ISSUE NO. 5

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

BEFORE THE BOARD OF CHIROPRACTORS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to examinations, temporary permits, continuing education requirements, unprofessional conduct, fees, interns and preceptors, recertification, denial and revocation and the adoption of a new rule pertaining to patient records	) NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF ARM 8.12.603 EXAMINATION REQUIREMENTS, 8.12.604 TEMPORARY PERMIT, 8.12.606 RENEWALS - CONTINUING EDUCATION REQUIREMENTS, 8.12.607 UNPROFESSIONAL CONDUCT, 8.12.615 FEE SCHEDULE, 8.12.616 INTERNS AND PRECEPTORS, 8.12.904 RECERTIFICATION - DENIAL - REVOCATION AND THE ADOPTION OF NEW RULE I PATIENT RECORDS RETENTION

TO: All Concerned Persons

1. On April 12, 2000, at 9:00 a.m., a public hearing will be held in the Department of Commerce downstairs conference room, 1424 9th Avenue, Helena, Montana to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Commerce no later than 5:00 p.m., on April 4, 2000, to advise us of the nature of the accommodation that you need. Please contact Cheryl Smith, Board of Chiropractors, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 444-5433; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-1667.

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

8.12.603 EXAMINATION REQUIREMENTS (1) The board accepts as its approved method of examination, parts I and II, including physiotherapy, part III and part IV of the national board of chiropractic examiners (NBCE) examination. In addition, the applicant must pass the state jurisprudence examination. ~~Effective January 1997, the board will require passage of part IV of the NBCE, and will no longer administer the state clinical proficiency examination.~~

Auth: Sec. 37-1-131, 37-12-201, MCA
IMP: Sec. 37-12-304, MCA

REASON: Part IV of the national board of chiropractic examiners examination has been required since January of 1997 and therefore this statement is no longer needed.

8.12.604 TEMPORARY PERMIT (1) Temporary permit applicants may be issued a permit under 37-1-305(2), MCA, while waiting to take either part IV of the NBCE or the special purposes examination for chiropractors (SPEC). The permit shall require the permit holder to practice under the on-premises supervision of a chiropractor licensed in the state of Montana.

(2) A temporary permit applicant must take and pass the jurisprudence exam by a minimum of 75% before a temporary permit will be granted.

(2) and (3) will remain the same but be renumbered (3) and (4).

(5) Any advertisement where the temporary permit holder is named or pictured must designate him/her as a temporary permit holder. This designation must appear with the name of the supervising licensed chiropractor.

Auth: Sec. 37-1-131, 37-12-201, MCA
IMP: Sec. 37-1-131, 37-12-302, 37-12-304, 37-12-305, MCA

REASON: Subsection (2) is being added to ensure that a temporary permit holder is aware of the laws and rules he/she is expected to practice under. Subsection (5) is being added so that the public is informed that a temporary permit holder is not a fully licensed chiropractor and has not met all of the licensing requirements.

8.12.606 RENEWALS - CONTINUING EDUCATION REQUIREMENTS (1) will remain the same.

(2) All licensees shall sign an affidavit provided on the renewal application which states ~~present evidence, satisfactory to the board,~~ that they have, in the year preceding the application for renewal, attended at least 12 hours of board-approved continuing education.

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

Auth: Sec. 37-1-134, 37-1-141, 37-1-319, 37-12-201, 37-12-307, MCA
IMP: Sec. 37-1-134, 37-1-306, 37-1-319, 37-12-307, MCA

REASON: To reduce the amount of paperwork and administrative time and cost in reviewing continuing education certificates. This amendment gives the responsibility of meeting the requirements back to the licensee.

8.12.607 UNPROFESSIONAL CONDUCT For the purpose of implementing the provisions of 37-1-316, MCA, the board further defines unprofessional conduct as follows:

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

(16) failing to keep adequate patient records in compliance with generally accepted standards of practice.

Auth: Sec. 37-1-131, 37-1-319, MCA
IMP: Sec. 37-1-307, 37-1-308, 37-1-309, 37-1-311, 37-1-312, MCA

REASON: Patient records are the only way a licensee can validate the examination, diagnosis and treatment. The public has the right to expect that adequate records of treatment have been kept.

8.12.615 FEE SCHEDULE
(1) through (3) will remain the same.
(4) Late renewal fee ~~35~~ 200
(5) through (12) will remain the same.

Auth: Sec. 37-1-134, 37-12-201, MCA
IMP: Sec. 37-1-134, 37-12-201, 37-12-302, 37-12-303, 37-12-304, 37-12-307, MCA

REASON: The Board is proposing this fee increase to deter late renewals. There were 35 late renewals for the year 1999 that generated fees of $1,225. The Board estimates this fee increase will reduce late renewals to approximately 10 which will generate fees of $2,000.

8.12.616 INTERNS AND PRECEPTORS (1) through (4) will remain the same.
(5) All pre-graduate and post-graduate interns doing preceptorships in the state are required to take the jurisprudence exam and pass the exam with a minimum score of 75%.
(6) All preceptors must state that the pre-graduate or post-graduate intern is an "intern" on any type of advertisement. This designation must appear with the name of the licensed preceptor supervising the intern.
(5) through (11) will remain the same but be renumbered (7) through (13).

Auth: Sec. 37-12-304, MCA
IMP: Sec. 37-12-304, MCA

REASON: The Board has proposed subsection (5) to insure that an intern knows the laws and rules of the state before commencing practice pursuant to said rules. The Board has proposed subsection (6) so that the public will know that the intern is not a licensed chiropractor.

8.12.904 RECERTIFICATION - DENIAL - REVOCATION
(1) Effective September 2, 2000 a ~~A~~ minimum of four ~~(4)~~ hours of specialized continuing education relevant to impairment evaluation ~~every even numbered year~~ must be demonstrated in order to qualify for renewal of certification

every four years or within one year of new journal of American medical association (JAMA) guidelines. This requirement is in addition to the continuing education hours required for annual renewal of licenses to practice chiropractic in this state.

(2) will remain the same.

(3) An impairment evaluator must comply with ARM 24.29.1415. These rules can be obtained by contacting the department of labor and industry workers' compensation regulation bureau.

Auth: Sec. 37-1-136, 37-12-201, MCA
IMP: Sec. 37-12-201, MCA

REASON: Subsection (1) is being amended because JAMA Guidelines do not change very often and it is redundant to require licensees to recertify every two years. However, it is important that they be recertified within one year of JAMA Guideline changes. The Board is proposing subsection (3) to make licensees aware that there are other state laws and rules that affect their impairment evaluation license.

4. The proposed new rule provides as follows:

NEW RULE I PATIENT RECORDS RETENTION (1) Chiropractors are required to retain adult patient records and x-rays for a minimum of five years and a minor patient's records and x-rays for a minimum of five years from their last treatment or at least one year past their 18th birthday.

Auth: Sec. 37-1-131, 37-12-201, MCA
IMP: Sec. 37-1-201, MCA

REASON: The Board is proposing this rule to establish a minimum guideline for chiropractors as to how long patient records must be kept. The Board feels this new rule will protect the public in that they will be able to obtain records regarding their care for a reasonable length of time.

5. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Chiropractors, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile, number (406) 444-1667, and must be received no later than 5:00 p.m., April 13, 2000.

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

7. The Board of Chiropractors maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. Persons who wish to have their name added to the list shall make a written request to the board which request shall include the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Chiropractors' administrative rulemaking or other

administrative proceedings. Such written request may be mailed or delivered to the Board of Chiropractors, 111 North 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 Board of Chiropractors.

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

BOARD OF CHIROPRACTORS
PATRICK MONTGOMERY, D.C.,
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, March 6, 2000

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

In the matter of the proposed amendment of rules pertaining to applications, fees, inactive status and reactivation, contracts, federal trade commission regulations, continuing education, disclosure statements on embalming, unprofessional conduct, crematory facility regulation, processing of cremated remains, perpetual care and maintenance fund reports, restrictions on officers, transfer of cemetery ownership, perpetual care and maintenance funds, repeal of a rule regarding prepaid funeral arrangements and the adoption of new rules regarding branch establishment facilities, definitions, prearranged, prefinanced or prepaid funerals, requirements for sale of at-need, pre-need and prepaid funeral arrangements, pre-need funeral agreements and trust funds	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF ARM 8.30.402 APPLICATIONS, 8.30.407 FEE SCHEDULE, 8.30.412 INACTIVE STATUS AND REACTIVATION, 8.30.414 CONTRACT FOR FUNERAL GOODS AND SERVICES, 8.30.416 FEDERAL TRADE COMMISSION REGULATIONS, 8.30.502 CONTINUING EDUCATION REQUIREMENTS, 8.30.608 DISCLOSURE STATEMENT ON EMBALMING, 8.30.701 UNPROFESSIONAL CONDUCT, 8.30.801 CREMATORY FACILITY REGULATION, 8.30.805 PROCESSING OF CREMATED REMAINS, 8.30.904 PERPETUAL CARE AND MAINTENANCE FUND REPORTS, 8.30.907 RESTRICTIONS ON OFFICERS, 8.30.908 TRANSFER OF CEMETERY OWNERSHIP, 8.30.909 PERPETUAL CARE AND MAINTENANCE FUNDS, THE REPEAL OF 8.30.606 PREARRANGED, PREFINANCED OR PREPAID FUNERALS AND THE ADOPTION OF NEW RULE I BRANCH FACILITY, NEW RULE II DEFINITIONS, NEW RULE III PREARRANGED, PREFINANCED OR PREPAID FUNERALS, NEW RULE IV REQUIREMENTS FOR SALE OF AT-NEED, PRE-NEED AND PREPAID FUNERAL ARRANGEMENTS, NEW RULE V PRE-NEED FUNERAL AGREEMENTS, AND NEW RULE VI TRUST FUNDS

TO: All Concerned Persons

1. On April 12, 2000, at 1:00 p.m., a public hearing will be held in the Department of Commerce downstairs conference room, 1424 9th Avenue, Helena, Montana to consider the proposed amendment, repeal and adoption of the above-stated rules.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to

participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Commerce no later than 5:00 p.m., on April 4, 2000, to advise us of the nature of the accommodation that you need. Please contact Cheryl Smith, Board of Funeral Service, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 444-5433; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-1667.

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

8.30.402 APPLICATIONS ~~(1) All applicants for examination must be in the hands of the department at least 30 days prior to the date set for the examination.~~

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

(a) will remain the same.

(b) ~~The application shall be accompanied with proofs of diploma or certificate~~ Certified copy of the final transcript ~~graduation~~ from an accredited college of mortuary science.

(c) will remain the same.

(d) ~~Certification~~ Certified copy of the certification form verifying successful completion of ~~national board examination of~~ the conference of funeral service examining board's examination ~~(mandatory)~~.

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

REASON: Paragraph (1) is being deleted because the examination is given by appointment rather than on a certain date for everyone. Subsections (b) and (d) are being changed because the board no longer requires a copy of the diploma. The board requires certified copies of the transcripts from the college of mortuary science and the conference of funeral service examining boards.

8.30.407 FEE SCHEDULE (1) will remain the same.

(2) Reactivation of inactive license	50

(2) and (3) will remain the same but be renumbered (3) and (4).

(5) Branch facility application fee (includes original license fee)	200

(4) and (5) will remain the same but be renumbered (6) and (7).

(a) Funeral director renewal	40
(b) Mortician renewal	125
(c) Inactive status renewal	50
(d) Inactive funeral director renewal	15
~~(d)~~ (e) Mortuary renewal (includes inspection fee)	200
(f) Branch facility renewal (annual inspection not required)	50
~~(e)~~ (g) Crematory operator renewal	60

~~(f)~~ (h) Crematory technician renewal 30

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

(6) through (10) will remain the same but be renumbered (8) through (12).

~~(11)~~ (13) Crematory renewal ~~- separate facility~~ 200

~~(12) Crematory renewal - attached to mortuary 200~~

(13) through (18) will remain the same but be renumbered (14) through (19).

Auth: Sec. 37-1-134, 37-19-202, 37-19-703, MCA
IMP: Sec. 37-1-134, 37-19-301, 37-19-304, 37-19-306, 37-19-402, 37-19-403, 37-19-702, 37-19-703, MCA

REASON: The Board is proposing the addition of (5) to distinguish the licensure of a mortuary and a branch facility. Since the branch facilities are not full mortuaries, this will allow the board to charge a lesser renewal fee for the branch facility, thereby lowering the overall costs to the main mortuary. Subsection (5) was amended because an active funeral director's renewal fee was less than an inactive funeral director's renewal fee. The proposed amendment will correct this inequity. Subsections (11) and (12) were amended to provide that a crematory will be charged the same renewal fee whether their facility is located in the same building as a mortuary or not because it is an independent business. The other subsections are being amended to clarify that they are renewal fees. The proposed fee amendment will affect approximately 426 licensees and applicants.

8.30.412 INACTIVE STATUS AND REACTIVATION (1) will remain the same.

(a) A mortician, funeral director, crematory operator, or crematory technician who has maintained valid licensure in the state of Montana for a period greater than 49 years may request that their license be placed on inactive "emeritus" status. An inactive emeritus licensee will be exempt from payment of any fee for annual renewal of their inactive license; but all other provisions and procedures relating to inactive status and reinstatement to active status will apply. The board, at its discretion, may provide other recognition or distinction for emeritus licensees.

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

Auth: Sec. 37-1-319, 37-19-202, MCA
IMP: Sec. 37-1-319, MCA

REASON: The Board wishes to honor those having had a license for more than 49 years by allowing them to keep their license without paying annual renewal fees.

8.30.414 CONTRACT FOR FUNERAL GOODS AND SERVICES

(1) The current mailing address, telephone number and name of the board of funeral service shall appear prominently on any contract for funeral goods and services offered by a private cemetery, crematory or mortuary. At a minimum, the information shall be in 10-point boldface type and make the following statement: "FOR MORE INFORMATION ON STATE CEMETERY, CREMATION AND MORTUARY REGULATIONS CONTACT: BOARD OF FUNERAL SERVICE, ~~111 NORTH JACKSON~~, P.O. BOX 200513, HELENA, MONTANA 59620-0513; TELEPHONE NUMBER (406) 444-5433."

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

(4) Every such cemetery contract shall contain in immediate proximity to the space reserved for the purchaser's signature, in a size equal to at least 10-point boldface type, the following statement: "YOU, THE PURCHASER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE FIFTH CALENDAR DAY AFTER THE DATE OF THIS TRANSACTION, PROVIDED NO INTERMENT, ~~OR~~ SUBSTANTIAL SERVICE OR ~~MERCHANDISE~~ FUNERAL GOODS ~~HAS~~ HAVE BEEN PROVIDED HEREUNDER. TO CANCEL, DELIVER OR MAIL WRITTEN NOTICE OF YOUR INTENT TO (NAME AND ADDRESS OF CEMETERY AUTHORITY OR CEMETERY MANAGER)."

(5) and (6) will remain the same.

Auth: Sec. 37-1-319, 37-19-202, MCA
IMP: Sec. 37-1-319, MCA

REASON: By eliminating the physical location in the address, the need for reprinting forms would be alleviated if the Board should move to a different physical location. The board proposes that the word "merchandise" be replaced with the term "funeral goods" to be consistent with the terms used in the Federal Trade Commission (FTC) regulations.

8.30.416 FEDERAL TRADE COMMISSION REGULATIONS (1) A licensed mortician in Montana shall comply with all federal trade commission (FTC) regulations governing the pricing of funeral services and ~~merchandise~~ funeral goods and the method of paying for funeral services, as defined in a manner and a form in compliance with Federal Trade Commission Funeral Industry Practice Rules, 16 CFR 453 (1997) which are hereby incorporated by reference. A copy of the written statement of compliance shall be kept by the mortuary for a period of three years. The FTC rules are available at the board office, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513.

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

REASON: The board proposes that the term "merchandise" be replaced with "funeral goods" to be consistent with the terms used in the FTC regulations.

8.30.502 CONTINUING EDUCATION REQUIREMENTS (1) The basic requirement for continuing education shall be completion

of a minimum of 12 clock hours in a two-year period, with a maximum carry-over from one year to the next of six hours.

(2) Each licensee in this state shall ~~submit with his or her renewal application, satisfactory proof of~~ sign an affidavit stating that he/she has completed a minimum of six clock-hours of continuing education courses, which affidavit shall be submitted as a part of his or her renewal application.

(a) will remain the same.

(2) and (3) will remain the same but be renumbered (3) and (4).

(a) will remain the same.

(i) The activity must have significant intellectual or practical content. The activity must deal primarily with substantive funeral service issues. In addition, the board may accept continuing education activities from other professional groups or academic disciplines if the licensee demonstrates that the activity is substantially related to his or her role as a mortician ~~or crematory operator~~. A continuing education program is defined as a class, institute, lecture, conference, or workshop.~~,~~ The following types of continuing education courses must require passage of a test following completion of the course: ~~tested~~ home study ~~course~~, cassette, ~~or~~ videotape or activity delivered by other means.

(ii) through (b)(i) will remain the same.

(ii) No continuing education is required for morticians ~~or crematory operators~~ renewing their license for the first time.

(iii) ~~All licensed morticians must submit to the board, on the appropriate year's renewal, a report on a form prescribed by the board summarizing their obtained continuing education credits.~~ The board will randomly audit 10% of the licensed morticians each year. A letter of audit will accompany the renewal application. Audited licensees must provide copies of completion certificates to the board as verification of compliance by the renewal deadline date.

(A) The board will review these audit reports within six months of their receipt. ~~, and notify the licensee regarding his/her noncompliance.~~

(B) Those not receiving notice from the board regarding their continuing education should assume satisfactory compliance.

(C) Licensees found to be in noncompliance with this requirement will be asked to submit to the board, for approval, a plan to complete the continuing education requirements for licensure.

(D) Prior to the next consecutive year's license renewal deadline, those licensees who were found to be in noncompliance will be formally reviewed to determine their eligibility for license renewal. Licensees, who at this time have not complied with continuing education requirements, will not be granted license renewal until they have fulfilled the board-approved plan to complete the requirements. ~~Those not~~

~~receiving notice from the board regarding their continuing education should assume satisfactory compliance.~~

(E) Notices will be considered properly mailed when addressed to the last known address on file in the board office.

(F) No continuing education used to complete delinquent continuing education plan requirements for licensure may be used to meet the continuing education requirements for the next continuing education reporting period.

(iv) and (v) will remain the same.

~~(vi) From the continuing education reports submitted each year, the board will randomly audit 5% of the reports and request documentation of completion for continuing education credits reported.~~

~~(4) A licensee desiring to obtain credit for completing more than 12 hours of continuing education credits during any two licensure years shall report such carry-over credit to the board with the annual renewal. Such carry-over credit shall be limited to no more than six clock hours.~~

(5) will remain the same.

Auth: Sec. 37-1-319, 37-19-202, MCA
IMP: Sec. 37-1-306, MCA

REASON: The Board is proposing this amendment to raise the percentage of licensees audited to better indicate compliance with continuing education requirements. The Board is also trying to reduce administrative time for review of all licensee's continuing education, to clarify who needs to report continuing education and to allow other sources for continuing education, such as the internet.

8.30.608 DISCLOSURE STATEMENT ON EMBALMING (1) will remain the same.

(2) The ~~statement shall be in addition to the following form:~~ following language shall be included with the requirement of (1): "Except in ~~certain~~ special cases, embalming is not required by law. Embalming may be necessary, however, if you select certain funeral arrangements, such as a funeral with viewing. If you do not want embalming, you usually have the right to choose an arrangement that does not require you to pay for it, such as direct cremation or immediate burial."

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

REASON: The amendments to this section are proposed to clarify the wording.

8.30.701 UNPROFESSIONAL CONDUCT (1) ~~The board may refuse to issue, may refuse to renew, may suspend or may revoke any license for the practice of mortuary science or may place the holder thereof on a term of probation not to exceed~~

~~one year, or issue a letter of reprimand or censure thereto after proper hearing upon finding the holder of such licenses to be guilty of acts of commission or omission including,~~ For the purpose of implementing 37-1-319, MCA, the board defines unprofessional conduct to include, but not be limited to, the following ~~items which are included as unprofessional conduct~~:

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

(c) employment directly or indirectly of any apprentice, agent, assistant, employee or other person, on part or full time, or on commission, for the purpose of calling upon individuals or institutions for solicitation of dead human bodies for a particular ~~funeral establishment~~ mortuary, mortician, or crematory;

(d) the direct or indirect payment or offer of payment of a commission by the licensee, his agent, assistants or employees for the purpose of securing business for that particular ~~funeral establishment~~ mortuary, mortician, or crematory; provided however, that compliance with a state pre-need shall not constitute a violation thereof;

(e) will remain the same.

