Security controls in general:~~

~~(a)~~ All applicants and registrants shall establish and maintain effective written controls and procedures to guard against theft and diversion of dangerous drugs into other than legitimate medical, scientific or industrial channels.

(2) ~~Other security controls:~~

~~(a)~~ The registrant shall not employ as an agent or

employee any person who has access to dangerous drugs, who has had a federal or state application for registration denied or his registration revoked at any time, or has been convicted of a felony offense under any state or federal law relating to dangerous drugs or convicted of any other felony.

~~(b)~~ (3) The registrant shall notify the board of pharmacy in writing ~~of~~ by forwarding a copy of the applicable DEA form reporting the theft or ~~significant~~ loss of any dangerous drugs upon discovery of such theft or loss. The notification shall contain a list of all dangerous drugs stolen or lost.

AUTH: 50-32-103, MCA
IMP: 50-32-106, MCA

REASON: The Board believes it is reasonable and necessary to amend this rule for updating and clarification purposes.

8.40.1215 ADDITIONS, DELETIONS AND RESCHEDULING OF DANGEROUS DRUGS (1) ~~The following controlled substances have been rescheduled or deleted by federal law:~~ The board of pharmacy hereby adopts the schedule of dangerous drugs as defined in 21 CFR 1308, et. seq, April 1, 1999. Copies are available from the Board of Pharmacy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513.

~~(a) Schedule I~~

~~(i) acetyl-alpha-methylfentanyl under 50-32-222(1), MCA, opiates~~

~~(ii) beta-hydroxyfentanyl under 50-32-222(1), MCA, opiates~~

~~(iii) beta-hyroxy-3-methylfentanyl under 50-32-222(1), MCA, opiates~~

~~(iv) doet= 2,5 -dimethoxy-4-ethalamphetamine under 50-32-222(3), MCA, hallucinogenic substances~~

~~(v) methaqualone under 50-32-222(4), MCA, depressants~~

~~(vi) 3, 4-methylenedioxymethamphetamine (MDMA) under 50-32-222, MCA, hallucinogenic substances~~

~~(vii) 3-methylfentanyl under 50-32-222(1), MCA, opiates~~

~~(viii) 3-methylthiofentanyl under 50-32-222(1), MCA, opiates~~

~~(ix) mppp=1-methyl-4phenyl-4-propionoxypiperidine under 50-32-222(1), MCA, opiates~~

~~(x) parahexyl under 50-32-222(3), MCA, hallucinogenic substances~~

~~(xi) para-flurofentanyl under 50-32-222(1), MCA, opiates~~

~~(xii) pce=n-ethyl-1-phenylcyclohexylamnie under 50-32-222(3), MCA, hallucinogenic substances~~

~~(xiii) pepap=1-(2-phenylethyl)-4-phenyl-4-acetoxypiperidine under 50-32-222(1), MCA, opiates~~

~~(xiv) php=1-(1-phenylcyclohexyl)pyrrolidine (pcp analog) under 50-32-222(3), MCA, hallucinogenic substances~~

~~(xv) sufentanil listed in 50-32-222(1)(rr), MCA, is~~

~~rescheduled to schedule II as listed below.~~

~~(xvi) thiofentanyl under 50-32-222(1), MCA, opiates~~

~~(b) Schedule II~~

~~(i) alfentanil under 50-32-224(2), MCA, opiates~~

~~(ii) hallucinogenic substances listed in 50-32-224(5), MCA, hallucinogenic substances.~~

~~(A) dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a U.S. food and drug administration approved drug product~~

~~(B) nabilone under 50-32-224(5), MCA, hallucinogenic substances~~

~~(iii) methaqualone listed in 50-32-224(4)(b), MCA, is rescheduled to schedule I as listed above~~

~~(iv) sufentanil under 50-32-224(2), MCA, opiates~~

~~(c) Schedule III~~

~~(i) tiletamine and zolazepam (telazol) under 50-32-226(2), MCA, depressants~~

~~(d) Schedule IV~~

~~(i) bromazepam under 50-32-229(2), MCA, depressants~~

~~(ii) camezepam under 50-32-229(2), MCA, depressants~~

~~(iii) cathine under 50-32-229(4), MCA, stimulants~~

~~(iv) clobazam under 50-32-229(2), MCA, depressants~~

~~(v) clotiazepam under 50-32-229(2), MCA, depressants~~

~~(vi) cloxazolam under 50-32-229(2), MCA, depressants~~

~~(vii) delorazepam under 50-32-229(2), MCA, depressants~~

~~(viii) estazolam under 50-32-229(2), MCA, depressants~~

~~(ix) ethyl loflazepate under 50-32-229(2), MCA, depressants~~

~~(x) fencamfamin under 50-32-229(4), MCA, stimulants~~

~~(xi) fenproporex under 50-32-229(4), MCA, stimulants~~

~~(xii) fludiazepam under 50-32-229(2), MCA, depressants~~

~~(xiii) flunitrazepam under 50-32-229(2), MCA, depressants~~

~~(xiv) haloxazolam under 50-32-229(2), MCA, depressants~~

~~(xv) ketazolam under 50-32-229(2), MCA, depressants~~

~~(xvi) loprazolam under 50-32-229(2), MCA, depressants~~

~~(xvii) lometazepam under 50-32-229(2), MCA, depressants~~

~~(xviii) medazepam under 50-32-229(2), MCA, depressants~~

~~(xix) mefenorex under 50-32-229(4), MCA, stimulants~~

~~(xx) midazolam listed in 50-32-229(2)(r), MCA, depressants~~

~~(xxi) nimetazepam under 50-32-229(2), MCA, depressants~~

~~(xxii) nitrazepam under 50-32-229(2), MCA, depressants~~

~~(xxiii) nordiazepam under 50-32-229(2), MCA, depressants~~

~~(xxiv) oxazolam under 50-32-229(2), MCA, depressants~~

~~(xxv) pinazepam under 50-32-229(2), MCA, depressants~~

~~(xxvi) quazepam listed in 50-32-229(2)(x), MCA,~~

~~depressants~~

~~(xxvii) tetrazepam under 50-32-229(2), MCA, depressants~~

~~(xxviii) triazolam under 50-32-229(2), MCA, depressants~~

~~(e) Schedule V~~

~~(i) Narcotic drugs under 50-32-232, MCA. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs and their salts, as set forth below:~~

~~(A) buprenorphine~~

~~(B) propyhexedrine under 50-32-232(3), MCA, stimulants~~

~~(C) pyrovalerone under 50-32-232(3), MCA, stimulants~~

~~(ii) Loperamide is deleted from the list of controlled substances.~~

~~(2) The following anabolic steroid containing compounds, mixtures or preparations have been exempted from Schedule III:~~

~~(a) Androgyn L.A.~~

~~(b) Andro-Estro 90-4~~

~~(c) depANDROGYN~~

~~(d) DEPO-T.E.~~

~~(e) depTESTROGEN~~

~~(f) Duomone~~

~~(g) Estratest~~

~~(h) Estratest HS~~

~~(i) PAN ESTRA TEST~~

~~(j) Premarin with Methyltestosterone~~

~~(k) Synovex H Pellets in process~~

~~(l) Synovex H Pellets in process granulation~~

~~(m) TEST-ESTRO Cypionates~~

~~(n) Testagen~~

~~(o) Testosterone Cyp 50 Estradiol Cyp 2~~

~~(p) Testosterone Cypionate - Estradiol~~

~~(q) Testosterone Enanthate - Estradiol~~

~~(r) Testosterone Valerate Injection~~

~~(s) Tilapia Sex Reversal Feed (investigational).~~

AUTH: 50-32-103, 50-32-203, MCA
IMP: 50-32-103, 50-32-202, 50-32-203, 50-32-209, 50-32-222, 50-32-223, 50-32-224, 50-32-225, 50-32-226, 50-32-228, 50-32-229, 50-32-231, 50-32-232, MCA

REASON: The Board believes it is reasonable and necessary to delete the listed drugs and reference 21 CFR 1308, et. seq to avoid a conflict in scheduling of controlled substances. The federal schedule has priority over state schedules.

4. The proposed new rules provide as follows:

NEW RULE I COLLABORATIVE PRACTICE AGREEMENT REQUIREMENTS

(1) Prior to initially engaging in collaborative practice, a pharmacist must provide the board with an executed written and electronic copy of the collaborative practice agreement.

(2) The collaborative practice agreement must include:

(a) the identification and signature of individual practitioner(s) or a facility's chief of staff or their designee authorized to prescribe drugs and responsible for the delegation of drug therapy management;

(b) the identification and signature of individual pharmacist(s) authorized to dispense drugs and engage in drug therapy management;

(c) the types of drug therapy management decisions that the pharmacist is allowed to make which may include:

(i) a specific description of the types of diseases and drugs involved, and the type of drug therapy management allowed in each case; and

(ii) a specific description of the procedures and methods, decision criteria and plan the pharmacist is to follow.

(d) a detailed description of the procedures and patient activities the pharmacist is to follow in the course of the protocol, including the method for documenting decisions made and a plan or mechanism for communication, feedback and reporting to the practitioner concerning specific decisions made. Documentation shall be recorded within 24 hours following each intervention and may be recorded on the patient medication record, patient medical chart, or a separate log book. Documentation of drug therapy management must be kept as part of the patient's permanent record and shall be considered confidential information;

(e) a method by which adverse events shall be reported to the practitioner;

(f) a method for the practitioner to monitor clinical outcomes and intercede when necessary;

(g) a provision that allows the practitioner to override protocol agreements when necessary;

(h) a provision that allows either party to cancel the agreement by written notification;

(i) the effective date of the protocol. The duration of each protocol shall not exceed one year;

(j) the annual date by which review, renewal and revision, if necessary, will be accomplished;

(k) the addresses where records of collaborative practice are maintained; and

(l) the process for obtaining the patient's written consent to the collaborative practice agreement.

(3) Patient records shall be maintained by the pharmacist for a minimum of seven years and may be maintained in an automated system pursuant to ARM 8.40.503(3).

