

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 4

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE BOARD OF DENTISTRY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to dentist applications, fees, conversion of inactive status licenses, complaint procedures; dental hygienist licensure by credentials, applications, fees, conversion of inactive status licenses; denturist applications, examinations, interns, fees, renewal, conversion of inactive status licenses, license reinstatement, complaint procedures and the adoption of a new rule regarding dental hygienist local anesthetic agent licensure) NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF ARM 8.16.402A DENTIST APPLICATION REQUIREMENT, 8.16.405 FEE SCHEDULE, 8.16.408 APPLICATION TO CONVERT AN INACTIVE STATUS LICENSE TO AN ACTIVE STATUS LICENSE, 8.16.410 COMPLAINT PROCEDURE, 8.16.605A DENTAL HYGIENIST LICENSURE BY CREDENTIALS, 8.16.605B DENTAL HYGIENIST APPLICATION REQUIREMENTS, 8.16.606 FEE SCHEDULE, 8.16.607 APPLICATION TO CONVERT AN INACTIVE STATUS LICENSE TO AN ACTIVE STATUS LICENSE, 8.17.403 DENTURIST APPLICATIONS, 8.17.404 DENTURIST EXAMINATION, 8.17.405 DENTURIST INTERN, 8.17.501 FEE SCHEDULE, 8.17.702 RENEWAL, 8.17.709 DENTURIST INACTIVE STATUS LICENSE TO ACTIVE STATUS LICENSE, 8.17.710 DENTURIST LICENSE REINSTATEMENT, AND 8.17.811 COMPLAINT PROCEDURE AND THE ADOPTION OF NEW RULE I DENTAL HYGIENE LOCAL ANESTHETIC AGENT LICENSURE
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TO: All Concerned Persons

1. On March 22, 2000, at 10:00 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 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 March 13, 2000, to advise us of the nature of the accommodation that you need. Please contact Sharon McCullough, Board of Dentistry, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 444-3745; 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)

"8.16.402A DENTIST APPLICATION REQUIREMENTS

(1) through (2)(i) will remain the same.

~~(j) successful passage of the jurisprudence examination;~~

~~(k)(j) copy of current CPR card (active licensees only);~~

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

(3) will remain the same.

(4) Application material is valid for six months from the time it is received in the office. If the jurisprudence examination has not been taken at the end of six months, the application will be considered incomplete and a new application and fees will have to be submitted."

Auth: Sec. 37-4-205, 37-4-301, MCA

IMP: Sec. 37-4-301, MCA

REASON: This rule is being amended to remove duplicative language and to establish application parameters.

"8.16.405 FEE SCHEDULE

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

(5) Active renewal, ~~in state~~ 153

(6) Inactive renewal, ~~out of state~~ 153

(7) Duplicate licensure fee certificate, replacement
license 30

(8) and (9) will remain the same.

(10) Certification of License verification
fee 20

(11) will remain the same."

Auth: Sec. 37-1-134, 37-4-205, MCA

IMP: Sec. 37-1-134, 37-4-301, 37-4-303, 37-4-307, MCA

REASON: This rule is being amended to remove unnecessary and possibly confusing language while designating the purpose for certain fees.

"8.16.408 APPLICATION TO CONVERT AN INACTIVE STATUS
LICENSE TO AN ACTIVE STATUS LICENSE (1) through (2)(a)(i)
will remain the same.

~~(ii) evidence that the applicant has not been out of practice for more than five years. If the applicant has been out of practice for longer than five years, the request for reactivation will be at the board's discretion; or if the applicant has been out of practice for longer than five years, the applicant shall provide evidence of one of the following:~~

(A) completion of clinical competency course(s)
submitted to and approved by the board; or

(B) that within the last year the applicant has
successfully passed the board's regional licensure

examination.

~~(iii) evidence that, within the last year, the applicant has successfully passed the board's regional licensure examination.~~

(b) through (e) will remain the same."

Auth: Sec. 37-4-205, 37-4-307, MCA

IMP: Sec. 37-1-319, 37-4-307, MCA

REASON: This rule is being amended for dentists to provide a procedure for activating licenses which have been on an inactive status for more than five years. Similar changes are being made for the other two professions regulated by the Board.

"8.16.410 COMPLAINT PROCEDURE (1) through (5) will remain the same.

(6) The screening panel may review anonymous unsanitary office complaints without a written complaint form."

Auth: Sec. 37-4-205, MCA

IMP: Sec. 37-1-308, 37-1-309, MCA

REASON: The addition is being made to this rule to allow unsanitary office complaints against denturists to be filed without a written complaint form. This will allow an investigation to be done upon review by the complaint screening panel or the complaint screening panel chairperson as defined by policy and procedures.

"8.16.605A DENTAL HYGIENIST LICENSURE BY CREDENTIALS

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

(2) Application material is valid for six months from the time it is received in the office. If the jurisprudence examination has not been taken at the end of six months the application will be considered incomplete and a new application and fees will have to be submitted."

Auth: Sec. 37-1-131, 37-4-205, 37-4-402, MCA

IMP: Sec. 37-4-401, 37-4-402, MCA

REASON: This rule amendment is proposed to clarify the length of time application materials are valid.

"8.16.605B DENTAL HYGIENIST APPLICATION REQUIREMENTS

(1) through (2)(i) will remain the same.

(j) copy of current CPR card ~~(active licensees only)~~;

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

(4) ~~No licensed dental hygienist shall administer local anesthetic agents during a dental procedure or dental surgical procedure unless and until he or she possesses a local anesthetic permit issued by the board. Application for a local anesthetic permit shall be made by letter of request to the board with proof of successful completion of a WREB local~~

~~anesthetic certificate, and a valid and current CPR card. Application material is valid for six months from the time it is received in the office. If the jurisprudence examination has not been taken at the end of six months, the application will be considered incomplete and a new application and fees will have to be submitted."~~

Auth: Sec. 37-4-205, 37-4-402, MCA
IMP: Sec. 37-4-402, MCA

REASON: Proposed amendment for clarification of anesthetic agents and their usage and is intended to clarify the length of time application materials are valid.

"8.16.606 FEE SCHEDULE

(1) and (2) will remain the same.	
(3) Active renewal, in state	70
(4) Inactive renewal, out of state	70
(5) will remain the same.	
(6) Duplicate license fee <u>certificate, replacement</u>	
<u>license</u>	30
(7) and (8) will remain the same	
(9) Certification of <u>License verification</u>	
<u>fee</u>	20
(10) Out of state application <u>Credentialing application</u>	
<u>fee</u>	75
(11) will remain the same.	
(12) <u>Local anesthetic agent application fee by</u>	
<u>exam</u>	10
(13) <u>Local anesthetic agent application fee by</u>	
<u>credentialing</u>	30"

Auth: Sec. 37-1-134, 37-4-205, MCA
IMP: Sec. 37-4-402, 37-4-403, 37-4-406, MCA

REASON: This section is being amended to provide fees for the local anesthetic agent applications which are commensurate with costs. It is anticipated that 15-25 hygienists will apply for a local anesthetic permit each year by either credentialing or exam. This section is also being amended to remove language that is no longer needed for active and inactive renewal fees and to more accurately designate the purpose for the other fees.

"8.16.607 APPLICATION TO CONVERT AN INACTIVE STATUS LICENSE TO AN ACTIVE STATUS LICENSE (1) through (2)(a)(i) will remain the same.

(ii) ~~evidence that the applicant has not been out of active practice for more than five years. If the applicant has been out of practice for longer than five years, the request for reactivation will be at the board's discretion; or if the applicant has been out of practice for longer than five years, the applicant shall provide evidence of one of the following:~~

(A) completion of clinical competency course(s) submitted to and approved by the board; or

(B) that within the last year, the applicant has successfully passed the board's regional licensure examination.

~~(iii) evidence that, within the last year, the applicant has successfully passed the board's regional licensure examination.~~

(b) through (e) will remain the same."

Auth: Sec. 37-1-131, 37-1-319, 37-4-205, 37-4-406, MCA

IMP: Sec. 37-1-319, 37-4-406, MCA

REASON: This amendment is proposed to eliminate confusion in process of activating an inactive license.

"8.17.403 DENTURIST LICENSURE APPLICATIONS (1) will remain the same.

(2) The application fee and required documentation must be submitted to the board of dentistry 20 days prior to the examination date jurisprudence examination. The application must include:

(a) will remain the same.

(b) certification of successful passage of a written denturistry examination approved by the board;

(c) certification of successful passage of a clinical/practical denturistry examination approved by the board;

(d) verification of written test scores sent directly to the board office from the testing agency;

(e) verification of clinical/practical test scores sent directly to the board office from the testing agency;

(f) documentation that the applicant has completed formal training of not less than 2 years at an educational institution as set forth in 37-29-303, MCA;

(g) documentation that the school is an educational institution accredited by a national or regional accrediting agency recognized by the Montana state board of regents;

(h) documentation that the curriculum includes those courses set forth in 37-29-303, MCA;

(i) a copy of a diploma from a recognized school as stated in 37-29-303, MCA;

(j) license verification(s) from all jurisdictions where the licensee has held/holds a license;

(k) copies of all other state licenses that are held by the licensee;

(l) a copy of a current CPR card;

(m) three affidavits of good moral character;

(n) photograph of the applicant;

(o) jurisprudence examination fee;

(p) licensure fee; and

(q) application fee.

(3) Licensee must successfully pass the jurisprudence examination.

(4) Licensee shall submit a copy of the board approved

intern application including intern reports, showing internship clinical training, which are signed by the monitoring licensed denturist.