(f) allowing the licensee's license number to be placed on a death certificate or any other official form of any dead human body as the mortician or ~~embalmer~~ funeral director, if the licensee did not prepare the body or supervise the final disposition of that body;

(g) will remain the same.

(h) failure to provide ~~merchandise~~ funeral goods that the consumer selected, or substitution of funeral goods~~,~~ or services ~~or merchandise~~ without the consumer's knowledge or consent;

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

(m) violation of applicable statutes ~~of a~~ or regulations of the state of Montana or any other state involved ~~having to do~~ with the pre-arrangement and/or pre-financing of a funeral;

(n) will remain the same.

(o) knowingly making false statements regarding other ~~licensed funeral personnel or mortuaries~~ licensees;

(p) will remain the same.

(q) personnel of a ~~funeral establishment~~ mortuary, crematory or cemetery whose services are desired shall not recommend auxiliary services or ~~merchandise~~ funeral goods or deprive the consumer the freedom of choice for such services or ~~merchandise~~ funeral goods;

(r) removing or possessing dental gold, ~~or~~ dental silver, or any other personal effects, from deceased persons without specific written permission of the ~~authorized~~ authorizing agent;

(s) will remain the same.

(t) failure to deposit or keep on deposit, misapply, misappropriate, or to repay on valid demand, any and all moneys received in payment for pre-need funeral goods or services;

(u) failure to comply with statutory or board requirements for pre-need or prepaid arrangements, agreements,

or trusts; or failure to disclose any material facts regarding pre-need or prepaid arrangements, agreements or trusts; or

(v) in circumstances where there is conflict in direction provided by authorizing agents of equal rank, it shall be considered unprofessional conduct for a licensee to proceed without requiring the parties to either come to agreement, or submit the matter for judicial resolution of the conflict.

Auth: Sec. 37-1-131, 37-1-136, 37-1-319, 37-19-202, MCA
IMP: Sec. 37-1-136, 37-1-316, MCA

REASON: The Board is proposing to amend this section to clarify unprofessional conduct. Subsections (t) and (u) are being proposed to address unprofessional conduct in connection with pre-need funeral goods or services and subsection (v) is being proposed to address authorization conflicts.

8.30.801 CREMATORY FACILITY REGULATION (1) through (3) will remain the same.

(4) The crematory operator is responsible for the maintenance and safe operation of ~~retort~~ equipment used in cremations.

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

(9) Prior to beginning the cremation process, the crematory must have in its possession, written authorization(s) bearing the original, photocopied, or facsimile signatures of the authorizing agent and, if the death occurred in Montana, the coroner having jurisdiction or the state medical examiner.

(10) Unauthorized persons may not be permitted in the cremation chamber area while any human remains are being placed within the cremation chamber, being cremated, or being removed from the cremation chamber. For this purpose authorization may be provided by the licensee performing the cremation or the authorizing agent.

Auth: Sec. 37-19-202, 37-19-703, MCA
IMP: Sec. 37-19-703, 37-19-705, MCA

REASON: The board is proposing these amendments to address the problem of authorization and to clarify who may be present during the cremation process.

8.30.805 PROCESSING OF CREMATED REMAINS (1) Upon completion of the cremation process, the recoverable residual of the cremation process shall be removed from the ~~retort~~ cremation chamber and the cremation chamber swept clean. All non-human residue shall be separated from the residue of human remains and placed in an enclosed, puncture-resistant container, and securely taped or capped to prevent the loss or exposure of contents during waste disposal. The residual cremated human remains shall be placed within a container or tray in such a way that will ensure against commingling with

other cremated remains. The identifying metal disc shall be removed from the control panel area and attached to the container or tray of cremated human remains to await final processing.

(a) The authorizing agent may specify that recoverable non-human residue that can be identified, in a manner satisfactory to the crematory operator in charge, as being related to that cremation may be returned to the custody of the authorizing agent.

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

Auth: Sec. 37-19-202, 37-19-703, MCA
IMP: Sec. 37-19-704, 37-19-705, 37-19-706, MCA

REASON: The Board is proposing this amendment to clarify the handling of cremated remains.

8.30.904 PERPETUAL CARE AND MAINTENANCE FUND REPORTS (1) A cemetery shall be required to submit an annual report. The report ~~may~~ shall consist of the certificate of the accountant or auditor preparing such statement and shall be deemed to have been complied with when prepared by an ~~licensed~~ independent certified public accountant or a licensed public accountant, provided that such statements fully and accurately disclose the position of the perpetual care and maintenance fund, and that such certificate does not contain disclaimers or qualifications such as to preclude the rendering of an independent opinion. Failure to provide the annual report shall void the operating license of the cemetery.

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

(a) A cemetery authority may request waiver or reduction of a fine by making a written request ~~therefor~~. The request shall be postmarked within 30 days of notice of the fine, and shall be accompanied by a statement showing good cause for the request.

(b) and (c) will remain the same.

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

REASON: This rule amendment is being proposed to clarify that it is mandatory to have the certificate of an accountant rather than permissive.

8.30.907 RESTRICTIONS ON OFFICERS (1) No director or officer of any cemetery authority, or as the partner or agent of others, shall directly or indirectly~~, for the director or officer, or as the partner or agent of others,~~ borrow any funds of the cemetery corporation or association, including perpetual care and maintenance funds. No director shall become an ~~indorser~~ endorser or surety for loans to others, nor in any manner be an obligor for money borrowed of or loaned by the corporation or association. No corporation, of which a

director or an officer is a stockholder, or in which either of them is in any manner interested, shall borrow any of the funds of the corporation or association.

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

REASON: This rule is being amended to correct the spelling of the word endorser and for clarification purposes.

8.30.908 TRANSFER OF CEMETERY OWNERSHIP (1) through (3) will remain the same.

(4) Every cemetery authority shall post and continuously maintain at the main public entrance to the cemetery, a sign specifying the current name and mailing address of the cemetery authority, a statement that the name and mailing address of each director and officer of the cemetery authority may be obtained by contacting the board of funeral service of the department of commerce and the mailing address of the board of funeral service. Such signs shall be at least 16 inches high and 24 inches wide and shall be prominently mounted upright and vertical.

(5) will remain the same.

Auth: Sec. 37-19-807, MCA
IMP: Sec. 37-19-815, MCA

REASON: This rule is being amended to indicate that only the mailing address of the Board is required and not the physical address. This is to eliminate the necessity of replacing signage if the Board should move to another physical address.

8.30.909 PERPETUAL CARE AND MAINTENANCE FUNDS

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

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

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

REASON: This amendment is being proposed for clarification purposes to indicate that it is mandatory to set up a perpetual care and maintenance fund and is not permissive.

4. ARM 8.30.606, which can be found on page 8-936 of the Administrative Rules of Montana, is proposed to be repealed because its content is being moved to a new Sub-Chapter 10.

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

5. The proposed new rules provide as follows:

NEW RULE I BRANCH FACILITY (1) A branch facility need only consist of space for the purpose of visitation and funeral rites. A branch facility shall not include a preparation room nor shall funeral arrangements or sales of funeral goods or services be permitted. An annual renewal fee is required but no inspection will be mandated.

Auth: Sec. 37-19-101, 37-19-202, 37-19-402, 37-19-403, MCA
IMP: Sec. 37-19-101, 37-19-202, 37-19-402, 37-19-403, MCA

REASON: The enabling statutes allow the board to establish a branch facility that may or may not have a suitable visitation room and that is owned by, a subsidiary of, or otherwise financially connected to or controlled by, a licensed mortuary. The Board believes a branch facility need not be inspected annually as there should be no provisions for preparation of remains, conduct of funeral arrangements, or sales of services or funeral goods. This rule is proposed to establish licensing of a branch facility.

NEW RULE II DEFINITIONS (1) "Cemetery authority" is defined as being the same as "cemetery company" as set forth in 37-19-101, MCA.

(2) "Guaranteed price agreement" means a prepaid funeral agreement under which, in exchange for the proceeds of a funeral trust or funeral insurance policy, the provider agrees to provide the stated funeral goods and services in the future, regardless of whether or not the retail value of those services and funeral goods exceeds the funds available from the funeral trust or funeral insurance policy at the time of death of the intended funeral recipient.

(3) "Intended funeral recipient" means the person named in a prepaid funeral agreement for whose bodily disposition and/or related funeral services and goods the prepaid funeral agreement is intended to provide. The intended funeral recipient may or may not be the purchaser. This term includes the agent, guardian, or other person legally acting on behalf of the person considered the "intended funeral recipient."

(4) "Non-guaranteed price agreement" means a prepaid funeral agreement funded with a funeral trust or funeral insurance policy, the proceeds of which the provider will apply to the current retail value of the prepaid funeral goods and services previously selected at the time of death of the

intended funeral recipient, but which agreement shall not bind the provider to provide the services and funeral goods if the value thereof exceeds the funds available at the time of death of the intended funeral recipient.

(5) "Pre-need funeral arrangement" or "pre-need funeral agreement" means arrangements made with a licensed funeral director or licensed mortician by a person on the person's own behalf or by an authorized individual on the person's behalf prior to the death of the person.

(6) "Prepaid funeral agreement" means a written agreement and all documents related thereto made by a purchaser with a provider prior to the death of the intended funeral recipient, with which there is connected a provisional means of paying for pre-need funeral arrangements upon the death of the intended funeral recipient by the use of a funeral trust or funeral insurance policy, made payable to a provider and in return for which the provider promises to furnish, make available or provide the prepaid funeral goods or services, or both, specified in the agreement, the delivery of which occurs after the death of the intended funeral recipient.

(7) "Prepaid funeral goods" means funeral goods purchased in advance of need and which will not be delivered until the death of the intended funeral recipient named in a prepaid funeral agreement. Prepaid funeral goods shall not mean the sale of interment spaces offered or sold by a cemetery company.

(8) "Funeral goods" means personal property typically sold or provided in connection with a funeral or the final disposition of human remains, including, but not limited to, caskets or other primary containers, cremation or transportation containers, outer burial containers, vaults, funeral clothing or accessories, monuments, cremation urns, and similar funeral or burial items.

(9) "Funeral services" means those services typically provided in connection with a funeral, or the final disposition of human remains, including, but not limited to, funeral directing services, embalming services, care of human remains, preparation of human remains for final disposition, transportation of human remains, use of facilities or equipment for viewing human remains, visitation, memorial services or services which are used in connection with a funeral or the disposition of human remains, coordinating or conducting funeral rites or ceremonies and similar funeral or burial services.

(10) "Prepaid funeral services" means funeral services which are purchased in advance of need and which will not be provided or delivered until the death of the intended funeral recipient named in a prepaid funeral agreement. Prepaid funeral services shall not mean the sale of services incidental to the provision of interment spaces offered or sold by a cemetery company.

(11) "Provider" means a licensed mortician or the licensed mortuary by whom the licensed mortician is employed,

that is providing or offering to provide at-need, pre-need or prepaid funeral arrangements, funeral goods or services.

(12) "Purchaser" means the person named in a prepaid funeral agreement who purchases the prepaid funeral goods and services to be provided thereunder. The purchaser may or may not be the intended funeral recipient. If the purchaser is different than the intended funeral recipient, it is understood that the relationship of the purchaser to the intended funeral recipient includes a means to provide administrative control over the agreement on behalf of the intended funeral recipient.

Auth: Sec. 37-1-131, 37-19-101, 37-19-202, MCA
IMP: Sec. 37-19-827, 37-19-828, 37-19-829, MCA

NEW RULE III PREARRANGED, PREFINANCED OR PREPAID FUNERALS (1) Mortuaries, crematories and cemeteries shall provide information to allow a continuing opportunity to all persons to consider, in advance and prior to need, the type and prices of the funeral or alternative thereto which best meets their needs. All prearranged, prefinanced or prepaid funerals shall be according to the law and rules of the state of Montana.

Auth: Sec. 37-1-131, 37-19-101, 37-19-202, MCA
IMP: Sec. 37-19-827, 37-19-828, 37-19-829, MCA

NEW RULE IV REQUIREMENTS FOR SALE OF AT-NEED, PRE-NEED AND PREPAID FUNERAL ARRANGEMENTS (1) No person, firm or corporation shall sell or offer to sell, or make or offer to make at-need funeral arrangements, pre-need funeral arrangements or prepaid funeral agreements, unless that person is a duly licensed mortician or funeral director.

(2) Any and all moneys paid to a funeral director, mortician, mortuary, cemetery, or any other person, firm or corporation, under or in connection with an agreement for the sale of personal property to be used in connection with a funeral or burial, or for the furnishing of personal services are not to be rendered until the occurrence of the death of the person for whose funeral or burial such funeral goods or services are to be furnished shall be trust funds in the possession of such funeral director, mortician, mortuary, cemetery, or other person, firm or corporation. Said trust funds shall be deposited within three business days after receipt thereof in a special account maintained exclusively for the deposit of such moneys in a banking institution, savings or building and loan association or credit union that must have its principal place of business in this state and must be organized under the laws of this state or of the United States. Said trust funds shall be held on deposit, together with any interest thereon until said personal property has been delivered and said personal services have been rendered, unless sooner repaid, in whole or in part.

(a) A receipt for the deposited funds shall be returned to the purchaser by the depository institution.

(b) No depository institution shall be liable for the misuse, misapplication or improper withdrawal by any such funeral director, mortician, mortuary, cemetery or other person, firm or corporation, of any moneys deposited in such depository institution pursuant to this subchapter.

Auth: Sec. 37-1-131, 37-19-101, 37-19-202, MCA
IMP: Sec. 37-19-827, 37-19-828, 37-19-829, MCA

NEW RULE V PRE-NEED FUNERAL AGREEMENTS (1) Every pre-need funeral agreement executed in this state shall be reduced to writing, and must:

(a) be signed by the provider and by the purchaser or the intended funeral recipient or the intended funeral recipient's guardian, agent or next of kin, and

(b) include at least the following information:

(i) the name, address and telephone number of the mortuary intended to be utilized at the time of the agreement;

(ii) the name and license number of the individual licensee acting as or on behalf of the provider;

(iii) the purchaser's name, address and social security number;

(iv) the name, address and social security number of the intended funeral recipient;

(v) both a copy of the provider's current general price list and an itemized statement of funeral goods and services to be included in the agreement;

(vi) full and complete disclosure of how the agreement is to be funded;

(vii) whether the agreement is a guaranteed price agreement or non-guaranteed price agreement, which term, as applicable, shall be defined in the agreement in accordance with this subchapter; together with complete disclosure of how the planned funeral expenses shall be funded in the event the funds held by the trust are insufficient and means of disposition of any proceeds of the trust in excess of that needed for planned funeral goods and services;

(viii) complete disclosure of rates of interest to be accrued on the invested funds, including any fees to be charged against the invested funds, how those fees are determined and how, when and to whom such fees are paid.

(ix) full identification of the depository institution where the funds will be held, together with all pertinent account numbers or other means whereby the funds may be identified.

(c) provide that all funeral arrangements and prepaid funeral trust agreements are revocable upon demand of the purchaser, if alive, and if not, then by the intended funeral recipient where they are different persons. The amount of any and all moneys paid under or in connection with such an agreement together with any and all interest, if any, accrued thereon while on deposit shall be repaid on demand at any time

prior to the delivery of the prepaid funeral goods or the performance of the prepaid funeral services. Upon the death of the intended funeral recipient, the intended funeral recipient's authorizing agent shall have the right to revoke the funeral arrangements and to sever the funeral funding arrangements from the funeral arrangements; except however, as provided in 37-19-708, MCA the means of disposition specified by the pre-need funeral agreement may not be changed by the authorizing agent. In those instances where a prepaid funeral agreement is revoked, the moneys used to fund the agreement, including all principal and all accrued interest, shall be paid to:

(i) the purchaser if alive, and if not, then to the personal representative or estate of the deceased purchaser; or

(ii) the intended funeral recipient if the funds originally paid for a prepaid funeral agreement belonged to the intended funeral recipient and the agreement is funded through a trust; or

(iii) the named beneficiaries on the insurance policy if the agreement is funded through a funeral insurance policy.

(d) notwithstanding the provisions of (c) above to the contrary, an agreement may provide that the trust shall be irrevocable during the lifetime of the beneficiary, if at the time of the signing of an agreement, the intended funeral recipient of the trust is an applicant for or recipient of, benefits pursuant to the regulations of any public assistance agency or the medicaid program and utilizing the eligibility criteria of the supplemental social security income program in regard to burial spaces and funds set aside for burial expenses; or, a person who reasonably anticipates applying for, or receiving, such benefits within six months. A prepaid funeral agreement made irrevocable pursuant to this subchapter shall not affect the selection of funeral goods or services or the selection of the funeral home. If the intended funeral recipient of the trust enters into an agreement, reasonably anticipating that the intended funeral recipient will become an applicant for, or recipient of these programs within six months from the execution of the agreement, the agreement shall provide that, in the event the intended funeral recipient does not become an applicant for, or recipient of, any of these programs within the six month period, the trust shall revert to a revocable trust.

(e) in circumstances wherein the agreement is made irrevocable, provisions must be made for a change of provider at the sole discretion of the purchaser or intended funeral recipient, without financial penalty or charge for such a change.

(f) provide that, unless otherwise specified therein, a prepaid funeral agreement anticipates the provision of prepaid funeral goods and services in the area served by the provider. The agreement shall further provide that, if the intended funeral recipient's place of death is in a location other than that served by the provider, alternative funeral arrangements

will be necessary unless otherwise provided for in the terms of the agreement.

(g) provide for the provider's substitution of any funeral goods or services to be furnished or rendered thereunder for funeral goods of equal quality, value and workmanship, or services of equal quality and value in the event of the unavailability of any funeral goods or services set forth in the agreement. Any change in the price of the agreement resulting from such substitution of funeral goods and/or services shall be reflected in the statement of funeral goods and services rendered.

(h) provide that, in the case of an agreement funded through a funeral trust, if the purchaser predeceases the intended funeral recipient where they are different persons, and no provision is made within the agreement for designation of the purchaser's successor, then the intended funeral recipient shall automatically assume the legal right to administer the funeral trust as purchaser, including the right to withdraw any and all funds held in the funeral trust, and with all other rights formerly held by the purchaser.

(2) Any provision of any such agreement whereby a person who pays money under or in connection therewith waives any provision of these rules shall be void.

Auth: Sec. 37-1-131, 37-19-101, 37-19-202, MCA
IMP: Sec. 37-19-827, 37-19-828, 37-19-829, MCA

NEW RULE VI TRUST FUNDS (1) The trustees of a trust fund established pursuant to this subchapter shall be entitled to withdraw administrative expenses of not more than 1% per annum of the interest earnings of the trust fund. All expense incurred in the administration of such a trust or the services rendered thereby shall be deducted from income received by the trustees, and in no event shall the trustee invade the corpus of the trust funds.

(2) No licensee of the Montana board of funeral service, or any director, officer, or employee of any mortuary, cemetery, crematory, or other provider shall directly or indirectly, for the director or officer, or as the partner or agent of others, borrow any prepaid funeral trust funds, including principal or accrued interest. No such person shall become an endorser or surety for loans to others, nor in any manner be an obligor for money borrowed from or loaned by the prepaid funeral trust. No business entity, of which a mortician, funeral director, mortuary employee, mortuary owner or family member of a mortician or funeral director, mortuary owner, or mortuary employee or business entity in which either of them is in any manner interested, shall borrow any of the funds of a pre-need funeral trust.

Auth: Sec. 37-1-131, 37-19-101, 37-19-202, MCA
IMP: Sec. 37-19-827, 37-19-828, 37-19-829, MCA

REASON: The board is promulgating New Rules II-VI to implement the authority given to the Board by the 56th Legislature to regulate pre-need arrangements and funeral trusts.

6. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Funeral Service, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile, number (406) 444-1667, and must be received no later than 5:00 p.m., April 13, 2000.

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

8. The Board of Funeral Service maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. Persons who wish to have their name added to the list shall make a written request to the board which request shall include the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Funeral Service administrative rulemaking or other administrative proceedings. Such written request may be mailed or delivered to the Board of Funeral Service, 111 North 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 Board of Funeral Service.

