

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 7

The Montana Administrative Register (MAR), a twice-monthly publication, has three sections. The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted. The rule section indicates that the proposed rule action is adopted and lists any changes made since the proposed stage. The interpretation section contains the attorney general's opinions and state declaratory rulings. Special notices and tables are found at the back of each register.

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

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BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the)	NOTICE OF PUBLIC HEARING
amendment of ARM 2.21.227 in	)	ON PROPOSED AMENDMENT OF
the Annual Vacation Leave	)	ARM 2.21.227 IN THE
Policy	)	ANNUAL VACATION LEAVE
	)	POLICY

TO: All Concerned Persons

1. On May 5, 2000, at 9:00 a.m., a public hearing will be held in Room 136 of the Mitchell Building, 125 N. Roberts Street, Helena, Montana to consider the proposed amendment to ARM 2.21.227 in the Annual Vacation Leave Policy.

2. The Department of Administration 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 5:00 p.m. on April 28, 2000, to advise us of the nature of the accommodation that you need. Please contact State Personnel Division, Department of Administration, P.O. Box 200127, Helena, MT 59620-0127; telephone (406) 444-3871; TDD (406) 444-1421; FAX (406) 444-0544; or E-mail hpeck@state.mt.us.

3. The rule as proposed to be amended provides as follows. Matter to be added is underlined. Matter to be deleted is interlined.

2.21.227 VACATION LEAVE REQUESTS (1) and (2) remain the same.

~~(3) The agency shall refuse to approve annual leave which results in a total of more than 40 hours in a pay status for the workweek. In no case may the number of hours of annual leave taken exceed the number of hours the employee is regularly scheduled to work. When approving an employee's request to take annual vacation leave, a supervisor must consider whether the combination of hours worked and annual leave taken will result in more than 40 hours in a pay status in a workweek. Normally, a supervisor shall only approve annual vacation leave that results in an employee receiving pay for 40 hours in a workweek. At any time during the workweek, management may adjust the amount of annual leave taken to maintain a 40-hour workweek.~~

(4) When it is in the best interest of the agency, management may approve annual leave in combination with time worked that results in more than 40 hours in a pay status in a workweek.

(5) In no case may the number of hours of annual leave taken exceed the number of hours the employee is regularly scheduled to work.

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

AUTH: Sec. 2-18-604, MCA
IMP: Sec. 2-18-616, MCA

REASON: This rule change is being made to provide agencies with flexibility in administering annual vacation leave and employee work schedules. The current version of this rule has made it difficult for agencies with emergency response or 24-hour per day programs to schedule adequate staff to fulfill their program requirements. The revised rule would allow agency supervisors, who are experiencing staff shortages, to call on those employees in an annual leave status.

4. Concerned persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to State Personnel Division, Department of Administration, P.O. Box 200127, Helena, MT 59620-0127; or E-mailed to hpeck@state.mt.us no later than May 11, 2000.

5. The State Personnel Division, Department of Administration has been designated to preside over and conduct the hearing.

6. 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 mailing 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 personnel rules. Such written request may be mailed or delivered to Department of Administration, State Personnel Division, P.O. Box 200127, Helena, MT 59620-0127, E-mailed to hpeck@state.mt.us or made by completing a request form at any rules hearing held by the Department of Administration.

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

Dal Smilie
Dal Smilie
Rule Reviewer

Lois Menzies
Lois Menzies, Director
Department of Administration

Certified to the Secretary of State April 3, 2000

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PROPOSED
adoption of new rules I and II	)	ADOPTION
pertaining to Japanese beetle)	
(<u>Popillia japonica</u>)	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On May 14, 2000, the Department of Agriculture proposes to adopt new rules I and II pertaining to Japanese beetle (Popillia japonica).

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than 5:00 p.m. on April 27, 2000, to advise us of the nature of the accommodation that you need. Please contact Gary Gingery, Administrator, Agricultural Sciences Division, Montana Department of Agriculture, P.O. Box 200201, Helena, MT 59620-0201, Phone: (406) 444-2944, TDD: (406) 444-4687, Fax: (406) 444-7336, or E-mail: agr@state.mt.us.

3. The proposed new rules provide as follows:

NEW RULE I DEFINITIONS (1) For purposes of implementing [new Rules I and II], the department hereby adopts and incorporates by reference definitions on pages 23 through 25 in the National Plant Board U.S. Domestic Japanese Beetle Harmonization Plan, revised April 22, 1999. A copy of this document can be obtained from the department at P.O. Box 200201, Helena, MT 59620-0201. The following additional definitions apply to [new Rules I and II]:

(a) "phytosanitary measures" means any statute, rule or procedure having the purpose of preventing the introduction or spread of quarantine pests;

(b) "quarantine" means a rule, order or other legal instrument duly imposed or enacted by the department to prevent the introduction or spread of various plant pests, or to gain official control thereof;

(c) "regulated area" is an area into which, within which, and/or from which plants, plant products and other regulated articles are subjected to phytosanitary measures in order to prevent the introduction and/or spread of quarantine pests; and

(d) "regulated article" means any plant, storage place, conveyance, container or any other object or material capable of harboring or spreading plant pests, and subject to phytosanitary measures.

AUTH: 80-7-402, MCA
IMP: 80-7-402, MCA

NEW RULE II INTERSTATE AND INTRASTATE QUARANTINE
PERTAINING TO JAPANESE BEETLE (Popillia japonica)

(1) The department hereby declares Japanese beetle, (Popillia japonica) family Scarabaeidae, a quarantine pest and establishes a quarantine to prevent movement from infested to non-infested areas or sale of regulated articles except as allowed by this rule.

(2) Areas subject to quarantine requirements are as follows:

(a) all states in the United States that are infested or found to be infested in the future are subject to the quarantine requirements of this rule. A list of infested and non-infested areas can be found in the most current version of the U.S. Domestic Japanese Beetle Harmonization Plan. Upon receipt of new information, the department will update the area subject to quarantine requirements and make it available; and

(b) any county in Montana found to be infested with Japanese beetle is quarantined and movement of regulated articles from an infested county to a non-infested county is subject to phytosanitary measures required by this rule.

(3) The following regulated articles are hereby declared to be hosts and possible carriers of the Japanese beetle:

- (a) soil, humus, compost, and manure;
- (b) all plants with roots;
- (c) grass sod;
- (d) plant crowns or roots for propagation (except when free from soil);
- (e) bulbs, corms, tubers, and rhizomes of ornamental plants (except when free from soil); and

(f) any other plant, plant part, regulated article, or means of conveyance when it is determined by the department agent to present a hazard of spreading live Japanese beetle due to infestation or exposure to infestation by Japanese beetle.

(4) The Montana department of agriculture adopts and incorporates by reference the certification and phytosanitary standards, and treatments and survey protocols of the National Plant Board U.S. Domestic Japanese Beetle Harmonization Plan, April 22, 1999, for shipment of regulated articles to a category 1 state. These standards may be found on pages 6 through 10 of the Harmonization Plan.

(5) Regulated articles originating from areas subject to quarantine requirements must meet standards for shipment to a category 1 state in order to enter Montana commerce. Designated categorized states can be found in the U.S. Domestic Japanese Beetle Harmonization Plan. Regulated articles must be accompanied by a state phytosanitary certificate or equivalent certification of quarantine compliance. Non-complying articles will be subject to penalties and remedies under Title 80, chapter 7, part 4, MCA.

AUTH: 80-7-402, MCA
IMP: 80-7-402, MCA and 80-7-404, MCA

REASON: The department was requested by the Montana Nursery and Landscape Association to adopt a quarantine to prevent establishment of Japanese beetle in Montana, and the department agreed. Japanese beetle is currently established in all states east of the Mississippi River and parts of the mid-west. It has been detected, but is not yet established, as far west as Colorado. Movement from infested to non-infested areas can occur by natural spread or by artificial means. For example, the Japanese beetle is a known hitchhiker and increases its territory by catching rides on airplanes, trains and vehicles and by distribution on infested plants and soil.

A national plan, the U.S. Domestic Japanese Beetle Harmonization Plan, was adopted in 1998 and revised in 1999, through cooperative efforts of the American Nursery & Landscape Association, National Plant Board, and USDA/AHPIS/PPQ. This plan provides adequate controls to prevent movement of Japanese beetle into Montana, and the plan is recognized by states. The department, recognizing the benefits of harmonizing control efforts and the effectiveness of the plan, proposes to adopt it by reference.

If Japanese beetle should become established in Montana, the impacts will be moderate to severe for Montana's nursery industry, homeowners, sod farmers, and irrigated areas. Establishment in nurseries or sod management areas would require control using the available biological, chemical and cultural management options. Equally important would be the economic costs of complying with quarantines. The establishment of the Japanese beetle in Montana would result in infested portions of Montana being named in quarantines, maintained or promulgated by Japanese beetle free states. These quarantines would restrict the interstate movement of any plants with soil attached including nursery stock and sod. The quarantine compliance measures would probably require the department to certify that interstate shipments met quarantine requirements such as pesticide treatments, maintenance of high density trapping programs at nurseries, and use of tightly constructed greenhouses to prevent entry of Japanese beetle.

4. Concerned parties may submit their data, views or arguments concerning the proposed rules in writing to Gary Gingery, Administrator, Agricultural Sciences Division, Montana Department of Agriculture, P.O. Box 200201, Helena, MT 59620-0201 no later than May 11, 2000.

5. If persons who are directly affected by the proposed adoption wish to express their data, views and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Gary Gingery, Administrator, Agricultural Sciences Division, Montana

Department of Agriculture, P.O. Box 200201, Helena, MT 59620-0201. The comments must be received no later than May 11, 2000.

6. If the agency receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected have been determined to be 91 persons based on 906 licensed nurseries in Montana.

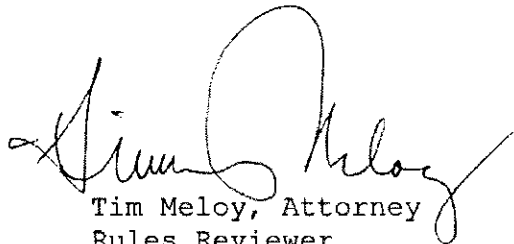
7. The department of agriculture maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: noxious weed seed free forage, noxious weeds, alfalfa seed, agriculture in Montana schools program, agriculture development, pesticides, feed, apiculture development, fertilizer, commodity dealers and warehouseman, produce, mint, seed, alternative crops, agriculture heritage program, wheat research and monitoring, rural development, and/or hail. Such written request may be mailed or delivered to Montana Department of Agriculture, 303 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201, faxed to the office at (406) 444-7336, or E-mail: agr@state.mt.us or may be made by completing a request form at any rules hearing held by the department of agriculture.

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

DEPARTMENT OF AGRICULTURE



Ralph Peck
Director



Tim Meloy, Attorney
Rules Reviewer

Certified to the Secretary of State April 3, 2000..

BEFORE THE BOARD OF PHARMACY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING
amendment of rules pertaining)
to forms and reports, pharmacy)
technicians and patient)
counseling)

TO: All Concerned Persons

1. On February 24, 2000 the board published a notice at page 540 of the 2000 Montana Administrative Register, Issue Number 4, of the proposed amendment of ARM 8.40.906 REQUIRED FORMS AND REPORTS, 8.40.1301 USE OF PHARMACY TECHNICIAN and 8.40.1503 PATIENT COUNSELING. The notice of proposed agency action is being amended because the required number of persons designated therein have requested a public hearing.

2. On May 4, 2000, at 9:00 a.m. a public hearing will be held in the large conference room on the lower level of the Arcade Building, 111 N. Jackson, Helena, Montana, to consider the amendment of the above noted rules.

3. The Board of Pharmacy 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 April 27, 2000 to advise us of the nature of the accommodation that you need. Please contact Cami Robson, Board of Pharmacy, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 444-1698; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-1667.

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 Pharmacy, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, and must be received no later than May 11, 2000 at 5:00 p.m.

5. Edward L. Myers, III, attorney, has been designated to preside over and conduct the hearing.

6. 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 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 Pharmacy. Such written request may be mailed or delivered to the Board of Pharmacy, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 444-1667 or may be made by completing a request form at any rules hearing held by the agency.

BOARD OF PHARMACY
JOHN POUSH, R.Ph. PRESIDENT

BY:

Annie M. Bartos

ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

BY:

Annie M. Bartos

ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, April 3, 2000.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of proposed	)	NOTICE OF PUBLIC HEARING
amendment of rules 10.57.220	)	ON THE PROPOSED
and 10.57.301 relating to	)	AMENDMENT OF 10.57.220
teacher certification	)	AND 10.57.301 RELATING TO
	)	TEACHER CERTIFICATION

TO: All Concerned Persons

1. On May 18, 2000 at 1:00 p.m. or as soon thereafter as it may be heard, a public hearing will be held at the University of Montana Yellow Bay-Flathead Lake Biological Station, 311 Bio Station Lane, Polson, MT, to consider the amendment of ARM 10.57.220 and 10.57.301, relating to teacher certification.

2. The Board of Public Education 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 Public Education no later than 5:00 p.m. on May 8, 2000, to advise us of the nature of the accommodation that you need. Please contact Dr. Wayne Buchanan, 2500 Broadway, Helena, MT 59620, telephone: (406) 444-6576, FAX: 444-0847. TDD number will be available upon request.

3. Statement of Reasonable Necessity: The two proposed amendments to administrative rules will reduce the negative impact of the current rules on experienced and fully qualified educators seeking Montana certification. The proposed amendment to 10.57.220 removes the requirement of academic coursework only as acceptable professional development content appropriate for the recency of credit requirement. This change would reduce the number of experienced teachers placed on provisional status due to the absence of recent college credit by permitting recognition of other forms of recent professional development. Likewise, the proposed amendment to 10.57.301 would allow recognition of other states' state-approved elementary or secondary programs in areas which this state prepares only at the K-12 level. This would allow fully qualified individuals to be granted regular certification at their level of preparation, reducing the need for provisional certification and additional academic requirements to extend the level elementary or secondary levels to K-12 unnecessarily.