AUTH: 37-7-101, 37-7-201, MCA
IMP: 37-7-101, 37-7-201, MCA

REASON: The Board is proposing this new rule as it is reasonable and necessary in response to House Bill 279 which was passed by the 2001 Legislature (Chapter 388, Section 3, L. 2001).

NEW RULE II SECURITY OF CERTIFIED PHARMACY (1) Each pharmacist, while on duty, shall be responsible for the security of the pharmacy, including provisions for effective control against theft or diversion of drugs.

(2) The pharmacy shall be secured at all times by either a physical barrier with suitable locks and/or an electronic barrier to detect entry by unauthorized persons. Such barrier shall be approved by the board or its designee before being put into use.

(3) Prescription and other patient health care information shall be maintained in a manner that protects the integrity and confidentiality of such information as provided by the rules of the board.

(4) Sections (1) and (2) of this rule shall be effective [two years from the effective date of this rule].

AUTH: 37-7-201, MCA
IMP: 37-7-201, MCA

REASON: The board believes that it is reasonable and necessary to adopt this rule to better provide for pharmacy security.

NEW RULE III ADMINISTRATION OF VACCINES BY PHARMACISTS

(1) A pharmacist may administer vaccines to persons 18 years of age or older provided that:

(a) the pharmacist has successfully completed an accredited course of training provided by the centers for disease control, the American council on pharmaceutical education or other authority approved by the board;

(b) the pharmacist holds a current basic cardiopulmonary resuscitation certification issued by the American heart association or the American red cross;

(c) the vaccines are administered in accordance with an established protocol; and

(d) the pharmacist has a current copy of the centers for disease control reference "Epidemiology and Prevention of Vaccine-Preventable Diseases".

(2) The pharmacist must give the appropriate vaccine information statement to the patient or the patient's legal representative with each dose of vaccine covered by these forms and counsel the patient accordingly.

(3) The pharmacist must maintain written policies and procedures for disposal of used or contaminated supplies.

(4) The pharmacist must report any adverse events to the primary care provider identified by the patient.

(5) A pharmacist administering any vaccine shall maintain the following information in the patient's medical records for a period of at least three years:

(a) the name, address and date of birth of the patient;

(b) the date of administration;

(c) the name, manufacturer, dose, lot number and expiration date of the vaccine;

(d) the vaccine information statement provided;

(e) the site and route of administration;

(f) the name and address of the patient's primary health care provider;

(g) the date on which the vaccination information was reported to the patient's primary health care provider under the provisions of the national vaccine injury compensation program;

(h) the name of the administering pharmacist; and

(i) any adverse events encountered.

(6) The authority of a pharmacist to administer immunizations may not be delegated.

(7) The pharmacist must provide a certified true copy of the certificate to the board for endorsement on their pharmacist license.

AUTH: 37-7-101, 37-7-201, MCA
IMP: 37-7-101, 37-7-201, MCA

REASON: The Board has determined that it is reasonable and necessary to adopt this rule to implement the provisions of HB 279 passed by the 2001 Legislature (Chapter 388, Section 3, L. 2001).

5. 8.40.405 EXPLOSIVE CHEMICALS, a rule proposed to be repealed, is on ARM pages 8-1136 and 8-1137.

AUTH: 37-7-201, MCA
IMP: 37-7-102, 37-7-201, 37-7-403, MCA

REASON: The Board believes that it is reasonable and necessary to repeal this rule because the chemicals listed are rarely carried in pharmacies for sale or use.

8.40.408 PRESCRIPTION COPIES FOR LEGEND DRUGS, a rule proposed to be repealed, is on ARM page 8-1138.

AUTH: 37-7-201, MCA
IMP: 37-7-102, 37-7-201, MCA

REASON: The Board believes that it is reasonable and necessary to repeal this rule because the provisions of 8.40.408(1) have been transferred to 8.40.407 and the definition of "legend drug" eliminated as it is contained in 37-7-101, MCA.

6. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Pharmacy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to DLIBSDPHA@state.mt.us and must be received no later than 5:00 p.m., September 6, 2001. If comments are submitted in writing, the Board requests that the person submit seven copies of their comments.

7. Lewis Smith, attorney, has been designated to preside over and conduct this hearing.

8. The Board of Pharmacy maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. Persons who wish to have their name added to the list shall make a written request to the board which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Pharmacy administrative rulemaking or other administrative proceedings. Such written request may be mailed or delivered to the Board of Pharmacy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to DLIBSDPHA@state.mt.us or may be made by completing a request form at any rules hearing held by the agency.

9. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

BOARD OF PHARMACY
ALBERT A.FISHER, R.Ph.,
PRESIDENT

By: /s/ MIKE FOSTER
Mike Foster, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

By: /s/ KEVIN BRAUN
Kevin Braun
Rule Reviewer

Certified to the Secretary of State, July 30, 2001.

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

In the matter of the proposed amendment of ARM 8.40.1301 through 8.40.1308 pertaining to pharmacy technicians and the adoption of new rule I and new rule II pertaining to registration of pharmacy technicians and renewal	) NOTICE OF PUBLIC HEARING) ON PROPOSED AMENDMENT) AND ADOPTION

TO: All Concerned Persons

1. On September 4, 2001, at 9:00 a.m., a public hearing will be held in the Business Standards Division conference room #487, 4th Floor, Federal Building, 301 South Park Avenue, Helena, Montana to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Pharmacy no later than 5:00 p.m., on August 29, 2001 to advise us of the nature of the accommodation that you need. Please contact Cami Robson, Board of Pharmacy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2356; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail DLIBSDPHA@state.mt.us.

3. The rules as proposed to be amended provide as follows: (new matter underlined, deleted matter interlined)

8.40.1301 USE OF PHARMACY TECHNICIAN (1) ~~A pharmacy technician may not perform any task or function allowed under any statutory section or rule unless a registered pharmacist is physically present within the pharmacy.~~

~~(2)~~ A pharmacy technician may not perform tasks which require the exercise of the pharmacist's independent professional judgment, including but not limited to, patient counseling, ~~oral prescription orders and substitution of generic drugs~~ drug product selection, drug interaction review or drug regimen review.

(2) When a pharmacist is not in the prescription department, there shall be no dispensing of new prescriptions that the pharmacist has checked and that are waiting to be picked up, nor shall counseling be provided by the pharmacy technician.

(3) No medication may be released to a patient without ~~verification~~ review by a registered pharmacist ~~of the tasks or functions which were performed by the pharmacy technician in~~

~~relation to that medication~~ for the accuracy and appropriateness of the prescription drug order.

(4) Remains the same.

AUTH: 37-7-201, MCA
IMP: 37-7-101, 37-7-201, 37-7-301, 37-7-307, MCA

REASON: The Board has determined that it is reasonable and necessary to amend this rule in response to HB 279 (Chapter 388, Section 5, L. 2001) and to better delineate what a pharmacy technician can and cannot do.

8.40.1302 QUALIFICATIONS OF PHARMACY TECHNICIAN

(1) Remains the same.

(a) at least 18 years old; ~~and~~

(b) a high school graduate or have attained an equivalent degree~~.~~;

(c) of good moral character; and

(d) certified by the pharmacy technician certification board (PTCB) or other board approved certifying entity.

(2) No pharmacist whose license has been denied, revoked, suspended, or restricted for disciplinary purposes shall be eligible to be registered as a pharmacy technician.

AUTH: 37-7-201, MCA
IMP: 37-7-201, 37-7-301, 37-7-307, MCA

REASON: The Board has determined that it is reasonable and necessary to amend this rule to provide additional requirements and restrictions for pharmacy technicians and because HB 279 (Chapter 388, Section 5, L. 2001) requires registration of pharmacy technicians.

8.40.1303 APPLICATION FOR APPROVAL OF UTILIZATION PLAN

(1) Remains the same.

(2) Any number of registered pharmacists employed in the same pharmacy may sign as supervising pharmacist of a pharmacy technician~~, in compliance with the one-to-one ratio as set forth in these rules,~~ on a single utilization plan submitted for approval to the board by that pharmacy.

(3) Remains the same.

AUTH: 37-7-201, MCA
IMP: 37-7-201, 37-7-308, 37-7-309, MCA

REASON: The Board has determined that it is reasonable and necessary to amend this rule to eliminate duplication with ARM 8.40.1308.

8.40.1304 TASKS AND FUNCTIONS OF PHARMACY TECHNICIAN

(1) A registered pharmacy technician may perform the following tasks or functions under the provisions of an approved utilization plan:

(a) remove a stock bottle from the shelf and count ~~and~~ or pour the contents into a suitable container. The stock bottle must be quarantined together with the prescription until the supervising pharmacist performs a final check ~~and~~

~~maintains appropriate records;~~ or bar coding or other available technology verifies the bottle contents;

(b) type a prescription label and affix it and auxiliary labels to a prescription bottle, with ~~a~~ final ~~check~~ review by the registered pharmacist~~. Attachment of auxiliary label(s) and any patient counseling to be performed by a pharmacist~~;

(c) enter prescription information into an ~~data processing~~ automated system under the supervision of a pharmacist who must be able to check all entries;

(d) through (f) remain the same.

(g) answer the telephone, properly identify themselves as a technician, accept verbal orders for prescriptions from medical practitioners or their designated agents and issue refill requests to the prescriber;

(h) a pharmacy technician may act as agent in charge of the pharmacy to assure its integrity when a registered pharmacist is not physically present, but may not perform any duties which require the exercise of the pharmacist's independent professional judgment;

(g) and (h) remain the same but are renumbered (i) and (j).

~~(i)~~ (k) compounding, ~~parenteral solutions, irrigations and other sterile solutions~~ if a mechanism for verification by the supervising pharmacist exists that includes checking of~~:~~ the original order~~,~~ additives~~,~~ dosages~~,~~ and clarity of IV solution, where appropriate.

(2) Remains the same.

AUTH: 37-7-201, MCA
IMP: 37-7-201, 37-7-301, 37-7-307, MCA

REASON: The Board has determined that it is reasonable and necessary to amend this rule to comply with the requirements of HB 279 (Chapter 388, Sections 4 & 5, L. 2001), to bring the language up to date with current methods and to more clearly define the role of the pharmacy technician.