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

BOARD OF FUNERAL SERVICE
JEAN RUPPERT, BOARD CHAIR

Annie M. Bartos

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

Annie M. Bartos

BY:

ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, March 6, 2000

BEFORE THE BOARD OF OCCUPATIONAL THERAPISTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to fees	)	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF ARM 8.35.407

TO: All Concerned Persons

1. On April 5, 2000, at 9:00 a.m., a public hearing will be held in the Division of Professional and Occupational Licensing conference room, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana to consider the proposed amendment of the above-stated rule.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Commerce no later than 5:00 p.m., on March 29, 2000, to advise us of the nature of the accommodation that you need. Please contact Helena Lee, Board of Occupational Therapists, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 444-3091; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-1667.

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

8.35.407 FEES (1) will remain the same.

(a)	Applications for licensure	$ ~~20~~ 80
(b)	Initial license issuance	~~20~~ 80
(c)	License renewal	~~20~~ 80
(d)	Late license renewal	~~20~~ 40
(e)	Temporary practice permit	~~10~~ 60
(f)	Inactive fee renewal	~~10~~ 30
(g)	will remain the same.	
(h)	License verification fee	~~10~~ 30

(2) will remain the same.

Auth: Sec. 37-1-131, 37-1-134, 37-24-201, 37-24-202, MCA
IMP: Sec. 37-24-310, MCA

REASON: The proposed changes in the fees are commensurate with the program costs for the Board of Occupational Therapists. Under the current fee schedule, the Board's projected revenue is $9,465 and the Board's projected expenses for fiscal year 2000 are $36,326. The proposed fee increases will generate revenue of approximately $31,830. The proposed fee increase will affect approximately 420 licensees and applicants.

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 Occupational Therapists, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile, number (406) 444-1667, and must be received no later than 5:00 p.m., April 13, 2000.

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

6. The Board of Occupational Therapists maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Occupational Therapists administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Occupational Therapists, 111 North 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 Board of Occupational Therapists.

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

BOARD OF OCCUPATIONAL THERAPISTS
LINDA BOTTEN, 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, March 6, 2000

BEFORE THE BOARD OF SPEECH-LANGUAGE PATHOLOGISTS
AND AUDIOLOGISTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to fees	) NOTICE OF THE PROPOSED) AMENDMENT OF ARM 8.62.413) FEES

NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On April 15, 2000, the Board of Speech-Language Pathologists and Audiologists proposes to amend the above-stated rule.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Commerce no later than 5:00 p.m., on April 5, 2000, to advise us of the nature of the accommodation that you need. Please contact Helena Lee, Board of Speech-Language Pathologists and Audiologists, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 444-3091; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-1667.

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

8.62.413 FEES (1) The initial application for speech-language pathologist and/or audiologist license shall be accompanied by a fee of ~~$5~~ 25, which is non-refundable (separate fee for temporary license, see (7) below).

(2) will remain the same.

(3) The initial license fee for a speech-language pathologist shall be ~~$5~~ 25.

(4) The initial license fee for an audiologist shall be ~~$5~~ 25.

(5) The initial fee for a combined speech-language pathology/audiology license shall be ~~$5~~ 25.

(6) The initial fee for ~~a probationary~~ an active temporary speech-language pathology and/or audiology license shall be ~~$5~~ 25.

(7) and (8) will remain the same.

(9) The combined application and license fee for a temporary license for a speech-language pathologist and/or audiologist shall be ~~$10~~ 50.

(10) will remain the same.

(11) A fee of ~~$10~~ 20 shall be charged the licensed speech-language pathologist and/or audiologist to place the license on inactive status.

(12) Renewal fees will be ~~$20~~ 40.

(13) Late renewal fee will be $20.

Auth: Sec. 37-1-134, 37-15-202, 37-15-307, 37-15-308, MCA

IMP: Sec. 37-15-307, 37-15-308, MCA

REASON: The proposed changes in the fees are commensurate with the program costs for the Board of Speech-Language Pathologists and Audiologists. Under the current fee schedule, the Board's projected revenue is $8,810 and the Board's appropriation for fiscal year 2000 is $17,051. The proposed fee increase will generate projected revenue of $17,050 or an increase of $8,240. The fee increase will affect approximately 300 current licensees and applicants.

4. Concerned persons may submit their data, views or arguments concerning the proposed actions in writing to the Board of Board of Speech-Language Pathologists and Audiologists, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile, number (406) 444-1667, to be received no later than 5:00 p.m., April 13, 2000.

5. If persons who are directly affected by the proposed actions wish to express their data, views or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit the request along with any comments they have to the Board of Speech-Language Pathologists and Audiologists, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., April 13, 2000.

6. If the Board receives requests for a public hearing on the proposed actions from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed actions, from the appropriate administrative rule review committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 30 based on the 300 licensed speech-language pathologists and audiologists in Montana.

7. The Board of Speech-Language Pathologists and Audiologists maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Speech-Language Pathologists and Audiologists administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Speech-Language Pathologists and Audiologists, 111 North 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 Board of Speech-Language Pathologists and Audiologists.

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

BOARD OF SPEECH-LANGUAGE
PATHOLOGISTS AND AUDIOLOGISTS
TERI BEAN, 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, March 6, 2000.

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

In the Matter of the Proposed Amendment of a Rule Pertaining to the Meaning and Effect of the Landfill Closure Provision in Class D Motor Carrier Authorities	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF ARM 38.3.130

TO: All Concerned Persons

1. On April 13, 2000, at 10:00 a.m., a public hearing will be held in the Bollinger Room, Public Service Commission (PSC) offices, 1701 Prospect Avenue, Helena, Montana, to consider an amendment to ARM 38.3.130.

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 April 6, 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 rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

NOTE: For the purpose of identifying or framing the issue involved in this rulemaking, new subsection (3) is stated in the alternative, only one of which will be the rule as adopted.

38.3.130 MEANING AND EFFECT OF CLASS D LANDFILL CLOSURE PROVISION (1) and (2) remain the same.

~~(3) This rule is effective on and after January 1, 2000.~~

[ALTERNATIVE A] (3) In Class D motor carrier authorities which include a required termination point the landfill closure provision does not allow continuation of a movement from the termination point to a certified landfill, unless it can be demonstrated that a legal landfill or facility accepting solid waste existed within the termination point at any time within one year prior to July 1, 1977 (effective date of law establishing Class D motor carrier authority, Ch. 138, L. 1977).

[ALTERNATIVE B] (3) In Class D motor carrier authorities which include a required termination point the landfill closure provision allows continuation of the movement from the termination point to a certified landfill.

AUTH: 69-12-201, MCA
IMP: 69-12-201, MCA

4. Amendment of this rule is necessary to resolve conflicting interpretations, views, and opinions regarding the proper application of the PSC's Class D motor carrier "landfill closure provision" in instances where underlying Class D authorities have required termination points, so that all Class D carriers and other interested persons will understand how the provision is to be interpreted and applied. The effective date of the existing rule is proposed for repeal because it is no longer required.

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 April 13, 2000. (PLEASE NOTE: When filing comments pursuant to this notice please reference "Docket No. L-00.2.2-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, do not apply.

Dave Fisher

Dave Fisher, Chairman

Robin A. McHugh

Reviewed By Robin A. McHugh

CERTIFIED TO THE SECRETARY OF STATE MARCH 6, 2000.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed adoption of New Rule I and amendment of ARM 42.15.801, 42.15.802, 42.15.803, and 42.15.804 relating to Family Education Savings Program Account Rules	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On April 6, 2000, at 9:00 a.m., a public hearing will be held in the Fourth Floor Conference Room of the East Wing to the Sam W. Mitchell Building, 125 North Roberts, Helena, Montana, to consider the adoption of new rule I and amendment of ARM 42.15.801, 42.15.802, 42.15.803, and 42.15.804 relating to family education savings account rules.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, and proceed to Room 455, where they will sign in and receive a visitor's pass to attend the hearing.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue not later than 5:00 p.m., March 31, 2000, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 5805, Helena, Montana 59604-5805; telephone (406)444-2460; fax (406)444-3696; or e-mail canderson@state.mt.us.

3. The proposed new rule I does not replace or modify any section currently found in the Administrative Rules of Montana. The rule proposed to be adopted provides as follows:

NEW RULE I DEFINITIONS The following definitions apply to this sub-chapter:

(1) "Program" means the family education savings program established pursuant to the Act.

(2) "Program manager" means a financial institution selected pursuant to 15-62-203, MCA. The term also includes a depository.

AUTH: 15-30-305 and 15-62-201, MCA
IMP: 15-30-111, 15-62-103, and 15-62-201, MCA

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

42.15.801 ~~EDUCATIONAL~~ FAMILY EDUCATION SAVINGS PROGRAM ACCOUNT OWNERS AND DESIGNATED BENEFICIARIES (1) Designated beneficiaries ~~must be~~ do not need to be a member of the account owner's family ~~as defined by 15-62-103, MCA~~.

(2) remains the same.

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

~~(4)~~(3) Account owners may name only one designated beneficiary per account. Designated beneficiaries may be changed as provided by 15-62-202, MCA.

AUTH: 15-30-305 and 15-62-201, MCA
IMP: 15-30-111, 15-62-202, and 15-62-206, MCA

42.15.802 CONTRIBUTIONS TO ~~EDUCATIONAL~~ FAMILY EDUCATION SAVINGS PROGRAM ACCOUNTS (1) through (3) remain the same.

(4) ~~Married taxpayers filing a joint return who have separate educational family savings accounts are each entitled to claim a deduction for contributions made to their individual accounts. Each spouse may deduct the contributions made to his or her individual account, not to exceed $3,000.~~ A taxpayer may contribute to more than one family education savings account during a tax year. The total deduction for contributions made to all accounts by the taxpayer may not exceed $3,000.

(5) Married taxpayers may each deduct up to $3,000 for contributions made to family education savings accounts during the tax year.

AUTH: 15-30-305 and 15-62-201, MCA
IMP: 15-30-111, 15-62-204, and 15-62-201, MCA

42.15.803 WITHDRAWALS FROM ~~EDUCATIONAL~~ FAMILY EDUCATION SAVINGS PROGRAM ACCOUNTS (1) through (3) remain the same.

(4) Internal Revenue Code, 26 U.S.C. 529(c)(3) shall apply for purposes of determining what portion of a withdrawal is a withdrawal of contributions and what portion is a withdrawal of earnings.

(5) The portion of a nonqualified withdrawal that is not treated as the withdrawal of earnings shall be treated as:

(a) first, out of nondeductible contributions not previously withdrawn; and

(b) second, out of deductible contributions not previously withdrawn.

(6) The taxpayer shall have the burden of sustaining a claim that all or a portion of the contributions withdrawn were not attributable to deductible contributions. There shall be a presumption that a withdrawal is a nonqualified withdrawal of deductible contributions.

AUTH: 15-30-305 and 15-62-201, MCA
IMP: 15-30-111 and 15-62-201, MCA

42.15.804 VERIFICATION OF ~~EDUCATIONAL~~ FAMILY EDUCATION SAVINGS PROGRAM ACCOUNT CONTRIBUTIONS AND WITHDRAWALS

(1) ~~Taxpayers claiming a deduction for contributions to educational family savings accounts must attach to their tax return each year, verification as prescribed by the department, showing account contributions, interest earned on contributions, withdrawals, and any penalties assessed on nonqualifying withdrawals from the account.~~ Each program manager shall provide to the department for each tax year a report identifying

all contributions made to family education savings accounts during such year. Such report shall be in electronic form that is sortable by names and social security numbers. The form shall include for each contributor and designated beneficiary the following:

(a) full name;

(b) last reported address;

(c) amount of the contributions; and

(d) social security number.

(2) Each program manager shall provide to the department for each tax year a copy of the report prepared for the internal revenue service on withdrawals from family education savings accounts. Such report shall be in electronic form that is sortable by names and social security numbers of the distributees (i.e., the designated beneficiary, account owner or estate that is treated as having withdrawn the funds for federal income tax purposes).

(3) At the request of the department, each program manager shall provide to the department copies of any other reports about accounts that it provides to either the internal revenue service or the board of regents. These reports shall contain the same information and be provided in the same format as those provided to either the internal revenue service or the board of regents.

AUTH: 15-30-305 and 15-62-201, MCA
IMP: 15-30-111 and 15-62-201, MCA

4. The department is proposing New Rule I to define the terminology which is not defined by statute.

The department is proposing the amendments to ARM 42.15.801 to follow the uniform practice between the board of regents and the department which states that the original designated beneficiary does not have to be a member of the account owner's family. Section 15-62-202, MCA, provides that if the account owner changes beneficiary, the next beneficiary must be a member of the former beneficiary's family. The deletion of (3) in ARM 42.15.801 is necessary because this information is covered in (1) of the same rule.

The amendments to ARM 42.15.802(4) are necessary to clarify that married couples do not need to open separate accounts in order to qualify for the $3,000 deduction for each contributor.

Amendments to ARM 42.15.803(4) through (6) are being made at the request of the College Savings Bank to help clarify the withdrawal process and how such withdrawals are to be treated. The department agrees that these amendments are necessary to clear up confusion regarding the recovery of previously deducted contributions.

The amendments to ARM 42.15.804(1) clarify the process regarding what is required from the program manager annually to verify the contributions. This information includes a list of account owners and how much they contributed. The taxpayer will not be required to provide this information since the program manager will provide it. Therefore, the rule must be amended to reflect this change in practice. The amendment to (2) refers to

the requirement in the law to retain copies of documents by the account owners and designated beneficiaries for the program manager.

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:

Cleo Anderson
Department of Revenue
Director's Office
P.O. Box 5805
Helena, Montana 59604-5805

and must be received no later than April 14, 2000.

6. Cleo Anderson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

7. The Department of Revenue 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 particular subject matter or matters. Such written request may be mailed or delivered to the person in 5 above or faxed to the office at (406)444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

Cleo Anderson
CLEO ANDERSON
Rule Reviewer

Mary Bryson
MARY BRYSON
Director of Revenue

Certified to Secretary of State March 6, 2000

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I through V relating to Declaratory Rulings	))))	NOTICE OF PROPOSED ADOPTION NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On April 28, 2000, the Department proposes to adopt new rules I through V relating to declaratory rulings.

2. The Department of Revenue 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 Revenue no later than 5:00 p.m. on April 3, 2000, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 5805, Helena, Montana 59604-5805; telephone (406)444-2855; fax number (406)444-3696; e-mail address canderson@state.mt.us.

3. The proposed new rules do not replace or modify any section currently found in the Administrative Rules of Montana. The proposed new rules provide as follows:

RULE I INTRODUCTION (1) A person taking or wishing to take a particular action may be unsure whether a department rule or statute applies to that action. Section 2-4-501, MCA, provides a person the opportunity to petition the department for a declaratory ruling as to the applicability of a statute, regulation, or order applicable to a petitioner's activity or proposed activity.

AUTH: 15-1-201, MCA
IMP: 2-4-501, MCA

RULE II CONTENT OF PETITION (1) A petition for declaratory ruling must be typewritten or printed.

(2) The petition must include:

(a) the name and address of petitioner;

(b) a detailed statement of the facts upon which petitioner requests the department to base its declaratory ruling;

(c) sufficient facts to show that petitioner will be affected by the requested ruling;

(d) the statute, rule or order for which petitioner seeks a declaratory ruling;

(e) the questions presented;

(f) propositions of law asserted by petitioner;

(g) the specific relief requested; and

(h) the name and address of any person known by petitioner to be interested in the requested declaratory ruling.

(3) The following sample form should be used.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of (summary) Example: the application of John Doe, a liquor license owner, for a declaratory ruling on the applicability of 16-4-413, MCA, to his new location	)))))))	PETITION FOR DECLARATORY RULING

1. Petitioner's name and address is (provide name and address of petitioner).

2. (Provide summary of facts). (Example: Petitioner previously applied for the transfer of ownership and location of a Montana beer/wine license for on-premises consumption, pursuant to the floor plan submitted with the application. Petitioner's application to transfer was granted by the department's hearing examiner on July 17, 1997, but was denied by the Director of the department on December 19, 1997.

Petitioner intends to apply to the department for transfer of license to a new premises to be located in an addition to the same building.

The new license application will apply only to the proposed new premises defined by the submitted floor plan. The new premises would have its own entrance/exit door to the outside, and would also have its own restrooms. The connecting door to the old premises is able to be locked blocking it off from the new premises.

Petitioner contends that the proposed new premises constitutes a different premises than the old premises for which the previous license transfer application was denied. Section 16-4-413, MCA. Before taking any further action, the Petitioner must know whether the department considers that the new premises constitutes a different premises than the premises previously denied.)

3. The statute, regulation, or order to which Petitioner requests a declaratory ruling is (list statute, regulation or order) which provides (list the pertinent provisions of the statute, regulation, or order identified above).

4. The question presented for declaratory ruling by the department is (explain the questions being presented to the department) (Example: Petitioner seeks a declaration that the proposed new premises constitutes a different premises than that which was previously denied, thus negating the five-year moratorium of section 16-4-413, MCA.)

5. Petitioner contends that (provide reasons). (Example: The proposed new premises constitutes premises that are different from that which were previously applied for and denied, and thus the five-year moratorium under 16-4-413, MCA, is inapplicable to such proposed new application and the department may consider such proposed new application and issue a license for the proposed new premises.)

6. Petitioner requests a declaratory ruling that (provide the ruling that is sought by the petitioner). (Example: The proposed new premises constitutes a different premises from that which was denied a transfer application, and thus the five-year moratorium outlined in 16-4-413, MCA, is inapplicable to such proposed new application and the department may consider such proposed new application and issue a license for the proposed new premises.)

7. (Option 1:) Petitioner knows of no other party similarly affected or otherwise interested.

(Option 2:) Petitioner knows of the following parties who are similarly affected or otherwise interested: (list the parties that are similarly affected).

Dated this ____ day of _____, ____.

_____
(Name of Petitioner)

(4) The department reserves the right to ask additional questions if the petitioner's intent is not clearly stated.

(5) The petition should be mailed directly to the director of the Department of Revenue, P.O. Box 5805, Helena, Montana 59604-5805.

AUTH: 15-1-201, MCA
IMP: 2-4-501, MCA

RULE III ACCEPTANCE OR DENIAL OF A PETITION FOR A DECLARATORY RULING (1) Upon receipt of a petition, the department will make its best effort to either accept or deny the petition within 60 days of receipt of the petition.

(2) If the petition is accepted, the department will notify the petitioner of the acceptance and how the department intends to proceed regarding the matter.

(3) If for good cause shown, the department determines an oral hearing is necessary, the petitioner will be provided notice of the date, time, and place for the hearing.

(4) If the department denies a petition for declaratory ruling, the department shall mail a copy of the order denying the petition to all persons named in the petition.

(5) An order denying a petition must include a statement of the grounds for the denial and the petitioner's right to appeal the denial for a declaratory ruling within 30 days to the district court.

AUTH: 15-1-201, MCA
IMP: 2-4-315, 2-4-501 and 2-4-702, MCA

RULE IV RECORD OF DECLARATORY RULING (1) The record in a declaratory ruling proceeding shall include:

(a) the petition;

(b) a statement of matters officially noticed;

(c) if for good cause shown the department has held hearings on the petition, a stenographic record of the proceedings when requested by a party; and

(d) the department ruling.

(2) The stenographic record of oral proceedings or any part thereof shall be transcribed on request of any party. Unless otherwise provided by statute, the cost of transcription shall be paid by the requesting party.

(3) Pursuant to 2-4-703, MCA, the petitioner may appeal the declaratory ruling within 30 days to the district court.

AUTH: 15-1-201, MCA
IMP: 2-4-501 and 2-4-614, MCA

RULE V EFFECT (1) A declaratory ruling is binding between the department and petitioner concerning the set of facts presented in the petition.

AUTH: 15-1-201, MCA
IMP: 2-4-501, MCA

4. The Department is proposing the new rules to clarify how a taxpayer may file a notice of declaratory ruling with the department. The rules further explain how the department will handle and respond to such requests. A sample form is provided which indicates the necessary information which must be provided in each petition for a declaratory ruling.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to:

Cleo Anderson
Department of Revenue
Director's Office
P.O. Box 5805
Helena, Montana 59604-5805

no later than April 13, 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 Cleo Anderson at the above address no later than April 13, 2000.

7. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

8. The Department of Revenue 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 particular subject matter or matters. Such written request may be mailed or delivered to

the person in 5 above or faxed to the office at (406)444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

Cleo Anderson
CLEO ANDERSON
Rule Reviewer

Mary Bryson
MARY BRYSON
Director of Revenue

Certified to Secretary of State March 6, 2000

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the Adoption of New Rule I and Amendment of ARM 42.15.401 relating to Tax Benefits	)))))	NOTICE OF PROPOSED ADOPTION AND AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On April 28, 2000, the department proposes to adopt New Rule I and amend ARM 42.15.401 relating to tax benefits that are allowed to a taxpayer in Montana.