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

10.57.220 RECENCY OF CREDIT (1) An applicant for initial Class 1, 2, 3 or 6 certification who holds current out-of-state certification and has a minimum of one year (at least 9 consecutive months) of appropriately certified teaching, administrative, or specialist experience during the 5-year period immediately preceding the validation date of the new certificate, and who has documented evidence of meeting the equivalent of Montana's 60 renewal unit requirement for renewal (state, school or district verified inservice hours or academic credit) during the same time period, will have met the recency of credit requirement.

(2) An applicant for initial certification whose degree is more than 5 but less than 15 years old or an applicant whose period of lapse is 15 years or less, and who does not have current out-of-state certification and recent appropriate experience as outlined in (1), must have the following credits earned within the 5-year period preceding the effective date of the certificate:

(a) Class 1 professional certificate:
~~4 semester (6 quarter credits) or 1 year of teaching experience with a masters degree~~ (Effective in 1995: 8 semester (12 quarter) credits);

(b) through (d) remain the same.

~~(2)~~ (3) An applicant for initial certification whose degree is over 15 years old or an applicant whose period of lapse is over 15 years, and who does not have current out-of-state certification and recent appropriate experience as outlined in (1), must obtain the credits listed in ~~(1)~~ (2) and the following credits based on teaching or specialist experience:

(a) through (d) remain the same.

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

AUTH: 20-4-102, 20-4-103, MCA

IMP: 20-4-102, 20-4-103, 20-4-106, MCA

10.57.301 ENDORSEMENT INFORMATION (1) through (5) remain the same.

(6) Both elementary and secondary training to include student teaching or appropriate waiver are required for endorsement in any approved K-12 endorsement area. Where a state-approved program of at least a minor (minimum of 20 semester credits) at the elementary or secondary level is presented for endorsement in a K-12 endorsement area, an endorsement at the level of preparation may be issued which limits the appropriate assignment to the level of preparation.

(a) and (b) remain the same.

(7) through (10) remain the same.

AUTH: 20-4-102, MCA

IMP: 20-4-103, 20-4-106, MCA

5. Concerned 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 by mail to the Board of Public Education, 2500 Broadway, Helena, MT 59620, or by e-mail to wbuchanan@bpe.montana.edu and must be received no later than 5:00 p.m. on May 17, 2000.

6. Storrs Bishop, Chairman of the Board of Public Education, 2500 Broadway, Helena, MT 59620 has been designated to preside over and conduct the hearing.

7. The Board of Public Education 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 Board of Public Education rules. Such written request may be mailed or delivered to the Board of Public Education office, 2500 Broadway, Helena, MT 59620, or faxed to the office at (406) 444-0847, or may be made by completing a request form at any rules hearing held by the agency.

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

/s/ Storrs Bishop
Storrs Bishop, Chairperson
Board of Public Education

/s/ Wayne Buchanan
Rule Reviewer
Board of Public Education

Certified to the Secretary of State April 4, 2000.

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

In the matter of the	)	NOTICE OF PROPOSED AMENDMENT
amendment and adoption	)	OF ARM 24.5.301,
of procedural rules	)	24.5.303, 24.5.308,
	)	24.5.331, 24.5.350 and
	)	PROPOSED ADOPTION OF NEW
	)	RULES I, II, III, IV and V

NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On June 1, 2000, the Office of the Workers' Compensation Judge proposes to amend and adopt new procedural rules of the Court.

2. The Workers' Compensation Court will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative, accessible format of this notice. If you require an accommodation, contact the Court no later than 5:00 p.m., on May 1, 2000, to advise us of the nature of the accommodation that you need. Please contact Patricia J. Kessner, Workers' Compensation Court, P.O. Box 537, Helena, MT 59624-0537; telephone (406) 444-7794; FAX (406) 444-7798.

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

24.5.301 PETITION FOR TRIAL (1) All requests for trial before the workers' compensation court shall be in petition form, and signed by petitioner or her/his attorney. The petition shall comply with ARM 24.5.303(5). Upon request, the court will provide a form which can be used as a petition. The petition shall include the following information:

(a) in the case of an injury, the date and a description of the accident, or, in the case of an occupational disease, the date the petitioner became aware of the occupational disease and a description of the condition and its occupational origin;

(b) the county where the accident occurred or the occupa-
tional disease arose;

(c) and (d) remain the same.

(e) for accidents occurring on or after July 1, 1987, and for occupational disease claims, a statement that the mediation provisions set forth in 39-71-2411, MCA, have been complied with;

(f) through (i) remain the same.

(2) through (4) remain the same.

AUTH: Sec. 2-4-201, 39-71-2901, 39-71-2903, 39-71-2905, MCA
IMP: Sec. 2-4-201, 39-71-2901, MCA

RATIONALE: The proposed amendments are technical ones required by the transfer of original jurisdiction over occupational disease cases from the Department of Labor and Industry to the Workers' Compensation Court.

24.5.303 SERVICE AND COMPUTATION OF TIME (1) The court will serve the furnished copies of the petition or third-party petition upon adverse parties and others, as designated in the petitioner's or third-party petitioner's instructions, by mailing them at Helena, Montana, with first class postage prepaid. If the respondent or third-party respondent is an unrepresented party or anyone other than an insurer, then the petition or third-party petition shall ordinarily be mailed by certified mail with return receipt requested. Where service is made by certified mail and a signed return receipt is not received by the court within 14 days, or at the court's discretion, the court may order the petitioner or third-party petitioner to serve the petition or third-party petition in accordance with Rule 4(d) of the Mont.R.Civ.P. The petitioner or third-party petitioner is responsible for providing correct names and addresses of all parties to be served.

(2) through (7) remain the same.

AUTH: Sec. 2-4-201, 39-71-2901, 39-71-2903, 39-71-2905, MCA

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

RATIONALE: The proposed amendments are technical in nature and are necessary to coordinate this rule with the proposed new third-party practice rule.

24.5.308 JOINING THIRD PARTIES (1) The joinder of parties shall be governed where appropriate by the considerations set forth in Rules 14, 19, 20, and 21 of the Mont.R.Civ.P.

(2) and (3) remain the same.

(4) Within 10 days of an order joining a third party, the joined party shall serve upon all parties, and file with the court, a response which shall comply with ARM 24.5.302.

AUTH: Sec. 2-4-201, 39-71-2901, 39-71-2903, 39-71-2905, 39-71-2401, MCA

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

RATIONALE: The proposed amendments are technical in nature and are necessary to coordinate this rule with the proposed new third-party practice rule.

24.5.331 SUBPOENA (1) ~~Every subpoena shall be issued by the clerk under the seal of the court, shall state the name of the court, and the title of the action, and the case number,~~ and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified. The clerk shall issue a subpoena or a subpoena for the production of documentary evidence. An attorney as an officer of the court may also issue and sign a subpoena or subpoena for the production of documentary evidence on behalf of the court. A subpoena may issue only for trial or a noticed deposition. If all

parties to the action agree, subpoenaed documents may be produced without the necessity of a noticed deposition, such as by simultaneous mailing to all parties or through production at a time and place agreed upon by the parties without the presence of a court reporter, otherwise the documents must be produced at trial or at a deposition with a court reporter. Unless otherwise ordered by the court, subpoenas shall be issued for the limited purposes of taking a duly noticed deposition or attendance of a witness at trial, signed and sealed but otherwise in blank, to a party requesting it, who shall fill it in before service.

(2) A subpoena may be issued for the purpose of taking a duly noticed deposition or compelling attendance of a witness at trial, and may also command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein in accordance with (1); but the court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may quash or modify the subpoena if it is unreasonable, unduly burdensome or and oppressive, or condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things. Any party serving a subpoena for the production of documentary evidence shall provide all other parties to the dispute reasonable notice of the place, date, and time for such production. In the event a subpoena is found to be unreasonable, unduly burdensome, or oppressive, the court may impose sanctions on the party issuing or requesting the subpoena, which may include, but are not limited to, lost earnings and a reasonable attorney fee.

(3) through (5) remain the same.

AUTH: Sec. 2-4-201, 39-71-2901, 39-71-2903, MCA .

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

RATIONALE: Effective January 1, 2000, Rule 45 of the Montana Rules of Civil Procedure was amended to permit attorneys to issue and sign subpoenas on behalf of the district courts. The proposed amendments to ARM 24.5.331 will make the Workers' Compensation Court procedure consistent with the Rule 45 amendment with certain exceptions. Initially, as does Rule 45, the amended rule will authorize attorneys to issue subpoenas in the name of the Court. However, unlike Rule 45, the amended rule does not authorize document subpoenas other than in connection with trial or a noticed deposition. The absence of such authorization is due to concerns expressed over potential abuses, including the potential for privileged records being produced by return mail without opportunity for objection. The amendments, however, authorize production by mail and other means where all parties agree. The amendments adopt a sanctions provision similar to Rule 45 but covering all subpoenas, not just those issued by attorneys. The provision is aimed at deterring and rectifying abuses in the use of subpoenas.

24.5.350 APPEALS TO WORKERS' COMPENSATION COURT UNDER TITLE 39, CHAPTERS 71 AND 72, MCA (1) An appeal from a final decision of the department of labor and industry under Title 39, chapters 71 and 72, MCA, other than an appeal of a department order regarding payment of benefits pursuant to 39-71-610, MCA, shall be by filing a notice of appeal with the court or with the department. The notice of appeal shall be served by mail on all other parties and the legal services division of the department of labor and industry and should include:

(a) and (b) remain the same.

(2) through (7) remain the same.

AUTH: Sec. 2-4-201, 39-71-2901, 39-71-2903, 39-71-2905, MCA

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

RATIONALE: The proposed amendment is a technical one to exempt 49-day benefits requests from the appeal procedures applicable to proceedings for judicial review. While the 49-day benefits statute, § 39-71-610, MCA, refers to appeals to the Workers' Compensation Court, the statute contemplates a prompt de novo hearing before the Court, hence procedures applicable to judicial review are inappropriate.

3. The proposed new rules follow:

RULE I JOINDER AND SERVICE OF ALLEGED UNINSURED EMPLOYERS

(1) In any case involving entitlement to benefits from the uninsured employers' fund, whether filed by a claimant, the uninsured employers' fund, or any other party, the alleged uninsured employer shall be deemed a party to the action. In all such cases, the uninsured employers' fund shall use due diligence to accomplish personal service of the petition upon the alleged uninsured employer within 20 days of the filing of the petition. Failure or inability to timely serve the alleged uninsured employer shall not be cause to delay the proceeding absent agreement of the parties or order of the court for good cause. At the request of any party, for good cause shown, an issue as to whether the employer was in fact uninsured or owed claimant a duty of providing workers' compensation coverage, may be bifurcated from the trial of issues relating to a claimant's entitlement to benefits.

AUTH: Sec. 2-4-201, 39-71-2401, 39-71-2901, 39-71-2903, 39-71-2905, MCA

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

RATIONALE: Presently, the Workers' Compensation Court rules do not have a provision parallel to Rule 14 Mont.R.Civ.P, for joinder of third parties who may be liable to a respondent for all or part of the petitioner's claim. In Uninsured Employers' Fund (UEF) cases, the UEF routinely seeks to bring in the alleged uninsured employer as a party so it can seek indemnification for any benefits the UEF is ordered to pay. The proposed rule will eliminate the delay due to those requests by providing that the uninsured employer shall be automatically deemed a party. Since the UEF is the party potentially benefitting from

making the alleged uninsured employer a party, the burden of serving the petition on the employer is placed on the UEF. Since claimants are entitled to speedy resolution of their claims for benefits, the proposed rule further provides that in the event the UEF is unable to promptly serve the alleged uninsured employer, the matter will proceed with respect to the benefits issues. Thus the rule permits bifurcation of issues involving benefits.

RULE II THIRD-PARTY PRACTICE (1) Prior to or simultaneous with the filing of the response to a petition, the responding party, an insurer or the uninsured employers' fund, may file a third-party petition with the court, naming any other insurer not already a party to the action which may be liable to the responding insurer, the uninsured employers' fund or claimant for all or part of the claims asserted in the petition. The third-party petition shall contain a short, plain statement of the party's contentions with regard to the third party's liability and may incorporate allegations of the petition and/or the response to the petition. The party filing the third-party petition shall serve the third-party petition upon the original petitioner in the case and shall file with the court an original and 3 copies of the third-party petition, along with a letter indicating the names and addresses of third parties to be served. The court shall serve the furnished copies of the third-party petition upon the third party, who shall be referenced as the third-party respondent in accordance with ARM 24.5.303.

(2) After the response to a petition has been filed, any attempt to join a third party into a pending case shall be through noticed motion in accordance with ARM 24.5.308.

(3) Within 10 days after the service of a third-party petition by the court, the third-party respondent shall serve upon all parties, and file with the court, a response which shall comply with ARM 24.5.302.

AUTH: Sec. 2-4-201, 39-71-2401, 39-71-2901, 39-71-2903, 39-71-2905, MCA

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

RATIONALE: As noted with regard to Proposed Rule I, the Workers' Compensation Court rules do not have a provision parallel to Rule 14 Mont.R.Civ.P. for joinder of third parties who may be liable to a respondent for all or part of the petitioner's claim. The proposed rule will permit third-party practice where there are two insurers potentially liable for a claimant's condition, as described in *Belton v. Carlson Transport*, 202 Mont. 384, 658 P.2d 405 (1983). The proposed rule will allow prompt joinder of the second insurer where the claimant has named only one of the two in his or her petition. As with the UEF third-party practice rule, the proposed rule will avoid the delays which may be encountered if leave of Court is required for joinder.

RULE III ADJUDICATION OF INTERIM BENEFIT CLAIMS UNDER 39-71-610, MCA (1) Appeals of determinations by the department of labor and industry regarding interim benefits under 39-71-610, MCA, may be presented to the court in letter form. Such appeals shall be initially addressed informally by the court through telephone conference involving all parties.