8.40.1305 PHARMACY TECHNICIAN TRAINING (1) A supervising pharmacist shall:

(a) provide initial training to a pharmacy technician that relates to the tasks the technician may perform pursuant to the supervising pharmacist's utilization plan; and

~~(b) assure the continuing competence of a pharmacist technician through inservice education and training to supplement the initial training; and~~

(c) Remains the same but is renumbered (b).

(2) and (3) remain the same.

AUTH: 37-7-201, MCA
IMP: 37-7-201, 37-7-307, MCA

REASON: The Board has determined that it is reasonable and necessary to eliminate (b) and will include these provisions in a rule for license renewal.

8.40.1306 CONTENTS OF TRAINING COURSE (1) through

(1)(e) remain the same.

(f) telephone procedure and communication including taking prescription orders and refill requests;

(g) Remains the same.

(h) intravenous admixture, if applicable; and

(i) Remains the same.

AUTH: 37-7-201, MCA
IMP: 37-7-201, 37-7-307, MCA

REASON: The Board has determined that it is reasonable and necessary to amend this rule to allow pharmacy technicians to be trained on taking verbal prescription orders.

8.40.1307 INSPECTION OF UTILIZATION PLAN AND TRAINING RECORD (1) The supervising pharmacist shall make the utilization plan ~~and training record~~ available for inspection by the board during the normal business hours of the pharmacy.

(2) The pharmacy technician shall make their training record available for inspection by the board during the normal business hours of the pharmacy.

AUTH: 37-7-201, MCA
IMP: 37-7-201, 37-7-308, MCA

REASON: The Board has determined that it is reasonable and necessary to amend this rule to transfer the responsibility for maintaining the training record from the supervising pharmacist to the pharmacy technician.

8.40.1308 RATIO OF PHARMACY TECHNICIANS TO SUPERVISING PHARMACISTS (1) through (3) remain the same.

(4) All registered pharmacists in good standing in the state of Montana may supervise more than one registered pharmacy technician, provided, in their professional judgment:

(a) a request for a ratio other than those previously defined must first be approved by the board;

(b) the policy and procedures of the certified pharmacy must allow for safe and accurate filling and labeling of prescriptions;

(c) the policy and procedures shall be reviewed annually. All affected supervising pharmacists and pharmacy technicians must be familiar with the contents and any changes made must be reported to the board; and

(d) a copy of the policy and procedures must be available for inspection by the board compliance officer.

AUTH: 37-7-201, MCA
IMP: 37-7-201, 37-7-307, 37-7-308, 37-7-309, MCA

REASON: The Board has determined that it is reasonable and necessary to amend this rule to further clarify when a ratio of greater than one-to-one can be utilized.

4. The proposed new rules provide as follows:

NEW RULE I REGISTRATION REQUIREMENTS (1) In order to

be registered as a pharmacy technician in this state, the applicant shall:

(a) submit application on a form prescribed by the board;

(b) pay application fees as prescribed by the board; and

(c) submit a copy of proof of certification by PTCB or other board approved certifying entity.

(2) In order to be registered as a technician-in-training in this state, the applicant shall:

(a) apply to the board for a permit on an application supplied by the board;

(b) pay the fee required;

(c) provide the name and address of the pharmacy in which the technician-in-training is employed. A change in place of employment will require submission of an updated application.

(3) The permit to practice as a technician-in-training shall be valid for a period of one year, and may not be renewed.

AUTH: 37-7-201, MCA
IMP: 37-7-201, MCA

REASON: The Board has determined that it is reasonable and necessary to adopt this new rule in response to House Bill 279 which was passed by the 2001 Legislature (Chapter 388, Section 4, L. 2001) and provided for registration of pharmacy technicians and technicians-in-training.

NEW RULE II PHARMACY TECHNICIAN RENEWAL (1) Pharmacy technicians will be required to renew each year on the date set forth in ARM 8.2.208.

(2) To assure the continuing competence of a pharmacy technician, proof of continued certification will be required at the time of renewal.

AUTH: 37-7-201, MCA
IMP: 37-7-201, MCA

REASON: The Board has determined that it is reasonable and necessary in response to HB 279 (Chapter 388, Section 4, L. 2001) to provide a date for renewal of registration for pharmacy technicians and to provide that the pharmacy technician must provide proof of continued certification in order to have their registration renewed.

5. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at http://discoveringmontana.com/dli/bsd under the rule notice section for the Board of Pharmacy. The Department strives to make the electronic copy of this Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered.

6. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Pharmacy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to DLIBSDPHA@state.mt.us and must be received no later than 5:00 p.m., September 6, 2001. If comments are submitted in writing, the Board requests that the person submit seven copies of their comments.

7. Lewis Smith, attorney, has been designated to preside over and conduct this hearing.

8. The Board of Pharmacy maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. Persons who wish to have their name added to the list shall make a written request to the board which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Pharmacy administrative rulemaking or other administrative proceedings. Such written request may be mailed or delivered to the Board of Pharmacy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to DLIBSDPHA@state.mt.us or may be made by completing a request form at any rules hearing held by the agency.

9. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

BOARD OF PHARAMCY
ALBERT A.FISHER, R.Ph.,
PRESIDENT

By: /s/ MIKE FOSTER
Mike Foster, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

By: /s/ KEVIN BRAUN
Kevin Braun
Rule Reviewer

Certified to the Secretary of State, July 30, 2001.

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

In the matter of the amendment of ARM 37.70.304, 37.70.305, 37.70.311, 37.70.401, 37.70.402, 37.70.406, 37.70.407, 37.70.408 and 37.70.601 and the repeal of 37.70.301 and 37.70.902 pertaining to the low income energy assistance program (LIEAP)	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL

TO: All Interested Persons

1. On August 30, 2001, at 10:00 a.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment and repeal of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on August 22, 2001, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

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

<u>37.70.304 APPLICATIONS TO BE VOLUNTARY</u> (1) Applications must be voluntary and initiated by the person in need<u>,</u>~~. There shall be no requirement of pre-application proof of eligibility; however, the applicant shall have the burden of proving eligibility at the time of application. The authority to proceed with a determination of eligibility for low income energy assistance is the signed application of the person who applies. When a case has been closed, application must be made for reinstatement of benefits. An~~ <u>except an</u> application may be made by a third party when the physical or mental condition of the ~~needy~~ person <u>in need</u> precludes his ability to make application himself.

AUTH: Sec. <u>53-2-201</u>, MCA
IMP: Sec. <u>53-2-201</u>, MCA

37.70.305 APPLICATION PROCEDURES AND REQUIREMENTS

~~(1) The main office of application shall be open during normal business hours, Monday through Friday, except for recognized holidays. Applicants 60 or more years old and handicapped individuals may apply through senior centers, home visits, by phone or mail.~~

~~(2) Applications are to be made at the office of the local contractor in the area where the person lives. When conditions preclude a person from visiting the local contractor's office to make application, he shall have an opportunity to make application through the mail, at a mutually agreed place, by telephone with the staff-completed application mailed to the applicant for signature, or through a home visit by a member of the local contractor's staff.~~

~~(3) Applications may be filed only during the period of October 1 through April 30.~~

(1) A new application for low income energy assistance must be made for each new heating season. An application is initiated by filing a signed written application on the form prescribed by the department at the office of the local contractor in the area where the applicant lives. If necessary, the contractor will provide assistance in completing the application form.

(2) The application form may be submitted by mail or by other means to the local contractor's office. The department or its contractor may, at their option, accept applications at locations other than the local contractor's office, such as a senior citizen center, as designated by the department or its contractor.

(3) An application for low income energy assistance generally must be filed during the heating season for which assistance is being sought, that is, between October 1 and April 30. However, at the option of the department, applicants who use certain types of heating fuel which are sold at lower prices during the summer months may be permitted to file their applications prior to October 1 of the heating season for which they are seeking assistance.

(4) After the application is filed, the contractor may request any additional information or documentation required to verify whether the applicant is eligible for assistance. The contractor may also, at its option, conduct an interview with the applicant in-person or by telephone if necessary to determine eligibility. In cases where the contractor considers an interview to be necessary and neither the contractor's office nor a telephone is reasonably accessible to the applicant, the contractor will conduct the interview at some place which is reasonably convenient for both the applicant and the contractor.

(5) The applicant has the burden of proving that the applicant meets all requirements for eligibility, and the application will be denied if the applicant fails to provide necessary information or documentation when requested to do so.

(6) No person or family will be excluded from participation in the low income energy assistance program or be discriminated against in regard to the amount of benefits or in

any other regard on the basis of race, color, religion, sex, culture, age, creed, marital status, physical or mental disability, political beliefs, or national origin.

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

37.70.311 PROCEDURES FOLLOWED IN PROCESSING APPLICATIONS (1) Procedures followed in determining eligibility for low income energy assistance are:

(a) An ~~A~~application is filed by the applicant together with all necessary verification for determining financial eligibility and benefit award. An applicant who willfully fails to provide information necessary for a determination of eligibility within 45 days of the date of initial application shall be determined ineligible but may reapply for assistance. The staff member of the local contractor accepts the application and determines financial eligibility and amount of benefit. The client is notified of the reasons for approval or disapproval of his application. Eligible applicants shall be notified that benefits are computed for heating costs only for the period October 1 through April 30.

(b) Eligibility requirements that must be verified are:

(i) current receipt of benefits under supplemental security income or ~~aid to families with dependent children~~ cash assistance funded by temporary assistance for needy families (TANF);

(ii) income/resources;

~~(iii) medical/dental deductions;~~

~~(iv)~~ (iii) lack of tax dependency status for individuals enrolled at least half time in an institution of higher education; and

~~(v)~~ (iv) primary heating fuel.

(c) remains the same.

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

37.70.401 DEFINITIONS (1) through (2) remain the same.

~~(3) "Dependent care expenses" means all payments for care provided to a dependent household member in the 12 months immediately preceding the month of application to enable a household member to maintain or seek employment or educational activities.~~

(4) through (6) remain the same but are renumbered (3) through (5).

(6) "Heating season" means the period from October 1 to April 30 of the following year. For example, the 1999 through 2000 heating season is the period from October 1, 1999, through April 30, 2000.

(7) "Household" means any individual or group of individuals who are living together as one economic unit for whom residential energy is customarily purchased in common or who make undesignated payments for energy in the form of rent.