(5) Application material is valid for six months from the time it is received in the office. If the jurisprudence examination has not been taken at the end of six months, the application will be considered incomplete and a new application and fees will have to be submitted."

Auth: Sec. 37-29-201, MCA

IMP: Sec. 37-29-303, 37-29-304, 37-29-306 MCA

REASON: The amendments proposed are to clarify the processes and procedures for licensure in the dentistry profession and to make them consistent with other licensed professionals regulated by the Board of Dentistry.

"8.17.404 DENTURIST EXAMINATIONS (1) The examinations approved by the board for licensure shall include a practical component on a live patient written examination, a clinical/practical examination on a live patient and a jurisprudence examination.

(2) No applicant will be permitted to bring any papers, books or other documents to the examination, unless requested by the board. Examinees must furnish their own supplies for the practical examination.

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

(7)(6) The applicant shall successfully pass take and verify passage of the jurisprudence examination.

(7) The applicant must be approved for internship, by the board, prior to taking the written examination.

(8) The applicant shall take and verify successful passage of the written examination, approved by the board.

(9) The applicant shall take and verify successful passage of the clinical/practical examination, approved by the board, after completion of the required internship as set forth in ARM 8.17.405.

(10) The dates and times of both the written and clinical examination will be set by the board.

(11) An applicant may retake a failed examination, at the next scheduled examination date, upon request to the board and payment of the appropriate fee."

Auth: Sec. 37-29-201, MCA

IMP: Sec. 37-29-305, MCA

REASON: The amendments proposed are to clarify the processes and procedures for licensure in the dentistry profession and to make them consistent with other licensed professionals regulated by the Board of Dentistry.

"8.17.405 DENTURIST INTERN (1) through (5) will remain the same.

(6) No intern may practice once the internship has been completed until after successful passage of the clinical examination and the applicant has met all other requirements for licensure."

Auth: Sec. 37-1-131, 37-29-201, 37-29-303, MCA
IMP: Sec. 37-29-303, MCA

REASON: Inclusion of restrictions on internship practice subsequent to completion of internship is necessary for clarity and to avoid confusion.

"8.17.501 FEE SCHEDULE

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

(3) Written Examination fee (paid to testing agency) 200

(4) Full Written re-examination fee (paid to testing agency) 200

~~(5) Written re-examination~~ 100

(6) will remain the same but is renumbered (5).

~~(7)~~(6) Duplicate certificate, replacement license 30

(8) through (12) will remain the same but are renumbered (7) through (11).

(12) Clinical/practical examination fee shall be set by testing agency (fees payable to testing agency)."

Auth: Sec. 37-1-134, 37-29-201, 37-29-304, MCA
IMP: Sec. 37-1-134, 37-29-304, MCA

REASON: The Board needed to adjust, clarify and remove fees no longer necessary. No fee increases were requested.

"8.17.702 RENEWAL (1) and (2) will remain the same.

(3) In case of default in payment of the annual renewal fee by a licensee, ~~his license must be revoked by the board~~ the licensee must forfeit the license. The board shall give the licensee 30 days' notice of ~~its the proposed revocation~~ forfeiture action. The notice must be sent by certified letter addressed to the last-known address of the licensee and must contain a statement of the time and place of ~~the meeting~~ at which the ~~revocation will be considered~~ forfeiture will be concluded.

(4) If the licensee pays the renewal fee, plus a delinquent fee as set forth in ARM 8.17.501(8), prior to the time set for ~~revocation~~ forfeiture, the license may not be ~~revoked~~ forfeited.

(5) A license ~~revoked~~ forfeited for nonpayment of the renewal fee may be reinstated within five years of ~~revocation~~ forfeiture if ~~all requirements set forth in ARM 8.17.710 have been satisfied~~.

~~(a) an application for reinstatement is submitted on the form used for original license applications;~~

~~(b) the applicant states in written correspondence~~

~~reasons why reinstatement should be granted;~~

~~(c) renewal fees are paid for each year they were unpaid, plus a delinquent fee as established in ARM 8.17.501(8);~~

~~(d) the applicant produces evidence, satisfactory to the board, of good standing with the denturistry regulatory agencies of any jurisdiction in which the applicant has engaged in the active practice of denturistry since the last payment of a renewal fee under this chapter; and~~

~~(e) the applicant produces evidence, satisfactory to the board, of good character and competence."~~

Auth: Sec. 37-1-141, 37-29-201, MCA

IMP: Sec. 37-1-141, 37-29-201, 37-29-306, MCA

REASON: It was necessary to take out revocation language and replace it with forfeiture language. This was done for dentists and dental hygienists, but the language for them was in statute. The Board felt the old language was harsh and that the new language would be more widely accepted. The Board also needed to remove language that is duplicated in another rule, i.e. ARM 8.17.710.

"8.17.709 DENTURIST APPLICATION TO CONVERT AN INACTIVE STATUS LICENSE TO AN ACTIVE STATUS LICENSE (1) through (2)(a)(i) will remain the same.

(ii) evidence that the applicant has not been out of active practice for more than five years. If the applicant has been out of practice for longer than five years, the request for reactivation will be at the board's discretion; or if the applicant has been out of practice for longer than five years, the applicant shall provide evidence of one of the following:

(A) completion of clinical competency course(s) submitted to and approved by the board; or

(B) that within the last year, the applicant has successfully passed the board's clinical licensure examination.

(iii) evidence that, within the last year, the applicant has successfully passed the board's licensure examination.

(b) through (e) will remain the same."

Auth: Sec. 37-1-319, 37-29-201, MCA

IMP: Sec. 37-1-319, 37-29-201, MCA

REASON: This language is being amended for denturists to provide a procedure for activating a license which has been on an inactive status for more than five years. Similar changes are being made for the other two professions regulated by the board.

"8.17.710 DENTURIST LICENSE REINSTATEMENT (1) Upon application and payment of the appropriate fee, the board may reinstate a license previously revoked forfeited for non-

payment of fee if the applicant does each of the following:

- (a) through (e) will remain the same.
- (f) takes and passes the jurisprudence examination if the license was ~~revoked~~ forfeited for five years or longer; and
- (g) will remain the same."

Auth: Sec. 37-1-141, 37-29-201, MCA

IMP: Sec. 37-1-141, 37-29-201, MCA

REASON: This proposed amendment is for consistency of language with ARM 8.17.702.

"8.17.811 COMPLAINT PROCEDURE (1) through (5) will remain the same.

(6) The screening panel may review anonymous unsanitary office complaints without a written complaint form."

Auth: Sec. 37-4-205, MCA

IMP: Sec. 37-1-308, 37-1-309, MCA

REASON: The addition is being made to this rule to allow unsanitary office complaints against denturists to be filed without a written complaint form. This will allow an investigation to be done upon review by the complaint screening panel or the complaint screening panel chairperson as defined by policy and procedures.

4. The proposed new rule provides as follows:

NEW RULE I DENTAL HYGIENE LOCAL ANESTHETIC AGENT

LICENSURE (1) No licensed dental hygienist shall administer local anesthetic agents during a dental procedure or a dental-surgical procedure unless and until he or she possesses a local anesthetic permit issued by the board.

(2) Application for a local anesthetic permit by examination shall be made by letter of request to the board, with proof of successful completion of a western regional examining board (WREB) local anesthetic certificate, a valid and current CPR card and the appropriate fee.

(3) The board shall provide for local anesthetic agent licensure by credentials of a dental hygienist who:

(a) submits an application on a form provided by the board;

(b) pays all the appropriate fees;

(c) is in the process of applying for a Montana license or has previously received a Montana license;

(d) submits verification of successful completion of a local anesthetic agent course given by a commission on dental accreditation (CODA) accredited dental or CODA accredited dental hygiene school. The only verification that will be accepted is any one of the following:

(i) a letter from the school with the school seal affixed (photocopies will not be accepted); or

(ii) a notarized copy of the certificate of local anesthetic agent course completion; or

(iii) a notarized copy of the dental or dental hygiene transcript with the local anesthetic agent course recorded; and

(e) submits verification of successful completion of a clinical and written local anesthetic agent regional or state board examination;

(f) submits copies of any local anesthetic agent license held in other states; and

(g) submits written third party verification that the applicant has practiced administering local anesthetic agents within the last five years."

Auth: Sec. 37-1-131, 37-4-205, 37-4-401, 37-4-402, MCA

IMP: Sec. 37-4-401, 37-4-402, MCA

REASON: The first part of this rule is being moved from ARM 8.16.605B and has not been changed. The second part of the rule is being implemented to provide an avenue for licensees who have been licensed in another state to administer local anesthetic agents, and who have practiced in the last five years, to not have to take another additional exam. This would allow credit for this experience from the other state. The combination of both the old rule and the new rule clarifies the procedure for a dental hygienist to acquire a license to administer local anesthetic agents.

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 Dentistry, 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., March 23, 2000.

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

7. The Board of Dentistry 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 Dentistry administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Dentistry, 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 Dentistry.

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

BOARD OF DENTISTRY
WAYNE HANSEN, DDS, 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, February 14, 2000.

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

In the matter of the proposed	)	NOTICE OF PROPOSED
amendment of ARM 8.22.503,	)	AMENDMENT AND ADOPTION
8.22.701, 8.22.806, 8.22.1807 and)	
the adoption of new rules	)	NO PUBLIC HEARING
pertaining to horse racing	)	CONTEMPLATED

TO: All Concerned Persons

1. On March 25, 2000 the Board of Horse Racing proposes to amend ARM 8.22.503, 8.22.701, 8.22.806, 8.22.1807, and adopt New Rules I and II.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format to this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on March 5, 2000, to advise us for the nature of the accommodation that you need. Please contact Janet Bramblett, Department of Commerce, 1424 Ninth Avenue, P.O. Box 200512, Helena, MT 59624-0512; telephone (406) 444-4287; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-4305.