(2) If any party objects to informal resolution of a dispute under 39-71-610, MCA, a formal evidentiary hearing shall be held on an expedited basis. Such hearing may be conducted through teleconference if all parties agree. If requested by any party, an in-person hearing will be promptly held in Helena or, at the court's discretion, in some other venue at a date and time set by the court.

AUTH: Sec. 2-4-201, 39-71-610, 39-71-2901, 39-71-2903, 39-71-2905, MCA

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

RATIONALE: The 1999 legislature transferred responsibility for hearings in 49-day benefits cases, § 39-71-610, MCA, from the Department of Labor and Industry to the Workers' Compensation Court. The nature of the benefits require immediate resolution of controversies over them. The proposed rule provides procedures for prompt resolution.

RULE IV DEFAULT (1) If a party required to file a responsive pleading under these rules fails to file a responsive pleading within the time specified, or otherwise fails to defend, the court at the request of the petitioner or upon its own motion may issue an order providing that the party shall file a responsive pleading within ten days, or in the alternative shall appear before the court at a specified date, time, and place to show cause why the party should not be found in default and relief granted in accordance with the petition. The order shall be served by mail if upon an insurer, otherwise by certified mail or through personal service as directed by and at the discretion of the court.

(2) If the party fails to file a responsive pleading within the time provided or to appear at the show cause hearing, the court may enter judgment by default.

(3) If any party fails to comply with any order of the court, the court may, after notice and hearing, enter a default judgment against the party.

(4) If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to inquire into amounts of benefits or other matters, the court shall conduct a hearing into those matters.

(5) Applications for relief from default judgment must be made within 60 days after judgment is entered and based upon good cause shown, such as mistake, inadvertence, surprise, or excusable neglect.

AUTH: Sec. 2-4-201, 39-71-2901, 39-71-2903, 39-71-2905, MCA

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

RATIONALE: There is presently no provision for default or

default judgment; this new rule would provide for both. The proposed rule is loosely based upon Mont.R.Civ.P. 55 and 60.

RULE V REFERENCE TO MONTANA RULES OF CIVIL PROCEDURE

(1) If no express provision is made in these rules regarding a matter of procedure, the court will be guided, where appropriate, by considerations and procedures set forth in the Mont.R.Civ.P.

AUTH: Sec. 2-4-201, 39-71-2901, 39-71-2903, 39-71-2905, MCA

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

RATIONALE: The proposed rule merely restates the general proposition established by case law that the Workers' Compensation Court may apply the Montana Rules of Civil Procedure where its own rules are silent.

4. It is reasonably necessary to amend and adopt the rules proposed in order for the Workers' Compensation Court to properly and timely decide and hear cases. In addition, the rules committee of the Court has reviewed and agreed to the rules changes.

5. Concerned parties may submit their data, views, or arguments concerning these changes in writing to the Workers' Compensation Court, 1625 Eleventh Avenue, P.O. Box 537, Helena, MT 59624-0537, to be received no later than May 15, 2000.

6. If persons who are directly affected by the proposed action wish to express their data, views, and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to the Workers' Compensation Court, 1625 Eleventh Avenue, P.O. Box 537, Helena, MT 59624-0537, no later than May 15, 2000.

7. If the Workers' Compensation Court receives requests for a public hearing on the proposed action from either 10% or 25 persons, whichever is less, of those who are directly affected by the proposed action, from the appropriate administrative rule review committee of the legislature, from a governmental agency or subdivision, or from another association having no less than 25 members that are directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than 25 based on the number of petitions filed in a year.

8. The Court also maintains lists of interested persons who wish to receive notice of rulemaking actions proposed by the Court. 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 Workers' Compensation

Court rules. Such written request may be mailed or delivered to the Workers' Compensation Court, 1625 Eleventh Avenue, P.O. Box 537, Helena, MT 59624-0537, faxed to the Court at 406-444-7798, or may be made by completing a request form at any rules hearing held by the Court.

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

/s/ Mike McCarter

MIKE MCCARTER

JUDGE

/s/ Jay Dufrechou

JAY DUFRECHOU

Staff Attorney - Rule Reviewer

CERTIFIED TO THE SECRETARY OF STATE: March 29, 2000

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

In the matter of the) NOTICE OF PUBLIC HEARING
amendment of Montana's) ON PROPOSED AMENDMENT OF
prevailing wage rates,) PREVAILING WAGE RATES-
pursuant to ARM 24.16.9007) BUILDING CONSTRUCTION
) SERVICES and HEAVY AND
) HIGHWAY CONSTRUCTION
) SERVICES

TO: All Concerned Persons

1. On May 4, 2000, at 10:00 a.m., a public hearing will be held in Room 104 of the Walt Sullivan Building (Department of Labor and Industry Building), 1327 Lockey, Helena, Montana, to consider proposed amendments to the prevailing wage rate rule, ARM 24.16.9007. The Department proposes to incorporate by reference the 2000 building construction services rates and the heavy and highway construction services rates.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the Department by not later than 5:00 p.m., April 27, 2000, to advise us of the nature of the accommodation that you need. Please contact the Office of Research and Analysis, Job Service Division, Attn: Bob Schleicher, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-2992; TTY (406) 444-0532; fax (406) 444-2638.

3. The Department of Labor and Industry proposes to amend the rule as follows: (new matter underlined, deleted matter interlined)

24.16.9007 ADOPTION OF STANDARD PREVAILING RATE OF WAGES

(1) Remains the same.

(a) through (d) Remain the same.

(e) The current building construction services rates are contained in the ~~1998~~ 2000 version of "The State of Montana Prevailing Wage Rates - Building Construction Services" publication.

(f) Remains the same.

(g) The current heavy and highway construction services rates are contained in the 2000 version of "The State of Montana Prevailing Wage Rates - Heavy and Highway Construction Services" publication.

(2) and (3) Remain the same.

AUTH: 18-2-431 and 2-4-307, MCA

IMP: ~~18-2-401 through 18-2-432~~ Title 18, chapter 2, part 4, MCA

REASON: Pursuant to 18-2-402, MCA, the Department is updating the standard prevailing wages for building construction and heavy & highway construction occupations. The Department

updates the prevailing wages for these construction services occupations at least once every two years. There is reasonable necessity to amend the prevailing wages for building construction services, which were last updated in 1998. Use of prevailing wage rates is required in public contracts by 18-2-422, MCA. There is also reasonable necessity to amend the rule to reference the 2000 heavy and highway rate publication.

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

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

so that they are received by not later than 5:00 p.m., May 12, 2000.

5. An electronic copy of this Notice of Public Hearing is generally available through the Department's site on the World Wide Web at <http://dli.state.mt.us/calendar.htm>, under the Calendar of Events, Administrative Rule Hearings 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. Because the Department is continually updating the design and features of its website, the Department reserves the right to change the location of the electronic copy of this Notice to elsewhere within the Department's website. In the event of such a change of location, the Department will endeavor to provide appropriate links from the Calendar of Events section of the website to the new location of this Notice of Public Hearing and other current rule-making documents. At the present time, the Department does not yet have the capability of accepting comments on the proposed rules via the Internet or e-mail.

6. The Department maintains a list of interested persons who wish to receive notices of rule-making actions proposed by this agency. Persons who wish to have their name added to the mailing 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 any specific topic or topics over which the Department has rule-making authority. Such written request may be delivered to Mark Cadwallader, 1327 Lockey St., Room 412, Helena, Montana, mailed to Mark Cadwallader, P.O. Box 1728, Helena, MT 59624-1728, faxed to the office at (406) 444-1394, or made by completing a request form at any rules hearing held by the Department.

7. The bill sponsor notice provisions of 2-4-302, MCA, do not apply.

8. The Department proposes to make the amendments effective July 1, 2000. The Department reserves the right to adopt only portions of the proposed amendments, or to adopt some or all of the proposed amendments at a later date.

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

/s/ KEVIN BRAUN

Kevin Braun
Rule Reviewer

/s/ PATRICIA HAFHEY

Patricia Haffey, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: April 3, 2000.

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

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

TO: All Concerned Persons

1. On May 4, 2000, at 11:00 a.m. or as shortly as possible thereafter, a public hearing will be held in Room 104 of the Walt Sullivan Building (Department of Labor and Industry Building), 1327 Lockey, Helena, Montana, to consider the amendment of ARM 24.21.414 by the adoption of wage rates related to certain apprenticeship programs in the building construction industry.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the Department by not later than 5:00 p.m., April 27, 2000, to advise us of the nature of the accommodation that you need. Please contact the Apprenticeship Program, Job Service Division, Attn: Mark Maki, 1327 Lockey Street, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 447-3210; TTY (406) 444-0532; fax (406) 447-3224. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Mr. Maki.

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

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

(5) The department will publish and incorporate by reference the 1995 2000 edition of the publication entitled "State of Montana Base Journey-Level Rates for Apprentice Wages" which sets forth the building construction industry occupations journeyman wage rates in the five regions of Montana, excluding the seven largest counties, in order to set the apprentice wage rates provided by (3) and (4). A copy of the publication is available from Kate Kahle Bob Schleicher, office of research and analysis bureau, department of labor and industry, 1327 Lockey, P.O. Box 1728, Helena, MT 59624-1728.

(6) and (7) Remain the same.

AUTH: 39-6-101, MCA

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

REASON: There is reasonable necessity for amendment of this rule in order to update the base wage rates, as contemplated by

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

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

Mark Maki
Apprenticeship Program
Job Service Division
Department of Labor and Industry
P.O. Box 1728
Helena, Montana 59624-1728

and must be received by no later than 5:00 p.m., May 12, 2000.

5. ARM 24.21.414 makes reference to the building construction prevailing wage rates adopted in ARM 24.16.9007. Persons interested in those prevailing wage rates should take notice that the Department will be conducting a public hearing on the proposed 2000 version of those rates at 10:00 a.m. on May 4, 2000, in the same room as the apprenticeship rate hearing. Persons wishing to obtain a copy of the official Notice of Public Hearing for the prevailing wage rates and/or the proposed 2000 prevailing wage rates may contact Bob Schleicher, Office of Research and Analysis, Job Service Division, Department of Labor and Industry, 1327 Lockey, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-2429; TTY (406) 444-0532; fax (406) 444-2638.

6. An electronic copy of this Notice of Public Hearing is generally available through the Department's site on the World Wide Web at <http://dli.state.mt.us/calendar.htm>, under the Calendar of Events, Administrative Rule Hearings 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. Because the Department is continually updating the design and features of its website, the Department reserves the right to change the location of the electronic copy of this Notice to elsewhere within the Department's website. In the event of such a change of location, the Department will endeavor to provide appropriate links from the Calendar of Events section of the website to the new location of this Notice of Public Hearing and other current rule-making documents. At the present time, the Department does not yet have the capability of

accepting comments on the proposed rules via the Internet or e-mail.

7. The Department maintains a list of interested persons who wish to receive notices of rule-making actions proposed by this agency. Persons who wish to have their name added to the mailing 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 any specific topic or topics over which the Department has rule-making authority. Such written request may be delivered to Mark Cadwallader, 1327 Lockett St., Room 412, Helena, Montana, mailed to Mark Cadwallader, P.O. Box 1728, Helena, MT 59624-1728, faxed to the office at (406) 444-1394, or made by completing a request form at any rules hearing held by the Department.

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

9. The Department proposes to make the amendments effective July 1, 2000. The Department reserves the right to adopt only portions of the proposed amendments, or to adopt some or all of the proposed amendments at a later date.

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

/s/ KEVIN BRAUN

Kevin Braun
Rule Reviewer

/s/ PATRICIA HAFHEY

Patricia Haffey, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: April 3, 2000.

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

In the matter of the adoption) NOTICE OF PUBLIC
of new Rules I through XII) HEARINGS ON THE PROPOSED
relating to control of timber) ADOPTION OF NEW RULES I
slash and debris) THROUGH XII

TO: All Concerned Persons

1. On May 31, June 1, 5, 6 and 7, 2000, public hearings will be held to consider the adoption of new Rules I through XII relating to control of timber slash and debris. The hearings will be conducted at 6:30 p.m. on the following dates and at the following locations:

May 31 DNRC Southern Land Office
Airport Industrial Park
1371 Rintop Drive
Billings, MT

June 1 223 W. Main (upstairs)
(Use the side entrance)
Lewistown, MT

June 5 Missoula City Fire Station #4
3011 Latimor Street
Missoula, MT

June 6 Cavanaugh's Inn
Big Mountain Room
Kalispell, MT

June 7 Park Plaza Hotel-Rimini Room
22 N. Last Chance Gulch
Helena, MT

2. The Department of Natural Resources and Conservation 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 agency no later than 5:00 p.m. on April 23, to advise us of the nature of the accommodation that you need. Please contact Shannon Kirby, Department of Natural Resources and Conservation, P.O. Box 201601, Helena, MT 59620-1601; telephone (406) 444-2074; FAX (406) 444-2684.

3. The proposed new rules provide as follows:

RULE I PURPOSE OF CONTROL OF TIMBER SLASH AND DEBRIS LAW
AND THIS SUBCHAPTER (1) The primary objectives of 76-13-401 through 76-13-414, MCA, are to:

(a) provide fire hazard reduction, protection, or management to the extent necessary for reasonable safety of the residual timber stand, future stands, and the property of others;

(b) reduce the fire hazard created by forest practices upon private forest lands, by methods found to be economical and yet accomplish the objectives; and

(c) reduce, protect or manage fire hazards within the constraints of proper land management.

(2) The purpose of this subchapter is to set forth rules implementing the fire hazard reduction or management law under the objectives stated above.

AUTH: Sec. 76-13-403, MCA

IMP: Sec. 76-13-402 through 76-13-414, MCA

RULE II DEFINITIONS Wherever used in this subchapter, unless a different meaning clearly appears from the context:

(1) "Average annual volume of uncompleted abatement" means the volume in thousand board feet (MBF) or equivalent, representing the acres of untreated slash and the acres of treated slash not yet cleared by inspection or affidavit based upon a prior three-year rolling average, the first of which ends January 1, 2000.

(2) "Fire break" means the removal of all vegetative material to bare mineral soil.