(a) Any foster child or foster adult who lives in the household at the time of application and for whom foster care payments are being made may be either included or excluded from the household at the option of the LIEAP applicant. This option must be exercised at the time of application and cannot be changed until a new application for the next heating season is made.

~~(a)~~ (b) An unborn child may not be counted as a member of the household.

(8) "Institution of higher education" means a college, university, or vocational or technical school at the post-high school level.

(8) and (9) remain the same but are renumbered (9) and (10).

~~(10) "Medical and dental deductions" mean all medical and dental payments for allowable costs, as described in ARM 37.70.407(4), made by members of the household in the 12 months immediately preceding the month of application.~~

~~(a) Medical and dental deductions shall not include medical payments by the household which are reimbursable by a third party.~~

(11) through (16) remain the same.

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

37.70.402 ELIGIBILITY REQUIREMENTS FOR CERTAIN TYPES OF INDIVIDUALS AND HOUSEHOLDS (1) through (3) remain the same.

(4) Households which contain a member who is enrolled at least half time in an institution of higher education and who was claimed for the previous tax year as a dependent child for federal income tax purposes by a taxpayer who is not a member of an eligible household are ineligible for low income energy assistance.

~~(a) An institution of higher education means a college, university, or vocational or technical school at the post-high school level.~~

(5) remains the same.

(6) Residents of publicly subsidized housing whose heating costs are included as a portion of their rent and whose rent is a fixed portion of their income are not eligible for low income energy assistance benefits provided for in ARM 37.70.601 but are eligible for weatherization assistance as provided for in ARM ~~37.71.101 through 37.71.602~~ Title 37, chapter 71.

(7) remains the same.

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

37.70.406 TABLES OF INCOME STANDARDS (1) The income standards in the table in (2) below are the ~~2000~~ 2001 U.S. ~~government office of management and budget~~ department of health and human services poverty ~~levels~~ guidelines for households of different sizes. This table applies to all households,

including self-employed households.

(a) Households with annual gross income at or below ~~125%~~ 150% of the ~~2000~~ 2001 poverty ~~level~~ guidelines are financially eligible for low income energy assistance. Households with an annual gross income above ~~125%~~ 150% of the ~~2000~~ 2001 poverty ~~level~~ guidelines are ineligible for low income energy assistance, unless the household is automatically financially eligible for LIEAP benefits as provided in ARM 37.70.402 because all members of the household are receiving SSI, TANF-funded case assistance, or county or tribal general assistance.

(2) Annual income standards for all households:

Family Size	Poverty Guideline		~~125~~ Percent	150 Percent	
One	$ ~~8,350~~	8,590	~~$10,438~~	$ ~~12,525~~	12,885
Two	~~11,250~~	11,610	~~14,063~~	~~16,875~~	17,415
Three	~~14,150~~	14,630	~~17,688~~	~~21,225~~	21,945
Four	~~17,050~~	17,650	~~21,313~~	~~25,575~~	26,475
Five	~~19,950~~	20,670	~~24,938~~	~~29,925~~	31,005
Six	~~22,850~~	23,690	~~28,563~~	~~34,275~~	35,535
Additional member add	~~2,900~~	3,020	~~3,625~~	~~4,350~~	4,530

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

37.70.407 CALCULATING INCOME (1) Excluded from income are the following types of unearned income and deductions:

(a) through (q) remain the same.

(r) proceeds from sale of the family home; ~~and~~

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

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

(u) veteran's administration pension reimbursements for medical expenses; and

(v) foster care payments received for a foster child or adult if the LIEAP applicant has chosen to exclude the foster child or adult from the household; such payments are not excluded if the applicant has chosen to include the foster adult or child as a member of the household. Additionally, any foster care payments received during the 12 months immediately preceding the month of application for a foster child or adult who is no longer living in the household at the time of application shall be excluded.

~~(2) Out-of-pocket dependent care expenses as defined in ARM 37.70.401(9) may be deducted from income only if:~~

~~(a) the household's annual gross income is between 125% and 150% of the 2000 U.S. government office of management and budget poverty level for the particular household size;~~

~~(b) the expenses are not reimbursable by a third party; and~~

~~(c) the dependent care was provided by a person who is not a member of the household.~~

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

~~(a) the household's annual gross income is between 125% and 150% of the 2000 U.S. government office of management and budget poverty level for the particular household size;~~

~~(b) the costs are not reimbursable by a third party; and~~

~~(c) they are expended for:~~

~~(i) medical and dental care including psychotherapy and rehabilitation services provided by a licensed practitioner or other qualified health professional;~~

~~(ii) hospitalization or outpatient treatment, nursing care, and nursing home care provided by a facility recognized by the state, including treatment or care paid for by the household for an individual who was a household member immediately prior to entering such a facility;~~

~~(iii) prescription drugs when prescribed by a licensed practitioner and other over-the-counter medication (including insulin) when approved by a licensed practitioner or other qualified health professional;~~

~~(iv) medical supplies and sickroom or other equipment prescribed by a licensed practitioner or other qualified health professional;~~

~~(v) health and hospitalization insurance policy premiums, except the premiums for health and accident policies, such as those payable in lump sum settlements for death or dismemberment, or other income maintenance policies, such as those that continue mortgage or loan payments while the beneficiary is disabled, are not deductible;~~

~~(vi) premiums related to coverage under Title XVIII, medicare, of the Social Security Act;~~

~~(vii) cost-sharing or spenddown expenses incurred by medicaid recipients;~~

~~(viii) dentures, hearing aids, and prosthetic devices;~~

~~(ix) seeing eye or hearing dogs, including the cost of securing and maintaining such dogs; or~~

~~(x) eye glasses prescribed by a physician skilled in eye diseases or by an optometrist.~~

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

37.70.408 RESOURCES (1) through (3) remain the same.

(4) In fiscal year ~~2000~~ 2002, a household will be eligible if its total countable non-business resources do not exceed ~~$7,750~~ $7,983 for a single person, ~~$11,625~~ $11,974 for two persons and an amount equal to ~~$11,625~~ $11,974 plus ~~$775~~ $798 for each additional household member, up to a maximum of ~~$15,500~~ $15,965 per household. In addition, the household may have business assets whose equity value does not exceed $12,500.

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

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

37.70.601 BENEFIT AWARD (1) The benefit matrices in (1)~~(d)~~ (c) and (1)~~(e)~~ (d) are used to establish the benefit payable to an eligible household for a full winter heating season (October thru April). The benefit varies by household income level, type of primary heating fuel, the type of dwelling (single family unit, multi-family unit, mobile home), the number of bedrooms in the dwelling, and the heating districts in which the household is located, to account for climatic differences across the state.

(a) ~~Except as provided in (1)(b), the~~ The benefit payable to an eligible household will be computed by multiplying the applicable amount in the table of base benefit levels found in (1)~~(d)~~ (c) by the applicable matrix amount in the table of income/climatic adjustment multipliers found in (1)~~(e)~~ (d).

~~(b) A household whose gross annual income is above 125% of the 2000 poverty level but is eligible for benefits because of dependent care deductions and/or medical and dental deductions provided in ARM 37.70.407(3) and (4) will receive a benefit which is 40% of the maximum benefit.~~

(c) through (d)(iii) remain the same but are renumbered (b) through (c)(iii).

~~(e)~~ (d) The following table is based upon the household's income as a percentage of the federal poverty ~~index~~ guideline and adjusted for climatic differences in the 10 human resource development council service areas in the state of Montana:

TABLE OF INCOME/CLIMATIC ADJUSTMENT MULTIPLIERS

PERCENT OF POVERTY	AEM	IV	V	VI	VII	VIII	IX	X	XI	XII
0 - ~~10~~ 11	1.00	1.08	0.98	0.99	0.93	1.02	1.08	0.90	0.92	1.09
> 11 - ~~20~~ 23	0.95	1.02	0.94	0.94	0.89	0.97	1.03	0.86	0.87	1.04
~~21~~> 23 - ~~30~~ 35	0.90	0.97	0.89	0.89	0.84	0.92	0.98	0.81	0.82	0.98
~~31~~> 35 - ~~40~~ 47	0.85	0.92	0.84	0.84	0.79	0.87	0.92	0.77	0.78	0.93
~~41~~> 47 - ~~50~~ 59	0.80	0.86	0.79	0.79	0.75	0.82	0.87	0.72	0.73	0.87
~~51~~> 59 - ~~60~~ 71	0.75	0.81	0.74	0.74	0.70	0.77	0.81	0.68	0.69	0.82
~~61~~> 71 - ~~70~~ 83	0.70	0.75	0.69	0.69	0.65	0.71	0.76	0.63	0.64	0.76
~~71~~> 83 - ~~80~~ 95	0.65	0.70	0.64	0.64	0.61	0.66	0.70	0.59	0.60	0.71
~~81~~> 95 - ~~90~~ 107	0.60	0.65	0.59	0.59	0.56	0.61	0.65	0.54	0.55	0.65
~~91~~>107 - ~~100~~ 119	0.55	0.59	0.54	0.54	0.51	0.56	0.60	0.50	0.50	0.60
~~01~~>119 - ~~110~~ 131	0.50	0.54	0.49	0.49	0.47	0.51	0.54	0.45	0.46	0.55
~~11~~>131 - ~~120~~ 143	0.45	0.48	0.44	0.44	0.42	0.46	0.49	0.41	0.41	0.49
~~1~~>143 - ~~125~~ 150*	0.40	0.43	0.39	0.39	0.37	0.41	0.43	0.36	0.37	0.44

*This category also applies to those whose income exceeds 150% of the poverty guideline and meets the criteria of ARM 37.70.406(1)(a).

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

MAR Notice No. 37-204 15-8/9/01

3. The rules 37.70.301 and 37.70.902 as proposed to be repealed are on pages 37-15434 and 37-15351 of the Administrative Rules of Montana.

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

4. The Low Income Energy Assistance Program (LIEAP) is a federally funded program to help low income households pay their home heating costs. The maximum income standards used to determine whether a household is eligible for LIEAP benefits are contained in ARM 37.70.406. These income standards are computed as a specified percentage of the federal poverty guidelines issued annually by the U.S. Department of Health and Human Services (HHS) and published in the Federal Register. The standards currently in ARM 37.70.406 are based on the HHS poverty guidelines for 2000.