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

"8.22.503 ANNUAL LICENSE FEES The following fees shall be charged annually:

(1) Trainer	\$ 30 <u>35</u>
(a) Assistant trainer	30 <u>35</u>
(2) Owner	30 <u>35</u>
(3) Temporary owner	30
(4) (3) Owner-trainer	35 <u>40</u>
(5) (4) Track license	110 <u>115</u>
(6) (5) Jockey	30 <u>35</u>
(7) (6) Jockey apprentice	30 <u>35</u>
(8) (7) Jockey agent	30 <u>35</u>
(9) (8) Authorized agent	20 <u>25</u>
(10) (9) Stable name	30 <u>35</u>
(11) (10) Parimutuel #1	
(a) Parimutuel manager	20 <u>25</u>
(b) Auditor	20 <u>25</u>
(c) Totalisator company	500 <u>505</u>
(d) Tote employee	20 <u>25</u>
(12) (11) Parimutuel #2	
(a) Parimutuel employees at live race meets and simulcast races	10 <u>15</u>
(13) (12) Official #1	
(a) Racing secretary	30 <u>35</u>
(b) State veterinarian	30 <u>35</u>
(14) (13) Official #2	
(a) Chief of security	20 <u>25</u>

(b)	Director of racing	20	<u>25</u>
(c)	Identifier	20	<u>25</u>
(d)	Paddock judge	20	<u>25</u>
(e)	Racing secretary assistant	20	<u>25</u>
(f)	Steward-track	20	<u>25</u>
(g)	Starter	20	<u>25</u>
(h)	Track superintendent	20	<u>25</u>
(i)	Custodian jockeys' room	20	<u>25</u>
(j)	Clerk of scales	20	<u>25</u>
(k)	Handicapper	20	<u>25</u>
(l)	Placing judge	20	<u>25</u>
(m)	Timer	20	<u>25</u>
(n)	Horsemen's bookkeeper	20	<u>25</u>
(o)	Office personnel	20	<u>25</u>
(15) (14)	Occupational #1		
(a)	Veterinarian practicing	30	<u>35</u>
(b)	Plater	30	<u>35</u>
(16) (15)	Occupational #2		
(a)	Announcer	20	<u>25</u>
(b)	Exercise person	20	<u>25</u>
(c)	Groom	20	<u>25</u>
(d)	Valet	20	<u>25</u>
(e)	Photo manager	20	<u>25</u>
(f)	Outrider	20	<u>25</u>
(g)	Pony person	20	<u>25</u>
(h)	Tip sheet seller	20	<u>25</u>
(i)	Photo company	350	<u>355</u>
(j)	Gate attendant	20	<u>25</u>
(k)	Photo employee	20	<u>25</u>
(l)	Security staff	20	<u>25</u>
(m)	Starter assistant	20	<u>25</u>
(n)	Veterinarian assistant	20	<u>25</u>
(o)	Others not listed	20	<u>25</u>
(p)	Track maintenance	20	<u>25</u>
(q)	Spouse/family	20	<u>25</u>
(r)	Director of simulcast network	35	<u>40</u>
(s)	Parimutuel manager at simulcast network	30	<u>35</u>
(t)	Director at simulcast facility	35	<u>40</u>
(u)	Program company	350	<u>355</u>
(v)	Program manager	30	<u>35</u>
(w)	Program employee	20	<u>25</u>
(x)	Simulcast site or network license	135	<u>140</u>
(y)	Lessor	30	<u>35</u>
(16)	Shareholder owner		<u>35</u>
(17)	Not requiring licenses but requiring identification. [Children over 6 years of age and under 16 years of age, duplicate (lost i.d. cards)]"	10	<u>15</u>

Auth: Sec. 23-4-104, 23-4-201, 37-1-134, MCA; IMP, Sec. 23-4-104, 23-4-201, 37-1-134, MCA

REASON: The proposed amendment to (3) will delete the license category of "temporary owner." This change is necessary because this category of license is being misused at the tracks, for purposes for which it was not intended. The

category was intended for use when the owner was not actually present at a given meet when the owner's horses were running. The owner would then get a regular license at a meet where the owner was in attendance. However, misuse has occurred whereby trainers obtain the "temporary" license without providing all relevant application information, but the regular "owner" license is never purchased. The board proposes to eliminate this license category to avoid its misuse.

The proposed amendments to (1) through (17) will raise each category of license fee by \$5.00. The board has not increased fees for 8 years. The board now has a need for additional income revenue, due to increased costs for administration of the board and regulation of the horse racing industry. The proposed amendment will make fees commensurate with costs. The proposed amendment to (17) will add a licensing fee for a "shareholder owner" license, when multiple persons have an ownership interest in a horse. The new fee will be consistent with the amendment to ARM 8.22.701. The proposed rule change will increase fees for every category of license issued by the Board by \$5.00. As per 2-4-302, MCA, the Board estimates (a) the cumulative amount for all persons of the proposed increase will be \$7,180.00; and (b) the number of persons affected will be the 1436 licensees of the Board. 1436 persons times \$5.00 each totals \$7,180.00 being sought to make the fees commensurate with Board costs.

"8.22.701 GENERAL PROVISIONS (1) will remain the same.

(2) Each applicant for owner's, trainer's, owner-trainer's, ~~temporary owner's~~, corporate owner's or lessor's license must provide evidence of workers' compensation insurance or its equivalent as determined by the state compensation insurance fund (state fund) for the protection of the applicant's employees, prior to being issued a license. All applicants shall pay the appropriate workers' compensation fees as determined by the board for each race season.

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

(16) Multiple ownership with four or more shareholders must designate a managing owner. The designated managing owner must be licensed as an owner by the board. The other shareholders may purchase a shareholder owner license from the board. The shareholder owner license allows access to the backside and grounds, however, it does not allow shareholder access to the paddock or test barn."

Auth: Sec. 23-4-202, MCA; IMP, Sec. 23-4-104, MCA

REASON: The proposed amendment to ARM 8.22.701(2) will delete the temporary owner from this rule because this category of license was deleted in ARM 8.22.503.

The proposed addition of (16) will create a "shareholder owner" license for those persons who hold an ownership interest, along with others, in a single horse. The shareholder owner license will eliminate the need for each

owner of a single horse to obtain workers' compensation insurance for employees. Only the designated managing owner will be required to obtain and show proof of workers' compensation insurance coverage for any employees.

"8.22.806 PADDOCK TO POST (1) through (12) will remain the same.

(13) Equine nasal strips may be used if declared at the time of entry. Use of such strips must be noted in the racing program. A horse that wins a race while using the nasal strip must race with the nasal strip for the next race. If the horse does not win while using the nasal strip, the horse is not required to use it in the next race."

Auth: Sec. 23-4-104, MCA IMP, Sec. 23-4-104, MCA

REASON: The proposed addition of (13) will allow use of equine nasal strips in Montana. These strips are relatively new for use in race horses, and have not been widely available in the past. The new rule section will clarify when and how the nasal strips may be used in Montana, as well as requiring that use of the strips must be noted in the program, to better inform the betting public. This rule addition will make Montana consistent with the majority of other racing jurisdictions.

"8.22.1807 TRI-SUPERFECTA WAGERING (1) through (12) will remain the same.

~~(13) After the first race of the tri superfecta is declared official, the second part of the divided pool shall be combined with the amount carried over from previous programs of the tri superfecta to create the "jackpot" pool. The total jackpot pool shall be distributed equally between all of the tri superfecta tickets for the second race of the tri superfecta accurately selecting the first four finishers in the exact order of finish as officially posted.~~

~~(a) In the event that there is no tri superfecta ticket issued accurately selecting the first four finishers of the second race of the tri superfecta in the exact order of finish as officially posted 50% of the jackpot pool shall be distributed equally to the holders of the tri superfecta tickets accurately selecting the first three finishers of the second race of the tri superfecta in the exact order of finish as officially posted. The remaining 50% of the jackpot pool shall be held for the next consecutive tri superfecta program and combined with that program's second part of the divided pool to form the next jackpot pool.~~

~~(b) In the event that there is no tri superfecta exchange ticket issued accurately selecting the first three finishers of the second race of the tri superfecta as officially posted, then the entire jackpot pool shall be held over for the next consecutive tri superfecta program and combined with that program's second part of the divided pool to form that program's jackpot pool.~~

(14) through (19) will remain the same, but will be

renumbered (13) through (18)."

Auth: Sec. 23-4-104, 23-4-202, MCA; IMP, Sec. 23-4-104, 23-4-202, 23-4-301, MCA

REASON: The proposed amendment to (13) will eliminate the Board's existing Tri-Superfecta language on paying out the pool after the first race. Eliminating this section cleans up the pool calculations and allows the pool to build for the winning payoff as initially intended. This is consistent with other racing jurisdictions.

4. The proposed new rules will read as follows:

"NEW RULE I SUPERFECTA (1) The superfecta is not a parlay and has no connection with the win, place or show betting, and will be calculated in an entirely separate pool.

(2) The superfecta is a contract between the purchaser of a ticket and the association, combining four runners in a single race, by selecting the four runners that will finish first, second, third and fourth in that race in exact order.

(3) Superfecta tickets shall be sold in not less than \$1.00 denominations.

(4) There will be no entries or fields in superfecta wagering races.

(5) If a runner is scratched or declared a non-starter, no further superfecta tickets may be issued designating that runner. All tickets previously issued designating the runner shall be refunded and the money deducted from the gross pool.