(3) "Fuel break" means the removal of all down or dead woody material with a diameter of three inches or less.

(4) "General standard" means the level to which slash must be reduced such that a fire starting under conditions similar to a standard day, as defined by the department's HRA Manual, would burn with a flame length of four feet or less, as calculated by the fire science BEHAVE model, or other fire behavior model selected by the department.

(5) "MHRA" means a master fire hazard reduction agreement.

(6) "Slash" means the woody debris that is dropped to the forest floor during forest practices and consists of stems, branches, and twigs.

(7) "Special management area" or "SMA" means a situation in which the general hazard reduction standard is not required.

AUTH: Sec. 76-13-403, MCA

IMP: Sec. 76-13-403, 76-13-407 and 76-13-408, MCA

RULE III CONTROL OF SLASH AND DEBRIS (1) Slash, including slash generated by right-of-way clearing, road construction and maintenance, must be reduced to meet the general standard for 90% of the total area within each cutting unit. No single area greater than two acres or 10% of the cutting unit area, whichever is less, may exceed the general standard.

(2) The cutting unit must meet the general standard within 100 feet of:

(a) the perimeter of a cutting unit;

(b) all roads with legal public access that pass though or are adjacent to the cutting unit; and

(c) active railroad right-of-ways.

(3) At least 90% of the slash piles generated by forest practices activity must be burned in areas where the general standard applies.

(4) All slash piles within 100 feet of a public road, cutting unit or property boundary, or active railroad right-of-way must be burned, except as provided in [Rules IV through X].

AUTH: Sec. 76-13-403, MCA

IMP: Sec. 76-13-403 and 76-13-407, MCA

RULE IV RESIDENTIAL STRUCTURES AND PUBLIC CAMPGROUNDS SMA

(1) For this SMA:

(a) 90% of slash within 100 feet of any residence, and for 100 feet inside any portion of a cutting unit boundary that lies within 1000 feet of a residential structure or public campground must be treated by piling, chipping, burying or removing.

(b) Slash treatment must be completed within 60 days of its generation when the slash is generated during the legal fire season or by May 1 for slash created during the previous 6 months.

(c) If piling is the chosen slash treatment, then slash piles must be burned within 18 months of their generation.

(d) The department may approve other appropriate slash treatment measures that would maintain public and firefighter safety.

AUTH: Sec. 76-13-403, MCA

IMP: Sec. 76-13-403, 76-13-406, 76-13-407, 76-13-408, 76-13-410, MCA

RULE V HIGH VALUE COMMUNICATIONS STRUCTURES AND POWERLINES

SMA (1) For this SMA, all slash within 100 feet of powerlines and high value communications structures such as microwave stations, radio relay stations, and television translators must meet a 2.8 foot flame length standard.

AUTH: Sec. 76-13-403, MCA

IMP: Sec. 76-13-403, 76-13-406, 76-13-407, 76-13-408, 76-13-410, MCA

RULE VI PRECOMMERCIAL THINNING UNITS SMA

(1) For this SMA:
(a) Slash on the perimeter of, or adjacent to, a precommercial thinning unit must meet the general standard.

(b) If the boundary of the unit coincides with a change in land ownership, it must have either:

(i) a 12-foot fire break;

(ii) a 33-foot fuel break; or

(iii) the slash must be lopped to a height of 18 inches for 66 feet inside the unit boundary.

(c) The department may approve other methods when such methods would maintain public and firefighter safety.

AUTH: Sec. 76-13-403, MCA

IMP: Sec. 76-13-403, 76-13-406, 76-13-407, 76-13-408, 76-13-410, MCA

RULE VII STEEP SLOPE/PARTIAL CUT UNITS SMA

(1) For this SMA:

(a) A partial cut occurring on a slope greater than 40% may be treated as an SMA when there is advanced regeneration or a manageable overstory that the owner wishes to save. The area must meet the following requirements:

(i) The entire SMA must be lopped such that 90% of all slash, three inches or less in diameter, is reduced to a height of 24 inches or less above the ground.

(ii) The boundaries of the SMA must be treated as follows:

(A) The top of the unit must have a 100-foot wide fuel break which may include the road prism from the top of the cut bank to the bottom of the fill slope.

(B) The sides of the unit must be treated so as to meet the general standard for a minimum width of 33 feet.

(iii) The bottom boundary of the unit must be treated to the same standards as required for the sides, if the bottom boundary of an SMA coincides with a change in land ownership.

(iv) All required boundary treatments must be completed entirely on the ownership of the person or entity doing the harvesting, unless otherwise approved by the department.

AUTH: Sec. 76-13-403, MCA

IMP: Sec. 76-13-403, 76-13-406, 76-13-407, 76-13-408, 76-13-410, MCA

RULE VIII HELICOPTER LOGGING SMA (1) For this SMA:

(a) The entire SMA must be lopped such that 90% of all slash three inches or less in diameter is reduced to a height of 24 inches or less above the ground.

(b) Slash piles at the landing area must be treated in compliance with [Rule III] or this rule, whichever is applicable.

AUTH: Sec. 76-13-403, MCA

IMP: Sec. 76-13-403, 76-13-406, 76-13-407, 76-13-408, 76-13-410, MCA

RULE IX WET AREAS AND AREAS WITH HIGHLY ERODIBLE SOILS SMA

(1) For this SMA:

(a) The landowner may treat any portion of a harvest unit as an SMA where best management practices recommend against equipment operation.

(b) The entire SMA must be lopped such that 90% of all slash three inches or less in diameter is reduced to a height of 24 inches or less above the ground.

AUTH: Sec. 76-13-403, MCA

IMP: Sec. 76-13-403, 76-13-406, 76-13-407, 76-13-408, 76-13-410, MCA

RULE X SLASH RETENTION SITES SMA (1) For this SMA:

(a) Sufficient slash may be retained for the purposes of soil nutrient recycling, wildlife habitat and control of surface water runoff.

(b) This may include slash broadcast over the timber harvest unit and skid trails; concentrated slash in the form of slash filter windrows and other appropriate surface water runoff controls as defined by the Montana best management practices;

and designated piles for wildlife habitat. Any such designated wildlife pile shall not be placed within 100 feet of a residence, property line, road with legal public access or active railroad right-of-way.

(c) The slash inspector shall recognize such beneficial and legitimate uses of slash and shall discount such slash from the general standard during the hazard assessment inspection.

AUTH: Sec. 76-13-403, MCA

IMP: Sec. 76-13-403, 76-13-406, 76-13-407, 76-13-408, 76-13-410, MCA

RULE XI RIGHT TO INSPECT (1) The department may inspect slash treatments on any private land in this state to assess compliance with the provisions of 76-13-401 through 76-13-414, MCA, and these rules.

AUTH: Sec. 76-13-403, MCA

IMP: Sec. 76-13-403, MCA

RULE XII MASTER FIRE HAZARD REDUCTION AGREEMENT (1) To qualify for a MHRA, a person must be engaged in continuous cutting operations of sufficient size and number that would require a bond of no less than \$12,000.

(2) The person applying for the MHRA must post an initial cash or surety bond sufficient to cover the estimated annual volume of the person's uncompleted abatement or \$12,000, whichever is greater.

(3) After the initial MHRA year, the bond will be adjusted according to 76-13-408(2), MCA, and the average annual volume of uncompleted abatement. However, the MHRA bond will, in no case, be less than \$12,000.

(4) MHRA agreements approved prior to the implementation of this rule must maintain a bond according to 76-13-408(2), MCA, but will not be required to meet the minimum \$12,000 bond specified in (3), if the average annual volume of uncompleted abatement would not require that level of bond.

AUTH: Sec. 76-13-403, MCA

IMP: Sec. 76-13-403 and 76-13-408, MCA

4. Adoption of new rules is consistent with the legislature's finding that the reduction of fire hazards associated with forest practices is of serious statewide concern for the protection of life, property and fire fighter safety, and the 56th Legislature's amendment of 76-13-403, MCA, (SB 412), directing the department to promulgate rules to implement and administer Title 76, chapter 13, part 4.

New Rule I sets forth the purposes of this set of new rules and elaborates upon the purposes set out in the statute.

New Rule II establishes definitions for terms not defined in the statute, but necessary to implement the statute.

New Rule III specifies the general standard to which timber slash fire hazards must be managed on all private forest land.

New Rules IV through X specify the areas in which the general standard described in Rule III will not apply, including a specific provision for slash retention directed by the

Legislature in SB 412.

New Rule XI provides the department with authority to inspect private forest lands for compliance with the statute and the rules, pursuant to the directive of 76-13-403, MCA.

New Rule XII describes the uniform mechanism whereby master fire hazard reduction agreement holders' bonds will be calculated. This rule is necessary to derive the actual bond amounts from the general parameters suggested in the statute.

5. Concerned 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 Chris Tootell, Department of Natural Resources and Conservation, 2705 Spurgin Road, Missoula, Montana, and must be received no later than May 12, 2000.

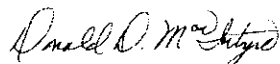
6. Chris Tootell, Department of Natural Resources and Conservation, 2705 Spurgin Road, Missoula, Montana, has been designated to preside over and conduct the hearings.

7. The agency 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 conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources or combination thereof. Such written request may be mailed or delivered to Department of Natural Resources and Conservation, P.O. Box 201601, Helena, MT 59620-1601, faxed to the office at (406) 444-2684, or may be made by completing a request form at any rules hearing held by the agency.

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

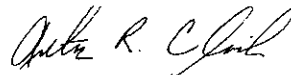
DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

By:



DONALD D. MACINTYRE
Rule Reviewer

By:



ARTHUR R. CLINCH
Director

Certified to the Secretary of State April 3, 2000.

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

In the Matter of the Proposed)	NOTICE OF PUBLIC HEARING
Amendment and Repeal of)	ON THE PROPOSED AMENDMENT
Certain Rules Pertaining to)	OF ARM 38.3.402, 38.3.805,
Application and Reporting Fees)	38.3.2014, 38.3.2101,
)	38.3.2404, 38.5.2601 AND
)	38.5.2602, AND REPEAL OF
)	ARM 38.4.701 AND 38.4.702

TO: All Concerned Persons

1. On May 15, 2000, at 1:30 p.m., a public hearing will be held in the Bollinger Room, Public Service Commission (PSC) offices, 1701 Prospect Avenue, Helena, Montana, to consider the amendment of ARM 38.3.402, 38.3.805, 38.3.2014, 38.3.2101, 38.3.2404, 38.5.2601 and 38.5.2602, and the repeal of 38.4.701 and 38.4.702.

2. The PSC 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 PSC no later than 5:00 p.m. on May 8, 2000, to advise us of the nature of the accommodation that you need. Please contact Kathy Anderson, PSC Secretary, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, telephone number (406) 444-6170, TTD number (406) 444-6199, fax number (406) 444-7618.

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

38.3.402 APPLICATION FEES (1) remains the same.

(a) ~~The specific filing fee is based on the number of counties contained within the application; i.e., 1-5 counties, \$100; 6-25 counties, \$200; 26-56 counties, \$300. The application fee for a certificate of public convenience and necessity to operate as a motor carrier is \$100.~~

(b) ~~Application~~ The application fee for a certificate of public convenience and necessity to operate as a motor carrier under a federal ~~and/or~~ or state contract, as provided under 69-12-324, MCA, ~~shall be is~~ \$100 for all such applications.

~~(c) Fees for the registration of interstate authority are as provided for under ARM 38.3.203(3).~~

AUTH: 69-12-201, MCA

IMP: 69-12-311, 69-12-312, 69-12-313, 69-12-314, and 69-12-324, MCA

38.3.805 REPORTS AND UNIFORM SYSTEM OF ACCOUNTS

(1) Reports due this commission from motor carriers operating within the state of Montana are as required in 69-12-

407, MCA. Annual reports shall be submitted to the commission ~~accompanied by a filing fee of twenty five dollars (\$25)~~. Annual report forms are available upon request at the Commission Office, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601. Information relative to the uniform system of accounts or any uniform reports may be had by contacting the commission office.

(2) and (3) remain the same.

AUTH: 69-12-201, MCA

IMP: 69-12-407, MCA

38.3.2014 LEASE OF CERTIFICATES OF OPERATING AUTHORITY-GENERAL (1) Remains the same.

(2) All leases of certificates of public convenience and necessity or permits shall be in writing ~~and accompanied by a filing fee of fifty dollars (\$50)~~. The leases shall be submitted to the commission for approval and shall not have any force or effect until approved by the commission.

(3) Remains the same.

AUTH: 69-12-201 and 69-12-204, MCA

IMP: 69-12-326, MCA

38.3.2101 SALE OR TRANSFER OF CERTIFICATE OF AUTHORITY

(1) As authorized by 69-12-325, MCA, public service commission certificates or permits may be sold or transferred. ~~Every application for the sale or transfer of a certificate of public convenience and necessity must be accompanied by an application filing fee of one hundred dollars (\$100), and shall be paid to the commission as provided in ARM 38.3.801(2).~~ The application for sale or transfer shall be addressed to the commission, be sworn to, and contain the following information:

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

AUTH: 69-12-201, MCA

IMP: 69-12-325, MCA

38.3.2404 ASSISTANCE IN PREPARING TARIFFS AND TIME SCHEDULES (1) Information regarding construction of freight, express and passenger tariffs, including classifications required of class A and class B carriers, will be furnished by the commission on application. These publications and supplements thereto, including time schedules and supplements thereto, must be filed in duplicate ~~with a fee of \$2 each as required by 69-12-423, MCA.~~

(2) and (3) remain the same.