2. The Department of Revenue 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 Revenue no later than 5:00 p.m. on April 7, 2000, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 5805, Helena, Montana 59604-5805; telephone (406)444-2855; fax number (406)444-3696; e-mail address canderson@state.mt.us.

3. New rule I does not replace or modify any section currently found in the Administrative Rules of Montana. The proposed new rule provides as follows:

RULE I RECOVERY OF A TAX CREDIT (1) If the recovery or recoupment of a tax credit was previously deducted in Montana taxable income, the recovery is included in Montana adjusted gross income in the year received to the extent the deduction benefited the taxpayer.

(2) If the recovery or recoupment was a credit against Montana tax, the Montana tax in the year the recovery is received must be increased to the extent that the credit benefited the taxpayer.

AUTH: 15-30-305, MCA
IMP: 15-30-112 and 15-61-201, MCA

4. The rule proposed to be amended provides as follows:

42.15.401 DEFINITIONS (1) through (8) remain the same.
(9) remains the same but is renumbered (10).
(10) remains the same but is renumbered (13).
(11) remains the same but is renumbered (9).
(12) remains the same but is renumbered (11).
(12) "Recovery" means the return or recoupment of amounts that were previously deducted in Montana taxable income or credited against Montana tax in any prior taxable year.

AUTH: 15-30-305, MCA
IMP: 15-30-112 and 15-61-201, MCA

5. Rule I is being proposed to clarify that the tax benefit may be a reduction or increase to Montana adjusted gross income, or in the case of a credit, it will be an increase or reduction directly to the tax liability.

The department is proposing to amend ARM 42.15.401 to clarify the term "recovery" as applied to Montana adjusted gross income.

6. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to:

Cleo Anderson
Department of Revenue
Director's Office
P.O. Box 5805
Helena, Montana 59604-5805

no later than April 14, 2000.

7. 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 Cleo Anderson at the above address no later than April 14, 2000.

8. If the department receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

9. The Department of Revenue 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 particular subject matter or matters. Such written request may be mailed or delivered to the person in 6 above or faxed to the office at (406)444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

Cleo Anderson
CLEO ANDERSON
Rule Reviewer

Mary Bryson
MARY BRYSON
Director of Revenue

Certified to Secretary of State March 6, 2000

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.11.309 relating to Commission Rate Applicability Date	)	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On April 28, 2000, the department proposes to amend ARM 42.11.309 relating to commission rate applicability date.

2. The Department of Revenue 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 Revenue no later than 5:00 p.m. on April 7, 2000, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 5805, Helena, Montana 59604-5805; telephone (406)444-2855; fax number (406)444-3696; e-mail address canderson@state.mt.us.

3. The rule proposed to be amended provides as follows:

42.11.309 COMMISSION ADJUSTMENT (1) through (2)(c) remain the same.

(3) All agency liquor stores that qualify under (2) above are eligible for a review. The agency store shall file an application and the required documentation by May 1 of each period. In order to qualify for the review, the agency store must open its books to the department.

(4) If the agency store qualifies for an adjustment, the adjustment will be effective on July 1 for each period except for the first review period, which is retroactive to January 1, 1999.

AUTH: 16-1-303, MCA
IMP: 16-2-101, MCA

4. The department is proposing the amendment because 16-2-101, MCA, states the commission rates may be greater than the average commission paid to agents with similar sales volumes. In order to qualify for this adjustment, the agent must demonstrate that they have experienced cost increases that are beyond their control and these cost increases are insufficient to yield net income commensurate with net income experienced before the cost increases occurred. All stores are eligible for review. This portion of the review will require the agent to open their books to the department. The agency store has to file an application and required documentation by May 1 of each period. If it is determined that an adjustment is due the agent, the adjustment will be effective on July 1 for each period except for the first review period which will be retroactive to January 1, 1999.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to:

Cleo Anderson
Department of Revenue
Director's Office
P.O. Box 5805
Helena, Montana 59604-5805

no later than April 14, 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 Cleo Anderson at the above address no later than April 14, 2000.

7. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

8. The Department of Revenue 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 particular subject matter or matters. Such written request may be mailed or delivered to the person in 5 above or faxed to the office at (406)444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

Cleo Anderson
CLEO ANDERSON
Rule Reviewer

Mary Bryson
MARY BRYSON
Director of Revenue

Certified to Secretary of State March 6, 2000.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed Adoption of New Rule I; Amendment of ARM 42.25.1801, 42.25.1803, 42.25.1804, 42.25.1806, 42.25.1807, 42.25.1808, 42.25.1809, 42.25.1810, and 42.25.1813 relating to Oil and Gas Taxes	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On April 6, 2000, at 10:00 a.m., a public hearing will be held in the Fourth Floor Conference Room, Sam W. Mitchell Building, 125 North Roberts Street, Helena, Montana, to consider the adoption of new rule I; amendment of ARM 42.25.1801, 42.25.1803, 42.25.1804, 42.25.1806, 42.25.1807, 42.25.1808, 42.25.1809, 42.25.1810, and 42.25.1813 relating to oil and gas taxes.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, and proceed to Room 455, where they will sign in and receive a visitor's pass to attend the hearing.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue not later than 5:00 p.m., March 31, 2000, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 5805, Helena, Montana 59604-5805; telephone (406)444-2460; fax (406)444-3696; or e-mail canderson@st.mt.us.

3. The proposed new rule I does not replace or modify any section currently found in the Administrative Rules of Montana. The rule proposed to be adopted provides as follows:

NEW RULE I INCENTIVE PERIOD (1) Incentive periods for new wells, vertical or horizontal, begin following the last day of the calendar month immediately preceding the month in which production begins. This incentive period only begins once, and is dependent upon the first production from the well, regardless of whether the oil and gas begin production on different dates. Therefore, if a well began producing oil on March 1, 2000, and gas began flowing from the same well on August 1, 2000, the incentive period begins on March 1, 2000, only.

AUTH: 15-36-322, MCA
IMP: 15-36-304, MCA

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

42.25.1801 DEFINITIONS (1) through (3) remain the same.

(4) "Natural gas" means a mixture of hydrocarbon gases and other products which at normal atmospheric conditions of temperature and pressure are in a gaseous state. This includes coalbed methane gas.

(5) and (6) remain the same.

(7) "Stripper well exemption" applies to wells producing an average of 3 barrels a day or less. This is calculated by dividing the amount of production from a lease or unitized area for the year immediately preceding the current calendar year by the number of producing wells in the lease or unitized area and by dividing the resulting quotient by 365. Once qualified, all production for the lease for the entire year is reported at the stripper well exemption tax rates of .8% for working interests and 15.1% for non-working interests, even if it exceeds the 3 barrel average.

~~(7)~~ (8) "Unit operation" is one in which persons owning leasehold interest in one or more pools or portions thereof in a field combine their operations to function as one unit operation for pressure maintenance of secondary recovery purposes, to increase ultimate recovery, or to prevent waste of gas from pools or portions of pools where gas only is produced. One operator must be named as the unit operator and shall be responsible for filing the oil and natural gas production tax return.

AUTH: 15-36-322, MCA

IMP: 15-1-101, 15-36-301, 15-36-302, 15-36-303, 15-36-304, 15-36-305, 15-36-309, 15-36-310, 15-36-311, 15-36-312, 15-36-313, 15-36-314, 15-36-315, 15-36-319, 15-36-320, 15-36-321, 15-36-322, 15-36-324, 15-36-326, and 82-1-111, MCA

42.25.1803 TREATMENT OF NONWORKING INTERESTS (ROYALTIES)

(1) Nonworking interest owners' share of production paid to the federal, state, tribal, county or municipal governments pursuant to the lease are deductible from gross value in determining oil or natural gas production tax.

(2) Nonworking interest owners' oil and natural gas production is subject to different tax rates than the working interest, as shown in ARM 42.25.1809.

AUTH: 15-36-322, MCA

IMP: 15-36-304, MCA

42.25.1804 HORIZONTALLY COMPLETED OR RECOMPLETED WELLS

(1) For horizontally completed or horizontally recompleted wells the operator must provide to the department of revenue a copy of the horizontal certification from the board of oil and gas conservation. If the operator does not provide the certification, or the well is not certified by the board as horizontally completed, production from the well will be subject to the tax rates in ARM 42.25.1809(1)(b)(i) ~~(B)~~ for oil wells, and 42.25.1809(1)(a)(i) for gas wells until such time as operator provides the certification to the department.

If a certification is received by the department after the month in which production for sale first occurs, and the taxpayer has filed and paid taxes on production which is greater than would otherwise be due, a refund or credit will be granted to the taxpayer.

(2) Production from ~~a well~~ pre-1999 and post-1999 wells certified by the board to be horizontally completed will be subject to the tax rates in ARM 42.25.1809(1)(b)(iii)(A) for oil wells, and 42.25.1809(1)(a)(iii)(A) for post-1999 gas wells for the first 18 months following the last day of the calendar month immediately preceding the month in which production for sale from a crude oil or natural gas well is pumped or flows. Production from pre-1999 certified horizontal oil wells will be subject to the tax rates under ARM 42.25.1809(1)(b)(iii)(B) after the first 18 months of production~~, but less than 25 months. Production from horizontal wells after the first 24 months of production will be taxed under ARM 42.25.1809(1)(b)(iii)(C) unless it is stripper or has incremental production.~~ unless it is a stripper producer or has incremental production. Production from post-1999 certified horizontal oil wells will be subject to the tax rates under ARM 42.25.1809(1)(b)(iii)(C) after the first 18 months of production unless it is a stripper producer or has incremental production. Production from post-1999 certified horizontal gas wells will be subject to the tax rates under ARM 42.25.1809(1)(a)(iii)(B) after the first 18 months of production.

> Example: The first production for sale from a horizontally drilled oil well is February 18, ~~1996~~ 1998. February ~~1996~~ 1998 is considered the first month of production subject to the tax rates in ARM 42.25.1809(1)(b)(iii)(A) and the last month of the exemption will be July ~~1997~~ 1999. The first month of production subject to the tax rates in ARM 42.25.1809(1)(b)(iii)(B) in this example is August ~~1997, and the last month is January, 1998~~ 1999. The tax rates in ARM 42.25.1809(1)(b)(iii)(A) will apply to the month in which production for sale first occurs regardless of when the operator provides a copy of the certification notice to the department.

(3) All production from wells certified by the board to be horizontally recompleted ~~and have not~~ which have produced oil during the five years immediately preceding the month the well was horizontally recompleted will be classified as incremental and the tax rates in ARM 42.25.1809(1)(b)~~(iv)(C)(I) and (II)~~ (v) apply.

(4) This section applies to a well reported as a ~~post-1985~~ pre-1999 oil well prior to recompletion as a horizontal well. For oil wells certified by the board to be horizontally recompleted, the tax rates in ARM 42.25.1809(1)(b)~~(iv)(C)~~(v)(A) and (B) apply to the incremental production. The operator must provide a production decline rate approved by

the board. If a well is in primary recovery after the first 18 months of production the well will be classified as a ~~post-1985~~ pre-1999 well, and the tax rates in ARM 42.25.1809(1)(b)(i)(B)~~(III)~~ will apply, or if qualified as a stripper well the rates in ARM 42.25.1809(1)(b)(ii)(A) and (B)~~(I) and (II)~~, or ~~both of them~~ 42.25.1809(1)(b)(ii)(C) apply.

(5) ~~This section applies to a well reported as pre-1985 well prior to recompletion as a horizontal well. For wells certified by the board to be horizontally recompleted only the incremental production from horizontal recompletions will be taxed at the rates in ARM 42.25.1809(1)(b)(iv)(C) from the completion date noted on the certification notice from the board. The operator must provide a production decline rate approved by the board. If a well is in primary recovery after the first 18 months of production the well will be classified as a pre-1985 well, and the tax rates in ARM 42.25.1809(1)(b)(i)(A), will apply, or if qualified as a well the rates in ARM 42.25.1809(1)(b)(ii) (A)(I) and (II), or both of them apply.~~ This section applies to a well reported as a post-1999 oil well prior to recompletion as a horizontal well. For oil wells certified by the board to be horizontally recompleted, the tax rates in ARM 42.25.1809(1)(b)(v)(A) and (C) apply to the incremental production. The operator must provide a production decline rate approved by the board. If a well is in primary recovery after the first 18 months of production the well will be classified as a post-1999 well, and the tax rates in ARM 42.25.1809(1)(b)(i)(C) will apply, or if qualified as a stripper well the rates in ARM 42.25.1809(1)(b)(ii)(A) and (B) or 42.25.1809(1)(b)(ii)(C) apply.

AUTH: 15-36-322, MCA
IMP: 15-36-304, MCA

42.25.1806 ALLOCATION OF INCREMENTAL PRODUCTION (1) If the designated area of a new or expanded enhanced recovery project has wells reported for tax purposes prior to the inception of the new or expanded enhanced recovery project, both as pre-~~1985~~ 1999 wells and as post-~~1985~~ 1999 wells, the operator must report and pay any tax due at the appropriate applicable rates on the non-incremental and incremental for pre-~~1985~~ 1999 and post-~~1985~~ 1999 wells.

(2) The amount of tax to be paid at pre-~~1985~~ 1999 and post-~~1985~~ 1999 tax rates will be based upon a production ratio determined each calendar year.

(a) The pre-~~1985~~ 1999 ratio will be computed by dividing incremental and non-incremental production for the previous calendar year from wells classified as pre-~~1985~~ 1999 wells by the total production for the previous calendar year from the designated area of the new or expanded recovery project.

(b) The post-~~1985~~ 1999 ratio will be computed by dividing incremental and non-incremental production for the previous calendar year from wells classified as post-~~1985~~ 1999 wells by the total production for the previous calendar year

from the designated area of the new or expanded recovery project.

(3) Incremental production to be reported as pre-~~1985~~ 1999 wells is the amount of production computed when the pre-~~1985~~ 1999 ratio determined above is multiplied times the total incremental production for the quarter. The amount of non-incremental pre-~~1985~~ 1999 production to be reported is determined by subtracting the amount of pre-~~1985~~ 1999 incremental production from the total pre-~~1985~~ 1999 production for the project for the tax period being reported.

(4) Incremental production to be reported as post-~~1985~~ 1999 is the amount of production computed when the post-~~1985~~ 1999 ratio determined above is multiplied times the total incremental production for the quarter. The amount of non-incremental post-~~1985~~ 1999 production to be reported is determined by subtracting the amount of post-~~1985~~ 1999 incremental production from the total post-~~1985~~ 1999 production.

(5) remains the same.

AUTH: 15-36-322, MCA
IMP: 15-36-303 and 15-36-304, MCA

42.25.1807 AVERAGE DAILY WELL PRODUCTION CALCULATION

(1) In determining whether a lease or unit has an average daily production of less than 60,000 cubic feet of natural gas ~~or less~~ per well, only those wells that produced natural gas during the prior calendar year shall be used in the calculation. For natural gas that is processed to remove natural gas liquids, the volume (i.e., cubic feet) used to calculate the average daily production herein will be the volume prior to any removal of the natural gas liquids.

(2) In determining whether a lease or unit has an average daily production of ~~10 barrels of crude oil or less per well~~ less than 15 barrels of crude oil per well for stripper qualification, or 3 barrels of crude oil or less per well for the stripper well exemption, only those wells that produced crude oil during the prior calendar year shall be used in the calculation.

(3) The operator must provide a stripper calculation for the previous calendar year to the department to qualify each oil stripper or natural gas stripper lease or unit each year when filing the return for the quarter ending in March to qualify the lease or unit as stripper for the current year.

~~Example: To file and report a lease or unit as stripper on the 1996 quarterly returns an operator must file with the return for the quarter ending March 31, 1996, the necessary calculation showing the average daily production for the lease or unit for all of 1995.~~

(4) remains the same.

AUTH: 15-36-322, MCA
IMP: 15-36-303 and 15-36-304, MCA

42.25.1808 DUALLY QUALIFIED STRIPPER WELLS AND ENHANCED RECOVERY PROJECTS (1) For the purpose of this rule a lease or unit will be considered to be dually qualified if the lease or unit qualifies as an oil stripper and the wells are within an approved enhanced recovery project. If the wells are dually qualified, the tax rates for stripper, incremental and non-incremental may all apply.

(a) If the production for a quarter from a dually qualified lease or unit is less than 270 barrels (3 barrels/day times 90 days in a calendar quarter) for each producing well in the lease or unit the tax rates in ARM 42.25.1809(1)(b)(ii) ~~(A)(I) or ARM 42.25.1809(1)(b)(ii)(B)(I)(C)~~ apply.

(b) If the production for a quarter from a dually qualified lease or unit is less than 900 barrels (10 barrels/day times 90 days in a calendar quarter) for each producing well in the lease or unit the tax rates in ARM 42.25.1809(1)(b)(ii)(A) apply.

~~(b)~~ (c) If the production from each well in a dually qualified lease or unit is greater than ~~270~~ 900 barrels for each producing well in the lease or unit the tax rates in ARM 42.25.1809(1)(b)(ii)(A) ~~(I) or ARM 42.25.1809(1)(b)(ii)(B)(I)~~ apply to the first ~~3~~ 10 barrels, and if:

(i) The total production for the quarter from the dually qualified lease or unit is less than the "production decline rate" for the calendar quarter any production in excess of ~~270~~ 900 barrels times the number of producing wells in the dually qualified lease or unit will be taxed at the rates in ~~ARM 42.25.1809(1)(b)(ii)(A)(II) or~~ ARM 42.25.1809(1)(b)(ii)(B) ~~(II), whichever is appropriate~~. None of the production would be taxed at the incremental tax rates.

> Example: A dually qualified lease or unit has ~~10~~ 3 producing wells in it and the "production decline rate" for the quarter is ~~4250~~ 5700 barrels. The actual production for the quarter ~~3500~~ is 5000 barrels. Therefore, 2700 barrels (~~10~~ 3 wells times ~~270~~ 900 barrels per well) would be taxed at the rates in ARM 42.25.1809(1)(b)(ii)(A) ~~(I) or ARM 42.25.1809(1)(b)(ii)(B)(I)~~, and ~~800~~ 2300 barrels (~~3500~~ 5000 barrels minus 2700 barrels) would be taxed at the rates in ~~ARM 42.25.1809(1)(b)(ii)(A)(II) or~~ ARM 42.25.1809(1)(b)(ii)(B) ~~(II), whichever is appropriate~~.

(ii) The total production for the calendar quarter from the dually qualified lease or unit ~~is greater than the "production decline rate" for the calendar quarter production~~ that is in excess of the "production decline rate" will be taxed as incremental. ~~and the~~ The tax rates in ARM 42.25.1809(1)(b)(iv)(A) ~~(I) and (II), or both of them,~~ will apply for secondary production, or the tax rates in ARM

42.25.1809(1)(b)(iv)(B) ~~(I) and (II), or both of them,~~ for tertiary production will apply.

Example: A dually qualified lease or unit has ~~10~~ 5 producing wells in it and the "production decline rate" for the quarter is ~~4250~~ 5700 barrels. The actual production for the quarter is 6000 barrels. Therefore, ~~2700~~ 4500 barrels (~~10~~ 5 wells times ~~270~~ 900 barrels per well) would be taxed at the rates in ARM 42.25.1809(1)(b)(ii)(A) ~~(I) or ARM 42.25.1809(1)(b)(ii)(B)(I)~~, and ~~1550~~ 1200 barrels (~~1550~~ 1200 barrels plus ~~2700~~ 4500 barrels = ~~4250~~ 5700) would be taxed at the rates in ARM 42.25.1809(1)(b)(ii)(B) ~~(A)(II) or ARM 42.25.1809(1)(b)(A)(B)(II), whichever is appropriate~~, and ~~1750~~ 300 (6000-~~4250~~ 5700) barrels would be taxed at the appropriate incremental tax rates in ARM 42.25.1809(1)(b)(iv).

AUTH: 15-36-322, MCA
IMP: 15-36-303 and 15-36-304, MCA

42.25.1809 TAX RATES (1) ~~The t~~Table I below reflects the tax rates effective on January 1, ~~1996~~ 2000, and includes the rates contained in 15-36-304, MCA, and 82-11-131, MCA. The rate of tax set under 82-22-131, MCA, is at the maximum allowable rate of .3% of value. The rate is subject to change by the board of oil and gas~~:~~.