(6) Licensees providing superfecta wagering shall, in addition to other requirements, comply with the following requirements:

(a) No entries or field horses in a race comprising the superfecta are allowed;

(b) No licensee shall offer superfecta wagering on any race when there are less than eight horses scheduled to start, at draw time. In no event will superfecta wagering be permitted on a race in which less than six horses go to the post;

(c) Superfecta wagering shall be allowed only at tracks that can demonstrate to the board that their facilities can properly handle and implement superfecta wagering;

(d) No more than two superfecta races may be offered on any single day at any race meet.

(7) The pay-out price for a superfecta pool shall be calculated in the following manner:

(a) The legal percentages shall be deducted from the total amount bet in the pool to determine the net pool;

(b) The net pool shall be divided by the value of tickets bet on the winning combination;

(c) The quotient obtained pursuant to (7)(b) shall be multiplied by the purchase price of each ticket on the winning combination;

(d) If no ticket is sold selecting the first four entries, the pool shall be divided among holders of superfecta

tickets correctly selecting the first three entries. If no ticket is sold selecting the first three entries, the pool shall be divided among holders of superfecta tickets correctly selecting the first two entries. If no ticket is sold selecting the first two entries, the pool shall be divided among holders of superfecta tickets correctly selecting the winner as officially posted. If no ticket is sold selecting the winner to win, the pool shall be divided among holders of superfecta tickets correctly selecting the entry finishing second. If no ticket is sold selecting the correct entry to finish second, the pool shall be divided among holders of superfecta tickets correctly selecting the entry finishing third. If no ticket is sold selecting the entry finishing third, the pool shall be divided among holders of superfecta tickets correctly selecting the entry finishing fourth.

(e) If no ticket is sold that would require distribution of the net superfecta pool to a winner pursuant to these rules, all money in the pool shall be refunded.

(f) In the event of a dead heat, or dead heats, each ticket selecting the correct order of finish, counting an entry in a dead heat as finishing in either position at issue, shall be winning tickets, and distribution shall be made in accordance with established board rules relating to dead heats.

(g) If only three entries finish the race, the pool shall be divided among the holders of superfecta tickets correctly selecting the first three entries, without consideration of the entry selected to finish fourth. If fewer than three entries finish the race, all money in the pool shall be refunded."

Auth: Sec. 23-4-104, 23-4-202 MCA; IMP: Sec. 23-4-104, 23-4-202, 23-4-301, MCA

REASON: The Board is proposing New Rule I to clarify and separate the Superfecta from the Superfecta Sweepstakes. This rule clarifies and establishes the payouts for the Superfecta. This rule is consistent with the uniform rules in other racing jurisdictions.

"NEW RULE II PICK THREE POOLS (1) The pick three requires selection of the first place finisher in each of three specified contests.

(2) The net pick three pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish:

(a) As a single price pool to those whose selection finished first in each of the three contests, unless there are no such wagers;

(b) As a single price pool to those who selected the first place finisher in any two of the three contests, unless there are no such wagers;

(c) As a single price pool to those who selected the first place finisher in any one of the three contests, unless there are no such wagers;

(d) The entire pool shall be refunded on pick three wagers for contests which do not meet (2)(a), (b) or (c) above.

(3) If there is a dead heat for first in any of the three contests, the pool shall be distributed as follows:

(a) In a contest in which contestants are representing the same betting interest, the pick three pool shall be distributed as if no dead heat occurred;

(b) In a contest in which contestants are representing two or more betting interests, the pick three pool shall be distributed as a single price pool with each winning wager receiving an equal share of the profit.

(4) If a betting interest in any of the pick three pools is scratched, the actual favorite, as evidenced by total amounts wagered in the win pool at the close of wagering on that contest shall be substituted for the scratched betting interest for all purposes, including pool calculations. In the event the win pool total for two or more favorites is identical, the substitute selection shall be the betting interest with the lowest program number. The totalizer shall produce reports showing each of the wagering combinations with substituted betting interests which became winners as a result of the substitution, in addition to the normal winning combination.

(5) If all three pick three contests are canceled or declared "no contest", the entire pool shall be refunded on pick three wagers for those contests."

Auth: Sec. 23-4-104, 23-4-202, MCA; IMP: Sec. 23-4-104, 23-4-202, 23-4-301, MCA

REASON: The Board is proposing New Rule II to establish and clarify the Pick Three from the Pick N rule. New Rule II establishes Pick Three rules for payouts consistent with the other racing jurisdictions.

5. Concerned persons may submit their data, views or arguments concerning the proposed action in writing to the Board of Horse Racing, 1424 Ninth Avenue, P.O. Box 200512, Helena, Montana 59620-0512, or by facsimile to (406) 444-4305, to be received no later than 5:00 p.m., March 23, 2000.

6. If persons who are directly affected by the proposed action 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 Horse Racing, 1424 Ninth Avenue, P.O. Box 200512, Helena, Montana 59620-0512, or by facsimile to (406) 444-4305, to be received no later than 5:00 p.m., March 23, 2000.

7. If the Board receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed action, from the appropriate administrative rule review committee of the legislature, from a governmental agency or subdivision or from 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 150 based on the approximately 1500 licensees in Montana.

8. The Board of Horse Racing 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 Board of Horse Racing administrative rulemaking actions. Such written request may be mailed or delivered to the Board of Horse Racing, faxed to the office at (406) 444-4305 or may be made by completing a request form at any rules hearing held by the Board of Horse Racing.

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

BOARD OF HORSE RACING
JOE ERICKSON, CHAIRMAN

BY:

Annie M. Bartos

ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

BY:

Annie M. Bartos

ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, February 14, 2000.

BEFORE THE BOARD OF NURSING
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of rules pertaining) OF ARM 8.32.301 NURSE
to nurse practitioner practice,) PRACTITIONER PRACTICE,
standards relating to the) 8.32.1408 STANDARDS RELATING
licensed practical nurse's role) TO THE LICENSED PRACTICAL
in intravenous (IV) therapy) NURSE'S ROLE IN INTRAVENOUS
and prohibited IV therapies) (IV) THERAPY AND 8.32.1409
) PROHIBITED IV THERAPIES

NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On March 25, 2000, the Board of Nursing proposes to amend the above-stated rules. The proposed amendments were first published on July 1, 1999 and public hearing was held on July 30, 1999. During the hearing one person provided oral testimony in support of the proposed changes and five written comments supporting the changes were received. However, the adoption order was not entered within six months of the date of publication which has resulted in this republication for proper adoption of the proposed changes.

2. The Board of Nursing 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 Board of Nursing, no later than 5:00 p.m., on March 15, 2000, to advise us of the nature of the accommodation that you need. Please contact Jill Caldwell, Nursing Practice Manager, Board of Nursing, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 444-7762; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-1667.

3. The proposed amendment of the above-stated rules will read as follows: (new matter underlined, deleted matter interlined)

"8.32.301 NURSE PRACTITIONER PRACTICE (1) through (1)(c) will remain the same.

(d) ~~work within nurse practitioner established protocols~~ and recognize when to refer clients to a physician or other health care provider;

(e) and (f) will remain the same."

Auth: Sec. 37-8-202, MCA
IMP: Sec. 37-8-202, MCA

REASON: Nurse practitioners normally are not required to have protocols for their practice, but are held to professional standards of practice. This amendment is to

clarify public and professional misconceptions which the old rule fostered regarding those professional standards of practice.

"8.32.1408 STANDARDS RELATING TO THE LICENSED PRACTICAL NURSE'S ROLE IN INTRAVENOUS (IV) THERAPY (1) and (2) will remain the same.

(3) "Standard intravenous solution" means an isotonic or hypotonic solution with no additives- and the following hypertonic solutions with no additives:

- (a) D5.2 normal saline;
- (b) D5.3 normal saline;
- (c) D5.45 normal saline;
- (d) D5.9 normal saline;
- (e) D5 in ringers; and
- (f) D5 in lactated ringers.

(4) through (6)(d) will remain the same."

Auth: Sec. 37-8-415, MCA

IMP: Sec. 37-8-415, MCA

"8.32.1409 PROHIBITED IV THERAPIES (1) through (1)(b)(xiii) will remain the same.

(xiv) hypertonic solutions, except as in ARM 8.32.1408(3);

(xv) through (d) will remain the same."

Auth: Sec. 37-8-415, MCA

IMP: Sec. 37-8-415, MCA

REASON: ARM 8.32.1408 and 8.32.1409 are proposed for amendment to accurately reflect just what constitutes a "standard intravenous solution" and to clarify the confusion expressed by those in the medical community (i.e. hospitals, doctors and nurses). The definition of standard intravenous solution leaves out any hypertonic solutions and yet the new ones being added are hypertonic based on osmolarity. By making these amendments, the rules should standardize the professional standards of practice for practical nurses.

4. Concerned persons may submit their data, views or arguments concerning the proposed actions in writing to the Board of Nursing, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., March 23, 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 Nursing, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., March 23, 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 340 based on the 3100 licensed practical nurses and 300 nurse practitioners in Montana.

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

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

BOARD OF NURSING
KIM POWELL, RN, BSN, PRESIDENT

BY: Annie M. Bartos

ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

BY: Annie M. Bartos

ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, February 14, 2000

BEFORE THE BOARD OF PHARMACY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PROPOSED AMENDMENT
amendment of rules pertaining	)	OF ARM 8.40.906 REQUIRED
to forms and reports, pharmacy	)	FORMS AND REPORTS, 8.40.1301
technicians and patient	)	USE OF PHARMACY TECHNICIAN,
counseling	)	AND 8.40.1503 PATIENT
	)	COUNSELING

NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On March 27, 2000, the Board of Pharmacy proposes to amend the above-stated rules.