HHS updates the poverty guidelines each year to take into account increases in the cost of living. The amendment of ARM 37.70.406 is therefore necessary to provide that the 2001 poverty guidelines rather than the 2000 guidelines will be used to determine LIEAP eligibility and benefit amount for the heating season which runs from October 1, 2001 through April 30, 2002. The new income standards based on the 2001 poverty guidelines are also being inserted in place of the standards based on the 2000 poverty guidelines. If the Department did not use the 2001 guidelines, which are higher, households might be ineligible for benefits or receive a smaller benefit due to inflationary increases in the household's income which do not reflect an increase in actual buying power.

In ARM 37.70.406, the HHS poverty guidelines are incorrectly referred to as the "U.S. government office of management and budget poverty levels". The notice which announced this year's annual update of the poverty guidelines, published in the Federal Register on February 16, 2001, at vol. 66, no. 33, page 10695, called this error to the Department's attention. This notice explained that due to confusing language in legislation dating back to 1972, the HHS poverty guidelines have often been mistakenly referred to as the Office of Management and Budget (OMB) poverty levels although the OMB never issued these guidelines and the correct term has always been "poverty guidelines", not "poverty levels". Therefore, it is now necessary for the Department to substitute the correct terminology.

ARM 37.70.406(1)(a) currently provides that a household with gross annual income which is more than 125% of the federal poverty guideline for a family of its size is ineligible for LIEAP assistance. However, ARM 37.70.407 governing the calculation of income for purposes of determining eligibility currently provides in subsections (2)(a) and (3)(a) that a household's medical expenses and dependent care costs may be

deducted from their gross income if the household's gross income is between 125% and 150% of the applicable poverty guideline. Households whose gross income is below 125% of the poverty guideline after medical and/or dependent care costs have been deducted are eligible for LIEAP under the current rules.

The Department proposes to amend ARM 37.70.406(1)(a) to provide that households with gross annual income up to 150% of the applicable poverty guideline, rather than 125% of poverty, are eligible for LIEAP. This expansion of LIEAP eligibility was recommended by the LIEAP Round Table. The Department decided to adopt this recommendation because it believes that households whose income is between 125% and 150% of the poverty level are in need of assistance to pay home heating charges, especially with the recent increase in energy costs. Additionally, the adoption of this higher income limit provides consistency between the LIEAP and Weatherization programs, since Weatherization assistance is already available to families with income up to 150% of poverty. The higher income limit is also closer to the income limits used by many other states in determining eligibility for LIEAP.

The increase in the income limit to 150% of poverty also necessitates the amendment of ARM 37.70.406(2) to eliminate the 125% income standards from the table of income standards for households of various sizes. The 125% standards are unnecessary since income over this limit does not bar a household from receiving benefits and because the special provisions allowing dependent care and medical expenses to be deducted for households with income between 125% and 150% of poverty no longer apply. Similarly, ARM 37.70.601(1)(b) is also being deleted. Subsection (1)(b) provides that households which have income between 125% and 150% of poverty but are eligible for benefits because of dependent care or medical expense deductions will receive a benefit which is 40% of the maximum benefit. This is no longer accurate because those deductions no longer apply and households with income between 125% and 150% of poverty no longer receive a reduced benefit for that particular reason.

Since households may now qualify for LIEAP even if they have income in excess of 125% of poverty, subsections (2)(a) and (3)(a) of ARM 37.70.407, which provide for the deduction of medical and dependent care costs from gross income if the household has income between 125% and 150% of poverty, and subsection (1)(b)(iii) of ARM 37.70.311, which requires verification of medical and dental deductions, are no longer necessary. The purpose of allowing those expenses to be deducted from gross income was to allow certain households whose income was above the 125% limit but less than 150% of poverty to qualify for LIEAP. These provisions are now being deleted because they are no longer necessary. Similarly, the definitions of "dependent care expenses" and "medical and dental deductions" currently contained in ARM 37.70.401 are being

deleted because there is no need to define terms which are not used in the LIEAP rules.

The Department is also adding a statement to subsection (1)(a) of ARM 37.70.406 to clarify that the 150% income limit does not apply to households which are automatically financially eligible for LIEAP benefits as specified in ARM 37.70.402(1). As the latter rule states, households which consist solely of members who are receiving SSI or certain other types of cash public assistance benefits are automatically qualified for LIEAP. In many cases, these households have total income which is less than 150% of poverty, but it is possible for an automatically eligible household to have income in excess of the 150% limit. An automatically eligible household which has income over 150% of poverty will nevertheless qualify for LIEAP. ARM 37.70.406(1)(a) is therefore being amended to explain that the 150% income limit is not absolute. This is not a change in policy but is being added to make the rule more accurate and to avoid confusion about the applicability of the 150% income limit.

Several other changes are being made to ARM 37.70.401 at this time. The definition of "institution of higher education" which was previously contained in ARM 37.70.402(4)(a) is being moved to ARM 37.70.401 because it can be confusing to readers if some definitions are contained in a separate definitions rule and other definitions are contained in the rule which uses the term. Also, a definition of the term "heating season" is being added. This term has been used in the LIEAP rules for a number of years but has never been defined. The definition being inserted merely spells out the meaning which the Department has long attributed to this term, namely, the period from October 1 of one year to April 30 of the next year. The insertion of this definition does not represent a change in policy.

The definition of "household" in ARM 37.70.401 is being amended to specify that foster children and adults are not required to be included in the LIEAP household but may be excluded at the option of the applicant. In a related change, ARM 37.70.407, which governs the computation of income for LIEAP eligibility purposes, is being amended to state that foster care payments received for a child or adult whom the applicant opts to exclude from the LIEAP household is not counted as income to the household. The result of these changes will be to allow households providing foster care services to maximize the amount of benefits they receive. Although a household receives a higher benefit amount if it has more members, all other things being equal, the income of all members of the household is generally counted in computing benefit amount. As a result, the inclusion of a foster child or adult in the household could result in either a higher or lower benefit, depending on how large the foster care payment was. If households with foster children or adults are allowed to include or exclude these individuals and their income, they can choose the option which

will result in the higher benefit amount.

The Department has chosen to adopt this policy to make the LIEAP policy consistent with that applied in the food stamp program, as set forth in 7 CFR 273.1(c)(6). The Department believes the food stamp policy is desirable because families which are caring for foster children or adults are providing a valuable service and should not be penalized by receiving a smaller LIEAP benefit than the household would otherwise receive. Rather, such families should be rewarded by a policy which allows them to maximize their benefits.

ARM 37.70.407 is also being amended to provide for the exclusion of Veterans' Administration pension reimbursements for medical expenses. The Department made the decision to exclude these reimbursements as income due to a recent administrative hearing decision which ruled that they should be excluded. The hearing decision cited cases relating to programs other than LIEAP which indicated that such payments should not be counted as income because the payments are not available to meet basic needs such as food, shelter, and clothing. In light of the hearing decision and the rationale stated in the cases cited by the hearing decision, the Department decided to change its policy regarding these payments.

ARM 37.70.408(4) pertaining to resources is being amended to increase the maximum amounts of non-business resources which a household can have to be eligible for LIEAP in fiscal year 2002. This is necessary because ARM 37.70.408(5)(a) and (b) state that the non-business resource limits will be increased annually by either 3% or the percentage increase in the consumer price index for the most recent calendar year, whichever is lower. The non-business resource limits are being increased by 3% this year, because the increase in the consumer price index was 3.8%.

The table of income/climactic adjustment multipliers currently in subsection (1)(e) of ARM 37.70.601 and renumbered (1)(d) in the rule is being amended to show income up to 150% of poverty, which was necessary due to the increase in the income limit from 125% to 150% of poverty.

The Department is repealing ARM 37.70.301, which addresses the interview requirements for LIEAP applicants, because this issue is now covered in ARM 37.70.305 governing applications. The Department has rewritten material about interviews and applications currently contained in ARM 37.70.301, 37.70.304, and 37.70.305 to make it more succinct and has combined it in a single rule addressing application procedures and requirements, ARM 37.70.305 as amended. ARM 37.70.301 was unduly long because it addressed in unnecessary detail the contents of the interview. Interview requirements are now addressed in a more concise manner in ARM 37.70.305. The purpose of all these changes is to present information about interviews and the application process and requirements in a briefer, more logical

and more readable manner.

Also, ARM 37.70.301 stated that an interview was required of all applicants, which is no longer correct. It has been the Department's policy for some time to interview applicants only if there is a specific need to obtain additional information not contained on the completed application or to clarify information on the application. Therefore the provision on interviews is being amended to correctly reflect the Department's current policy.

Additionally, ARM 37.70.305 currently states that applicants aged 60 or older and handicapped individuals may apply through senior citizen centers, home visits, by phone or by mail. This rule is now being amended to state that all applicants, not just older individuals or individuals with disabilities, may make application by mail. This is the Department's long-standing policy which the rule is now being revised to reflect.

ARM 37.70.305 currently states that applications may be filed only during the period from October 1 through April 30. This is no longer correct. Although the heating season for which benefits are paid still runs from October 1 through April 30, the Department in recent years has accepted and processed the applications of clients who use certain type of heating fuels, such as propane, prior to October 1. The purpose of permitting these early applications is to allow clients to purchase heating fuel at summer rates, which are significantly lower. This will benefit LIEAP clients by allowing them to purchase more heating fuel for their LIEAP dollars. ARM 37.70.305 therefore must be amended to authorize the Department, at its option, to accept applications prior to October 1.

Two provisions currently contained in other rules have been moved to ARM 37.70.305. The anti-discrimination provision currently in ARM 37.70.301(3) has been moved to ARM 37.70.305 and the phrase "physical or mental handicap" has been replaced with "physical or mental disability" to conform with current usage. The statement in ARM 37.70.304 that the applicant has the burden of proving eligibility has been moved to ARM 37.70.305 because that is a more logical place for it, but the Department's policy in this respect is unchanged.