~~Table I~~ ~~Type of Production~~	~~Working Interest~~	~~Nonworking Interest~~
~~(a) Natural gas~~		
~~(i) pre-1985 wells~~	~~18.85%~~	~~15.1%~~
~~(ii) post-1985 wells(qualifying production)~~		
~~(A) First 12 months~~	~~.8%~~	~~15.1%~~
~~(B) After first 12 months, but less than first 25 months~~	~~12.8%~~	~~15.1%~~
~~(C) after first 24 months~~	~~15.45%~~	~~15.1%~~
~~(iii) Stripper(wells averaging < 60 MCF/day)~~		
~~(A) pre-1985 and post-1985 wells~~	~~11.3%~~	~~15.1%~~
~~(b) Oil~~		
~~(i) primary recovery production~~		
~~(A) pre-1985 wells~~	~~14.2%~~	~~17.2%~~
~~(B) post-1985 wells~~		
~~(I) First 12 months~~	~~.8%~~	~~15.1%~~
~~(II) After first 12 months, but less than first 25 months~~	~~7.8%~~	~~15.1%~~

~~Table I Type of Production~~	~~Working Interest~~	~~Nonworking Interest~~
~~(III) After first 24 months~~	~~12.8%~~	~~15.1%~~
~~(ii) Stripper(wells averaging < 10 bbls/day)~~		
~~(A) pre-1985 wells~~		
~~(I) First 3 barrels~~	~~5.8%~~	~~17.2%~~
~~(II) Over 3 barrels~~	~~10.8%~~	~~17.2%~~
~~(B) post-1985 wells~~		
~~(I) First 3 barrels~~	~~5.8%~~	~~15.1%~~
~~(II) Over 3 barrels~~	~~10.8%~~	~~15.1%~~
~~(iii) Horizontally drilled~~		
~~(A) First 18 months~~	~~.8%~~	~~5.8%~~
~~(B) After first 18 months, but less than first 25 months~~	~~7.8%~~	~~12.8%~~
~~(C) After 24 months~~	~~12.8%~~	~~12.8%~~
~~(iv) Incremental Production~~		
~~(A) Secondary Production~~		
~~(I) pre-1985 wells~~	~~8.8%~~	~~16.3%~~
~~(II) post-1985 wells~~	~~8.8%~~	~~10.8%~~
~~(B) Tertiary Production~~		
~~(I) pre-1985 wells~~	~~6.1%~~	~~15.3%~~
~~(II) post-1985 wells~~	~~6.1%~~	~~9.8%~~
~~(C) Horizontally recompleted~~		
~~(I) First 18 months~~	~~5.8%~~	~~5.8%~~
~~(II) After 18 months~~	~~12.8%~~	~~12.8%~~

Table I - Effective 1/1/2000 Type of Production	Working Interest	Nonworking Interest
(a) Natural gas		
(i) Primary recovery production		
(A) First 12 months of production	.8%	15.1%
(B) Pre-1999 wells after the first 12 months	15.1%	15.1%
(C) Post-1999 wells after the first 12 months	9.3%	15.1%
(ii) Stripper wells (averaging < 60 MCF/day		
(A) Pre-1999 wells	11.3%	15.1%
(iii) Horizontally completed well production		

Table I - Effective 1/1/2000 Type of Production	Working Interest	Nonworking Interest
(A) First 18 months of qualifying production	.8%	15.1%
(B) After 18 months	9.3%	15.1%
(b) Oil		
(i) Primary recovery production		
(A) First 12 months of production	.8%	15.1%
(B) Pre-1999 wells after the first 12 months	12.8%	15.1%
(C) Post-1999 wells after the first 12 months	9.3%	15.1%
(ii) Stripper wells (averaging < 15 bbls/day		
(A) Pre-1999 and post-1999 wells first 1 - 10 bbls	5.8%	15.1%
(B) pre-1999 and post-1999 over 10 bbls	9.3%	15.1%
(C) Pre-1999 and post-1999 stripper well exemption	.8%	15.1%
(iii) Horizontally drilled		
(A) Pre-1999 and post-1999 wells first 18 months	.8%	15.1%
(B) Pre-1999 wells after 18 months	12.8%	15.1%
(C) Post-1999 wells after 18 months	9.3%	15.1%
(iv) Incremental production		
(A) New or expanded secondary recovery production	8.8%	15.1%
(B) New or expanded tertiary production	6.1%	15.1%
(v) Horizontally recompleted wells		
(A) Pre-1999 and post-1999 wells first 18 months	5.8%	15.1%
(B) Pre-1999 wells after 18 months	12.8%	15.1%
(C) Post-1999 wells after 18 months	9.3%	15.1%

(2) Table II below reflects the tax rates effective on July 1, 1999 through December 31, 1999, and includes the rates contained in 15-36-304, MCA, and 82-11-131, MCA. The rate of tax set under 82-22-131, MCA, is at the maximum allowable rate of .3% of value. The rate is subject to change by the board of oil and gas.

Table II - Effective 7/1/1999 through 12/31/1999 Type of Production	Working Interest	Nonworking Interest
(a) Natural gas		
(i) Pre-1985 wells	18.85%	15.1%
(ii) Post-1985 wells (qualifying production)		
(A) First 12 months	.8%	15.1%
(B) After first 12 months, but less than first 25 months	12.8%	15.1%
(C) After first 24 months	15.45%	15.1%
(iii) Stripper (wells averaging < 60 MCF/day)		
(A) Pre-1985 and post-1985 wells	11.3%	15.1%
(iv) Post-1999 wells		
(A) First 12 months of qualifying production	.8%	15.1%
(B) After 12 months	9.3%	15.1%
(v) Horizontally completed well production		
(A) First 18 months of qualifying production	.8%	15.1%
(B) After 18 months	9.3%	15.1%
(b) Oil		
(i) Primary recovery production		
(A) Pre-1985 wells	14.2%	17.2%
(B) Post-1985 wells		
(I) First 12 months of qualifying production	.8%	15.1%
(II) After first 12 months, but less than first 25 months	7.8%	15.1%
(III) After first 24 months	12.8%	15.1%
(C) Post-1999 wells		
(I) First 12 months of qualifying production	.8%	15.1%
(II) After 12 months	9.3%	15.1%
(ii) Stripper wells (averaging < 15 bbls/day)		
(A) Pre-1985 and post-1985 wells first 1 - 10 bbls	5.8%	15.1%
(B) Pre-1985 and post-1985 wells over 10 bbls	9.3%	15.1%
(C) Pre-1985 and post-1985 stripper		

Table II - Effective 7/1/1999 through 12/31/1999 Type of Production	Working Interest	Nonworking Interest
well exemption	.8%	15.1%
(iii) Horizontally drilled		
(A) Post-1985 wells		
(I) First 18 months	.8%	15.1%
(II) After first 18 months, but less than first 25 months	7.8%	12.8%
(III) After 24 months	12.8%	12.8%
(B) Post-1999 wells		
(I) First 18 months	.8%	15.1%
(II) After 18 months	9.3%	15.1%
(iv) Incremental Production		
(A) New or expanded secondary recovery production		
(I) Pre-1985 wells	8.8%	16.3%
(II) Post-1985 wells	8.8%	10.8%
(III) Post-1999 wells	8.8%	15.1%
(B) New or expanded tertiary production		
(I) Pre-1985 wells	6.1%	15.3%
(II) Post-1985 wells	6.1%	9.8%
(III) Post-1999 wells	6.1%	15.1%
(v) Horizontally recompleted well		
(A) First 18 months of qualifying production		
(I) Post-1985 wells	5.8%	5.8%
(II) Post-1999 wells	5.8%	15.1%
(B) After 18 months		
(I) Post-1985 wells	12.8%	12.8%
(II) Post-1999 wells	9.3%	15.1%

AUTH: 15-36-322, MCA
IMP: 15-36-304 and 82-11-131, MCA

42.25.1810 DISTRIBUTION (1) The department will determine whether tax payments received are for production occurring prior to January 1, ~~1995~~ 2000, or are for production occurring after December 31, ~~1994~~ 1999~~, but before January 1, 1996, or are for production occurring after January 1, 1996~~. Tax payments will be allocated between the state and local

government and schools as provided in Table I of this rule. The portion of money allocated to the state will be distributed as provided in Table I. The portion of money allocated to local governments and schools will be distributed as provided in (1)(a) and (b) below.

(a) If the tax payment is for production occurring prior to January 1, ~~1995~~ 2000, ~~and is local government severance tax,~~ all the proceeds will be distributed to ~~counties and local schools as described in this rule;~~ local government entities as follows:

(i) 95% of the locally-distributed portion shall be returned to the county treasurers to be distributed in the same manner as property taxes were distributed in the preceding fiscal year to the applicable taxing jurisdictions based on the origin of production.

(ii) 5% of the locally-distributed portion shall be returned to the county treasurers for distribution to taxing jurisdictions in the same manner as property taxes were distributed in fiscal year 1990. The department will calculate the amount due to each levy district based on its relative share of revenue loss resulting from the change from the unit value to the liability system of distribution for local taxes on pre-1985 production, if a liability distribution had existed during calendar year 1997. The share of the 5% distribution for each levy district is fixed; however, the total 5% distribution pool will change depending on overall revenue collections.

(b) If the tax payment is for production occurring after December 31, ~~1994~~ 1999, ~~but before January 1, 1996, and is local government severance tax,~~ all the proceeds will be distributed to counties and local schools as ~~described in this rule;~~ follows: 100% of the locally-distributed portion shall be returned to the county treasurers to be distributed in the same manner as property taxes were distributed in the preceding fiscal year to the applicable taxing jurisdictions based on the origin of production.

~~(c) If the tax payment is for the oil and natural gas production tax for production occurring after January 1, 1996, it will be allocated between the state and local government and schools as provided in Table I of this rule. The portion allocated to the state will be distributed as provided in Table I. The portion of money allocated to local government and schools from pre 1985 wells will be distributed pursuant to 15-36-324, MCA. The portion of money allocated to local government and schools from post-1985 wells for production occurring after January 1, 1996, will be transmitted to the taxing unit where the production occurred to be distributed pursuant to 15-36-324, MCA.~~

~~(d)~~ (c) The department may enter into revenue sharing agreements with Indian tribes which may change the distribution described in this rule for production within an Indian reservation.

Table I TYPE	Local Govt Share	State Govt Share	General Fund	Board of Oil and Gas	Distributed to RIGWAT
OIL PRODUCTION					
Working Interest					
Stripper					
Pre-1985 and Post-1985 Wells					
First 3 Barrels	86.20%	13.80%	0.00%	37.50%	62.50%
Post-1985 Wells(Qualifying Production)					
First 12 months of production	0.00%	100.00%	0.00%	37.50%	62.50%
After first 12 months, But less than 24 months	89.75%	10.25%	0.00%	37.50%	62.50%
Horizontally Drilled					
Newly Drilled					
First 18 months of production	0.00%	100.0%	0.00%	37.50%	62.50%
After 18 months, but less than 24 months	89.75%	10.25%	0.00%	37.50%	62.50%
Recompleted					
First 18 months	0.00%	100.0%	86.21%	5.17%	8.62%
All Other Oil Production					
Working and Royalty Interests	60.70%	39.30%	86.21%	5.17%	8.62%
GAS PRODUCTION					
Post-1985 Wells(Qualifying Production)					
First 12 months of product.	0.00%	100.00%	0.00%	37.50%	62.50%
After first 12 months, but less than 24 months	93.75%	6.25%	0.00%	37.50%	62.50%
All Other Gas Production					
Working and Royalty Interests	86.00%	14.00%	76.81%	8.70%	14.49%

Table I - Effective 1/1/2000 TYPE	Local Govt Share	State Govt Share	General Fund	Board of Oil and Gas	Distri-buted to RIGWAT
OIL PRODUCTION					
Working Interest Stripper Pre-1999 and Post-1999 Wells First 1 - 10 Barrels	86.20%	13.80%	0.00%	37.50%	62.50%
Stripper Well Exemption 3 barrels or less	0.00%	100.00%	0.00%	37.50%	62.50%
Pre-1999 and Post-1999 Wells (qualifying production) First 12 months of production	0.00%	100.00%	0.00%	37.50%	62.50%
Horizontally Drilled Newly Drilled Pre-1999 and Post-1999 Wells First 18 months of production	0.00%	100.00%	0.00%	37.50%	62.50%
Recompleted Incremental Pre-1999 and Post-1999 Wells First 18 months of production	0.00%	100.0%	86.21%	5.17%	8.62%
All Other Oil Production Working and Royalty Interests	60.70%	39.30%	86.21%	5.17%	8.62%
GAS PRODUCTION					
Pre-1999 and Post-1999 Wells (qualifying production) First 12 months of production	0.00%	100.00%	0.00%	37.50%	62.50%
Horizontally drilled Newly drilled First 18 months of production	0.00%	100.0%	0.00%	37.50%	62.50%
All Other Gas Production Working and Royalty Interests	86.00%	14.00%	76.80%	8.70%	14.50%

Table II - Effective 7/1/99 TYPE	Local Govt Share	State Govt Share	General Fund	Board of Oil and Gas	Distributed to RIGWAT
OIL PRODUCTION					
Working Interest Stripper Pre-1985, post-1985, and post-1999 wells First 1 - 10 barrels	86.20%	13.80%	0.00%	37.50%	62.50%
Stripper well exemption	0.00%	100.00%	0.00%	37.50%	62.50%
Post-1985 wells (qualifying Production) First 12 months of production	0.00%	100.00%	0.00%	37.50%	62.50%
After first 12 months, but less than 24 months	89.75%	10.25%	0.00%	37.50%	62.50%
Post-1999 Wells (qualifying Production) First 12 months of production	0.00%	100.00%	0.00%	37.50%	62.50%
Horizontally drilled Newly drilled					
Post-1985 and Post-1999 wells First 18 months of production	0.00%	100.00%	0.00%	37.50%	62.50%
Post-1985 wells First 18 months but less than 24 months	89.75%	10.25%	0.00%	37.50%	62.50%
Recompleted Incremental First 18 months of production	0.00%	100.00%	86.21%	5.17%	8.62%
All Other Oil Production					
Working and Royalty Interests	60.70%	39.30%	86.21%	5.17%	8.62%
GAS PRODUCTION					
Post-1985 Wells (qualifying production) First 12 months of production	0.00%	100.00%	0.00%	37.50%	62.50%
After first 12 months, but less than 24 months	93.75%	6.25%	0.00%	37.50%	62.50%
Post-1999 wells (qualifying production First 12 months of production	0.00%	100.00%	0.00%	37.5%	62.50%
Horizontally drilled Newly drilled First 18 months	0.00%	100.00%	0.00%	37.5%	62.50%
All Other Gas Production Working and Royalty Interests	86.00%	14.00%	76.80%	8.70%	14.5%

~~(2) The department has established a database containing the 1988 unit values for all school districts having oil and gas, or both of them, production for leases or units that were required to file the annual net proceeds returns for calendar year 1988 including adjustments under 15-36-323, MCA, for production occurring on or after January 1, 1995. However, for leases and units that had both oil and gas produced from the same lease or unit in 1988, net proceeds were not separated between oil and gas. Therefore, for the purpose of establishing the unit values, net proceeds were prorated between the oil and gas using the following formula:~~

~~Gas Gross Value / Total Gross Value X Total Net Proceeds = Gas Net Proceeds~~

~~Oil Gross Value / Total Gross Value X Total Net Proceeds = Oil Net Proceeds~~

~~Except, distribution of tax payments made from wells filed under the local government severance tax for production occurring prior to January 1, 1995 the unit values calculated will be based upon the mills levied for the taxing unit in fiscal year 1990 against calendar year 1988 production.~~

~~(3) The unit value databases will be adjusted once a year as needed to reflect amended returns for 1988 and audits that affect the 1988 annual net proceeds and taxable royalties. The adjustment will be done on, or about, June 30 each year. Any adjustments that affect the unit values will only be applied on a prospective basis to distribute the county and school taxing units pre-1985 share of the oil and natural gas production tax and payments of the local government severance tax made after January 1, 1996.~~

~~(4) A separate unit value has been determined for oil and gas. Therefore, a separate distribution will be done for the oil collections and the gas collections. The amount to be distributed will be:~~

~~(a) For production occurring after January 1, 1996, the county and school taxing units pre-1985 share of the oil and natural gas production tax, collected, both for working interest owners and nonworking interest owners, plus the county and school taxing units share of any interest and penalty assessed and collected on the oil and natural gas production delinquencies since the last distribution for each product. In addition, any interest earned from temporarily investing the tax, penalty and interest on the county and school taxing units pre 1985 share of the oil and natural gas production tax will be included in the distribution.~~

~~(b) For payments of local government severance tax, for production occurring after December 31, 1994, but before January 1, 1996, the department will distribute to the county~~

~~and school taxing units based upon the unit values as calculated in 15-36-325, MCA.~~

~~(c) For payments of local government severance tax made after May 31, 1996, for production occurring on or before December 31, 1994, the department will distribute to the county and school taxing units based upon the unit values as calculated in (2)(a) above, times the units of production reported for local severance government tax for the calendar quarters ending September 30, 1994 and December 31, 1994. The amount to be distributed will be the total of the county and school taxing units local government severance tax collected for production occurring on or before December 31, 1994. This is for both working interest owners and nonworking interest owners, plus any interest and penalty assessed and collected on the oil and natural gas production delinquencies since the last distribution for each product. In addition, any interest earned from temporarily investing the tax, penalty and interest on the local government severance, for production occurring on or before December 31, 1994, will be included in the distribution.~~

~~(5) Once a distribution has been completed and the payments have been made to the taxing units the department will not adjust the distribution for additional payments or refunds retroactively. Any additional tax collected or refunds made will be treated as a current transaction for the distribution as follows:~~

~~(a) If a taxpayer makes a payment for a period after the distribution has been completed for that period, the tax collected will be distributed based upon the unit values for the current period.~~

> ~~Example: A taxpayer makes a payment on May 31, 1997, that was due February 28, 1997. This payment will be included in the total to be distributed on or before August 1, 1997. If the payment had been made timely it would have been included in the May 1, 1997 distribution.~~

~~(b) If a taxpayer receives a refund of the oil and natural gas production tax the amount refunded related to pre-1985 production will be taken from the total amount to be distributed in the current period.~~

> ~~Example: A taxpayer requests and receives a refund on December 31, 1996, for taxes that were paid on May 31, 1996. The counties' share of the original payment of the tax would be included in the distribution made on or before August 1, 1996. The refunded amount will be included as part of the net total distribution made on February 28, 1997.~~

~~(c) If a taxpayer elects to take a credit for an overpayment of oil and natural gas production tax, the credit~~

~~for pre-1985 production will be taken from the total amount to be distributed in the current period.~~

~~(6) Any units of production that are exempt from the oil and natural gas production tax will not be used in determining the distribution of the pre-1985 production tax. This includes exempt production for federal, state, county, and non-taxable Indian royalties.~~

AUTH: 15-36-322, MCA
IMP: 15-36-324, MCA

42.25.1813 APPLICABILITY (1) A taxpayer is subject to the provisions of Title 15~~, chapter 23, parts 1 and 6; Title 15, chapter 36; Title 15, chapter 38;~~ and Title 82, chapter 11, part 1, MCA, and the corresponding administrative rules as those laws and rules read for all oil and natural gas produced and sold by the operator ~~before January 1, 1996~~.

(2) ~~Except as provided in (3), the payment, collection, and distribution of taxes on oil and natural gas production occurring before January 1, 1996, must be made according to the provisions of the laws and administrative rules referred to in (1) governing the tax in effect on the last day of the tax period in which the production took place.~~ All oil and gas production taxes collected pursuant to audit or collected after the date the tax is payable will be distributed according to the statutes and ARM governing the allocation of the tax in effect on the date the tax liability is considered paid or collected.

~~(3) Section 15-36-325, MCA applies to the payment, collection, and distribution of the local government severance tax for oil and natural gas produced and sold after December 31, 1994, and before January 1, 1996.~~

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

AUTH: 15-36-322, MCA
IMP: 15-36-324, MCA

5. The rules are proposed for adoption and amendment because the 56th Legislature enacted HB 658, HB 661, and SB 530, which are codified in Title 15, chapter 36, part 3, L. 1999. Section 15-36-322, MCA, gives the department the authority to adopt rules necessary to implement and administer Title 15, chapter 36, part 3.