AUTH: 69-12-201, MCA

IMP: 69-12-201, MCA

38.5.2601 RATE TARIFF FILING FEE (1) Every utility which changes its tariff sheets for rates, tolls and charges, pursuant to 69-3-302, MCA, shall file the tariff sheets with the

~~commission accompanied by a filing fee of five dollars (\$5) per tariff page up to a maximum filing fee of \$500 per tariff filing.~~

~~(2) The tariff filing fee shall also apply to interim or temporary tariff rate filings, and tariff changes ordered by the commission.~~

~~(3)(2) Every utility which changes its price list sheets for rates, tolls and charges or its detariffed service sheets, shall file the sheets with the commission accompanied by a filing fee of two dollars (\$2) per page up to a maximum filing fee of \$200 per filing.~~

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

AUTH: 69-3-103, MCA

IMP: 69-3-204, 69-3-301, 69-3-302, and 69-3-304, MCA

38.5.2602 ANNUAL REPORTS AND FEES (1) Every utility is required to file an annual report with the commission pursuant to 69-3-203, MCA. ~~Each annual report, except those for municipally owned utilities, shall be accompanied by a filing fee of twenty five dollars (\$25).~~

~~(2) Each municipally owned utility, as defined in Title 69, chapter 7, MCA, shall file an annual report with the commission accompanied by a filing fee, the amount of which will be determined as follows:~~

- ~~(a) First class city, \$25~~
- ~~(b) Second class city, \$20~~
- ~~(c) Third class city, \$15~~
- ~~(d) A town, \$10.~~

AUTH: 69-3-103, MCA

IMP: 69-3-203 and 69-3-204, MCA

4. The rules proposed for repeal provide as follows:

38.4.701 RAILROAD APPLICATION AND PETITION FEES, which can be found on page 38-401 of the Administrative Rules of Montana.

AUTH: 69-14-111, MCA

IMP: 69-14-111, MCA

38.4.702 ANNUAL REPORTS AND FEES, which can be found on page 38-401 of the Administrative Rules of Montana.

AUTH: 69-14-111, MCA

IMP: 69-14-251, MCA

5. Rationale: The amendment or repeal of the above rules is necessary because the fees are becoming outdated, are applicable in several instances to functions which the PSC no longer performs, can no longer be readily justified as being commensurate with costs, or are inconsistent with the mechanism through which the PSC is funded through taxes on regulated entities, the same entities which pay most of the fees in the

above rules. The PSC intends that the amendments and repeals become effective July 1, 2000, the beginning of the new fiscal year.

6. This rulemaking involves a monetary amount. The following table includes the estimate of the cumulative monetary amount per rule, per year, that will result from the proposed fee decreases or repeals. The table also includes the estimated number of persons affected, per rule, per year.

Rule	Cumulative Amount	Persons Affected
38.3.402	\$ 100	1
38.3.805	4,450	178
38.3.2014	850	18
38.3.2101	1,500	15
38.3.2404	0	0
38.4.701	0	0
38.4.702	175	7
38.5.2601	6,484	12
38.5.2602	1,200	48

7. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments (original and 10 copies) may also be submitted to Legal Division, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, and must be received no later than May 15, 2000. (PLEASE NOTE: When filing comments pursuant to this notice please reference "Docket No. L-99.6.7-RUL.")

8. The PSC, a commissioner, or a duly appointed presiding officer may preside over and conduct the hearing.

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

10. The PSC maintains a list of persons who wish to receive notices of rulemaking actions proposed by the PSC. 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: electric utilities, providers, and suppliers; natural gas utilities, providers and suppliers; telecommunications utilities and carriers; water and sewer utilities; common carrier pipelines, motor carriers, rail carriers, and administrative procedures. Such written request may be mailed or delivered to Public Service Commission, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, faxed to Rhonda Simmons at 406-444-7618, or may be made by completing a request form at any rules hearing held by

the PSC.

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


Dave Fisher, Chairman


Reviewed By Robin A. McHugh

CERTIFIED TO THE SECRETARY OF STATE APRIL 3, 2000.

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

In the Matter of the Proposed) NOTICE OF PUBLIC HEARING
Adoption of New Rules) ON THE ADOPTION OF NEW
Pertaining to Protective Orders) RULES I THROUGH XX
and Protection of Confidential)
Information)

TO: All Concerned Persons

1. On May 16, 2000, at 1:30 p.m., a public hearing will be held in the Bollinger Room, Public Service Commission (PSC) offices, 1701 Prospect Avenue, Helena, Montana, to consider the adoption of new Rules I through XX.

2. The PSC 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 PSC no later than 5:00 p.m. on May 8, 2000 to advise us of the nature of the accommodation that you need. Please contact Kathy Anderson, PSC Secretary, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, telephone number (406) 444-6170, TTD number (406) 444-6199, fax number (406) 444-7618.

3. The proposed new rules provide as follows:

NOTE: Several rules or rule sub-parts are proposed in alternative versions (e.g., public access, Rule IV, Alts. "A" and "B" and accompanying Rule XIX; burdens in challenges to confidentiality, Rule VII(4), Alts. "A" and "B"; and termination of protection, Rule XX, Alts. "A" and "B"), only one of which will be adopted.

RULE I. DEFINITIONS Terminology used in these rules shall have the following meanings, except where the context otherwise clearly demands:

(1) "Confidential information" means information the commission has identified, either specifically, by category, or generally, as being subject to protection from disclosure in accordance with a protective order and these rules;

(2) "Consumer counsel" means the Montana consumer counsel and staff of the Montana consumer counsel;

(3) "Information" includes knowledge, observations, opinions, data, facts, and the like, whether recorded or communicated in writing, orally, electronically, or otherwise, and whether provided through pleadings, reports, exhibits, testimony, work papers, or similar items or attachments to such items, or in response to discovery, subpoena, order, audit, investigation, or other request;

(4) "Provider" or "providing party" means the person having the right, through ownership, control, or other reason,

to claim information is confidential and to provide the information to others under protective order and these rules; and

(5) "Requesting party" means the person requesting access or granted access to confidential information.

AUTH: 69-3-103, MCA

IMP: 69-3-105, MCA

RULE II. PROTECTIVE ORDERS AND RULES -- RELATIONSHIP, WAIVER, SPECIAL PROVISIONS, PROVIDER DISCRETION, INAPPLICABILITY

(1) In the event that conflict is determined to exist between a provision within these rules and a provision within the protective order applicable in a proceeding before the commission, the provision within the protective order will control.

(2) Requests for waiver of one or more of these rules, in whole or in part, will not be routinely granted, but may be granted by the commission upon clear showing of good cause. Requests for waiver must be accompanied by a clear identification of the provision for which waiver is sought and a concise statement of the facts and law supporting the request.

(3) Requests that special provisions or terms and conditions not provided by these rules be included in a protective order will not be routinely granted, but may be granted by the commission upon a clear showing of good cause. Requests for special provisions or terms and conditions must be accompanied by an exact statement of the special provision or term and condition proposed and a concise statement of the facts and law supporting the request.

(4) The providing party has discretion to provide confidential information to a requesting party under special terms and conditions agreed to by the provider and the requesting party, so long as the purpose of the agreement is to expedite or simplify the providing of confidential information and the terms and conditions imposed on the requesting party are either not more strict in relation to the receiving party than those included in these rules or will be replaced by the provisions or terms and conditions of a protective order when issued.

(5) Except as the commission may otherwise order, access to information through protective orders and these rules will not be available in regard to information protected on request, temporarily or permanently as the law may permit, in regard to matters such as the identity of an informant or the identity or other personal information of a complainant, or when access or disclosure of information will violate constitutionally-protected personal privacy, create a risk of personal safety, or impede law enforcement efforts.

AUTH: 69-3-103, MCA

IMP: 69-3-105, MCA

RULE III. PROTECTION OF INFORMATION -- "90-DAY RULE"

(1) Pursuant to 69-3-105, MCA, the commission may, when necessary in the public interest, withhold information from the public for a period of not more than 90 days, without protective order. When necessary a commissioner or commission staff may make the preliminary determination regarding withholding of information pursuant to 69-3-105, MCA, pending final commission determination. During the allowed period of withholding, the information will remain inaccessible to any person except commissioners and commission staff, unless and until the commission issues a protective order or other order governing disposition of the information. Commissioners and staff accessing information withheld from the public pursuant to 69-3-105, MCA, shall not use the information for any purpose except as necessary in the furtherance of commission business and shall not disclose the information to others.

AUTH: 69-3-103, MCA
IMP: 69-3-105, MCA

RULE IV. PUBLIC ACCESS TO CONFIDENTIAL INFORMATION
[ALTERNATIVE A]

(1) Generally, access to confidential information by persons other than the commission, the consumer counsel, and parties to a proceeding in which the confidential information has been provided is not allowed. In accordance with applicable provisions in these rules, persons denied access may challenge the designation of information as confidential.

[ALTERNATIVE B]

(1) Access to confidential information by persons other than the commission, the consumer counsel, and parties to a proceeding in which the confidential information has been provided is allowed in accordance with the governing protective order and these rules. If access to confidential information is allowed following all necessary or requested proceedings on the petition, including an allowance of time for the provider to appeal the matter, access will be in accordance with the governing protective order and these rules.

AUTH: 69-3-103, MCA
IMP: 69-3-105, MCA

RULE V. GENERIC PROTECTIVE ORDERS (1) The commission, in its discretion, upon its own motion or the motion of a provider, may issue a "generic protective order," which is a protective order applicable to specified information or general categories of information expected to be supplied by a provider in certain specified or general categories of proceedings, compliance with reporting requirements, response to certain inquiries, or other matters, for a period of time (e.g., term of years) rather than by specific proceeding. The generic protective order and these rules govern access to confidential information provided under the generic protective order.

AUTH: 69-3-103, MCA
IMP: 69-3-105, MCA

RULE VI. PROTECTIVE ORDER -- REQUESTS AND TIMING OF REQUESTS (1) In general, information will be designated confidential information only upon request by a provider. It is the responsibility of the provider or other person asserting a right to protection of information to specifically advise the commission of the claim to confidentiality and to request, by motion prior to submitting the information, that the commission designate the information as confidential.

(2) Prior to requesting a protective order, the provider must make a good faith effort to verify that information claimed confidential is a bona fide trade secret, a matter of constitutionally-protected privacy, or otherwise legally protectible.

(3) The motion for protective order must comply with commission procedural rules on motions in general, but need not include a proposed protective order, and must also include:

(a) an identification of the person to whom commission and party communications may be made in regard to the information in issue;

(b) an identification, item-by-item or by category of like items, of the information for which protection is requested; and

(c) the rationale, including the pertinent facts and law applicable, demonstrating that protection is justified.

(4) Requests for protection of confidential information should be made by the providing party at the earliest possible time in a proceeding, including in anticipation of a proceeding, in which the provider has reason to believe that confidential information will be submitted or is likely to be requested.

AUTH: 69-3-103, MCA
IMP: 69-3-105, MCA

RULE VII. PROTECTIVE ORDER -- ISSUANCE, RECONSIDERATION, CHALLENGE TO CONFIDENTIALITY (1) When justified the commission will issue a protective order, with liberal reference to these rules and with attachments as necessary, including to identify the protected information and any waivers and special terms and conditions which may apply.

(2) Reconsideration of a protective order is generally allowed, but not in regard to a determination that the information is or appears to be protectible. Challenges to a commission determination that information is or appears to be protectible shall be in accordance with (3).

(3) Protective orders and these rules establish a procedure for the expeditious handling of information that a provider claims is confidential. Generally, commission issuance of a protective order and designation of information as confidential information means only that the information appears to be information entitled to protection or appears to be within a category of information entitled to protection. A party to the proceeding in which information has been designated

confidential, or a person or entity with proper standing, or the commission on its own motion, may challenge the provider's claim of confidentiality at any time, in accordance with the following procedure.

(a) A motion must be filed with the commission and served upon the providing party. The providing party must file a response to the motion within 14 days. Requests for hearing or oral argument may be granted for good cause.

(b) If the commission determines that information should be removed from protection, the information will remain protected under the governing protective order and these rules for a reasonable period, to be established in the commission ruling, to allow the provider time to appeal the commission decision.

[ALTERNATIVE A]

(4) The burden of demonstrating that information which the commission has determined appears to be information entitled to protection or appears to be within a category of information entitled to protection and has therefore designated as confidential information shall be on the party challenging that commission determination.

[ALTERNATIVE B]

(4) The burden of demonstrating that information which the commission has determined appears to be information entitled to protection or appears to be within a category of information entitled to protection and has therefore designated as confidential information shall be on the provider.

AUTH: 69-3-103, MCA
IMP: 69-3-105, MCA

RULE VIII. PROTECTIVE ORDER -- EXTENSION TO ADDITIONAL INFORMATION, EXTENSION TO OTHER PROVIDERS (1) In any proceeding in which a protective order exists the provider may request that the protective order and these rules extend to additional information to be supplied by the provider in the proceeding and any party to the proceeding may request that the protective order and these rules extend to information to be supplied in the proceeding by that party. Requests must be made by motion to the commission and must comply with provisions of these rules pertaining to requests.

AUTH: 69-3-103, MCA
IMP: 69-3-105, MCA

RULE IX. NONDISCLOSURE AGREEMENTS -- GENERAL (1) All persons, including legal counsel, having a right pursuant to protective order and these rules to access confidential information, shall sign and file with the commission and serve on the provider a nondisclosure agreement on the commission form or commission-approved form prior to receiving or reviewing the confidential information.

(2) Commissioners and commission staff may sign a "commission nondisclosure agreement" which must certify,

permanently and for all confidential information in all proceedings before the commission, in substantial compliance with the following:

"I understand that in my capacity as commissioner or commission staff, I may be called upon to access, review, and analyze, directly or through reports directed to me, information that is protected as confidential information. I have reviewed all commission rules applicable to protection of confidential information and I am familiar with the standard terms and conditions of protective orders issued by the commission. I understand and will abide by my obligations in regard to confidential information.

"I agree that I will use confidential information only for commission purposes and I will discuss and disclose confidential information only with the provider and persons, including commissioners and commission personnel, having also signed a nondisclosure agreement. I agree to be bound by the terms and conditions of protective orders and these rules. I will neither use nor disclose protected information except for lawful purposes in accordance with the governing protective order and these rules so long as such information remains protected.

"I understand that this nondisclosure agreement may become part of my permanent personnel file and the files of the division to which I am assigned and may be freely copied and distributed to other files and persons having interest in it, including the provider and other parties in proceedings before the commission."