The Department proposes to repeal ARM 37.70.902, which authorizes the Department to provide supplemental assistance, in addition to their regular LIEAP benefit, to families who have paid at least 5% of their annual income for energy costs. The Department decided to eliminate supplemental assistance for several reasons. First, the Department will be paying out more regular LIEAP benefits as a result of increasing the income limit from 125% to 150% of the federal poverty guidelines. The elimination of supplemental assistance will make available additional dollars to pay for these increased LIEAP costs. After careful consideration and discussion of this at the LIEAP

Round Table, the Department felt it was more equitable to help a broader range of low income families with their energy costs than to provide supplemental assistance to families under 125% of poverty. Also, one of the original purposes of the supplemental assistance program, which was to encourage households to make out-of-pocket energy payments, was not being achieved. Finally, eliminating supplemental assistance will make the administration of the LIEAP program easier.

In regard to the economic impact of the proposed changes to the LIEAP rules, the Department estimates that an additional 5,368 households will be eligible for LIEAP for the upcoming heating season as compared to last year. It is estimated that 4,768 of these additional households will qualify as a result of increasing the income limit for eligibility from 125% to 150% of the federal poverty guidelines. However, the Department cannot estimate whether the total dollar amount of LIEAP benefits paid out to all eligible households will be an increase or decrease over last year's total, because Congress has not yet appropriated funds for the LIEAP program for the upcoming season.

LIEAP is a federal block grant program, meaning that each state receives a fixed amount of dollars every year to fund LIEAP in that state. If the total number of eligible households increases as projected, and Montana's LIEAP appropriation is equal to or less than the amount received last year, benefit levels for eligible households would decrease overall, because an equal or lesser amount of money would be divided among a larger number of households. On the other hand, if Montana's appropriation for the 2001-2002 heating season is larger than last year's grant, households may experience an increase in benefits received per household. However, this will occur only if the total appropriation increases by an amount large enough to offset the additional number of eligible households.

5. The Department proposes to apply these changes to the LIEAP rules retroactive to August 1, 2001. These is necessary because the Department will be accepting and processing applications from clients using certain types of heating fuels beginning August 1, although applications may not be filed by most clients until October 1. The Department wishes to apply the higher 2001 income guidelines and benefit amounts in determining eligibility and benefit awards for these early applications.

6. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on September 6, 2001. Data, views or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department

also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

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

/s/ Dawn Sliva
Rule Reviewer

/s/ Gail Gray
Director, Public Health and Human Services

Certified to the Secretary of State July 30, 2001.

**BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA**

In the matter of the amendment of ARM 17.8.102, 17.8.103, 17.8.302, 17.8.602, 17.8.702, 17.8.902, and 17.8.1002, pertaining to incorporation by reference of current federal statutes and regulations into air quality rules	NOTICE OF AMENDMENT (AIR QUALITY)

TO: All Concerned Persons

1. On April 5, 2001, the Board of Environmental Review published notice of a public hearing on the proposed amendment of the above-captioned rules pertaining to incorporation by reference of current federal statutes and regulations into air quality rules, at page 518, 2001 Montana Administrative Register, issue number 7.

2. The Board has amended the rules as proposed.

3. The Board received the following comments (Board response follows the comment):

COMMENT #1: Two comments were received, both questioning the proposed adoption through incorporation by reference of EPA's Maximum Achievable Control Technology (MACT) Standard for the pulp and paper industry. According to these commenters, the Environmental Protection Agency's (EPA's) MACT rules are not adequate, as they do not meet the requirements of the federal Clean Air Act.

According to these commenters, the federal Clean Air Act requires a minimum emission standard, known as the MACT floor. Determining the MACT floor involves an analysis of emissions from existing sources. The MACT floor is based upon emissions from the best performing 12% of these sources. These commenters state that in setting the MACT floor for the pulp and paper industry, EPA violated the federal Clean Air Act, as the new standard can already be met by 80% of existing sources. Instead of 88% of these sources having to upgrade to meet the standard, only 20% will actually be affected.

These commenters believe the Board should reject EPA's MACT standard and should set appropriate standards that are more stringent and comply with the specific requirements of the federal Clean Air Act.

One of these commenters suggested that the Board direct the Department to investigate the emissions from the three types of emission units regulated by this rule in Montana. The commenter

stated that, after reviewing the data used by EPA to set the MACT floor, the Department should require the control technology necessary to ensure that emissions are limited consistent with the requirements of federal law, which requires more than the MACT floor set by EPA. The commenter stated that the Board must implement rules that both protect public health as well as meet the requirements of state and federal law.

RESPONSE: The issues raised by the commenters are beyond the scope of the public notice in this proceeding, except as they relate to whether the Board should adopt the EPA MACT standard for the pulp and paper industry. The Board has not proposed or raised for consideration a more stringent standard than the federal MACT standard.

The Board does not believe it should reject the EPA MACT standard. Whether EPA has complied with the federal Clean Air Act in adopting the standard is an issue the commenters should take up with EPA. Neither the Board nor the Department is charged under the federal Clean Air Act with determining MACT floors; this is a responsibility delegated solely to EPA. Thus, it would make no sense to direct the Department to review EPA's MACT analysis for its accuracy. It has been the Board's policy to incorporate by reference new MACT standards that apply to Montana facilities when they are published in the Federal Register. This allows the Department to assume primary jurisdiction for compliance at an earlier date than waiting for the MACT standard to be published in the Code of Federal Regulations.

As a practical matter, rejecting the EPA MACT standard in this proceeding would not repeal the standard, but would subject the regulated entity to dual regulation by EPA and the state. It has been the Board's policy to maintain the Department's primacy in administering the air program. If the Board does not incorporate the MACT standard by reference, EPA will maintain primary authority to enforce it. However, because the pulp mill MACT is an "applicable requirement" of the Title V operating permit program, it would be enforceable by the Department through an operating permit even if it is not incorporated by reference.

Adoption of the EPA MACT standard for the pulp and paper industry in this proceeding does not preclude the adoption of a more stringent standard at a later date, if it is established that such a standard is necessary to protect public health or the environment. Because EPA has adopted the MACT standard, the Board must comply with the requirements of section 75-2-207, MCA, before it can adopt a more stringent standard. The record in this proceeding does not contain any basis for making the requisite findings to support a more stringent standard.

BOARD OF ENVIRONMENTAL REVIEW

by: *Joseph W. Russell, M.P.H.*
JOSEPH W. RUSSELL, M.P.H.
Chairperson

Reviewed by:

David Rusoff
David Rusoff, Rule Reviewer

Certified to the Secretary of State July 30, 2001.

BEFORE THE BOARD OF MEDICAL EXAMINERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the transfer of ARM 8.28.101 through 8.28.1911 pertaining to the Board of Medical Examiners	))))	NOTICE OF TRANSFER

TO: All Concerned Persons

1. Pursuant to Chapter 483, Laws of Montana 2001, effective July 1, 2001, the Board of Medical Examiners is transferred from the Department of Commerce to the Department of Labor and Industry ARM Title 24, Chapter 156.

2. The Department of Labor and Industry has determined that the transferred rules will be numbered as follows:

OLD	NEW	
8.28.101	24.156.101	Board Organization
8.28.201	24.156.201	Procedural Rules
8.28.202	24.156.202	Citizen Participation Rules
8.28.401	24.156.203	Board Meetings
8.28.402	24.156.501	Definitions
8.28.403	24.156.502	Medical Schools
8.28.403A	24.156.607	Graduate Training Requirements for Foreign Medical Graduates
8.28.403B	24.156.503	Medical Student's Permitted Activities
8.28.404	24.156.504	Internship
8.28.404A	24.156.505	Intern's Scope of Practice
8.28.405	24.156.506	Residency
8.28.405A	24.156.507	Resident's Scope of Practice
8.28.405B	24.156.508	Approved Residency
8.28.406	24.156.608	ECFMG Requirements
8.28.407	24.156.609	Fifth Pathway Program
8.28.408	24.156.610	Reciprocity
8.28.409	24.156.603	Applications for Licensure
8.28.410	24.156.604	Refusal of License
8.28.411	24.156.626	Revocation or Suspension Proceedings
8.28.412	24.156.627	Reinstatement
8.28.414	24.156.605	Temporary Certificate
8.28.416	24.156.606	Examination
8.28.417	24.156.602	Nonrefundable Fees
8.28.418	24.156.615	Annual Registration and Fees
8.28.419	24.156.616	Registry
8.28.420	24.156.601	Fee Schedule
8.28.421	24.156.618	Testing Requirement
8.28.422	24.156.628	Management of Infectious Wastes
8.28.423	24.156.625	Unprofessional Conduct
8.28.424	24.156.617	Inactive License
8.28.501	24.156.1405	Approval of Schools
8.28.502	24.156.1403	Requirements for Licensure
8.28.503	24.156.1404	Application for Licensure

8.28.504	24.156.1402	Fees
8.28.507	24.156.1411	Annual Renewal Date
8.28.508	24.156.1412	Unprofessional Conduct
8.28.509	24.156.1401	Definitions
8.28.510	24.156.1413	Management of Infectious Wastes
8.28.511	24.156.1406	Curriculum Approval
8.28.904	24.156.1801	Definitions
8.28.905	24.156.1802	Emergency Medical Services Bureau - Duties
8.28.906	24.156.1803	Application - Program Approval
8.28.907	24.156.1804	Candidates - Certification
8.28.908	24.156.1805	Equivalency
8.28.909	24.156.1806	Suspension or Revocation of Certification
8.28.910	24.156.1807	Management of Infectious Wastes
8.28.1010	24.156.1901	EMT - Basic: Acts Allowed
8.28.1011	24.156.1902	EMT - Basic: Course Requirements
8.28.1012	24.156.1903	EMT - Basic: Student Prerequisites
8.28.1013	24.156.1904	EMT - Basic: Certification
8.28.1014	24.156.1905	EMT - Basic: Recertification
8.28.1109	24.156.2001	EMT - Advanced: Acts Allowed
8.28.1110	24.156.2002	EMT - Advanced: Course Requirements
8.28.1111	24.156.2003	EMT - Advanced: Student Eligibility
8.28.1112	24.156.2004	EMT - Advanced: Certification
8.28.1113	24.156.2005	EMT - Advanced: Recertification
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8.28.1902	24.156.802	Definitions
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8.28.1905	24.156.805	Fees
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8.28.1910	24.156.810	Effect of Telemedicine Certificate
8.28.1911	24.156.811	Sanctions

3. The transfer of rules is necessary because this board was transferred from the Department of Commerce to the Department of Labor and Industry by the 2001 legislature by Chapter 483, Laws of Montana 2001.