New rule I clarifies language contained in the statute to explain that the incentive period for a well begins only once for a well even though the oil and gas began production on different dates.

The amendment to ARM 42.25.1801(4) includes coalbed methane gas. This is a clarification of current statutory language relating to natural gas and coalbed methane gas.

The new definition ARM 42.25.1801(7) defines "stripper well exemption." The definition also clarifies which wells will qualify for the exemption. The rule explains the calculation an operator must perform to verify if a lease or unitized area qualifies for the reduced rate.

The amendment to ARM 42.25.1803 is housekeeping.

Amendments to ARM 42.25.1804(1) specify the appropriate tax rates for a horizontally completed or recompleted well that has not been certified by the board as horizontally completed or recompleted.

Certain tax incentives are provided by statute which include horizontally drilled natural gas wells. Amendments to ARM 42.25.1804(2) guide you to the appropriate tax rates for pre-1999 and post-1999 oil or gas wells certified to be horizontally completed by the board. This amendment also directs you to the appropriate tax rates for horizontally drilled wells after the 18-month incentive period is completed, unless the well qualifies as a stripper producer or has incremental production. The amendment closes by providing an updated example.

Amendments to ARM 42.25.1804(3), (4), and (5), direct you to the appropriate tax rates to use for horizontally recompleted wells in the updated tax rate table listed in ARM 42.25.1809.

Two new categories of production were created by the statutory amendments. Those are pre-1999 and post-1999. Amendments to ARM 42.25.1806 simply delete the old categories of pre-1985 and post-1985 and add the two new ones.

Amendments to ARM 42.25.1807 are necessary to clarify the new statute language for an oil stripper well which has changed from less than 10 barrels to less than 15 barrels per day. The law also creates a new "stripper well exemption" tax rate for leases producing 3 barrels of oil or less per day. Therefore, the rule must mention the two categories when explaining how to calculate average daily production.

The example shown in ARM 42.25.1807(3) is no longer needed.

Amendments to ARM 42.25.1808 clarify the new tax rates for stripper oil wells and the new tax rates under the tax rate table in ARM 42.25.1809(1)(b).

Amendments to ARM 42.25.1809, Table I, reflect the new tax rates effective January 1, 2000, contained in 15-36-304 and 82-11-131, MCA. Table II reflects the new tax rates effective July 1, 1999, through December 31, 1999, contained in 15-36-304 and 82-11-131, MCA.

Amendments to ARM 42.25.1810 are necessary because the law changed how the department shall distribute the tax proceeds received for production occurring after December 31, 1999. The portion of money allocated to local government entities for production occurring before January 1, 2000 is distributed in a unique way. The department must distribute 5% of the local government monies from pre-1999 wells to eligible counties. The rule clarifies how the department will calculate the monies and distribute it to the local government entities.

Amendments to ARM 42.25.1813 refer to the applicability of Title 15, Title 82, MCA, and these administrative rules. The rule further clarifies how the collected oil and gas production taxes will be distributed.

6. 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:

Cleo Anderson
Department of Revenue
Director's Office
P.O. Box 5805
Helena, Montana 59604-5805

and must be received no later April 14, 2000.

7. Cleo Anderson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

8. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the 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 a particular subject matter or matters. Such written request may be mailed or delivered to the person identified in 6 above, faxed to the office at (406)444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

Cleo Anderson
CLEO ANDERSON
Rule Reviewer

Mary Bryson
MARY BRYSON
Director of Revenue

Certified to the Secretary of State March 6, 2000

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the adoption of new rules to implement a commodity research and market development program	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On January 27, 2000, the Montana Department of Agriculture published a notice of proposed adoption of new rules concerning implementation of a commodity research and market development program at page 113 of the 2000 Montana Administrative Register, Issue No. 2.

2. The department has adopted new RULE I, ARM 4.6.101 and new RULE II, ARM 4.6.102 exactly as proposed.

3. No comments or testimony were received.

DEPARTMENT OF AGRICULTURE

By: /s/ Ralph Peck
Ralph Peck
Director

By: /s/ Tim Meloy
Tim Meloy, Attorney
Rules Reviewer

Certified to the Secretary of State March 6, 2000.

BEFORE THE BOARD OF CLINICAL LABORATORY
SCIENCE PRACTITIONERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of rules pertaining to applications for license, fees, minimum standards for licensure, and continuing education requirements	)))))	NOTICE OF AMENDMENT OF ARM 8.13.301 APPLICATIONS FOR LICENSE, 8.13.303 FEES, 8.13.305 MINIMUM STANDARDS FOR LICENSURE, 8.13.306 CONTINUING EDUCATION

TO: All Concerned Persons

1. On December 2, 1999, the Board of Clinical Laboratory Science Practitioners published a notice of the proposed amendment of the above-stated rules at page 2675, 1999 Montana Administrative Register, issue number 23. The hearing was held January 24, 2000.

2. The Board has amended ARM 8.13.301, 8.13.303 and 8.13.305 as proposed. The Board has amended ARM 8.13.306 with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

8.13.306 CONTINUING EDUCATION REQUIREMENTS (1) through (1)(b) will remain as proposed

(c) ~~Ten hours of~~ All continuing education credits must be germane to the profession~~. The remaining four hours can be non-germane, but~~ and must contribute to the professional competence of a clinical laboratory science practitioner.

(2) through (2)(a)(xiv) will remain as proposed.

(xv) professional laboratory societies in any of the 50 states; ~~or~~

(xvi) clinical laboratory management association (CLMA); or

(xvii) other providers as listed in the office of the board or on the web site.

Auth: Sec. 37-34-201, MCA
IMP: Sec. 37-34-201, MCA

3. The Board received four oral and written comments. The comments received and the Board's response is as follows:

COMMENT NO. 1: Anne Weber, MTSCLS PACE Administrator, submitted oral and written comments regarding the proposed amendments to ARM 8.13.306. Ms. Weber commented that in connection with the PACE program she had certain guidelines to follow in connection with approving a program for continuing education. Ms. Weber provided a list of non-lab type programs that have recently received PACE approval for education germane to clinical laboratory science. Ms. Weber did not feel that continuing education could be "non-germane" and at the same time contribute to the competence of the profession.

She was also concerned about how the Board would monitor non-germane education programs. Ms. Weber questioned what a "professional society" is as provided in the proposed rule. Ms. Weber urged that the board not adopt ARM 8.13.306 as proposed.

COMMENT NO. 2: Susan Poleman concurred with Anne Weber's comments.

RESPONSE: The Board determined that the 14 hours of continuing education should not be modified to provide 4 hours of "non-germane" programs and therefore rejected the changes to ARM 8.13.306(1)(c). The board amended 8.13.306(2)(a)(xv) by adding the word "laboratory" to clarify what type of professional societies' continuing education programs would be accepted.

COMMENTS NO. 3, and 4: Jean H. Triol, MEd, CT (ASCP), CMIAC, and Denise A. Manley, CT (ASCP) IAC, submitted written comments stating that the list of continuing education providers was not complete and suggesting the names of additional providers who offer continuing education programs for clinical laboratory practitioners.

RESPONSE: The board added subsection (xvii) to ARM 8.13.306(2) to provide that other entities listed in the Board office or on the Board's web site were also approved continuing education providers.

BOARD OF CLINICAL LABORATORY
SCIENCE PRACTITIONERS
SONJA BENNETT, CHAIRPERSON

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, March 6, 2000

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

In the matter of the amendment of a rule pertaining to definitions and the adoption of rules pertaining to post-graduate training programs	CORRECTED NOTICE OF ADOPTION

TO: All Concerned Persons

1. On October 7, 1999, the Board of Medical Examiners published notice of the proposed amendment and adoption of the above-stated rules, pertaining to definitions and post graduate training programs, at page 2143 of the 1999 Montana Administrative Register, Issue Number 19, and on February 24, 2000 published notice of the adoption and amendment of said rules at page 627 of the 2000 Montana Administrative Register, Issue Number 4.

2. The corrected notice is being filed to correct an error in the numbering of the new rules.

3. The new rules are to be numbered as follows: ARM 8.28.1524 MEDICAL STUDENT'S PERMITTED ACTIVITIES, 8.28.1525 INTERN'S SCOPE OF PRACTICE, 8.28.1526 RESIDENT'S SCOPE OF PRACTICE and 8.28.1527 APPROVED RESIDENCY.

4. Replacement pages for the corrected notice of adoption will be submitted to the Secretary of State on March 31, 2000.

BOARD OF MEDICAL EXAMINERS
LAWRENCE R. McEVOY, MD,
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, March 6, 2000

BEFORE THE BOARD OF OUTFITTERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of amendment of rules pertaining to licenses, qualifications, examinations, outfitter acting as guide, renewal, amendment to operations plan, inactive, guide or professional guide license, fees, operations plan, N.C.H.U., records, safety, standards, unprofessional conduct and misconduct, moratorium, review of new operations plan and proposed expansion of net client hunting use under existing and new operations plans and the adoption of a new rule regarding sale and purchase of an outfitting operation	)))))))))))))))))))	NOTICE OF AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On October 21, 1999, the Board of Outfitters published a notice of the proposed amendment and adoption of the above-stated rules at page 2318, 1999 Montana Administrative Register, issue number 20. The hearing was held November 15, 1999.

2. The Board is not adopting the amendments to ARM 8.39.508. The Board has amended ARM 8.39.502, 8.39.512, 8.39.514, 8.39.704, 8.39.709, and 8.39.802 exactly as proposed and amended ARM 8.39.501, 8.39.503, 8.39.507, 8.39.510, 8.39.518, 8.39.703, 8.39.804 and adopted NEW RULE I (ARM 8.39.513) as proposed but with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

8.39.501 LICENSURE--OUTFITTER LICENSES (1) through (2)(d)(iv) will remain as proposed.

(v) ~~nonmotorized~~ boat or other floating craft, or

(vi) ~~motorized watercraft used for fishing or hunting and shall include or,~~

~~(vii)~~ lodging.

AUTH: Sec. 37-1-131, 37-47-201, 37-47-301, 37-47-302, 37-47-307 and 37-47-308, MCA
IMP: Sec. 37-47-201, MCA

8.39.503 LICENSURE--OUTFITTER EXAMINATION (1) through (3)(c) will remain as proposed.

(d) ~~motorized~~ watercraft used for fishing or hunting;

(3)(e) through (5) will remain as proposed.

AUTH: Sec. 37-1-131, 37-47-201, MCA
IMP: Sec. 37-47-201, 37-47-305, MCA

8.39.507 OUTFITTER ACTING AS GUIDE (1) Any person holding a current and valid ~~active~~ outfitter's license may act as a guide ~~for another licensed outfitter~~ without a guide's license if:

(a) he or she possesses the qualifications ~~and the license endorsements for the activity to be guided in~~ of a guide under these rules;

~~(b) has a record of this permissive activity on file with the department;~~

~~(c)~~ (b) ~~is considered as a licensed guide for this particular outfitter only~~ they work for only one outfitter at any given time; and

~~(d)~~ (c) they act~~s~~ as a guide only within the services and area of operation of this particular outfitter.

AUTH: Sec. 37-47-201, MCA
IMP: Sec. 37-47-201, 37-47-301, 37-47-302, 37-47-303, MCA

8.39.510 LICENSURE--AMENDMENT TO OPERATIONS PLAN (1) An outfitter may apply for an amendment to his or her operations plan by stating in writing his or her proposed changes and submitting it to the board. All amendments will be considered by the board using the same criteria as new applicants, including, if an outfitter is applying to add hunting, fishing, ~~motorized~~ watercraft used for fishing or hunting, upland game bird, waterfowl, turkey or horse use to his or her operations plan, being required to take those parts of the outfitter examination that apply to the proposed amendment.

AUTH: Sec. 37-1-131, 37-47-201, MCA
IMP: Sec. 37-47-201, MCA

8.39.518 LICENSURE--FEES FOR OUTFITTER, OPERATIONS PLAN, NET CLIENT HUNTING USE (N.C.H.U.), AND GUIDE OR PROFESSIONAL GUIDE (1) through (1)(d)(ii) will remain as proposed.

~~(e) Amendment to operations plan 10~~

(f) will remain as proposed but is renumbered (e).

~~(g)~~ (f) Annual fee for each additional hunting camp added after January 1, 1999 and located beyond a 100-mile radius of the outfitter's base of operations and that is in an administrative region other than the region containing the outfitter's base of operations 5,000

~~(h)~~ (g) Amendments to operations plan proposing an increase in net client hunting use 2,000

~~(i)~~ (h) Fee for each new client added to operations plan by N.C.H.U. expansion request 500

~~(j)~~ (i) Resident guide or resident professional guide license

(i) through (iii) will remain as proposed.

~~(k)~~ (j) Nonresident outfitters, guides or professional guides will pay the fee their residency state charges for the similar license if in excess of the amount established by the board for the license. Otherwise they will pay the Montana resident fee.

AUTH: Sec. 37-1-131, 37-47-201, MCA
IMP: Sec. 37-47-306, MCA

8.39.703 OUTFITTER RECORDS (1) through (2)(g) will remain as proposed.

(h) tally sheets reflecting the number of clients served per N.C.H.U. category as defined in ARM 8.39.804(2)(a), (b), and (c), each year shall be maintained and submitted to the board during the renewal of the license or when the outfitter's license is lapsed.

(3) will remain as proposed.

AUTH: Sec. 37-1-131, 37-47-201, MCA
IMP: Sec. 37-47-301, MCA

8.39.804 DETERMINATION OF NET CLIENT HUNTING USE AND REVIEW OF NEW OPERATIONS PLAN AND PROPOSED EXPANSION OF NET CLIENT HUNTING USE UNDER ~~AN~~ EXISTING AND NEW OPERATIONS PLAN(S) (1) through (7) will remain as proposed.

(8) The board shall issue an order, in accordance with the provisions set forth in 37-47-316 and 37-47-317, MCA, supported by findings of fact and conclusions of law, either granting, denying or modifying the proposal. A copy of the order shall be provided by regular mail to the individual submitting the request and any persons, associations or agencies submitting comments.

(9) will remain as proposed.

AUTH: Sec. 37-47-201, MCA
IMP: Sec. 37-47-201, MCA

NEW RULE I (ARM 8.39.513) SALE AND PURCHASE OF AN OUTFITTING OPERATION (1) through (2)(d) will remain as proposed.

(e) a statement relative to whether the seller will surrender or retain the outfitter license, or place the license on inactive status~~, or transfer the license to the purchaser upon sale~~.

(3) through (5) will remain as proposed.

AUTH: Sec. 37-47-201, MCA
IMP: Sec. 37-47-201, MCA

3. The Board received 38 written and oral comments. The comments received and the Board's responses are as follows:

Re: ARM 8.39.501, 8.39.502, 8.39.503

COMMENT No. 1: Oral and written comments received from Ms. Jean Johnson, Executive Director, Montana Outfitters and Guides Association (MOGA) on behalf of MOGA. Commentor states that MOGA does not oppose the proposed rules pertaining to 8.39.501, 8.39.502 and 8.39.503.

RESPONSE: The Board acknowledged the comment. No response is warranted because Commentor agrees with the proposed rules.

COMMENT No. 2: Written comment received from Mr. Mike Geary, President, Fishing Outfitters Association of Montana (FOAM) on behalf of FOAM. Commentor states FOAM opposes the proposed rule as it pertains to 8.39.501(2)(d)(v) and (vi) because the association fears that adoption of the rule will trigger the U.S. Coast Guard to come forward with more federal licensure procedures for motorized or non-motorized watercraft.

RESPONSE: The Board acknowledges the comment and responded with a point of clarification that the rule was proposed in an attempt to clearly identify what services are being offered by a licensee. The Board amended the proposed rule by striking "~~nonmotorized~~" from Sub-section (v) and "~~motorized watercraft used for fishing or hunting and shall include or~~" from Sub-section (vi) and "~~motorized~~" from 8.39.503(3)(d).

COMMENT No. 3: Written comment received from Allen Schallenberger of Sheridan, MT. Commentor indicates that the Board is "picking" on bird hunters by charging outrageous fees and that he would like to see electric and small gas motors exempt from regulations.

RESPONSE: The Board acknowledges the comment, however, the Board has already voted on the proposed rule in the above comments.

Re: ARM 8.39.507

COMMENT No. 4: Oral and written comment received from Ms. Jean Johnson, Executive Director, MOGA on behalf of MOGA. Commentor states that MOGA does not oppose the proposed rule as it pertains to Section (1), but added that the word "without" is underlined as if it were not pre-existing language.

RESPONSE: The Board acknowledges the comment and will make the appropriate revisions.

COMMENT No. 5: Commentor further states that MOGA opposes the proposed rule as it pertains to Section (1)(a), as it is their understanding no such requirement exists for guides, therefore, none should exist for outfitters whose qualifications should exceed those of a guide.

RESPONSE: The Board acknowledges the comment. The Board amended the proposed rule by reverting subsection (1)(a) back to its original state.

COMMENT No. 6: Written comment received from Mr. Mike Geary, President, FOAM on behalf of FOAM. Commentor states that FOAM opposes the proposed rule as it pertains to Section (1)(b) because outfitter's client logs, which are submitted annually, should be sufficient to show a record of which outfitter is acting as a guide.

RESPONSE: The Board acknowledges the comment and wishes to respond that the Board wants outfitters to be reminded that they are solely responsible for all their guides, even if it is an outfitter working as a guide. In addition, working as a guide for another outfitter does not allow anyone to operate outside of his or her license or operation plan. The Board amended the proposed amendment as follows:
Section (1) to revert back to its original state.
Subsection (a) to revert back to its original state.
Subsection (b) to revert back to its original state.
Subsection (c) to be amended to read as follows: "~~is considered as a licensed guide for this particular outfitter only; and~~ can work for only one outfitter at any given time; and".
Subsection (d) to be adopted as proposed.

COMMENT No. 7: Written comment received from Mr. Allen Schallenberger. Commentor states that he opposes the proposed rule as it pertains to 8.39.507 because outfitters do not need to obtain a guide license when they already pay fees for their outfitter license, of which, the qualifications are much higher than for a guide. The comment further states that 8.39.507 should be eliminated altogether.

RESPONSE: The Board acknowledges the comment but communicated that the rule, as written, is specific.

Re: ARM 8.39.508

COMMENT No. 8: Oral and written comment received from Ms. Jean Johnson, Executive Director, MOGA on behalf of MOGA. Commenter states that MOGA does not oppose the proposed rule as it pertains to section (2). In addition, MOGA requests the Board adopt the following new section: "The Board shall issue a certificate, a copy of which must accompany an application for a nonresident B-10 or B-11 license, upon receipt of completed application".

RESPONSE: The Board acknowledges the comment and stated that license certification forms are within the jurisdiction of the Department of Fish, Wildlife and Parks (MFWP) and not the Board of Outfitters. The Board of Outfitters currently submits written notification to MFWP to enable them to provide certification forms immediately upon receipt of a completed outfitter's license renewal.

COMMENT No. 9: Written comment received from Mr. Mike Geary, President of FOAM on behalf of FOAM. Commentator states that FOAM opposes the elimination of Section (4) because it is difficult to prosecute guides for a violation when they could avoid prosecution by not renewing their license. Not renewing their licenses within the time frame specified in Section (4) would jeopardize the board's ability to pursue and prosecute violations within the statute of limitations.

RESPONSE: The Board acknowledges the comment and added that ARM 8.2.208(2) also requires guides to renew licenses by April 1st. The Board is not adopting the proposed amendments to ARM 8.39.508.

COMMENT No. 10: Oral comment received from Ms. Bridgett Erickson, Lincoln, Montana. Commentor states that she does not understand the meaning of eliminating the April 1st deadline from proposed rule Section (2). In addition the Commentor suggested deleting "~~guide or professional guide~~" from the first line of Subsection (2) since it applies to outfitters.

RESPONSE: The Board acknowledges the comment, however, the Board has already voted not to adopt the proposed amendments to ARM 8.39.508.

Re: ARM 8.39.510

During its review the Board concurred to eliminate "~~motorized~~" from the proposed rule as it pertains to Section (1) to be consistent with 8.39.501 and 8.39.503.

COMMENT No. 11: Oral and written comment received from Ms. Jean Johnson, Executive Director, MOGA on behalf of MOGA. Commentor states that MOGA does not oppose the proposed rule.

RESPONSE: The Board acknowledges the comment. No response is warranted because Commentor agrees with the proposed rule.

COMMENT No. 12: Written comment received from Mr. Allen Schallenberger. The Commentor indicates that the proposed rule appears to require current outfitters to take a test in order to provide motorized boat services. The Commentor further states that the Board is "again picking" on bird hunters.