2. The Board of Pharmacy 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 Board of Pharmacy, no later than 5:00 p.m., on March 13, 2000, to advise us of the nature of the accommodation that you need. Please contact Cami Robson, Board of Pharmacy, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 444-1698; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-1667.

3. The proposed amendment of the above-stated rules will read as follows: (new matter underlined, deleted matter interlined)

"8.40.906 REQUIRED FORMS AND REPORTS (1) will remain the same.

~~(2) In addition, an essay must be completed covering topics selected by the board.~~

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

Auth: Sec. 37-7-201, MCA

IMP: Sec. 37-7-201, MCA

REASON: The essay requirement has been changed to a formal evaluation of the intern and preceptor during each intern rotation. The board believes the evaluations will indicate more consistent information on what the interns have learned.

"8.40.1301 USE OF PHARMACY TECHNICIAN (1) through (3) will remain the same.

(4) All technicians and auxiliary staff shall be made visually identifiable by name and job title utilizing letters of 16 point or larger on a name badge."

Auth: Sec. 37-7-201, MCA

IMP: Sec. 37-7-101, MCA

REASON: Name badges will help clarify all pharmacy staff for the consumer. The Board of Pharmacy has been advised that patients are not always sure to whom they are speaking at a pharmacy counter. Many times this will cause a patient to be frustrated and not seek proper counseling.

"8.40.1503 PATIENT COUNSELING (1) will remain the same.

(2) Each pharmacy shall have at least one area that offers appropriate visual and auditory patient confidentiality for patient counseling.

(2) through (4) will remain the same but will be renumbered (3) through (5)."

Auth: Sec. 37-7-201, MCA

IMP: Sec. 37-7-406, MCA

REASON: Consumers are not always comfortable with a pharmacist counseling them on their prescription in the presence of other consumers. The Board feels that pharmacists should provide a place other than the main pharmacy counter where the consumer can discuss their prescription with the pharmacist without this information being overheard by other consumers.

4. Concerned persons may submit their data, views or arguments concerning the proposed actions in writing to the Board of Pharmacy, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., March 23, 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 Pharmacy, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., March 23, 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 50 based on the 500 licensees in Montana.

7. The Board of Pharmacy maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices

regarding Board of Pharmacy administrative rulemaking actions. Such written request may be mailed or delivered to the Board of Pharmacy, 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 Pharmacy.

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

BOARD OF PHARMACY
JOHN POUSH, R.Ph. PRESIDENT

BY: Annie M. Bartos

ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

BY: Annie M. Bartos

ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, February 14, 2000

BEFORE THE BOARD OF PHYSICAL THERAPY EXAMINERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of rules pertaining) OF ARM 8.42.403 FEES
to fees)

NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On March 25, 2000, the Board of Physical Therapy Examiners proposes to amend the above-stated rule.

2. The Board of Physical Therapy Examiners 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 Board of Physical Therapy Examiners, no later than 5:00 p.m., on March 15, 2000, to advise us of the nature of the accommodation that you need. Please contact Sandra Donahue, Board of Physical Therapy Examiners, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 444-3728; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-1667.

3. The proposed amendment of the above-stated rule will read as follows: (new matter underlined, deleted matter interlined)

"8.42.403 FEES (1) The fees shall be as follows:

(a) Application for NPTE and NPTAE examination (paid directly to the federation of \$195285
state boards of physical therapy (FSBPT)
~~professional examination service~~ by either
cashier's check or money order only)

(b) through (2) will remain the same."

Auth: Sec. 37-1-134, 37-11-201, 37-11-304, MCA

IMP: Sec. 37-11-304, MCA

REASON: The Board has proposed the amendment because the Federation of State Boards of Physical Therapy (FSBPT) has implemented an increase in the fee for the national examination given to physical therapists and physical therapist assistants. The increase will commence on July 1, 2000 and is directly payable to the FSBPT. No Board fee increases are being requested.

4. Concerned persons may submit their data, views or arguments concerning the proposed action in writing to the Board of Physical Therapy Examiners, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., March 23, 2000.

5. If persons who are directly affected by the proposed action 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 Physical Therapy Examiners, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., March 23, 2000.

6. If the Board receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed action, from the appropriate administrative rule review committee of the legislature, from a governmental agency or subdivision or from 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 six based on an average of 60 persons per year applying for licensure by examination.

7. The Board of Physical Therapy Examiners 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 Board of Physical Therapy Examiners administrative rulemaking actions. Such written request may be mailed or delivered to the Board of Physical Therapy Examiners, 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 Physical Therapy Examiners.

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

BOARD OF PHYSICAL THERAPY
EXAMINERS
BEVERLY HANCOCK, PT
BOARD 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, February 14, 2000.

BEFORE THE BOARD OF REALTY REGULATION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING ON
amendment of a rule pertaining) THE PROPOSED AMENDMENT OF
to applications for license) ARM 8.58.406A APPLICATION
by salespersons and brokers) FOR LICENSE--SALESPERSON
AND BROKER

TO: All Concerned Persons

1. On March 28, 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 21, 2000, to advise us of the nature of the accommodation that you need. Please contact Grace Berger, Board of Realty Regulation, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 444-2961; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-1667.

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

"8.58.406A APPLICATION FOR LICENSE--SALESPERSON AND BROKER (1) through (8) will remain the same.

(9) ~~Sales or listing of property owned by the applicant, by a corporation, partnership, trust or other entity in which the applicant has an interest or by such an entity which employed the applicant as an employee, shall not qualify as experience under (2) and (3) above, or under 37-51-302(2)(c), MCA.~~ Real estate transactions completed while employed by a publicly held utility or subsidiary wholly owned and regulated by a public utility may be accepted as experience to obtain a broker license. The board shall review each application and determine on a case by case basis the sufficiency of the experience offered."

Auth: Sec. 37-1-131, 37-51-203, MCA

IMP: Sec. 37-1-135, 37-51-202, 37-51-302, MCA

REASON: To allow utility employees to use their real estate activity to qualify for a broker license. This activity would need to be reviewed and approved by the board on a case by case basis.

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 Realty Regulation, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile, number (406) 444-1667, to be received no later than the close of the hearing on March 28, 2000.

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

6. The Board of Realty Regulation 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 Board of Realty Regulation administrative rulemaking actions. Such written request may be mailed or delivered to the Board of Realty Regulation, 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 Realty Regulation.

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

BOARD OF REALTY REGULATION
JOHN BEAGLE, 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, February 14, 2000

BEFORE THE BOARD OF RESPIRATORY CARE PRACTITIONERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING ON
amendment of rules pertaining	)	PROPOSED AMENDMENT
to definitions, procedures for	)	OF ARM 8.59.402 DEFINITIONS,
renewal, inactive status	)	8.59.505 PROCEDURES FOR
licenses and continuing	)	RENEWAL, 8.59.507 INACTIVE
education requirements	)	STATUS, 8.59.601 CONTINUING
	)	EDUCATION REQUIREMENTS

TO: All Concerned Persons

1. On March 15, 2000, at 10:00 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 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 March 6, 2000 to advise us of the nature of the accommodation that you need. Please contact Helena Lee, Board of Respiratory Care Practitioners, 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)

"8.59.402 DEFINITIONS (1) through (3) will remain the same.

(4) The board defines "pulse oximetry," pulmonary function testing" and "spirometry" as a diagnostic procedures that, pursuant to the orders of a physician, may be performed only by, or under clinical supervision of, a licensed respiratory care practitioner, ~~pursuant to the orders of a physician~~, or other licensed health care professional or individuals who have met the minimum competency standards as established by the national institute for occupational safety and health (NIOSH) or the national board for respiratory care (NBRC) certification examination for entry level pulmonary function technologist (CPFT) credential or registry examination for advanced pulmonary function technologists (RPFT) specific to pulmonary function testing."

Auth: Sec. 37-28-104, 37-28-101, MCA
IMP: Sec. 37-28-203, 37-28-102, MCA

REASON: In order to protect the public health, safety and welfare, the Board of Respiratory Care Practitioners feels

this amendment is necessary because pulmonary function testing includes assessment, monitoring and instruction and the spirometry screening is diagnostic. The results of these diagnostic tests can or may qualify individuals for medication, disabilities or rule out surgeries and must be performed by skilled and licensed individuals.

"8.59.505 PROCEDURES FOR RENEWAL (1) will remain the same.

(2) Licenses expire every even numbered year on May 1.
(2) will remain the same but be renumbered (3)."

Auth: Sec. 37-28-104, 37-28-101, MCA

IMP: Sec. 37-28-203, 37-28-102, MCA

REASON: Under the current annual renewal cycle the board's budget will double every year. The proposed change to a biennial renewal cycle, with the renewal fee remaining the same, is commensurate with program costs for the Board of Respiratory Care Practitioners.

"8.59.507 INACTIVE STATUS (1) A licensee who wishes to retain a license but who will not be practicing respiratory care may obtain inactive status by indicating this intention on the ~~annual~~ biennial renewal form or by submission of an application and payment of the appropriate fee. An individual licensed on inactive status may not practice respiratory care during the period in which he or she remains on inactive status.

(2) and (3) will remain the same."

Auth: Sec. 37-28-104, 37-28-101, MCA

IMP: Sec. 37-28-203, 37-28-102, MCA

REASON: The proposed change in this rule is to conform with the change from an annual renewal to biennial renewal as proposed in ARM 8.59.505.

"8.59.601 CONTINUING EDUCATION REQUIREMENTS (1) Upon ~~annual~~ biennial renewal of licensure, each respiratory care practitioner must affirm on the renewal form that he/she has completed ~~12~~ 24 continuing education units in the preceding ~~12~~ 24 months. One continuing education unit is equivalent to 50 minutes in length.