(3) Counsel, expert witnesses, and others entitled to access confidential information for parties to a proceeding in which information has been designated as confidential and a protective order has been issued must sign and file with the commission and serve on the provider a nondisclosure agreement applicable to the proceeding, certifying in substantial compliance with the following:

"I understand that in my capacity as counsel or expert witness for a party to this proceeding before the commission, or as a person otherwise lawfully so entitled, I may be called upon to access, review, and analyze information which is protected as confidential information. I have reviewed all commission rules and protective orders governing the protected information that I am entitled to receive. I fully understand, and agree to comply with and be bound by, the terms and conditions thereof. I will neither use nor disclose confidential information except for lawful purposes in accordance with the governing protective order and commission rules so long as such information remains protected.

"I understand that this nondisclosure agreement may be copied and distributed to any person having an interest in it and that it may be retained at the offices of the provider, commission, consumer counsel, any party and may be further and freely distributed."

(4) Nondisclosure agreements shall include the name, employer, and business address of the person signing and the name of the party represented by the person.

AUTH: 69-3-103, MCA
IMP: 69-3-105, MCA

RULE X. PROTECTIVE ORDER -- STANDARD TERMS AND CONDITIONS
-- GENERAL (1) Confidential information must not be provided to, disclosed to, discussed with, or accessed by any person, including legal counsel, who has not first signed a commission-approved nondisclosure agreement and thereby agreeing to access, maintain, use, and disclose confidential information in strict accordance with the governing protective order and these rules. All persons who may be entitled to receive or access confidential information shall neither use nor disclose the confidential information for any purpose other than the purposes of preparation for and conduct of proceedings before the commission, and then solely as contemplated in the governing protective order and these rules, and shall take reasonable precautions to keep the confidential information secure in accordance with the purposes and intent of the protective order and these rules.

(2) Neither commission designation of information as confidential information nor party access to confidential information pursuant to a protective order and these rules affect the rights of the provider to continue to claim confidentiality or challenge the admissibility (e.g., relevance) of the information into the evidentiary record in a commission proceeding.

AUTH: 69-3-103, MCA
IMP: 69-3-105, MCA

RULE XI. PROTECTIVE ORDER -- STANDARD TERMS AND CONDITIONS
-- IDENTIFICATION OF CONFIDENTIAL INFORMATION (1) Except as otherwise ordered by the commission, confidential information must be provided and maintained at all times on yellow paper and must be clearly marked and maintained as marked in a fashion substantially equivalent to "confidential - subject to protective order, PSC Docket No. (insert docket number)" and may include additional markings not inconsistent with the governing protective order and these rules.

AUTH: 69-3-103, MCA
IMP: 69-3-105, MCA

RULE XII. PROTECTIVE ORDER -- STANDARD TERMS AND CONDITIONS
-- PROVIDING CONFIDENTIAL INFORMATION -- NON-CONFIDENTIAL WRITTEN SUMMARY (1) For all confidential information supplied in accordance with a protective order and these rules the provider must prepare for each item of information a concise, written, non-confidential description and summary suitable for meaningful inclusion in party testimony and arguments, commission orders, and the public record of the proceeding. The description and summary must be filed and served within 5 days of the filing and service of the confidential information to which it relates.

AUTH: 69-3-103, MCA
IMP: 69-3-105, MCA

RULE XIII. PROTECTIVE ORDER -- STANDARD TERMS AND CONDITIONS -- PROVIDING CONFIDENTIAL INFORMATION - GENERAL (1) The provider shall provide confidential information pursuant to the governing protective order and these rules. The commission and all requesting parties having access to confidential information shall take appropriate action in good faith to mitigate the effect of provider errors in supplying confidential information, such as mismarking or misdirecting, upon discovery of the error or upon notice of the error by the provider or the commission.

(2) Except as the commission may otherwise order following notice and an opportunity to be heard, or as the provider may otherwise agree, confidential information is only available from the provider and only available in accordance with the governing protective order and these rules, and confidential information is not to be obtained from the commission or others, including the consumer counsel. However, the commission may allow inspection of confidential information maintained at the commission by any person having lawful access pursuant to the terms of the governing protective order and these rules.

AUTH: 69-3-103, MCA
IMP: 69-3-105, MCA

RULE XIV. PROTECTIVE ORDER -- STANDARD TERMS AND CONDITIONS -- MAINTENANCE AND USE OF CONFIDENTIAL INFORMATION -- GENERAL (1) The commission and all other persons having lawful access to confidential information may access confidential information in accordance with the governing protective order and these rules. The commission and all other persons having lawful access shall at all times maintain and process the confidential information in strict accordance with the governing protective order and these rules. Confidential information must be maintained by all persons at all times in accordance with protective order and these rules.

(2) Confidential information must not be used except for purposes of the proceeding in which the protective order is issued. However, the commission, on its own motion or on motion of a party, after notice and an opportunity to be heard, may allow confidential information from one commission proceeding to be used for purposes of another proceeding before the commission, in accordance with a protective order and these rules.

AUTH: 69-3-103, MCA
IMP: 69-3-105, MCA

RULE XV. PROTECTIVE ORDER -- STANDARD TERMS AND CONDITIONS -- USE OF CONFIDENTIAL INFORMATION -- GENERAL (1) Where written or oral reference to confidential information is required in pleadings, motions, examinations, testimony, objections, arguments, briefs, or other procedure, reference

must be by general citation of title or exhibit number or by non-confidential description and summary, such as the non-confidential summary supplied by the provider. If further reference to confidential information is necessary oral reference must be presented in camera and written reference must be separated, clearly marked, filed with the commission under seal, and served only on counsel of record for each party.

(2) Where written or oral reference to confidential information is required in a commission decision, reference must be through non-confidential, general or summary form. If further reference to confidential information is necessary oral reference must be stated in camera and written reference must be separated, clearly marked, sealed, and served only on counsel of record for each party.

(3) Where in camera proceedings are recorded, stenographically or otherwise, the recording and all transcription of the recording must be separated, clearly marked, sealed, and maintained in accordance with the governing procedural order and these rules. The person recording the in camera proceeding and the person transcribing the recording of the in camera proceeding must comply with the governing protective order and these rules and must sign a nondisclosure agreement.

AUTH: 69-3-103, MCA

IMP: 69-3-105, MCA

RULE XVI. PROTECTIVE ORDER -- STANDARD TERMS AND CONDITIONS -- ACCESS AND MAINTENANCE OF CONFIDENTIAL INFORMATION -- COMMISSION AND CONSUMER COUNSEL (1) The commissioners and commission staff and the consumer counsel and consumer counsel staff may have access to all confidential information made available pursuant to protective order, and shall be bound by the terms of the protective order and these rules.

(2) While in the custody of the commission or consumer counsel confidential information shall remain on yellow paper and remain marked with a clear indication that the information has been designated confidential information in a proceeding before the commission. Confidential information maintained by the commission will be sealed and segregated in the files of the commission. Confidential information maintained by the consumer counsel will be sealed and segregated in the files of the consumer counsel.

(3) Confidential information maintained by the commission or the consumer counsel will not be considered public information or public records of any type for purposes of public access, right to participate, right to know, open meetings, or similar matters.

(4) The consumer counsel, whether or not a party to a proceeding in which confidential information exists, including in a commission proceeding where parties do not exist, shall have access to all confidential information which is subject to a protective order and these rules so long as access is in

accordance with the governing protective order and these rules and a nondisclosure agreement has been signed.

AUTH: 69-3-103, MCA
IMP: 69-3-105, MCA

RULE XVII. PROTECTIVE ORDER -- STANDARD TERMS AND CONDITIONS -- ACCESS AND MAINTENANCE OF CONFIDENTIAL INFORMATION -- PARTIES (1) Confidential information must be provided by the provider to legal counsel for the receiving party. Legal counsel shall be bound by the terms of the protective order and these rules. Access to confidential information may be authorized by legal counsel to expert witnesses of the receiving party. Except as otherwise agreed to by the provider, the designated expert may not be an officer, director, or employee of any party, or an officer, director, employee, stockholder, or member of an association or corporation of which any party is a member or affiliate. Prior to giving access to an expert, legal counsel shall deliver a copy of the governing protective order and these rules to the expert and the expert shall sign a nondisclosure agreement. A copy of the nondisclosure agreement must be provided to the provider.

(2) When it is not feasible that confidential information be provided to counsel and experts, confidential information may be made available by the provider for inspection and be reviewed by legal counsel and experts at a place and a time mutually agreed on by the provider and the party, or as directed by the commission.

AUTH: 69-3-103, MCA
IMP: 69-3-105, MCA

RULE XVIII. PROTECTIVE ORDER -- STANDARD TERMS AND CONDITIONS -- ACCESS AND MAINTENANCE OF CONFIDENTIAL INFORMATION -- EMPLOYEE EXPERTS OF PARTIES (1) Counsel for the receiving party may propose access to confidential information by an employee expert of the receiving party in accordance with the following procedure.

(a) Counsel for the receiving party shall notify legal counsel for the provider, in writing, of the intent to provide confidential information to an employee expert of the receiving party. The notice must contain the name, title, job description, description or previous positions and experience, and area of expertise of the employee expert accessing the information.

(b) Within 5 days of the provider's receipt of notice, if it is the good faith position of the provider that the designated employee expert should not be given access to the information, the provider must object in writing.

(c) If the receiving party does not receive an objection within the time required counsel for the receiving party may provide access to the information by the designated employee expert in accordance with the governing protective order and these rules.

(d) If the receiving party receives an objection within

the time required the requesting party and provider shall attempt to resolve the objection. If the parties are unable to resolve the objection, either may apply to the commission for a ruling as to the access proposed. Access to the information shall not be given to the designated employee expert pending ruling by the commission.

(e) The standard to be applied by the commission in determining a question of employee expert access to confidential information shall be whether access would be reasonably likely to jeopardize the confidential nature of the information. A factor will be whether the employee's duties are solely dedicated to regulatory activities on behalf of the receiving party and not related to marketing or strategic planning of competitive products or services.

(f) A party dissatisfied with a ruling by the commission may appeal to the district court, and, pending appeal, the information shall not be disclosed to the designated employee expert.

(2) Counsel for the receiving party proposing access to confidential information by an employee expert of the receiving party shall commence the above procedure as early as possible in a proceeding so proceedings to determine employee expert access will not cause a delay.

AUTH: 69-3-103, MCA

IMP: 69-3-105, MCA

[NOTE: The following rule, Rule XIX, is to be adopted only if the PSC adopts Rule IV, Alternative "B".]

RULE XIX. PROTECTIVE ORDER -- STANDARD TERMS AND CONDITIONS -- ACCESS AND MAINTENANCE OF CONFIDENTIAL INFORMATION -- PUBLIC (1) A person not being a party to a proceeding in which a protective order has been issued may propose access to confidential information in accordance with the following procedure.

(a) The person shall notify the commission and legal counsel for the provider, in writing, of the intent to request access to confidential information. The notification must include the name and address of the person, an identification of the information for which access is requested, the reason access is requested, and the intended use of the information if access is granted.

(b) Within 10 days of the provider's receipt of notice, if it is the good faith position of the provider that the person should not be given access to the information, the provider must object in writing, so notifying the person and the commission.

(c) If the person and the commission do not receive an objection within the time required the person may access the information in accordance with the governing protective order and these rules.

(d) If the person and the commission receive an objection within the time required the person and the provider shall attempt to resolve the objection. If unable to resolve the

objection, either the person or the provider may apply to the commission for a ruling as to the access proposed. Access to the information shall not be given to the person pending ruling by the commission.

(e) The standard to be applied by the commission in determining a question of access to confidential information shall be whether access would be reasonably likely to jeopardize the confidential nature of the information.

(f) Dissatisfaction with a ruling by the commission may be appealed to the district court, and, pending appeal, the information shall not be disclosed to the designated person.

AUTH: 69-3-103, MCA

IMP: 69-3-105, MCA

RULE XX. CONFIDENTIAL INFORMATION -- REMOVAL OF PROTECTION, RETURN TO PROVIDER

[ALTERNATIVE A]

(1) Confidential information remains protected permanently, whether or not returned to the provider, unless:

(a) the commission otherwise orders following notice and opportunity to be heard;

(b) the provider agrees otherwise, in writing, communicated to each person having obtained access to the confidential information; or

(c) a court having jurisdiction over the subject matter and persons affected otherwise orders.

(2) Removal of protection relieves all persons having access to the confidential information from ongoing compliance with the governing protective order and these rules.

(3) Except for the commission and consumer counsel and unless the provider agrees to another disposition, all persons having obtained confidential information will return the confidential information to the provider within 45 days of final action, including court action, in the proceeding in which the information was designated confidential, or, in instances where confidential information has been obtained outside a commission proceeding, confidential information shall be returned to the provider within 30 days of obtaining the confidential information. Return of confidential information does not relieve the receiving party or any person having access to the confidential information from ongoing compliance with the governing protective order and these rules. The commission and the consumer counsel may maintain confidential information permanently. The consumer counsel, in its discretion, may return confidential information to the provider. The commission may return or destroy confidential information, when no longer required to be maintained by the commission in accordance with laws governing records retention by state agencies.

[ALTERNATIVE B]

(1) Confidential information remains protected for a period of two years following issuance of the protective order governing disclosure of the confidential information, unless the provider renews the protection by motion to the commission,

stating the reasons why protection should not be removed. Removal of protection relieves all persons having access to the confidential information from ongoing compliance with the governing protective order and these rules.

(2) Except for the commission and consumer counsel and unless the provider agrees to another disposition, all persons having obtained confidential information will return the confidential information to the provider within 45 days of final action, including court action, in the proceeding in which the information was designated confidential, or, in instances where confidential information has been obtained outside a commission proceeding, confidential information shall be returned to the provider within 30 days of obtaining the confidential information. Return of confidential information does not relieve the receiving party or any person having access to the confidential information from ongoing compliance with the governing protective order and these rules. The commission and the consumer counsel may maintain confidential information permanently. The consumer counsel, in its discretion, may return confidential information to the provider. The commission may return or destroy confidential information, when no longer required to be maintained by the commission in accordance with laws governing records retention by state agencies.