RESPONSE: The Board acknowledges the comment, however, noted that the Board has already voted to eliminate "motorized" from the proposed rule.

Re: ARM 8.39.512

COMMENT No. 13: Oral and written comment received from Ms. Jean Johnson, Executive Director, MOGA on behalf of MOGA. Commentor states that MOGA does not oppose the proposed rule as it pertains to Section (3). Commentor further states that MOGA requests that the proposed rule as it pertains to section (5) should be amended to delete reference to Sec. 37-47-201(5)(d), MCA and instead, should reference ARM 8.39.804(3).

RESPONSE: The Board acknowledges the comment, but responded with a point of clarification that it is more practical to cite a statute within an administrative rule because a statute is more likely to remain in effect longer than a rule.

COMMENT No. 14: Written comment received from Mr. Mike Geary, President FOAM on behalf of FOAM. Commentor states that FOAM opposes the proposed rule as written as it pertains to Section (3) because they feel operation plans should only be updated if changes have occurred. FOAM requested that the Board amend the proposed rule by adding "if necessary to reflect any changes".

RESPONSE: The Board acknowledged the comment and wishes to respond that the additional language is not necessary because the updated operation plan allows the Board office to determine, officially, whether any changes have occurred. This process is currently being followed through Board policy.

Re: ARM 8.39.514

COMMENT No. 15: Oral and written comment received from Ms. Jean Johnson, Executive Director, MOGA on behalf of MOGA. Commentor states that MOGA does not oppose the proposed rule.

RESPONSE: The Board acknowledges the comment. No response is warranted because Commentor agrees with the proposed rule. Re: ARM 8.39.518

COMMENT No. 16: Oral and written comment received from Ms. Jean Johnson, Executive Director MOGA on behalf of MOGA. Commentor states that MOGA opposes the proposed changes pertaining to Section (1)(e) because the Board had previously voted, on September 2, 1999, to drop the $10.00 fee for operation plan amendments. In addition, the Commentor further requests the Board amend Section (1)(g) by inserting "after January 1, 1999".

RESPONSE: The Board acknowledges the comment as it pertains to proposed Section (1)(e) and will amend the rule to require no fee for operation plan amendments. The Board further acknowledges the comment as it pertains to proposed Section (1)(g) and will amend the rule as follows: "Annual fee for each hunting camp added after January 1, 1999 and located beyond a 100 mile radius of the outfitter's base of operations and that is in an administrative region other than the region containing the outfitter's base of operations."

COMMENT No. 17: Written comment received from Mr. Mike Geary, President, FOAM on behalf of FOAM. Commentor states that FOAM requests a complete review of the board's current income and expense accounting.

RESPONSE: The Board acknowledged the comment. The majority of the fee changes are a result of 1999 Montana legislation. As for the fees pertaining to operation plan amendments, the Board is satisfied that there will not be any severe effect in the area of inspections and operation plan amendments if the fee is eliminated.

COMMENT No. 18: Written comment received from Mr. Mike Geary, President, FOAM on behalf of FOAM. Commentor states that FOAM requests an amendment to proposed rule 8.39.518(1)(b) to read, in part: "Application for amendment of service to resident outfitter license." This clarification will keep licensees from assuming they have to pay a $400.00 fee for operation plan amendments involving gear, territory, etc.

RESPONSE: The Board acknowledges the comment, however, the Board is satisfied that it is already clear in the proposed rules.

COMMENT No. 19: Commentor further states that FOAM requests an amendment to proposed rule 8.39.518(1)(e) to read: "Amendment to existing operations plan other than change of service." This is another clarification of the rules similar to the comment pertaining to Subsection (b) above. In addition, the Commentor suggested that $10.00 is sufficient to offset the staff time handling these amendments.

RESPONSE: The Board acknowledges the comment. The Board concurred to strike Subsection (e) "~~Amendment to operation plan~~" and noted that it has previously voted to eliminate the proposed operation plan amendment fee.

COMMENT No. 20: Written comment received from Mr. Allen Schallenberger, Sheridan, MT. Commentor states that the fees are too outrageous. It appears the Board's goal is to drive outfitters out of business.

RESPONSE: The Board acknowledges the comment, however, clarified that the fee structure was mandated by 1999 Montana legislation.

COMMENT No. 21: Oral comment received from Ms. Bridgett Erickson, Lincoln, MT. Commentor suggested that it would be hard to demonstrate that fees, in proposed rule Section (1)(g) are commensurate with program costs. In addition the Commentor suggested that the proposed rule makes no distinction between private and public land outfitter.

RESPONSE: The Board acknowledges the comment, however, clarified that the type of camp, private or public land, is already covered in Board statutes.

COMMENT No. 22: Written comment received from Mr. Robert Stroebel, Rimrock Outfitters, Billings, MT. Commentor states his opposition of any increase in fees, especially the $5,000 fee for hunting camps and the $2,000 fee for operation plan changes.

RESPONSE: The Board acknowledges the comment, however, clarified that both fees were mandated by 1999 Montana legislation and not the Board of Outfitters.

Re: ARM 8.39.703

COMMENT No. 23: Oral and written comment received from Ms. Jean Johnson, Executive Director, MOGA on behalf of MOGA. Commentor states that MOGA requests the Board amend Section (1) by deleting "at all times" in an attempt to bring this rule into agreement with proposed rule 8.39.709.

RESPONSE: The Board acknowledges the comment, but responded that outfitters should have their records readily available at their main base camp. In addition, such amendments would require the Board to meet the time and expense of an additional notice to solicit further public comment because the request is not part of the rule proposal.

COMMENT No. 24: Written comment received from Mr. Mike Geary, President, FOAM on behalf of FOAM. Commentor states that FOAM requests the Board amend, for clarity, proposed Section (2)(h) to read: "tally sheets reflecting the number of clients serviced per NCHU category as defined in 8.39.804(2)(a), (b), and (c), each year shall be maintained and submitted to the Board during the renewal of the license or when the outfitter's license is lapsed."

RESPONSE: The Board acknowledged the comment and will amend the proposed rule accordingly. The Board's staff will amend the current tally sheets to reflect all new statute and rule changes as well.

COMMENT No. 25: Written comment received from Mr. Allen Schallenberger, Sheridan, MT. Commentor states that it appears as though the Board is giving out data collected from outfitters regarding their individual day use on rivers. The comment adds that freedom and privacy are important to outfitters in Montana.

RESPONSE: The Board acknowledges the comment, however, noted that the comment is not specific to any matter pertaining to the proposed rules.

Re: ARM 8.39.704

COMMENT No. 26: Oral and written comment received from Ms. Jean Johnson, Executive Director, MOGA on behalf of MOGA. Commentor states that MOGA does not oppose the proposed rule.

RESPONSE: No response is warranted because Commentor agrees with the proposed rules.

COMMENT No. 27: Oral comment received from Ms. Bridgett Erickson, Lincoln, MT. Commentor suggested that 8.39.704(2) states there is a one-time, 90 day exemption provided for new first-time applicants and temporary guide licenses. She suggested that if the Board is going to include temporary guides in 8.39.704, then 8.39.514 needs to be changed to be consistent.

RESPONSE: The Board acknowledges the comment but believes the Commentor is confusing the temporary guide rules.

Re: ARM 8.39.709

COMMENT No. 28: Oral and written comment received from Ms. Jean Johnson, Executive Director, MOGA. Commentor states that MOGA does not oppose the proposed rule.

RESPONSE: The Board acknowledged the comment. No response is warranted because Commentor agrees with the proposed rule.

COMMENT No. 29: Written comment received from Mr. Allen Schallenberger, Sheridan, MT. Commentor states outfitters should be allowed to kill dangerous animals to protect their clients in certain situations.

RESPONSE: The Board acknowledges the comment, however, clarified that the rule is being eliminated because it is already a requirement in the Board's statutes.

COMMENT No. 30: Oral comment received from Ms. Bridgett Erickson, Lincoln, Montana. Commentor suggests that there is a law against shooting in competition with a client.

RESPONSE: The Board acknowledged the comment, and added that the rule is being eliminated because it is already a requirement in the Board's statutes.

Re: ARM 8.39.803

COMMENT No. 31:

Oral and written comment received from Ms. Jean Johnson, Executive Director, MOGA on behalf of MOGA. Commentor states that MOGA does not oppose the proposed rule.

RESPONSE: The Board acknowledged the comment. No response is warranted because the Commentor agrees with the proposed rule.

Re: ARM 8.39.804

COMMENT No. 32: Oral and written comment received from Ms. Jean Johnson, Executive Director, MOGA on behalf of MOGA. Commentor states that MOGA requests the Board amend the "title" of the proposed rule by adding: "DETERMINATION OF NET CLIENT HUNTING USE", because the rule defines how net client hunting use is initially determined.

RESPONSE: The Board acknowledges the comment and concurred to amend the rule title to read: "DETERMINATION OF NET CLIENT HUNTING USE AND REVIEW OF NEW OPERATIONS PLAN AND PROPOSED EXPANSION OF NET CLIENT HUNTING USE UNDER ~~AN~~ EXISTING AND NEW OPERATIONS PLAN(S)".

COMMENT No. 33: Commentor further states that MOGA requests the Board amend the proposed rule as it pertains to Section (2)(c), category 3 by splitting it into two parts. Turkey, upland game bird and migratory game bird clients holding the nonresident B-1 bird license and clients holding the B-1 license as an integral part of the B-10 or B-11 license. The comment suggests that an outfitter would then not be allowed to change, trade or substitute between the two parts.

RESPONSE: The Board acknowledges the comment and responds by clarifying that amending the rule as requested is beyond the scope of the original intent of the proposed notice.

COMMENT No. 34: Another oral comment received from the same Commentor above, states that MOGA requests the Board amend the final sentence in Section (3) to read: "Submission of false information regarding net client hunting use is specifically designated as unprofessional conduct and may ~~shall~~ result in revocation of the outfitter's license."

RESPONSE: The Board acknowledges the comment and responds that amending the rule as suggested would require the Board to solicit further public comment as the request is not a part of the rule proposal.

COMMENT No. 35: Written comment received from Mr. Mike Geary, President, FOAM on behalf of FOAM. Commentor states that FOAM requests that the Board amend, for clarity, proposed Section (8) to reference the criteria and processes set forth in Sec. 37-47-316 and 37-47-317, MCA.

RESPONSE: The Board acknowledges the comment and will amend the proposed rule accordingly.

COMMENT No. 36: Written comment received from Mr. Dwayne Andrews, Miles City, Montana. Commentor states that the proposed rule appears to eliminate the public review and comment process prior to Board review.

RESPONSE: The Board acknowledges the comment and responds by clarifying that the rules are being eliminated because the public comment process exists in the Board's statutes.

Re: NEW RULE I SALE AND PURCHASE OF AN OUTFITTING OPERATION

COMMENT No. 37: Oral and written comment received from Ms. Jean Johnson, Executive Director, MOGA on behalf of MOGA. Commentor indicates that MOGA will submit a written comment on the proposed rule at a later date, but prior to the comment deadline period of November 22, 1999.

RESPONSE: The Board acknowledges the comment, but noted that there was no written comment received.

COMMENT No. 38: Written comment received from Mr. Mike Geary, President, FOAM on behalf of FOAM. Commentor states that FOAM requests the Board eliminate the language "~~or transfer the license to the purchaser upon sale~~" as it pertains to Section (2)(e). Except as noted in Sec. 37-47-310(3), MCA the Board does not actually transfer a license. Licensees may surrender their license and a new license may be issued to a successful applicant. The suggestion of "license transfer" leaves the Board open to criticism for possibly creating a value for a

license that may be transferred. Even with the moratorium on hunting licenses, a "license transfer" does not occur.

RESPONSE: The Board acknowledges the comment and will amend the proposed rule accordingly.

BOARD OF OUTFITTERS
ROBIN CUNNINGHAM, 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 March 3, 2000.

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

In the matter of the amendment of a rule pertaining to fees	)))	NOTICE OF AMENDMENT OF ARM 8.48.1105 FEE SCHEDULE

TO: All Concerned Persons

1. On September 23, 1999, the Board of Professional Engineers and Land Surveyors published a notice of the proposed amendment of the above-stated rule at page 1936, 1999 Montana Administrative Register, issue number 18. The hearing was held October 25, 1999.

2. The Board has adopted ARM 8.48.1105 exactly as proposed.

3. The Board received one written comment. The comment received and the Board's response is as follows:

COMMENT: Loren Smith commented that he was opposed to the increasing fees as proposed in MAR Notice No. 8-48-21 stating that the additional monies would do "little more than 'build additional bureaucracy' while providing little or no benefit to...engineers, surveyors, etc." Other comments were made which are not relevant to the proposed rule amendment.

RESPONSE: The Board acknowledged Mr. Smith's comments, however, the rule was adopted as proposed.

BOARD OF PROFESSIONAL ENGINEERS
AND LAND SURVEYORS
DANIEL MCCAULEY, 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, March 6, 2000

BEFORE THE FISH, WILDLIFE AND PARKS COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 12.6.901, limiting motor-propelled water craft to no-wake speed on the Fort Peck Dredge Cut Trout Pond	)))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On December 2, 1999, the Fish, Wildlife and Parks Commission published notice of the proposed amendment to ARM 12.6.901 concerning limiting motor-propelled water craft to no-wake speed on the Fort Peck Dredge Cut Trout Pond at page 2722 of the 1999 Montana Administrative Register, Issue Number 23.

2. The commission has amended ARM 12.6.901 as proposed.

3. No comments or testimony were received.

BY: S.F. Meyer

S.F. Meyer
Commission Chairman

BY: John F. Lynch

John F. Lynch
Rule Reviewer

Certified to the Secretary of State March 6, 2000.

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

In the matter of the repeal of ARM 46.9.301, 46.9.302, 46.9.303, 46.9.304, 46.9.305 and 46.9.310 pertaining to grants-in-aid to counties and the transfer of rules 46.9.601, 46.9.602, 46.9.603, 46.9.604, 46.9.605, 46.9.606, 46.9.607, 46.9.608 and 46.9.611 pertaining to community services block grants	)	NOTICE OF REPEAL AND TRANSFER

TO: All Interested Persons

1. On January 13, 2000, the Department of Public Health and Human Services published notice of the proposed repeal and transfer of the above-stated rules at page 39 of the 2000 Montana Administrative Register, issue number 1.

2. The Department has repealed rules 46.9.301, 46.9.302, 46.9.303, 46.9.304, 46.9.305 and 46.9.310 and transferred rules 46.9.601, 46.9.602, 46.9.603, 46.9.604, 46.9.605, 46.9.606, 46.9.607, 46.9.608 and 46.9.611 as proposed.

3. No comments or testimony were received.

Dawn Sliva
Rule Reviewer

Laurie Ekanger
Director, Public Health and Human Services

Certified to the Secretary of State March 6, 2000.

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

In the matter of the amendment of ARM 46.12.3804, 46.18.106, 46.18.107, 46.18.109, 46.18.113, 46.18.118, 46.18.122, 46.18.126, 46.18.129, 46.18.134, 46.18.140, 46.18.306, 46.18.309 and 46.18.326 pertaining to Families Achieving Independence in Montana (FAIM)	)	NOTICE OF AMENDMENT

TO: All Interested Persons

1. On December 16, 1999, the Department of Public Health and Human Services published notice of the proposed amendment of the above-stated rules at page 2799 of the 1999 Montana Administrative Register, issue number 24.

2. The Department has amended rules 46.12.3804, 46.18.106, 46.18.107, 46.18.109, 46.18.113, 46.18.118, 46.18.122, 46.18.126, 46.18.129, 46.18.140, 46.18.306, 46.18.309 and 46.18.326 as proposed.

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

46.18.134 FAIM FINANCIAL ASSISTANCE: SANCTIONS (1) through (7)(b) remain as proposed.

(8) "Employment-related or training activities", as specified in (7)(a), means educational or training activities required by the family investment agreement which are directly intended to promote economic self-sufficiency. "Employment-related or training activities" does not include ~~family strengthening activities,~~ child support enforcement; early periodic screening, diagnosis and treatment; program compliance; third party liability; participation log and travel; nor negotiation of a new family investment agreement.

(9) remains as proposed.

AUTH: Sec. 53-4-212, MCA
IMP: Sec. 53-4-211, 53-4-601 and 53-4-608, MCA

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

COMMENT #1: What is the background for the sanction rule, ARM 46.18.134?

RESPONSE: Senate Bill 353, enacted in 1999 by the Montana legislature, provided that sanctioning of FAIM participants will not include the loss of Medicaid benefits except as federal law requires, that child care assistance will continue during any penalty period provided the sanctioned individual is participating in employment-related or training activities in compliance with his or her Family Investment Agreement, and that an overpayment collection will be made when sanctions cannot be imposed at a later date.

COMMENT #2: Would breaks from school, i.e., spring break, result in a sanction being imposed? Such a result seems to violate the intent of the bill.

RESPONSE: The department's policy is that a break in Post Secondary Education component participation due to a scheduled school vacation is not cause for a sanction by itself if ongoing attendance is maintained prior to and following the vacation period. Short breaks are treated as continuous participation while longer breaks may involve other negotiated activities.

COMMENT #3: Please define family strengthening activities in the rule. What activities are included under this? If child care is denied for these activities during a sanction, that could cause the recipient to be unable to further efforts toward self-sufficiency, which seems contrary to the intent of SB 353.

RESPONSE: The Department has considered the comment. Since the assertion that Family Strengthening Activities may be necessary to further a family's ability to achieve self-sufficiency is convincing, the Department is changing the language of ARM 46.18.134 to allow child care for family strengthening activities which are part of the Family Investment Agreement during a sanction period. While the Department declines to include a definition of "Family Strengthening Activities" in the rule, examples of such activities include, but are not limited to: medical appointments, counseling, parenting classes, attending school, and the resolution of housing issues. The Department recognizes that child care is most often not needed for Family Strengthening Activities because generally the children are involved in the Family Strengthening Activity with the parent. Yet, based on the comment, the Department is convinced that child care should be provided for Family Strengthening Activities during a sanction period when it is necessary for the parent to leave the child or children in order to accomplish such activities pursuant to a Family Investment Agreement. Consequently, ARM 46.18.134(8) is changed to delete the reference to Family Strengthening Activities.

COMMENT #4: Why has the reference to one-time employment-related payments been removed from ARM 46.18.129?

RESPONSE: The one-time employment-related payment is a "cash assistance payment" and is addressed under subsection (2) of the rule. Thus, the one-time employment-related payment has not been removed from ARM 46.18.129, it simply was already addressed in another subsection. Making reference to the payment in both subsections was confusing, redundant, and unnecessary.

Dawn Sliva
Rule Reviewer

Laurie Ekanger
Director, Public Health and Human Services

Certified to the Secretary of State March 6, 2000.

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

In the Matter of the Amendment of a Rule Pertaining to Practice Before the Public Service Commission	))))	NOTICE OF AMENDMENT TO ARM 38.2.314

TO: All Concerned Persons

1. On November 4, 1999, the Department of Public Service Regulation, Public Service Commission (PSC), published notice of public hearing on the proposed amendment of ARM 38.2.314, concerning practice of law before the PSC, at page 2559 of the 1999 Montana Administrative Register, issue number 21.

2. The PSC has amended ARM 38.2.314 exactly as proposed.

3. The following comments were received and appear with the PSC's responses:

COMMENT 1: Camelot Limousine questions whether it must now be represented by legal counsel in PSC proceedings, instead of appearing pro se. Camelot is a partnership and is concerned that the prohibition on corporations appearing pro se might now extend to other organizational entities.

RESPONSE: Partnerships are distinguishable from corporations in many ways, but also may have some traits similar to corporations. Whether or not the prohibition against corporations appearing pro se applies to partnerships is an uncertainty inherent in the PSC's existing practice rule as well as in the PSC's new practice rule. The proper answer might also depend on the nature or type of the partnership (e.g., informal, formal, small, large, general, limited). The PSC agrees that small partnerships should be allowed to appear pro se. In regard to pro se appearance by partnerships the adopted amendment will not change the PSC's existing practice, which is to allow such pro se appearances unless and until presented with a compelling legal argument that such practice is in violation of Montana law. See also the general response below.

COMMENT 2: The Coalition Against Unfair Utility Competition argues that the PSC's proposed rule violates the United States and Montana Constitutions in regard to free speech and participation in government functions. Dick Irvin, Inc., argues that the rule discards the important concept of public participation.