(2) It is the sole responsibility of each licensee to meet the continuing education requirement, and to provide documentation of his/her compliance if so requested during a random audit. The random audit will be conducted on an ~~annual~~ biennial basis. The board will not permit excess units to be carried over from one licensing renewal ~~year cycle~~ to the next.

(3) A licensee who fails to obtain a sufficient number of continuing education units may satisfy the requirement by taking and passing the national board of respiratory care

certified respiratory therapy technician examination or the registered respiratory therapy examination during the preceding ~~12~~ 24 months.

(4) through (7) will remain the same."

Auth: Sec. 37-28-104, 37-28-101, MCA

IMP: Sec. 37-28-203, 37-28-102, MCA

REASON: The proposed change to a biennial renewal cycle is reflected in the continuing education units being increased from 12 (annual requirement) to 24 continuing education units for a biennial renewal cycle.

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 Respiratory Care Practitioners, 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., March 23, 2000.

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

6. The Board of Respiratory Care Practitioners 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 Respiratory Care Practitioners administrative rulemaking actions. Such written request may be mailed or delivered to the Board of Respiratory Care Practitioners, 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 Respiratory Care Practitioners.

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

BOARD OF RESPIRATORY CARE
PRACTITIONERS
RICK LUNDY, 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, February 14, 2000.

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

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING ON
amendment of the rule for	)	THE PROPOSED AMENDMENT OF
the submission and review of	)	RULE 8.94.3806 PERTAINING
applications under the 2000/	)	TO THE 2000/2001 TREASURE
2001 Treasure State	)	STATE ENDOWMENT PROGRAM
Endowment Program (TSEP))	

TO: All Concerned Persons

1. On March 15, 2000, at 1:30 p.m., a public hearing will be held in the downstairs conference room at the Department of Commerce Building, 1424 Ninth Ave., Helena, Montana, to consider the amendment of ARM 8.94.3806 governing the submission and review of applications under the 2000/2001 Treasure State Endowment Program (TSEP).

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 12, 2000, to advise us of the nature of the accommodation that you need. Please contact Richard M. Weddle, Local Government Assistance Division, P.O. Box 200501, Helena, Montana 59620-0501; telephone (406) 444-2781; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-4482 or by E-mail, addressed to rweddle@state.mt.us.

3. The Department is proposing to amend ARM 8.94.3806 as follows: (new matter underlined, deleted matter interlined)

"8.94.3806 INCORPORATION BY REFERENCE OF RULES GOVERNING THE SUBMISSION AND REVIEW OF APPLICATIONS UNDER THE 2000/2001 TREASURE STATE ENDOWMENT PROGRAM (1) The department of commerce herein adopts and incorporates by this reference the Montana Treasure State Endowment Program 2000/2001 Application Guidelines, as amended in February 2000, published by it as rules governing the submission and review of applications under the TSEP program.

(2) The rules incorporated by reference in (1) above, relate to the following:

(a) estimated amount of TSEP funds available in FY 2000 and 2001;

(b) eligible applicants and projects;

(c) application scoring system and ranking criteria;

(d) forms of financial assistance available under TSEP;

(e) general requirements for TSEP applications; and

(f) application review process.

(3) Copies of the regulations adopted by reference in (1) of this rule may be obtained from the Department of Commerce, Local Government Assistance Division, Capitol Station, Helena, Montana 59620."

AUTH: Sec. 90-6-710, MCA
IMP: Sec. 90-6-710, MCA

REASON: For the past several funding cycles of the TSEP program the program's application guidelines have specified the following water and sewer target rates: 1) for communities having only a water system a water rate of at least 1.4 percent of the applicant's median household income (MHI); 2) for communities having only a wastewater system a sewer rate of at least .8 percent of the applicant's MHI; and 3) for communities having both a water and a wastewater system a combined water and sewer rate of at least 2.2 percent of the applicant's MHI.

As the result of information provided by a new survey of state-wide water and sewer rates, the Department, without objection or comment from any interested party, incorporated new, higher, target rates in its application guidelines (adopted on January 14, 2000) for the 2000/2001 funding cycle. These higher target rates were: 1) 1.8 percent of MHI for communities having only a water system; 2) 1.2 percent of MHI for communities having only a wastewater system; and 3) a combined rate of 3.0 percent of MHI for communities having both systems.

Recently the Department's Community Development Block Grant Program proposed to incorporate the higher target rates into its application guidelines for the 2000 CDBG Program. This proposal has met with overwhelming opposition from the CDBG Program's local government constituents, and the Department has decided to retain the previous target rates in the CDBG Program application guidelines and reinstate them in the TSEP Program application guidelines at pages 53, 63, 67, 68, and incorporate them in the tables on pages 75-78.

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 Richard Weddle, Local Government Assistance Division, P.O. Box 200501, Helena, Montana 59620-0501, or by facsimile (406) 444-4482, or by E-mail, addressed to rweddle@state.mt.us to be received no later than 5:00 p.m., March 23, 2000.

5. Richard M. Weddle will preside over and conduct the hearing.

6. The Local Government Assistance Division maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the Division. Persons who wish to have their name added to this list may 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 rules relating to the Treasure State Endowment Program. This request may be mailed or delivered to the Division, faxed to the office at (406) 444-4482 or may be made by completing a request form at any

rules hearing held by the Division.

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

LOCAL GOVERNMENT ASSISTANCE
DIVISION
DEPARTMENT OF COMMERCE

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, February 14, 2000

BEFORE THE ECONOMIC DEVELOPMENT DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING ON
amendment and repeal of rules) THE PROPOSED AMENDMENT AND
pertaining to the Microbusiness) AND REPEAL OF RULES
Finance Program) PERTAINING TO THE
) MICROBUSINESS FINANCE
) PROGRAM

TO: All Concerned Persons

1. On March 16, 2000 at 2:00 p.m. the Montana Department of Commerce, Microbusiness Finance Program will hold a public hearing in the downstairs conference room, at the Department of Commerce Building, 1424 Ninth Avenue, Helena, Montana, to consider the proposed amendment of ARM 8.99.401, 8.99.403, 8.99.404, 8.99.501, 8.99.502, 8.99.503, 8.99.504, 8.99.505, 8.99.506, 8.99.508, 8.99.511; and the repeal of ARM 8.99.402, 8.99.405 and 8.99.510.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you wish to request an accommodation, contact the Department no later than 5:00 p.m., March 2, 2000, to advise us of the nature of the accommodation that you need. Please contact Robyn Hampton, Department of Commerce, 1424 Ninth Avenue, PO Box 200501, Helena, Montana 59620-0501; telephone (406) 444-4187; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-1872. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Robyn Hampton.

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

8.99.401 DEFINITIONS (1) through (7) remain the same.

(8) "Region" means one of not more than the 12 multi-county service regions, ~~as identified in 17-67406(8), MCA.~~

(9) and (10) remain the same.

~~(11) "Group or circle lending program" means a microbusiness loan to a group of microbusiness owners which in turn makes loans to its members based on the performance of all members.~~

~~(12)~~ (11) "Certification" means the criteria and process, described herein, by which an organization becomes eligible to participate in the microbusiness finance program as a "certified" MBDC and to apply for a development loan, in the region in which that organization is located.

(13) remains the same, but is renumbered (12).

~~(14)~~ (13) "Funded" means an a certified MBDC holding that has a development loan balance outstanding and that provides

technical assistance and loans to microbusinesses. in good standing.

~~(15)~~(14) "Unfunded" means a certified an MBDC certified that does not have a development loan balance outstanding. in good standing but not holding a development loan. See ARM 8.99.404(2)(b).

~~(16)~~(15) "Transitional" means a MBDC that is certified and that has a development loan outstanding but which is not currently offering new loans to microbusinesses with development loan funds. A "transitional MBDC" has selected the installment payment termination option to repay its outstanding development loan balance.

~~(17)~~(16) "Renewal" means an MBDC who that is currently certified, meets the requirements for certification for an additional term, and if approved, is awarded a an extension of its development loan for an additional term.

~~(18)~~(17) "Default" shall be defined in the development loan agreement between the department and MBDC. An MBDC is in default when it receives notice from the department declaring it to be in default under the provisions of the loan agreement.

(19) through (22) remain the same but will be renumbered (18) through (21).

AUTH: 17-6-406, MCA

IMP: 17-6-406, MCA

REASON: The addition of a definition of a "Transitional MBDC" is necessary to allow a MBDC to repay their development loan on an installment basis if they decide to discontinue active involvement with the program. As the rule stands now, we would not be able to offer a development loan to a new MBDC in the same region because the former MBDC still has a development loan balance outstanding. The other changes are to delete definitions that are not needed or to improve the clarity of the language.

8.99.403 SOLICITING NOMINATIONS (1) The director of the department shall solicit written nominations for the 13 council positions from the following organizations as follows:

~~(a) one position filled from one nomination submitted by each certified community lead organizations located in cities 15,000 or more in population;~~

~~(b) two positions filled from one nomination submitted by each certified community lead organization located in cities under 15,000 in population;~~

~~(c)(b) three positions representing microbusiness owners filled from one nomination each submitted by the executive director of the national federation of independent business and by each loan fund program located in Montana that primarily serves microbusiness (a list of such microbusiness lending organizations is maintained by the department of commerce);~~

~~(d)(c) two positions with expertise in administering~~

~~such funds filled from one nomination submitted by each loan fund program located in Montana that primarily serves microbusiness;~~

~~(e)(d) one position to be filled from two nominations submitted by the state of Montana Indian affairs coordinator for Indian tribes;~~

~~(f)(e) one position to be filled from two nominations submitted by the Montana low income coalition;~~

~~(g)(f) two positions to be filled from two nominations each submitted by the Montana banker's association and the Montana independent bankers association;~~

~~(h)(g) one position to be filled from two nominations submitted by the Montana state chamber of commerce.~~

(2) and (3) remain the same.