AUTH: 69-3-103, MCA

IMP: 69-3-105, MCA

4. Adoption of the new rules is reasonably necessary for purposes of recapturing consistency among PSC protective orders, ensuring that protective orders remain in accordance with the law applicable, and eliminating inefficient and cumbersome aspects of protective orders and the process of obtaining protective orders. The PSC has been issuing protective orders since the early 1980s. The PSC issues approximately 25 case-specific protective orders each year. Additionally, the PSC issues a number of longer-term, generic protective orders for certain matters. Requests for protective orders are becoming more common and the scope of protection is becoming more broad, partly attributable to the move towards competition in the public utility environment. The present process for obtaining protection of confidential information involves a motion accompanied by a draft order. All that is really necessary is the motion itself and the proposed rules allow for this. Recent motions for protection vary and sometimes include information not necessary or lack essential information. This is likely a result of no clear guidance as to what is required. The rules provide the necessary guidance. If justified, requests for protection are presently followed by a lengthy (ten page) order which may or may not be identical to that requested. The proposed rules will allow for comparatively brief orders, liberally referencing the rules. Through time, existing protective orders have also departed from a standard, primarily as a result of various interests, PSC and party, pertaining to different utilities and types of utilities. This has resulted

in inconsistency and uncertainty as to what provisions should apply in various instances and has caused some problems. The proposed rules will recapture the consistency among protective orders. The proposed rules will still allow for variations in protective orders when necessary, but in a manner that is more easily monitored.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments (original and 10 copies) may also be submitted to Legal Division, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, and must be received no later than May 16, 2000. (PLEASE NOTE: When filing comments pursuant to this notice please reference "Docket No. L-99.6.6-RUL.")

6. The PSC, a commissioner, or a duly appointed presiding officer may preside over and conduct the hearing.

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

8. The PSC maintains a list of persons who wish to receive notices of rulemaking actions proposed by the PSC. 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: electric utilities, providers, and suppliers; natural gas utilities, providers and suppliers; telecommunications utilities and carriers; water and sewer utilities; common carrier pipelines, motor carriers, rail carriers, and administrative procedures. Such written request may be mailed or delivered to Public Service Commission, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, faxed to Rhonda Simmons at (406) 444-7618, or may be made by completing a request form at any rules hearing held by the PSC.

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


Dave Fisher, Chairman


Reviewed By Robin A. McHugh

CERTIFIED TO THE SECRETARY OF STATE APRIL 3, 2000.

BEFORE THE BOARD OF HORSE RACING
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 8.22.503, 8.22.701,) AND ADOPTION
8.22.806, 8.22.1807 and the)
adoption of rules pertaining)
to horse racing)

TO: All Concerned Persons

1. On February 24, 2000, the Board of Horse Racing published a notice of the proposed amendment and adoption of the above-stated rules at page 529, 2000 Montana Administrative Register, issue number 4.

2. The Board has amended ARM 8.22.503, 8.22.701, 8.22.806, and 8.22.1807 exactly as proposed.

3. The Board has adopted NEW RULE I (ARM 8.22.1808) SUPERFECTA and NEW RULE II (ARM 8.22.1809) PICK THREE POOLS exactly as proposed.

4. The Board received no comments.

BOARD OF HORSE RACING
JOE ERICKSON, CHAIRMAN

BY:

Annie M. Bartos

ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

BY:

Annie M. Bartos

ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, April 3, 2000.

BEFORE THE BOARD OF NURSING
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of rules pertaining to nurse)
practitioner practice,)
standards relating to the)
licensed practical nurse's)
role in intravenous (IV))
therapy and prohibited IV)
therapies)

TO: All Concerned Persons

1. On February 24, 2000, the Board of Nursing published a notice of the proposed amendment of the above-stated rules at page 537, 2000 Montana Administrative Register, issue number 4.

2. The Board has adopted ARM 8.32.301, 8.32.1408 and 8.32.1409 exactly as proposed.

3. The Board received six comments. The comments received and the Board's responses are as follows:

COMMENT No. 1: Donna Bristow testified in support of the amendments to 8.32.301.

RESPONSE: The Board acknowledged the comment. No response is necessary as the Commentor is in agreement with the proposed amendment.

COMMENT No. 2: A written comment was received from Sami Butler, Executive Director, Montana Nurses' Association stating that the Montana Nurses' Association supports the proposed amendments to 8.32.301.

RESPONSE: The Board acknowledged the comment. No response is necessary as the Commentor is in agreement with the proposed amendment.

COMMENTS No. 3 & 4: A written comment was received from Brenda Willkom, RNCNP and Diane Nagy, RNCNP, stating that they support removing the requirement to work within nurse practitioner protocols from the nursing statutes.

RESPONSE: The Board acknowledged the comment. No response is necessary as the Commentors are in agreement with the proposed amendment.

COMMENT No. 5: A written comment was received from Yvonne Kammerzal, APRN stating that the current rule had been ignored and that removing the requirement for NP's to work within nurse practitioner established protocols would benefit all NP's and clarify practice rules to reflect actual practice.

RESPONSE: The Board acknowledged the comment. No response is necessary as the Commentor is in agreement with the proposed amendment.

COMMENT No. 6: A written comment was received from Ullainee Hartman, WHNP stating that she is in support of the proposal to remove the requirement that NP's work within established protocols from the statutes.

RESPONSE: The Board acknowledged the comment. No response is necessary as the Commentor is in agreement with the proposed amendment.

BOARD OF NURSING
KIM POWELL, RN, BSN, PRESIDENT

BY:

Annie M. Bartos

ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

BY:

Annie M. Bartos

ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, April 3, 2000.

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

In the matter of the amendment) NOTICE OF AMENDMENT
of rules pertaining to) AND ADOPTION
qualifying education)
requirements, adoption of USPAP)
by reference, and the adoption)
of a new rule pertaining to)
regulatory reviews)

TO: All Concerned Persons

1. On December 2, 1999, the Board of Real Estate Appraisers published a notice of the proposed amendment of ARM 8.57.406 QUALIFYING EDUCATION REQUIREMENTS and 8.57.413 ADOPTION OF USPAP BY REFERENCE and adoption of NEW RULE I REGULATORY REVIEWS at page 2679, 1999 Montana Administrative Register, issue number 23. The hearing was held January 24, 2000.
2. The Board has amended ARM 8.57.406 and 8.57.413 exactly as proposed.
3. The Board adopted NEW RULE I (ARM 8.57.421) REGULATORY REVIEWS exactly as proposed.
4. The Board received no comments.

BOARD OF REAL ESTATE APPRAISERS
JEANNIE FLECHSENHAR, CHAIRPERSON

BY: Annie M. Bartos

ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

BY: Annie M. Bartos

ANNIE M. BARTOS, RULE REVIEW

Certified to the Secretary of State, April 3, 2000.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF AMENDMENT
amendment of ARM	)	OF ARM 10.56.101
10.56.101 relating	)	RELATING TO STUDENT
to student assessment	)	ASSESSMENT

TO: All Concerned Persons

1. On February 10, 2000, the Board of Public Education published notice of the proposed amendment of administrative rule 10.56.101 concerning student assessment, at page 242 of the 2000 Montana Administrative Register, Issue Number 3.

2. After consideration of the comments received, the board has amended ARM 10.56.101 with the following changes, stricken matter interlined, new matter underlined:

10.56.101 STUDENT ASSESSMENT (1) remains the same as proposed.

(2) The board recognizes that the primary purpose of assessment is to serve learning. Classroom assessment is the primary means through which assessment impacts instruction and learning for individuals. State-level and large-scale assessment affect learning through assisting policy decisions and assuring program quality for all students. To meet both classroom and state-level needs, state-level assessments will provide information about the proficiency level of student achievement relative to established content standards, as well as the status of Montana's schools in relation to other groups of students, states, and nations. The school and district responsibilities for assessment are identified in ARM 10.55.603.

(3) In order to obtain state-level achievement information, Aall accredited schools will shall annually administer a single system of state-level assessments instruments approved by the board.

(a) The tests will State-level assessments shall be administered to all students in grades four, eight and eleven in reading, communication arts, mathematics, science, and social studies. For planning purposes, the tests will state-level assessments shall be given during a week in the spring of the year, identified by the office of public instruction a year prior to the testing assessment date.

(b) All test state-level assessment results will shall be provided to the office of public instruction and school districts in a format specified by the office of public instruction and approved by the board of public education.

(4) Test State-level assessment results are a part of each student's permanent records as described in ARM 10.55.2002.

(5) The office of public instruction ~~will~~ shall provide

a report of the results to the board, the legislature, and the public. Schools are encouraged to compare their results with the state results and share ~~testing~~ state-level assessment information with parents and local communities.

(6) The superintendent of public instruction is authorized to make available the reported student assessment data in compliance with confidentiality requirements of federal and state law. State-level Assessment results released to the public ~~will~~ shall be accompanied by a clear statement of the purposes of the ~~test~~ assessments, subject areas ~~tested~~ assessed, level of measurement of the content standards, and the percent of students who participated in the ~~testing~~ assessments. The release ~~will~~ shall include additional information to provide a fair and useful context for assessment reporting (e.g., dropout rates, mobility rates, poverty levels, district size) that will assist districts to examine their educational programs to assure effectiveness.

(7) All students ~~will~~ shall participate in the state-level assessments. Students with disabilities or limited English proficiency (LEP) shall participate using the approved ~~assessments instruments~~, unless it is determined that the a student's progress toward the content standards cannot be adequately measured with the approved ~~assessments instruments~~ even when provided accommodations.

(a) remains the same as proposed.

(i) When an IEP team determines that an accommodation for a student's disability would still not allow for adequate measurement of the student's progress toward the content standards, the IEP team may waive using the approved ~~assessment-instruments~~ state-level assessments by providing an alternate ~~form-of~~ assessments that ~~is~~ are appropriate to determine the student's progress toward the content standards.

(b) remains the same as proposed.

(i) When the team of educators determines that an accommodation for an LEP student who has had fewer than three years of instruction in English would still not allow for adequate measurement of the student's progress toward the content standards, the team of educators may waive using the approved ~~assessment-instruments~~ state-level assessments by providing an alternate ~~form-of~~ assessments that ~~is~~ are appropriate to determine the student's progress toward the content standards.

(c) The office of public instruction ~~will~~ shall provide guidance to schools concerning alternate ~~testing~~ state-level assessments.

(8) Accommodations allow students to demonstrate competence in subject matter so that ~~test~~ state-level assessment results accurately reflect the students' achievement levels rather than ~~reflecting~~ limited English language development or impaired sensory or manual skills, except where those skills are the factors which the ~~test~~ assessment purports to measure.

(a) Accommodation for ~~testing~~ state-level assessment purposes is defined as modifications similar to those used to

support and accommodate the student in the instructional setting.

(b) remains the same.

(c) The office of public instruction ~~will~~ shall provide guidance to schools concerning appropriate accommodations.

AUTH: 20-2-121 MCA

IMP: 20-2-121, 20-7-402 MCA

3. The following comments which were received and result in changes to the rule appear with the Board of Public Education's responses:

COMMENT 1: Eric Feaver, commenting on behalf of the membership of the MEA/MFT, supports the proposed rule but provides suggestions for consistency and clarity of the rule. He recommends using either assessment or test throughout the rule, instead of using both interchangeably. He also suggests using "state-level" to modify the word assessment or test throughout the rule to clarify that the rule applies only to state exams; substituting "a single system of state-level assessment (or test)" for the vague phrase "assessment instruments;" using "shall" in place of "will" when being directive; and other small editorial changes.

Johnny Lott, Mathematics Professor at the University of Montana representing himself, made similar suggestions.

RESPONSE 1: The Board of Public Education agrees with the comments and the suggested changes are incorporated into the rule. For consistency and clarity, the Board also added the sentence "The school and district responsibilities for assessment are identified in ARM 10.55.603." to the end of (2) to reference ARM 10.55.603, Curriculum Development and Assessment.

COMMENT 2: Roger Johnston, representing the Billings Public Schools, supports the proposed rule but wishes to see changes made to (2) to strike "relative to the established standards."

Eric Feaver would like to see changes made to (2) to strike "large-scale."

RESPONSE 2: The Board of Public Education disagrees. Subsection (2) of the rule incorporates the board adopted statement of the broad and primary purpose for assessment in Montana schools, and is intended to identify the larger assessment context into which state-level testing is placed. The comments indicate that the intent is not clear, therefore (3) has been amended to separate the requirements for a state-level assessment from the broader purpose.

4. The following comments which were received and do not result in changes to the rule appear with the Board of Public Education's responses:

COMMENT 3: Johnny Lott believes that the reporting discussion in (5) is unnecessary.

RESPONSE 3: Subsection (5) identifies the audience to whom the Office of Public Instruction (OPI) reports, and provides suggestions to local schools for use of the information. Without this subsection, only the collection process would be identified, and no reporting process would be included.

COMMENT 4: Chris Tuckerman, Superior School District Superintendent, approves of the proposed rule. She asks for verification that the costs of the assessment tools and scoring will not be added expenses to the districts.

Al Gunderson, representing himself, comments that he hopes statewide testing leads to something good.

RESPONSE 4: The costs for the state-level assessment tools and the scoring will be funded from legislative appropriations. The Board of Public Education anticipates that the costs for the state-level assessment will continue to be provided from legislative appropriations. The Board is aware that unintended consequences of this rule may arise, but the intent of this rule is to provide fair and useful information to policy makers and to assist districts to examine their educational programs.

COMMENT 5: Jim Hirstein, Mathematics Professor at the University of Montana speaking for himself; Steve Tull, representing Superior High School; Fred Anderson, Principal at Miles City; Tammy Elser, representing the Arlee Public Schools; Teri Wing, Curriculum Coordinator representing the Mission Valley Partnership; Carolyn Lott, Professor at the University of Montana School of Education speaking for herself; and Johnny Lott support assessment and accountability, but object to the proposed rule because it establishes a single norm-referenced test that they feel is not aligned to the standards. They also express concerns about the fact that results will be published and schools compared, about the loss of selection of tests, about a state intervention strategy to assist districts with students who perform poorly, and about the need to move toward meaningful assessment and training district personnel to use the data.