RESPONSE: The comments of the Coalition and Dick Irvin appear to be directed at the deletion of the existing rule's provisions recognizing that any person may appear on his or

her own behalf before the PSC and, possibly, the existing rule's allowing for appearance through an agent authorized in writing. Pro se appearances by individuals will still be allowed under the new rule because pro se appearances are either not the practice of law or, if they are the practice of law, are recognized as being in accordance with Montana laws governing the practice of law. The existing rule's provision allowing appearance through an agent authorized in writing, if that appearance constitutes the practice of law, conflicts with Montana laws governing the practice of law and must be repealed. The PSC agrees that public participation in matters before the PSC is important and should not be impeded. See also the general response below.

COMMENT 3: AT&T, Sprint, and MCI WorldCom suggest that Montana is not well-served by Montana's new limitation on pro hac vice appearances as that limitation might apply to their appearances before the PSC through in-house counsel. These national telecommunications carriers suggest that the PSC define "practice of law" so that all interested persons will know what activities the rule applies to. One or more suggest that the PSC narrowly construe what constitutes the practice of law. These carriers also suggest that the PSC liberally construe the "good cause" waiver allowing appearance by attorneys pro hac vice more than two times.

RESPONSE: The PSC will not define the practice of law by rule, because the PSC is not the appropriate state entity to do so. Montana's limitation on pro hac vice appearances is relatively new and therefore likely presents some uncertainties. However, as is the case in regard to defining practice of law, the PSC is not the appropriate state entity to resolve any pro hac vice uncertainties by rule. The PSC will consider, address, and resolve pro hac vice matters as they arise. See also the general response below.

GENERAL RESPONSE: The PSC appreciates the comments on this rulemaking. The PSC does not regulate the practice of law and does not view itself as the most appropriate entity to settle uncertainties pertaining to the practice of law through rulemaking. The most the PSC can and should do by rule in regard to the practice of law is what it has done in the amendment adopted above, which essentially provides that the PSC must comply with Montana laws pertaining to the practice of law and must enforce those laws to the extent those laws apply in matters before the PSC. The PSC has attempted in the past to apply a reasonable, workable, and lawful approach to addressing all practice of law questions that have been presented in matters before the PSC. The PSC will continue to so apply its understanding of practice of law in all matters before the PSC as questions arise. The PSC will develop an informal policy statement on practice of law before the PSC, which, as amended from time to time as may be necessary, may answer some questions which cannot properly be answered by

rule and may serve as guidance in practice of law questions arising before the PSC.

Dave Fisher, Chairman

Reviewed By Robin A. McHugh

CERTIFIED TO THE SECRETARY OF STATE MARCH 6, 2000.

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

In the Matter of the Amendments to Rules Pertaining to Pipeline Safety	)))	NOTICE OF AMENDMENTS TO ARM 38.5.2202 AND 38.5.2302

TO: All Concerned Persons

1. On November 18, 1999, the Department of Public Service Regulation, Public Service Commission (PSC) published notice of a public hearing on the proposed amendment of ARM 38.5.2202 and 38.5.2302 concerning pipeline safety, at page 2608 of the 1999 Montana Administrative Register, issue number 22.

2. The PSC has amended ARM 38.5.2202 and 38.5.2302 exactly as proposed.

3. No comments or testimony were received.

Dave Fisher, Chairman

Reviewed By Robin A. McHugh

CERTIFIED TO THE SECRETARY OF STATE MARCH 6, 2000.

VOLUME NO. 48 OPINION NO. 9

ENVIRONMENTAL QUALITY, DEPARTMENT OF - Reimbursement for expenses associated with release from petroleum storage tank;
PETROLEUM TANK RELEASE COMPENSATION FUND - Continued compliance with state and federal laws required for reimbursement;
UNDERGROUND STORAGE TANKS - Eligibility requirements for reimbursement for expenses associated with release from petroleum storage tank;
MONTANA CODE ANNOTATED - Title 75, chapter 11, part 3; sections 1-2-101, 75-11-301(5), -307, -308.

HELD: A tank that has been granted eligibility for reimbursement under Mont. Code Ann. § 75-11-308 loses its eligibility status if the tank falls out of compliance with applicable state and federal laws and rules.

February 17, 2000

Mr. Tim Hornbacher, Chair
Petroleum Tank Release Compensation Board
1721 Cedar
Helena, MT 59601

Dear Mr. Hornbacher:

The Montana Petroleum Tank Release Compensation Board ("Board") has requested my opinion regarding the eligibility requirements for reimbursement for expenses associated with a release from a petroleum storage tank. As you know, the Board administers the Montana Petroleum Cleanup Fund ("Fund") which was created in 1989 to assist with the cost of cleaning up releases from underground storage tanks containing petroleum products.

Pursuant to title 75, chapter 11, part 3 of the Montana Code Annotated, owners and operators of petroleum storage tanks may obtain reimbursement from the Fund for expenses caused by a release. See Mont. Code Ann. § 75-11-307 (authorizing reimbursement for certain expenses but not for others). In order to qualify for reimbursement, however, the owner or operator must meet the eligibility requirements of Mont. Code Ann. § 75-11-308(1), which provides:

> An owner or operator is eligible for reimbursement for the applicable percentage as provided in 75-11-307(4)(a) and (4)(b) of eligible costs caused by a release from a petroleum storage tank only if:
> (a) the release was discovered on or after April 13, 1989;

(b) the department is notified of the release in the manner and within the time provided by law or rule;

(c) the department has been notified of the existence of the tank in the manner required by department rule or has waived the requirement for notification;

(d) the release was an accidental release;

(e) with the exception of the release, the operation and management of the tank complied with applicable state and federal laws and rules that the board determines pertain to prevention and mitigation of petroleum releases when the release was discovered and remained in compliance following discovery of the release; and

(f) the owner or operator undertakes corrective action to respond to the release and the corrective action is undertaken, in accordance with a corrective action plan approved by the department, from the time of discovery until the release is resolved.

Because this statute is written in the conjunctive, all six of these requirements must be met before an owner or operator is eligible for reimbursement. See State v. Hall, 1999 MT 297, 56 State Rptr. 1190, ___ P.2d ___.

Your question involves an interpretation of subsection (1)(e). Specifically, you ask:

> If a tank that has been granted eligibility for reimbursement under Mont. Code Ann. § 75-11-308 falls out of compliance with applicable state and federal laws and rules, does the tank lose eligibility for reimbursement from the fund for the existing release?

By its plain terms, Mont. Code Ann. § 75-11-308(1)(e) renders ineligible for reimbursement any owner or operator whose tank subsequently falls out of compliance with applicable state and federal laws and rules. The Board relies upon this plain language to further conclude that eligibility is not restored even if the tank is subsequently brought back into compliance with applicable law.

In light of the rules of statutory construction, I conclude that the Board's interpretation of the statute is correct. Where the statutory language is plain and unambiguous, that language speaks for itself and there is no need to resort to extrinsic means of interpretation. Seypar, Inc. v. Water & Sewer Dist.

No. 363, 1998 MT 149, ¶ 26, 289 Mont. 263, 960 P.2d 311. The function of statutory construction is "simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted." Mont. Code Ann. § 1-2-101.

Here, the operative language of subsection (1)(e) is the phrase "remained in compliance." By its plain terms, this phrase requires that the tank be in an ongoing state of compliance in order for it to be eligible for reimbursement. It is not sufficient for the tank to "have been in" compliance at the time reimbursement is sought, then "go out of" compliance before full reimbursement is made, even if compliance is restored at some point. The statute clearly requires that compliance be maintained throughout the process in order for the eligibility requirement in subsection (1)(e) to be met. The legislature's use of the term "remained in" precludes any other interpretation of the statute.

As the Board points out, this determination does not render the tank ineligible for all times, but only for the then existing release. I acknowledge that this result may appear contrary to the overall intent of the legislature when it created the Fund and the statutes governing its administration. It is clear from the history of section 4, chapter 528 of the 1989 Laws of Montana that the legislature intended to mitigate financial impacts on small owners and operators who are forced to comply with federal regulations by providing a method of reimbursement for tank releases, while at the same time promoting environmental health. See Mins. on H.B. 603, House Taxation Comm., Feb. 14, 1989, at 1-5. These goals are further stated in Mont. Code Ann. § 75-11-301(5).

The statement of purpose and the legislative history of the bill would seem to favor reimbursement, rather than allowing an owner or operator to face potential bankruptcy as a result of an accidental release. Moreover, the interpretation of Mont. Code Ann. § 75-11-308(1)(e) rendered herein does not provide an incentive to owners and operators to bring into compliance any tank for which reimbursement has already been approved if that tank somehow falls out of compliance before reimbursement is complete. Nonetheless, I am bound by the plain words of the statute, which clearly require ongoing compliance with applicable law. The legislature should consider whether amendments are necessary to adjust the fit between its stated objectives and the language it adopted in the provision.

THEREFORE, IT IS MY OPINION:

> A tank that has been granted eligibility for reimbursement under Mont. Code Ann. § 75-11-308 loses its eligibility status if the tank falls out of compliance with applicable state and federal laws and rules.

Sincerely,

JOSEPH P. MAZUREK
Attorney General

jpm/jma/dm

VOLUME NO. 48 OPINION NO. 10

COURTS, DISTRICT - Marriage license application confidentiality;
MARRIAGE AND DIVORCE - Marriage license application confidentiality;
PRIVACY - Marriage license application confidentiality;
PUBLIC RECORDS - Marriage license application confidentiality;
RIGHT TO KNOW - Marriage license application confidentiality;
VITAL STATISTICS - Marriage license application confidentiality;
MONTANA CODE ANNOTATED - Sections 1-2-107, 40-1-107, 50-5-1103(2), 50-15-101(15), -114, -121, -122;
ADMINISTRATIVE RULES OF MONTANA - Rule 37.8.126;
OPINIONS OF THE ATTORNEY GENERAL - 37 Op. Att'y Gen. No. 159 (1978);
REVISED CODES OF MONTANA, 1947 - Sections 48-305, 69-4401.

HELD: 1. Subject to the provisions of Mont. Code Ann. §§ 50-15-121 and -122, applications for marriage licenses should be treated as confidential records once they have been completed and filed with the clerk of the district court.

2. Once a marriage has been reported to the Department of Public Health and Human Services on the form prescribed by the Department, the Department or the clerk of the district court may disclose to the public the names of the bride and groom, the date and place of the marriage, the name of the officiant and whether the ceremony was religious or civil.

3. The clerk of court may not divulge or provide copies of applications for marriage licenses under Mont. Code Ann. § 50-15-121(1) unless the requestor is the applicant, the applicant's spouse, child, parent, or guardian, or an authorized representative. For purposes of this statute, "authorized representative" has the meaning provided in Mont. Code Ann. § 50-5-1103(2).

February 18, 2000

Mr. Jeffrey A. Noble
Powder River County Attorney
P.O. Box 240
Broadus, MT 59317

Dear Mr. Noble:

You have requested my opinion on the following question:

Should Montana applications for marriage licenses be treated as confidential records once they have been

completed and filed with the clerk of the district court, or may such applications be divulged to or open to inspection by any person?

Individuals wishing to obtain a marriage license in the state of Montana must complete an application for marriage license prior to the issuance of the license. You have asked whether the information contained in the application for a marriage license is confidential or open to review by the public.

I.

Marriage license applications contain information known as vital statistics. Vital statistics are "the data derived from certificates or reports of birth, death, fetal death, induced termination of pregnancy, marriage, and dissolution of marriage and related reports." Mont. Code Ann. § 50-15-101(15). See also 37 Op. Att'y Gen. No. 159 at 657 (1978), wherein Attorney General Greely determined that Rev. Codes Mont. 1947 § 69-4401 (predecessor to Mont. Code Ann. § 50-15-101(15)) and Rev. Codes Mont. 1947 § 48-305 (predecessor to Mont. Code Ann. § 40-1-107), authorized the Department of Health and Environmental Sciences (a predecessor of the Department of Public Health and Human Services) to gather vital statistics in marriage license applications. While holding that state agencies had a sufficient interest to justify the accumulation of private information from individuals seeking to marry, that opinion did not address the release to the public of vital statistics information gained from marriage license applications.

Mont. Code Ann. § 50-15-114 states that it is unlawful to disclose records of vital statistics maintained by the Department of Public Health and Human Services ("DPHHS"), local registrars, or county clerks and recorders, except when disclosure is authorized by law. Vital statistics maintained by clerks of court are not mentioned in this statute, although other provisions of law create similar confidentiality requirements for marriage-related vital statistics held by the district court clerks.

"Local registrar" is defined at Mont. Code Ann. § 50-15-101(8) as a person appointed by DPHHS to act as its agent in administering vital statistics in the area set forth in the letter of appointment. District court clerks are not appointed by DPHHS to receive vital statistics. Rather, the legislature has decreed that the district court clerk must accept marriage license applications (Mont. Code Ann. § 40-1-202), issue marriage licenses (Mont. Code Ann. §§ 40-1-201(1) and -202), and report marriage certificates to DPHHS (Mont. Code Ann. § 50-15-301). Thus, a court clerk has some of the same duties and responsibilities as does a local registrar, compare, e.g., Mont. Code Ann. § 50-15-109(2) (local registrars to forward original

certificates to DPHHS), and is bound by statutory requirements to retain the confidentiality of the vital statistics in the court clerk's possession. Mont. Code Ann. § 50-15-122.

II.

The 1995 legislature provided that vital statistics constitute confidential information which should not be disseminated to the public absent statutory or regulatory authorization, or court order:

> It is the policy of the state to protect the integrity of vital records and vital reports, to ensure their proper use, and to ensure the efficient and proper administration of the system of vital statistics. In furtherance of the policy, it is unlawful for any person to permit inspection of or to disclose information contained in vital records or in vital reports or to copy or issue a copy of all or a part of a record or report unless authorized by this chapter, by administrative rule, or by order of a court of competent jurisdiction. Rules adopted under this chapter must provide for adequate standards of security and confidentiality of vital records.

Mont. Code Ann. § 50-15-122(1).

Mont. Admin. R. 37.8.126 establishes to whom vital statistics may be given and under what circumstances. The rule does not generally allow the public dissemination of this information unless all identifying information is removed, or disclosure is otherwise authorized by law.

Pursuant to these laws, neither the clerk of the district court nor DPHHS may disseminate marriage license applications to the public unless authorized to do so by some other provision of law. Mont. Code Ann. § 50-15-122(5) provides that "immediately upon the filing of a record with [DPHHS], . . . a record of marriage . . . may be released to the public without restriction." The phrase "record of marriage" is not defined, but in my opinion the interpretation that best gives effect to all the provisions of these laws is that the term refers to the information relating to the marriage filed by the district court clerks with DPHHS on prescribed forms.

According to Mont. Code Ann. § 50-15-301, district court clerks are to report marriage certificates filed with them for the preceding calendar month to DPHHS. The reports must be "on forms and contain information provided by the department." Id. From information provided by DPHHS, it is my understanding that the marriage certificate itself is not customarily filed with DPHHS. Rather, DPHHS has prescribed a "yellow copy" of the top portion of the marriage license application to be sent to its

Vital Statistics Bureau. The "yellow copy," read from top to bottom, contains two sections providing detailed background information about the bride and groom. The bottom portion of the "yellow copy" includes the information about the marriage itself: a record of the date and place of the marriage, the officiant, a statement of whether the marriage ceremony was religious or civil, and the name of the local official submitting the form and date of its submission. Vital Statistics Bureau personnel enter the names of the bride and groom, the date the marriage took place, and the county where the marriage occurred into an index, then either file or microfiche the "yellow copy." People seeking marriage information from DPHHS are given the indexed information and advised to direct further inquiries to the county where the marriage occurred.

Clearly, not all of the "yellow copy" can fairly be said to be a "record of marriage." The background information in the top two portions of the form relates to the bride and groom, but also includes information that exists independent of whether they actually go forward with the wedding. Those portions of the form record nothing about the marriage itself beyond the names of the bride and groom. The bottom portion, in contrast, sets forth the record of the wedding--the date and place, the name of the officiant, and the type of ceremony. In my opinion, this information, taken together with the names of the bride and groom, constitutes the "record of marriage" that may be released to the public under Mont. Code Ann. § 50-15-122(5).

This interpretation is most consistent with the overall intent of the legislature in dealing with vital records. The legislature recognized that vital records include information of a personal nature that affects the privacy interest of the person to whom the information relates. The general scheme of Mont. Code Ann. § 50-15-122 is that information can be released if (1) the personally identifiable information is removed, Mont. Code Ann. § 50-15-122(3); (2) the information is released to a government agency having need for it for official business, Mont. Code Ann. § 50-15-122(6) and (7); (3) the information is released to a private researcher who enters into a written agreement to maintain the confidentiality of personally identifiable information, Mont. Code Ann. § 50-15-122(2); or (4) the information only contains the limited facts set forth in subsection (5) discussed above.

An interpretation that would release all of the detailed background information found in the marriage license application--the birthplace and family background of the bride and groom, whether either had been married before and to whom, and the circumstances surrounding termination of a prior marriage--would be a marked contrast to the other provisions of the law which jealously safeguard the privacy of persons providing the information. In my opinion, the most likely

legislative intent was to provide general information about the fact of the marriage, while protecting the privacy interests of the bride and groom by not allowing release of this detailed background information.

These statutes were enacted in 1995, and they are hardly a model of clarity. The legislature has the power to revise them to clearly state its intention if it differs from my interpretation. In the meantime, I believe the better course is to adopt the interpretation most consistent with the overall structure of the statute and most protective of individual privacy.

III.

Mont. Code Ann. § 50-15-121(1) allows either DPHHS or a local clerk and recorder to provide copies of vital records "to the registrant, the registrant's spouse, children, parents, or guardian, or an authorized representative. Other individuals may obtain certified copies when the individual demonstrates that the record is needed for the determination or protection of the individual's personal or property rights." Mont. Code Ann. § 50-15-121. Thus, DPHHS and clerks and recorders may provide copies of the marriage license application to the named individuals, but to no other requestor unless it is determined that the document is required to determine or protect the requestor's personal or property rights. As I have previously found a district court clerk's duties to be similar to that of a clerk and recorder with respect to vital records, the district court clerk may also release the marriage license application under the above-stated circumstances.

The term "authorized representative" is not defined in title 50, part 15 of the Montana Code Annotated. It is, however, defined in the "Montana Long-Term Care Residents' Bill of Rights," Mont. Code Ann. §§ 50-5-1101 to -1107, as follows:

> (2) "Authorized representative" means:
> (a) a person who has a general power of attorney for a resident;
> (b) a person appointed by a court to manage the personal or financial affairs of a resident;
> (c) a representative payee;
> (d) a resident's next of kin; or
> (e) a sponsoring agency.

Mont. Code Ann. § 50-5-1103(2).

Absent a clear intent otherwise, definitions used in any part of the Montana Code Annotated are applicable to the same word wherever it occurs in that code. Mont. Code Ann. § 1-2-107. No contrary intention plainly appears in either Mont. Code Ann. § 50-15-121 or the DPHHS regulations. Thus, in my opinion one

should apply the general terms of the above definition of "authorized representative" to the term as it is used in Mont. Code Ann. § 50-5-121.

Genealogists who do not have one of the special relationships listed in Mont. Code Ann. § 50-5-1103(2) are not "authorized representatives" as defined in that statute. The question of whether genealogists should be given access to vital statistics should be addressed to the legislature.

IV.

I express no opinion with respect to any questions regarding the constitutionality of the statutes cited in this opinion. Such issues are beyond the scope of your request and would not, in any event, be appropriate for resolution through an Attorney General's Opinion.

THEREFORE, IT IS MY OPINION:

1. Subject to the provisions of Mont. Code Ann. § 50-15-121 and -122, applications for marriage licenses should be treated as confidential records once they have been completed and filed with the clerk of the district court.

2. Once the marriage has been reported to the Department of Public Health and Human Services on the form prescribed by the Department, the Department or the clerk of the district court may disclose to the public the names of the bride and groom, the date and place of the marriage, the name of the officiant and whether the ceremony was religious or civil.

3. The clerk of court may not divulge or provide copies of applications for marriage licenses under Mont. Code Ann. § 50-15-121(1) unless the requestor is the applicant, the applicant's spouse, child, parent, or guardian, or an authorized representative. For purposes of this statute, "authorized representative" has the meaning provided in Mont. Code Ann. § 50-5-1103(2).

Sincerely,

JOSEPH P. MAZUREK
Attorney General

jpm/mas/jym

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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