BOARD OF MEDICAL EXAMINERS
LAWRENCE R. McEVOY, M.D.
PRESIDENT

By: /s/ MIKE FOSTER
Mike Foster, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

By: /s/ KEVIN BRAUN
Kevin Braun
Rule Reviewer

Certified to the Secretary of State, July 30, 2001.

BEFORE THE BOARD OF MEDICAL EXAMINERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 8.28.416 pertaining to examinations	**)**	**NOTICE OF AMENDMENT**

TO: All Concerned Persons

1. On April 26, 2001, the Board of Medical Examiners published a notice of proposed amendment of the above-stated rule at page 589, 2001 Montana Administrative Register, issue number 8. The hearing was held May 30, 2001.

2. The Board has amended ARM 8.28.416 exactly as proposed.

3. No comments or testimony were received.

4. In another notice in this issue, ARM 8.28.416 is being transferred to ARM 24.156.606.

BOARD OF MEDICAL EXAMINERS
LAWRENCE R. McEVOY, M.D.
PRESIDENT

By: /s/ MIKE FOSTER
Mike Foster, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

By: /s/ KEVIN BRAUN
Kevin Braun
Rule Reviewer

Certified to the Secretary of State, July 30, 2001.

**BEFORE THE BOARD OF MEDICAL EXAMINERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA**

In the matter of the adoption of new rule I pertaining to occasional case exemptions) NOTICE OF ADOPTION

TO: All Concerned Persons

1. On April 26, 2001, the Board of Medical Examiners published a notice of proposed adoption of the above-stated rule at page 591, 2001 Montana Administrative Register, issue number 8. The hearing was held May 30, 2001.

2. The Board adopted NEW RULE I (ARM 24.156.611) OCCASIONAL CASE EXEMPTION as proposed.

3. No comments or testimony were received.

**BOARD OF MEDICAL EXAMINERS
LAWRENCE R. McEVOY, M.D.,
PRESIDENT**

**By: /s/ MIKE FOSTER
Mike Foster, Commissioner
DEPARTMENT OF LABOR & INDUSTRY**

**By: /s/ KEVIN BRAUN
Kevin Braun
Rule Reviewer**

Certified to the Secretary of State, July 30, 2001.

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

In the matter of the amendment of ARM 37.40.905, 37.83.802, 37.83.811, 37.83.812, 37.83.825, 37.85.406, 37.86.105, 37.86.610, 37.86.705, 37.86.1406, 37.86.1706, 37.86.1806, 37.86.1807, 37.86.2005, 37.86.2207, 37.86.2605, 37.86.4413, 37.88.206, 37.88.306, 37.88.606 and 37.88.907 pertaining to medicaid cross-over pricing	)	NOTICE OF AMENDMENT

TO: All Interested Persons

1. On June 21, 2001, the Department of Public Health and Human Services published notice of the proposed amendment of the above-stated rules at page 1029 of the 2001 Montana Administrative Register, issue number 12.

2. The Department has amended rules 37.40.905, 37.83.802, 37.83.811, 37.83.812, 37.83.825, 37.85.406, 37.86.105, 37.86.610, 37.86.705, 37.86.1406, 37.86.1706, 37.86.1806, 37.86.1807, 37.86.2005, 37.86.2207, 37.86.2605, 37.86.4413, 37.88.206, 37.88.306, 37.88.606 and 37.88.907 as proposed.

3. No comments or testimony were received.

/s/ Dawn Sliva
Rule Reviewer

/s/ Gail Gray
Director, Public Health and Human Services

Certified to the Secretary of State July 30, 2001.

VOLUME NO. 49 OPINION NO. 3

BONDS - Lease purchase contract with "nonappropriation" clause under statute requiring election on general obligation bonds;
CITIES AND TOWNS - Lease purchase contract with "nonappropriation" clause under municipal debt limit statutes;
CITIES AND TOWNS - Lease purchase contract with "nonappropriation" clause under statute requiring election on municipal general obligation bonds;
ELECTIONS - Lease purchase contract with "nonappropriation" clause under statute requiring election on municipal general obligation bonds;
MUNICIPAL GOVERNMENT - Lease purchase contract with "nonappropriation" clause under municipal debt limit statutes;
MUNICIPAL GOVERNMENT - Lease purchase contract with "nonappropriation" clause under statute requiring election on municipal general obligation bonds;
MONTANA CODE ANNOTATED - Sections 7-1-4124, 7-7-4101, -4104, -4201, -4221, -4221(1);
MONTANA CONSTITUTION - Article XI, section 4(2);
OPINIONS OF THE ATTORNEY GENERAL - 38 Op. Att'y Gen. No. 56 (1979).

HELD: 1. A long-term lease with an option to purchase containing a provision allowing the City to terminate the agreement without penalty if the governing body of the City, in its sole discretion, fails to appropriate funds to make payments due under the lease in any fiscal year, does not create indebtedness of the City under Mont. Code Ann. § 7-7-4101 or -4201.

2. A city may enter a long-term lease with an option to purchase containing a provision allowing the City to terminate the agreement without penalty if the governing body of the City, in its sole discretion, fails to appropriate funds to make payments due under the lease in any fiscal year without first putting the question to a vote of the people under Mont. Code Ann. § 7-7-4221.

June 28, 2001

Mr. David V. Gliko
Great Falls City Attorney
P.O. Box 5021
Great Falls, MT 59403

Dear Mr. Gliko:

You have requested my opinion on two questions which I have phrased as follows:
1. Does a long-term lease with an option to purchase

containing a provision allowing the City to terminate the agreement without penalty if the governing body of the City, in its sole discretion, fails to appropriate funds to make payments due under the lease in any fiscal year constitute indebtedness of the City under Mont. Code Ann. § 7-7-4101 or -4201?

2. Does such a lease agreement pledge the general credit of the City such that a vote of the City's electors would be required under Mont. Code Ann. § 7-7-4221?

Your letter informs me that the City of Great Falls is considering entering into a contract for the development and operation of a water park. The City envisions an arrangement under which the City would enter a long-term lease to a private party of certain real property adjacent to the current municipal swimming pool. Concurrently, the City would lease from that party for a somewhat shorter term certain personal property to be used in connection with the proposed water park. The personalty lease contract would include an option for the City to purchase the personal property at the close of the lease terms under certain conditions. It would also include a clause, which you have termed a "nonappropriation" clause, under which the personalty lease would terminate without penalty to the City in the event the City chose not to appropriate funds for the lease payments in any fiscal year. Upon termination of the personalty lease in this way, possession of the personal property would revert to the lessor of that property, who would retain possession of the realty under the separate realty lease until the term of that lease expired. Your questions generally revolve around the assertion that the nonappropriation clause would operate to take the arrangement out of the scope of several state laws regulating municipal government debt and the pledging of the City's credit.

I.

For many years, various laws have regulated the accumulation of debt by city, county, and state government. See, e.g., Mont. Const. art. 8, § 8 (state debt); Mont. Code Ann. §§ 7-7-2101 (county debt), 7-7-4101 (municipal debt). A relatively large body of case law exists in which the Montana Supreme Court has spoken to the question of whether a particular government expenditure constitutes a "debt" to which these limitations apply. Since the same test seems to be applied to city, county, and state debts, see State ex rel. Rankin v. State Bd. of Exam'rs, 59 Mont. 557, 197 P. 988 (1921) (state expenditures), State ex rel. Diederichs v. Board of Trustees of Missoula County High Sch., 91 Mont. 300, 7 P.2d 543 (1932) (county expenditures), and Simmons (city expenditures), it appears that the authorities with respect to the definition of "indebtedness" are interchangeable without regard to the level of government involved.

The cases have been fairly consistent in holding that an expenditure payable from funds currently available is not a "debt" for purposes of these statutes, while one that would require appropriation by a future government legislative body would create a "debt." Compare Yovetich v. McClintock, 165 Mont. 80, 526 P.2d 999 (1974) (county contract for erection of multipurpose arena to be funded from proceeds of bond sale previously approved by electors, fire insurance proceeds, and federal revenue sharing funds did not create additional county debt since all funds to be expended were currently in the county treasury), with State ex rel. Simmons v. City of Missoula, 144 Mont. 210, 395 P.2d 249 (1964) (city contract for erection of building to be paid for in installments funded by taxes levied over a three-year period created "debt"); see also State ex rel. Diederichs v. Board of Trustees of Missoula County High Sch., 91 Mont. 300, 7 P.2d 543 (1932) (reconstruction of county high school from previously approved bond funds and insurance proceeds not a "debt"); State ex rel. Rankin v. State Bd. of Exam'rs, 59 Mont. 557, 197 P. 988 (1921) (issuance of treasury notes in anticipation of receipt of revenue to cover existing appropriations not "debt").

The basis of the various debt limitation statutes appears to be an aversion to the practice of obligating future legislative bodies to appropriate funds for current projects. As the Montana Supreme Court observed in State ex rel. Diederichs v. State Highway Comm'n, 89 Mont. 205, 211, 296 P. 1033, 1035 (1931):

> Knowing the tendency of governments to run in debt, to incur liabilities, and thereby to affect the faith and credit of the state in matters of finance, thus imposing additional burdens on the taxpaying public, the framers of the Constitution placed positive limitations upon the power of the legislative assembly to incur a debt or impose a liability upon the state beyond the limit prescribed, without referring the proposition to the electorate for its approval.

The Supreme Court has consistently relied on this understanding of the purpose of debt limitation statutes.

Applying this test to the City's proposal, I conclude that the lease purchase agreement would not create a "debt" which would be subject to the limitations found in Mont. Code Ann. § 7-7-4201. The payments under the lease purchase contract would be made from currently available City revenue. Nothing in the contract as you have described it would obligate the City to make a payment in any future budget year. On the contrary, the City would remain free to decide in any budget year not to make the lease purchase payment. Under the contract the lessee would have no right to sue the City for specific performance of an obligation to pay under these circumstances.