Jerry Scott, Carbon County Superintendent, is not opposed to the proposed rule, and is not opposed to norm referenced testing, but is concerned that the state maintains the test being selected is criterion referenced.

Ron Rude, District Superintendent at Plains Public Schools, opposes the proposed rule and feels the proposed assessment instrument does not align to the standards.

David Erickson, a parent of students in public schools representing himself, feels the OPI should not develop a statewide norm-referenced test.

Steve McCormick, representing the Polson School District, opposes the proposed rule and believes the focus should be on development of meaningful assessment tools.

RESPONSE 5: The Board of Public Education and the OPI do not maintain that the test being selected is criterion-referenced. They do maintain that the selection of a norm-referenced test which has had items matched to the Montana standards is a first step toward alignment of the state-level test and the standards. The Legislature appropriated a small amount of money, \$350,000, to begin the process of aligning a state testing system with the standards. The adoption of a single company's system for testing three grade levels and five subjects will begin to bring common ground and alignment to state-level testing. Procedures, dates, and test administration will be similar, and a common process for including and excluding students will be applied to all schools evenly. Using a different system for each grade and subject would create unmanageable statewide scheduling, administration, and reporting problems.

Standards-based assessment (criterion referenced) is complex and potentially very expensive if such testing is done at the state level. The Montana content standards contain several standards that cannot and should not be assessed using a multiple choice format. Several standards must be assessed at the classroom level and state-level testing is not appropriate. The matching of norm-referenced test items to state content standards identifies the degree of alignment that is present within the norm-referenced test in each of the subject areas. The test publishing companies have been requested, through the Request for Proposal (RFP), to assist with more than providing and scoring a norm-referenced test. They have been asked to provide technical assistance to identify methods for testing at the state or local level those standards for which testing gaps have been identified, by customizing components to be added to the norm-referenced test, by assisting with a process for setting proficiency levels related to the test and the state standards, and by helping Montana take steps toward providing both norm-referenced results and standards-based reporting. The successful publishing company will be asked to provide these additional services beyond the administration and scoring of a norm-referenced test.

The norm-referenced state level test represents only one component of a larger comprehensive state assessment system. The responsibility for assessment will be shared between the state and local districts and schools, with the primary impact on instruction occurring at the classroom level.

However, current statutes require the gathering and reporting of assessment data at the state-level to assist policy makers with program wide information. In 1997, the Legislature passed legislation requiring the OPI to release the test results obtained through the Board of Public Education requirements. That reporting included results from several norm-referenced tests provided by three different testing companies, varying in the age of the test and the norms being used, often having different sub-tests, testing somewhat different topics, and using a variety of testing procedures. A great number of educators, the public, and policy-makers indicated a concern that the information did not provide a common base of information across districts. Although the OPI attempted to report the results using broad scoring bands rather than only average scores to provide a common structure for looking across the variety of tests, and although the releases to the press and the public indicated that the test results represented very different assessment practices, schools were compared on very dissimilar information, and the results provided little guidance to state policy makers.

At a state level, there will be a focus on program improvement, professional development activities, development of local aligned assessment tools, and assistance to districts to evaluate the results of assessment and use the information to improve instruction. The statewide education profile will continue to report achievement data in the context of the major information categories.

COMMENT 6: Tammy Elser and Teri Wing are concerned that the test should relate to Native American experiences, and be validated using a population of Indian students.

RESPONSE 6: The Board of Public Education agrees that the potential test bias toward the American Indian population needs to be addressed. Therefore one of the Board's criteria for test adoption includes evaluating the impact of the testing on the American Indian students. The RFP included a specific requirement that, if the testing company had not done validation using a population of Indian students, they do a study using the results of the first year's testing in Montana. American Indians represent less than two percent of the total national school population, and have not been the focus of validation studies. Since Montana has one of the highest state percentages of American Indian students, the companies have agreed to include a study within the basic costs of the RFP, sharing results and potential strategies with Montana.

COMMENT 7: Harold Johnson, teacher at Plentywood High School, is concerned about the time students are absent from class and suggests the OPI make some effort to address the problem.

RESPONSE 7: This comment does not directly address this assessment rule, but the comment will be communicated to other staff at the Office of Public Instruction.

COMMENT 8: David Irion, representing Billings West High School, Roger Johnston, and Fred Anderson comment in opposition to the test being given in the Spring versus the Fall. Mr. Johnston and Mr. Irion also object to testing at grade 11 instead of grade 10, expressing concern that the Board is setting policy based on the convenience of the federal government instead of educational needs of Montana students.

RESPONSE 8: The Board of Public Education appreciates the potential benefits for moving testing from grade 11 to grade 10, and from the Spring to the Fall. The Board requested comments from the public and educators on those potential changes prior to taking a position on the changes. Although there was strong support and sound educational argument for moving the test to the Fall and to grade 10, there was also strong support to retain the current practice of testing in the Spring and in grade 11, and the Board ultimately chose not to make a change to those practices.

COMMENT 9: Fred Anderson opposes the proposed rule. In his opinion the OPI misled educators when the standards were being developed. The education community was encouraged to support "utopian" standards with the assurance that the statewide assessment would not be "high stakes."

Ron Rude opposes the proposed rule and considers the new standards vague, repetitive, and lacking content. He feels that Montana should use standards developed by other states and experts.

RESPONSE 9: The Board of Public Education and the OPI understand the critical issues facing Montana's small school districts. The lack of time, money, materials, and personnel are real and complex obstacles to overcome. To assist all school districts in Montana, but particularly Montana's rural and small districts, the Board and the OPI are working with the education community to develop a statewide and regional education support network. This support network will provide state and regional professional development opportunities to support the implementation of the standards through the delivery of content, materials, other resources, and personnel to meet the specific professional learning needs of local teachers and administrators.

While considering these issues, the Board also recognized Montana's strong spirit of local control and Montana's belief that our education system is good because communities participate, parents care, and teachers and administrators are well prepared. The Board and the OPI completed a deliberative process to determine the approach to use in the development of standards. Standards and processes from other states, national standards, and the efforts of professional organizations, as well as proven practice of Montana teachers were examined. Based upon this research, the Board made a decision to develop a standards framework that would assure Montana citizens that its public schools provide all children with challenging academic expectations.

The standards are intended to provide guidance to school districts, but districts remain responsible for developing curriculum and instructional programs that are locally meaningful. Written without excessive detail, the standards allow teachers and administrators flexibility to meet the needs of their students and community and to continue Montana's tradition of local control of school districts by local communities. The standards are intended to give citizens living anywhere in Montana assurance that a district following the standards is providing a quality education program consistent with other districts.

COMMENT 10: Fred Anderson believes the proposed rule should direct the OPI to coordinate with the Montana High School Association (MHSA) when setting the test date.

RESPONSE 10: Rather than including the name of one specific organization in the rule, the OPI will consult with several organizations in addition to the MHSA. OPI will consult the MHSA activities calendar, local district calendars, rural school groups, teacher and administrator organizations, and other pertinent groups prior to setting the test date.

COMMENT 11: Steve Tull, opposes the proposed rule. He believes it is important that the public understand what is being tested when test scores are used as a comparison of schools.

Teri Wing feels OPI should report the percentage of the statewide test that is aligned to state standards.

RESPONSE 11: The Board of Public Education is also concerned that educators, the public, and policy-makers be made aware of the degree of alignment of the state-level test to the Montana content standards. Subsection (6) includes the statement that "the results will be accompanied by a clear statement of the purposes of the test, level of measurement of

the content standards, and will include additional information to provide a fair and useful context for assessment reporting."

By: /s/ Storrs Bishop
Storrs Bishop
Chairperson
Board of Public Education

/s/ Geralyn Driscoll
Geralyn Driscoll
Rule Reviewer
Office of Public Instruction

Certified to the Secretary of State April 3, 2000.

BEFORE THE MONTANA HERITAGE AND
PRESERVATION DEVELOPMENT COMMISSION

In the matter of the adoption) NOTICE OF ADOPTION
of Rules I through VII,)
pertaining to the acquisition)
of real and personal property)

TO: All Concerned Persons

1. On January 13, 2000, the Montana Heritage Preservation and Development Commission published notice of proposed adoption of Rules I through VII, pertaining to the future acquisition of real and personal property by the Commission at page 13 of 2000 Montana Administrative Register, Issue Number 1.

2. A public hearing was held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed adoption of the rules, but no comments or testimony were submitted. No other written comments have been submitted to or were received by the Commission.

3. The Commission has adopted new Rules I through VII, ARM 10.125.101 through 10.125.107, exactly as proposed.

MONTANA HERITAGE AND PRESERVATION
DEVELOPMENT COMMISSION

By: Jeffrey Tiberi
Jeffrey Tiberi, Executive Director

By: Elizabeth L. Griffing
Elizabeth L. Griffing
Rules Reviewer

Certified to the Secretary of State on April 3, 2000.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 17.36.101, 17.36.102,)
17.36.108, and 17.36.110,)
pertaining to procedures for)
local health officer review of)
subdivision applications) (SUBDIVISIONS)

TO: All Concerned Persons

1. On February 24, 2000, the Department of Environmental Quality published notice of the proposed amendment to ARM 17.36.101, 17.36.102, 17.36.108, and 17.36.110 pertaining to procedures for local health officer review of subdivision applications at page 610 of the 2000 Montana Administrative Register, Issue No. 4.

2. A public hearing was held on March 21, 2000, at which written and oral comments were received. All commentators favored amendment of the rules as proposed.

3. The Department has amended ARM 17.36.101, 17.36.102, 17.36.108, and 17.36.110 as proposed.

4. The statement of reasonable necessity provided in the Notice of public hearing contained two clerical errors. In the section-by-section statement of rationale, two references to the proposed amendments used incorrect section numbering. These clerical errors are corrected in this adoption notice, pursuant to Section 2-4-305(8), MCA.

At page 615 of the Notice, the first sentences in the sixth and seventh paragraphs are corrected to read as follows (deleted material interlined, added material underlined):

"The proposed ARM 17.36.110(2)(a) prohibits the Department from issuing a certificate of subdivision approval unless the applicant has submitted evidence that non-public sewage systems are in compliance with local laws."

"The proposed ARM 17.36.110(2)(b)(3) requires the Department to identify, in its certificate of subdivision approval, all conditions of approval imposed by the local health officer."

DEPARTMENT OF ENVIRONMENTAL QUALITY

by: Mark A. Simonich
MARK A. SIMONICH, Director

Reviewed by:

John F. North

John F. North, Rule Reviewer

Certified to the Secretary of State April 3, 2000.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the adoption	)	NOTICE OF ADOPTION,
of NEW RULES I and II; the	)	TRANSFER, AMENDMENT
transfer and amendment of ARM	)	AND REPEAL
17.56.1202, 17.56.1205 through)	
17.56.1210, 17.56.1215 through)	
17.56.1218, 17.56.1221 through)	
17.56.1223, 17.56.1226 through)	
17.56.1229, 17.56.1232 and)	
17.56.1252 through 17.56.1256,)	
the amendment of ARM 17.56.1003)	
through 17.56.1005, and the)	
repeal of ARM 17.56.1201,)	
17.56.1233, 17.56.1235 through)	
17.56.1240, 17.56.1242,)	
17.56.1245 through 17.56.1247,)	
17.56.1250, 17.56.1251 and)	
17.56.1260 pertaining to)	
underground storage tank)	
licensing	)	(UNDERGROUND STORAGE TANKS)

TO: All Concerned Persons

1. On February 24, 2000, the Department of Environmental Quality published a notice of hearing on the proposed adoption of new rules, and the transfer, amendment and repeal of other rules pertaining to underground storage tank licensing and permitting. The notice was published at page 572 of the 2000 Montana Administrative Register, Issue No. 4.

2. The hearing was held on March 15, 2000 at 10:00 a.m. in the Lewis Conference room of the Phoenix Building, 2209 Phoenix Ave., Helena, Montana.

3. The rules were adopted, amended, transferred and repealed as proposed. New Rules I and II will be numbered 17.56.308 and 17.56.309.

4. The following comment was received; the Department's response follows:

COMMENT: Raising registration fees is hurting small business. All tanks in the state are supposed to be in compliance by now, we don't need all these state employees.

RESPONSE: The new and amended rules will neither increase the underground storage tank registration fees, which must be paid annually by a tank owner or operator, nor result in an increase in the number of state employees. The rules implement a legislative mandate to improve inspection services statewide by transferring inspection duties from state employees to private sector inspectors as opposed to increasing the number of

state staff conducting inspections. The amendments do increase installation and closure inspection fees to cover the actual costs of the inspections. These fees must be paid only when a tank is installed or removed and the installation or removal is not performed by a licensed installer or remover.

The amendments also increase permit application fees to more adequately cover the actual cost of permit review. These fees must be paid only when a tank system is installed, modified or closed. Permit review costs in excess of the permit application fee have historically been paid using underground storage tank registration fees. The department believes it to be more appropriate for the permittee to pay the cost of review, rather than have it subsidized by other owners and operators.

DEPARTMENT OF ENVIRONMENTAL QUALITY

by: Mark A. Simonich

MARK A. SIMONICH, Director

Reviewed by:

John F. North

John F. North, Rule Reviewer

Certified to the Secretary of State April 3, 2000.

**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.

Business and Labor 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 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, Justice, and Indian Affairs Interim Committee:

- ▶ Department of Corrections; and
- ▶ Department of Justice.

Revenue and Taxation Interim Committee:

- ▶ Department of Revenue; and
- ▶ Department of Transportation.

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through December 31, 1999. This table includes those rules adopted during the period January 1, 2000 through March 31, 2000 and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through December 31, 1999, 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 1999 and 2000 Montana Administrative Registers.

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