(4) ~~If, after the department director's additions, the list contains insufficient names to offer the governor a choice for the appointment of each position on the council, the director may poll such additional organizations as the director deems suitable in each category for additional nominations.~~

(5) The director of the department shall forward the list of nominees to the governor's office for the governor's appointment.

AUTH: 17-6-411, MCA

IMP: 17-6-411, MCA

REASON: The proposed changes will make the nomination process easier and will result in the Governor having a more adequate choice of nominees to fill the positions as prescribed by the statute. The interested parties will still have an opportunity to nominate council members, but they will actually have more flexibility to nominate individuals that meet more than one qualification for service on the council.

8.99.404 CERTIFICATION OF REGIONAL MICROBUSINESS DEVELOPMENT CORPORATIONS ~~(1) Under the authority granted by 17-6-406, MCA, the department adopts the following rules for the certification of microbusiness development corporations.~~

~~(2) There is no limit to the number of certified MBDCs per region; however, only one certified MBDC may be funded at any given time in any one region.~~

~~(a) When the certified and funded MBDC in a region is determined to be in default that MBDC is considered decertified and no longer funded, and another certified MBDC in that region may apply for and receive a development loan.~~

~~(b) to maintain its status as a certified MBDC, an MBDC that is certified but not funded must be reviewed and recertified every four years.~~

~~(3)(1) The following information is required to be presented to the department by applicants for certification as an MBDC:~~

~~(a) A plan for delivery of management training and technical assistance. The plan will show qualifications of~~

providers, time line and cost of training. The plan will include, but will not be limited to, the subjects of business planning, accounting, financial planning, financial controls, personnel management, marketing, legal aspects of business operation and loan proposal preparation.

(b) A plan for credit investigation and analysis, and loan analysis of microbusiness loan applicants. The plan will include, but will not be limited to, the manner in which the credit history of microbusiness loan applicants will be determined and evaluated, what business information and history will be required from applicants and the manner in which confidentiality will be maintained. The plan will include a description of the exact credit approval and denial process, and the qualifications of those who will conduct the investigation, analysis, and evaluation.

(c) A plan for and evidence of ability to administer a revolving loan fund. The plan will include, but will not be limited to, loan servicing documentation, financial oversight and monitoring of borrowers, delinquent loans and collateral collections, internal accounting, financial procedures and controls, business management procedures, loan portfolio risk management policies, measures and procedures and loan fund balance investment and management practices. The plan will include structure, composition and organizational relationships of the loan committee and qualifications of its members.

(d) remains the same.

(e) Evidence of broad-based community support, to include letters of support from persons and institutions throughout the region including, but not limited to, local governments, certified community lead organizations, financial institutions, business incubators, business assistance groups, women and representatives of low income and minority populations. The evidence must include a full list of names and resumes of board members, demonstrating the minimum requirement for board representation of women, minorities and low income persons.

(f) Evidence of matching loan funds in the ratio of \$1 for every \$6 of development loan funds requested collateral funds. Such evidence shall include a legally binding commitment from a governmental entity, organization, business and/or individual pledging \$1 for every \$6 in development loan to be borrowed from the program. Collateral funds must be in cash available for deposit with the development loan, or to be pledged as collateral for the development loan. Leveraging of development loan funds through banks or other lending institutions does not constitute collateral funds.

(g) Evidence of sufficient operating income including at least, but not limited to, financial reports for previous two years for an existing organization, and two year full financial projections for all applicants. In the case of a new organization, evidence shall include principals and board members with successful experience in managing similar amount of funding in a nonprofit corporation.

(h) remains the same.

(i) A plan for marketing to specific groups including at least, but not limited to, minorities, women and low-income persons. ~~The plan will include analysis of needs of these groups, and plan for design and delivery of training suited specifically to those needs.~~

(j) ~~Documented~~ Evidence that the proposing organization is a nonprofit corporation organized and existing under the laws of the state of Montana.

(k) remains the same.

~~(4)(2)~~ The procedures for selection of certification of MBDCs are as follows:

(a) ~~the department will follow state agency procedures in conducting requests for proposals for certification from each region.~~ the department will provide a written certification application guide to any interested individuals or organizations.

(b) remains the same.

~~(c) in regions with proposals for certification from more than one organization, the department will convene and chair a regional evaluation committee. Nominations for membership to the committee will be solicited from groups including, but not limited to, proposers from that region, local governments, certified community lead organizations, financial institutions, business assistance groups, women and representatives of low income and minority populations. The committee will attempt, through negotiation, to arrive at a consensus proposal from the region. If, however, in the opinion of the chair and a majority of the committee a consensus cannot be reached in a timely fashion, then the committee will evaluate the competing proposals or any modified proposals that have emerged from negotiation, and will select by means of that evaluation a single proposal to be forwarded to the department for certification review.~~

~~(5)(3) Statewide MBDCs may not be certified until the date one year from the deadline for receiving proposals specified in the first request for proposals for certification of MBDCs issued by the department. An application for certification as a statewide MBDC shall also be required to provide evidence that it will serve a specialized population or specialized need and that its services do not duplicate services offered by existing "funded" regional certified MBDCs.~~

(4) To maintain its status as a certified MBDC, a MBDC must be reviewed and re-certified every four years.

AUTH: 17-6-406, MCA

IMP: 17-6-408, MCA

REASON: The program has matured to the point and most of the development loan funds have already been disbursed to existing MBDCs. We do not expect to award development loans to many new MBDCs. Twelve regions have been created but not all regions have continued active involvement in the program.

Most of our certification activity will involve "renewals" or re-certifications of existing MBDCs. We have also combined the certification requirements for a Statewide MBDC to decrease redundancy of the rules. The deletions are intended to provide broad guidance to parties that are interested in certification. The department will provide more detailed information to anyone that wants to prepare a new certification application.

8.99.501 DEVELOPMENT LOAN - CRITERIA (1) The criteria used by the department to make development loans to a certified MBDC will include the criteria required for certification as an MBDC as set forth in ARM 8.99.4014- plus the following additional requirements:

- ~~(2) The MBDC must provide to the department:~~
 - (a) legally binding commitment(s) for MBDC operating income other than earned income; and
 - (b) legally binding commitment(s) for matching loan funds collateral funds.
 - ~~(c) such updates as are requested by the department to the proposal for certification as MBDC.~~
- ~~(3)~~ (2) Development loans funds will be awarded pursuant to a promissory note, development loan agreement, and security agreement between the department and the MBDC.
- ~~(4)~~ (3) The department will consider the following in determining the amount of a development loan awarded to a MBDC:
 - (a) financial stability and sources and sufficiency of operating income of the MBDC;
 - (b) through (d) remain the same.

AUTH: 17-6-406, MCA

IMP: 17-6-407, MCA

REASON: The terminology "collateral funds" and "cash collateral funds" is replaced with "matching loan funds" and "matching funds". Collateral has a specific meaning under the Uniform Commercial Code. The Department actually uses all of the assets of the revolving microloan fund including microloans receivable and liquid assets as collateral to secure our development loan. Defining the \$1 to \$6 required matching loan funds as "collateral funds" might confuse the reader into believing that only the matching funds are used as collateral. The other changes in language are intended to clarify the department's position on advancing loan funds to MBDCs.

8.99.502 DEVELOPMENT LOAN - APPLICATION PROCESS

- (1) the MBDC may apply for a development loan by submitting an application to the department on a form provided by the department. The application shall contain:
 - ~~(a) a description of the purpose for which the loan will be used;~~
 - ~~(b)~~ (a) a description of all outstanding obligations of

the MBDC including copies of all notes and contracts payable and a complete description of all collateral pledged as security for said notes and contracts;

~~(e)(b)~~ a copy of the most recent audited financial statements of the organization including if applicable, a supplemental schedule or other detailed information to specifically disclose the financial condition and results of operations of financial statement of the MBDC;

~~(d)(c)~~ any other information deemed necessary by the department to evaluate the application ~~in accordance with the rules.~~

(2) and (3) remain the same.

AUTH: 17-6-406, MCA

IMP: 17-6-407, MCA

REASON: We are adding language to give better direction to the MBDCs that are applying for additional development loan funds.

8.99.503 DEVELOPMENT LOAN - INTEREST (1) ~~A range of allowable~~ The development loan interest rates will be set by the department annually based on a forecast of administrative expenses and income for the program.

(2) ~~The interest rate for each development loan will be set by the department, within the established~~ at the time the promissory note is signed and may be adjusted annually, provided that the rate does not exceed the maximum rate specified in the development loan agreement. range of interest rates current at the time the loan agreement is negotiated.

~~(3) The interest rate set in the development loan agreement may be reduced at the department's discretion.~~

AUTH: 17-6-406, MCA

IMP: 17-6-407, MCA

REASON: The Department will set a single interest rate each year that is sufficient to meet our projected operating costs. Since the loan agreements will be signed at different times during the year, the MBDCs may have different rates at the time the agreements are signed. The rates will be adjusted annually for all loan agreements. We will also specify a maximum rate in each development loan agreement.