Your request does not present the question of whether the result would be different if the City was under some practical financial compulsion to continue to make the payments, even if no legal obligation to do so existed. Cf. Pollard v. City of Bozeman, 228 Mont. 176, 181, 741 P.2d 776, 779 (1987) (contract term obligating city to pay liquidated damages of $175,000 and to forfeit title to property could convert lease/purchase option contract to contract for outright sale). Under the proposal described in your letter, failure of the City to make payments could, at worst, place the parties in the status quo ante. The City would be out the value of the lease payments previously made, which would in effect serve as rental of the leased property, but would retain title to the real property leased to the lessor of the personalty. The lessor of the personalty would be entitled to the return of the leased personal property, and would have the right to retain possession of the realty during the term of the realty lease, but would acquire no other interest in the realty and have no other remedy against the City. Under these circumstances, no plausible argument could be made that the City would be under some practical compulsion to make future expenditures.

It could be argued that the legislature has spoken on this issue through the adoption of Mont. Code Ann. § 7-7-4104. That statute, adopted in 1999, allows cities and towns to incur "an obligation" in the form of bonded or note indebtedness, lease, lease purchase agreement, installment purchase contract, or any other "legal form," as long as the term of the obligation is less than twenty years, the principal amount of the obligation does not exceed 10 percent of the municipality's general fund budget for each of the two preceding years, and the total "debt service" on the present "obligation" and any other "obligations" does not exceed 2 percent of the city's general fund revenue for each of the two preceding years. The statute provides in subsection (2) that a valid "obligation" under its provisions "does not constitute indebtedness for the purpose of statutory debt limitations."

While the argument could be made that this provision limits the prerogatives of cities and towns to undertake other forms of financing under the principle of *expressio unius est exclusio alterius*, see State ex rel. Jones v. Giles, 168 Mont. 130, 133, 541 P.2d 355, 357 (1975) ("[A]n express mention of a certain power or authority implies the exclusion of non-described powers."), such an argument would not be well-taken in the context of the powers of local governments. The overriding constitutional principle is that the powers of local governments are to be liberally construed. Mont. Const. art. XI, § 4(2); see Granite County v. Komberec, 245 Mont. 252, 256-57, 800 P.2d 166, 169 (1990). A liberal construction of the statute would not permit an interpretation that it preempts municipalities from finding other financing methods not prohibited by law. This is especially so in light of subsection (7) of the statute, which

recognizes that "[t]he powers conferred on a municipality under this section are in addition to and are supplemental to the powers conferred by other general, special, or local law."

The arrangement proposed by the City would not fall within the scope of Mont. Code Ann. § 7-4-4104. An "obligation" incurred under the statute would be "a general obligation of the municipality." Mont. Code Ann. § 7-7-4104(2). The statute provides further in subsection (6):

> All obligations incurred under this section are legal and valid obligations of the municipality issuing the obligations, and the general credit of the municipality is irrevocably pledged for the prompt payment of both the principal of and interest on the obligations as they become due. However, the municipality may not be obligated to levy taxes for the payment of any obligation or interest on the obligation.

In contrast, the City's proposal does not envision that the general credit of the City will be pledged to make the full course of lease payments under the agreement. To the contrary, the agreement as described will clearly disclose that the City is not pledging to make any particular payment in any particular year, and the lessor will have no legal remedy to compel the City to pay if it chooses not to do so in any year. It therefore seems clear that the limits on the individual and aggregate amount of "obligations" undertaken pursuant to Mont. Code Ann. § 7-7-4104 would not apply to the City's proposal as described here.

The conclusion that the City's proposal does not create a "debt" is consistent with the rule adopted by a substantial majority of courts in other jurisdictions that have considered the question. See, e.g.,Wayne County Citizens for Better Tax Control v. Wayne County Bd. of Comm'rs, 328 N.C. 24, 31-32, 399 S.E.2d 311, 316 (1991) (collecting cases); State ex rel. Kane v. Goldschmidt, 308 Ore. 573, 783 P.2d 988 (1989) (statute allowing lease/purchase contract with nonappropriation clause not violative of limit on state debt); Baliles v. Mazur, 224 Va. 462, 297 S.E.2d 695 (1982) (same). The cases taking the minority position are distinguishable or are based on rules of law that have not been applied in Montana. Montano v. Gabaldon, 108 N.M. 94, 766 P.2d 1328 (1989), seems to be based on the conclusion that local government powers are narrowly construed, an approach inconsistent with the Montana Constitution. Brown v. City of Stuttgart, 312 Ark. 97, 847 S.W.2d 710 (1993), appears to depend for its result on the conclusion that default by the city would result in imposition of unacceptable penalties against the city, creating a practical obligation on the city's part to fund the full term of the lease. As noted above, no such practical compulsion would appear to exist with respect to

the City's proposal here.

While self-governing local governments are specifically required to comply with general laws relating to "the budget, finance, or borrowing procedures and powers of local governments," Mont. Code Ann. § 7-1-114(1)(g), even general power municipalities have the authority, "subject to the provisions of state law," to acquire interests in real or personal property by lease. Mont. Code Ann. § 7-1-4124. In my opinion, the arrangement proposed by the City here would not violate the provisions of state law limiting the accumulation of debt by municipal governments.

II.

Mont. Code Ann. § 7-7-4221(1) requires an election before a municipal government may "issue bonds pledging the general credit of the municipality." For the reasons discussed above, even if the lease purchase arrangement proposed by the City were to be considered the equivalent of a bond issue, it would not be considered to have "pledg[ed] the general credit of the municipality" for purposes of this section. Mont. Code Ann. § 7-7-4221(1) clearly uses the term "bonds pledging the general credit of the municipality" to refer to the issuance of general obligation bonds. "General obligation" bonds are debt instruments for the retirement of which the issuing government body is obligated to levy taxes. Mont. Code Ann. § 7-7-4204; see Port of New York Auth. v. Baker, Watts & Co., 392 F.2d 497, 498 (D.C. Cir. 1968) ("While no judicial construction of the [Glass-Steagall] Act's term 'general obligations' has been found, the trade meaning of the term requires a full faith and credit obligation supported by the taxing power."); Rivers v. City of Owensboro, 287 S.W.2d 151, 154 (Ky. 1956) (same). The City's proposal as you describe it would not pledge the taxing power of the City to make the full term of lease payments, and it therefore would not qualify as an obligation for which the general credit of the City is pledged.

Your letter suggests that Attorney General Greely's opinion in 38 Op. Att'y Gen. No. 56 (1979) should be reconsidered. In that opinion, Attorney General Greely held that a clause allowing cancellation of a lease at the end of each year did not avoid the then-existing statute requiring an election on the incurrence of any county "indebtedness or liability for any single purpose" in excess of $40,000. See Mont. Code Ann. § 7-7-2101(2) (1979). The opinion reasoned that unless the total possible expenditures were aggregated prior to the expenditure, it would be impossible to determine whether the total amount to be spent for a "single purpose" would exceed $40,000, and the purpose of the statute--to require submission of such expenditures to the voters--would be thwarted.

None of the statutes that control the questions you have asked deal with a numerical limit on the incurrence of "indebtedness

or liability for any single purpose." Rather, the statutes limit the creation of any "indebtedness" without abiding by the procedures and limitations found in the bonding process provided in Mont. Code Ann. title 7, chapter 7, parts 41 and 42. In light of my conclusion that a lease with a nonappropriation clause does not create municipal "indebtedness," the prior opinion, which construes a statute dealing with county finance and which includes language different from the statutes applicable here, should not be viewed as authoritative in the context of municipal finance. Since your questions arise in the context of a lease by a municipality, and not a county, I will leave it to another day to determine whether the prior opinion should be overruled in its entirety.

III.

For the foregoing reasons, the proposed lease purchase arrangement described in your letter would not create "indebtedness" under Mont. Code Ann. § 7-7-4101 or -4201, nor would it require a vote of the people under Mont. Code Ann. § 7-7-4221. I express no opinion as to the legality of the proposal under any other state or federal law.

THEREFORE, IT IS MY OPINION:

1. A long-term lease with an option to purchase containing a provision allowing the City to terminate the agreement without penalty if the governing body of the City, in its sole discretion, fails to appropriate funds to make payments due under the lease in any fiscal year, does not create indebtedness of the City under Mont. Code Ann. § 7-7-4101 or -4201.

2. A city may enter a long-term lease with an option to purchase containing a provision allowing the City to terminate the agreement without penalty if the governing body of the City, in its sole discretion, fails to appropriate funds to make payments due under the lease in any fiscal year without first putting the question to a vote of the people under Mont. Code Ann. § 7-7-4221.

Very truly yours,

Mike McGrath
MIKE McGRATH
Attorney General

mm/cdt/dm

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee:

- **Department of Agriculture;**
- **Department of Commerce;**
- **Department of Labor and Industry;**
- **Department of Livestock;**
- **Department of Public Service Regulation; and**
- **Office of the State Auditor and Insurance Commissioner.**

Education and Local Government Interim Committee:

- **State Board of Education;**
- **Board of Public Education;**
- **Board of Regents of Higher Education; and**
- **Office of Public Instruction.**

Children, Families, Health, and Human Services Interim Committee:

- **Department of Public Health and Human Services.**

Law and Justice Interim Committee:

- **Department of Corrections; and**
- **Department of Justice.**

Revenue and Transportation Interim Committee:

- **Department of Revenue; and**
- **Department of Transportation.**

State Administration, and Veterans' Affairs Interim Committee:

- **Department of Administration;**
- **Department of Military Affairs; and**
- **Office of the Secretary of State.**

Environmental Quality Council:

- **Department of Environmental Quality;**
- **Department of Fish, Wildlife, and Parks; and**
- **Department of Natural Resources and Conservation.**

These interim committees and the EQC have 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. They also 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, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is PO Box 201706, Helena, MT 59620-1706.

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	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 March 31, 2001. This table includes those rules adopted during the period April 1, 2001 through June 30, 2001 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 March 31, 2001, 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 2000 and 2001 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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