8.99.504 DEVELOPMENT LOAN - TERMS (1) ~~Development loans shall be interest only loans, renewable at intervals of no more than four years. Development loans shall require, at a minimum, the payment of interest on a quarterly basis. Contract extensions of 12 months may be approved by the department in lieu of repayment for nonperforming loan funds at the department's discretion.~~

~~(2) The loan agreement will specify a schedule for the MBDCs to make microbusiness loans with the proceeds of the development loan.~~

~~(3)~~ (2) The loan agreement shall require that the MBDC

provide will specify levels of classroom training, pre-loan and post-loan consulting and technical assistance as described in the MBDCs application for certification. by the MBDC.

~~(4)(3)~~ The loan agreement will specify reporting obligations of the MBDC to the department, including scheduling and format of reporting, ~~on reporting topics including, but not limited to, the following:~~

~~(a) financial management;~~

~~(b) job creation;~~

~~(c) unemployment and public assistance cost reduction;~~
and

~~(d) demographic distribution of lending.~~

(5) remains the same but will be renumbered (4).

AUTH: 17-6-406, MCA

IMP: 17-6-408, MCA

REASON: The department would like to offer MBDCs an opportunity to repay some or all of the principal amount of their development loan. We will still offer interest only loans for four-year terms. A MBDC that wishes to eventually operate their program without our leverage should be offered an opportunity to restructure their development loan as an installment loan. The department no longer feels it is necessary to specify the investment schedule for MBDCs, and the certification application can be used as evidence of the MBDCs commitment to provide training and technical assistance.

8.99.505 DEVELOPMENT LOAN - MATCHING CONTRIBUTIONS AND COLLATERAL (1) ~~Collateral funds Matching loan funds must be provided in cash. Leverage provided by financial institutions committing to make microbusiness loans in consequence of a guarantee fund established with the development loan funds does not constitute cash collateral.~~

(2) The development loan agreement between the department and an MBDC must specify account(s), or type of account(s), into which the full amount of the cash matching funds collateral must be deposited before the development loan may be disbursed to the MBDC, except that, when the MBDC presents a legally binding commitment for cash matching funds ~~cash collateral~~ from a federal agency contingent only upon disbursement of the development loan, the development loan may be disbursed prior to deposit of that committed federal portion of the cash matching funds collateral.

(3) In order to assist an MBDC in obtaining cash matching funds collateral from other sources, the department may provide a legally binding commitment to an MBDC to award a development loan, contingent on receipt and deposit of cash matching funds ~~cash collateral~~ as specified in the loan agreement. Such a commitment will be made first to MBDCs with cash matching funds ~~cash collateral~~ ready and available and then to MBDCs with strong evidence of ~~collateral~~ commitments. ~~materializing. Such commitments to those developing cash matching funds collateral must have an expiration date.~~

(4) All development loan and matching funds not invested in microbusiness loans must be maintained in: Cash balances of development loan proceeds and collateral funds, including guarantee funds and all other funds not loaned out in microbusiness loans, must be:

(a) direct obligations of, or obligations guaranteed as to principal and interest by, the United States which mature within 15 months from the date of investment; or placed in demand, savings or time deposits with solvent banks, building and loan associations, savings and loan associations or credit unions located in the state, provided that no such deposit may be made in excess of 150% of the amount insured by the federal deposit insurance corporation, federal savings and loan insurance corporation or national credit union administration; or

(b) repurchase agreements with federally insured institutions, with a maturity of seven days or less. The securities underlying the repurchase agreements must be direct obligations of, or obligations guaranteed as to principal and interest by the United States. The securities must be maintained in a custodial account at a federally insured institution; or

(c) certificates of deposit with a maturity of one year or less, issued by a federally insured institution; or

(d) deposit account in a federally insured institution; or

(e) a checking account in a federally insured institution; or

(f) a reasonable petty cash fund.

(g) deposit of funds in excess of the insured amount is allowed only if the institution meets the definition of "well capitalized" in accordance with the regulations of the federal deposit insurance corporation.

~~(5) So long as any development loan balance is outstanding between the department and an MBDC, cash collateral from the MBDC must be maintained in the form of microbusiness loans made from the revolving loan fund, or in the form of such deposits and investments as are specified in (4) above, in at least the ratio of \$1 in cash collateral to \$6 in development loan balance outstanding. Reduction of collateral below this minimum ratio or the minimum established in the development loan agreement between the department and the MBDC, whichever is greater, will be grounds for declaring an MBDC to be in default of the development loan agreement between the department and the MBDC.~~

~~(6)~~ (5) Collateral All funds and all receivables held by MBDCs pursuant to the authority of the Microbusiness Development Act in cash, cash deposits or investments other than microbusiness loans or guarantee funds must be pledged as collateral to secure against the development loan.

~~(7)~~ (6) An MBDC must provide the department with senior security interest in a first lien against the full amount of all microbusiness loans made from development loan and matching collateral funds.

~~(8)~~(7) In the case that proceeds from a development loan are used to establish a revolving loan fund, from which loans are made directly to microbusinesses, cash collateral matching loan funds must be deposited, invested and lent together with the development loan proceeds, and must be used for only those purposes for which the development loan fund proceeds are used, as defined in 17-6-407(5), MCA.

~~(9)~~(8) In the case that an MBDC establishes both a revolving loan fund and a guarantee fund, matching loan funds ~~cash collateral~~ must be allocated between the guarantee fund and the revolving loan fund in the same proportion that development loan proceeds are allocated between the guarantee fund and the revolving loan fund.

~~(10)~~(9) In the case that proceeds from a development loan are used in whole or in part to establish a guarantee fund, with which the MBDC guarantees loans made by financial institutions to microbusinesses, the following additional requirements apply:

(a) and (b) remain the same.

(c) the MBDC must provide the department with no less than a second lien against the guarantee fund established with development loan proceeds.

~~(d) in addition,~~

~~(i) so long as any development loan balance is outstanding between the department and an MBDC, cash collateral from the MBDC must be maintained in the form of microbusiness loans made from the guarantee fund, or in the form of such deposits and invested as specified in (4) above, pledged as collateral against the development loan in the amount of at least \$1 for every \$6 of development loan proceeds allocated to the guarantee fund or the amount specified in the development loan agreement, whichever is greater;~~

~~(ii) alternative collateral arrangements may be substituted for the requirements under (d)(i), if, in the department's sole judgment and discretion, these arrangements provide security for the development loan funds that is equivalent or superior to that required above.~~

AUTH: 17-6-406, MCA

IMP: 17-6-407, MCA

REASON: The terminology "collateral funds" and "cash collateral funds" is replaced with "matching loan funds" and "matching funds". Collateral has a specific meaning under the Uniform Commercial Code. The Department actually uses all of the assets of the revolving microloan fund including microloans receivable and liquid assets as collateral to secure our development loans. Defining the \$1 to \$6 required matching loan funds as "collateral funds" might confuse the reader into believing that only the matching funds are used as collateral. The statute requires that the MBDC contribute cash from other sources to leverage and secure development loan funds from the department. Contributions must be on a

ratio of at least \$1 for every \$6 from the program. The MBDCs must lend their matching funds at that same ratio. The losses incurred in the program have exceeded original projections and have created a financial burden for many of the MBDCs. Since the statute does not specifically require that the MBDCs maintain the ratio of \$1 for every \$6 throughout the term of their development loan, deleting this requirement from the rules will eliminate the conflict that exists between the rules and the financial realities of the program.

8.99.506 DEVELOPMENT LOAN - RENEWAL REQUIREMENTS (1) The department will notify the MBDCs in writing of its intent to renew and/or require repayment of a development loan, at least ninety days prior to the expiration of the development loan agreement. ~~two weeks after the last quarter report in the calendar year in which a loan agreement expires.~~

(2) The department may renew the terms of the development loan up to four years ~~with interest only payments,~~ or may require the repayment of the loan in full or in part.

(3) The department will consider the criteria for certification of the MBDC and development loan approval, and the MBDC's record of performance on compliance with the development loan agreement, in determining if a development loan is to be renewed and/or repaid in full or in part.

AUTH: 17-4-406, MCA

IMP: 17-6-406, MCA

REASON: The proposed change in rules to allow a MBDC to repay their loan through an installment loan makes the reference to interest only payments unnecessary. The other changes are intended to make the department's intent easier to understand.

8.99.508 DEVELOPMENT LOANS - NONCOMPLIANCE AND DEFAULT

(1) Criteria for determining noncompliance and default and provisions for notice and remedy shall be ~~must be~~ defined in the development loan agreement.

~~(2) An MBDC may not be declared in default until at least 60 days from the postmark date of the first notice of noncompliance with the loan agreement.~~

~~(3) The department may declare an MBDC in default in the event of failure to correct any noncompliance with the loan agreement, or to initiate a mutually acceptable course of action, within 60 days from the postmark date of the first notice of noncompliance.~~

AUTH: 17-6-406, MCA

IMP: 17-6-407, MCA

REASON: The development loan agreement is a contractual agreement between the department and a MBDC. The default provisions of the development loan agreements are more suited for describing the notice requirements than Administrative Rules.

8.99.511 MICROBUSINESS LOANS - ELIGIBILITY FOR AND TERMS AND CONDITIONS (1) Microbusiness loan applicants will be required to certify to the MBDCs, that the applicants are eligible borrowers ~~from the program as defined in 17-6-403 and 17-6-407(5) and (6), MCA.~~

(2) remains the same.

~~(3) Each MBDC will adopt and make known to microbusiness loan applicants a process for appeal in the event of loan denial or award of less than the amount requested in the microbusiness loan application.~~

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

~~(5)(4) The interest rate charged to microbusiness borrowers by MBDCs shall be, at a minimum, the highest rate charged by the department to the MBDC for its development loan and, at a maximum, the rate allowed by Montana law pursuant to 31-1-107, MCA. The interest rate charged borrowers will be set by the MBDC board of directors or its delegated committee and made public. The loan interest rate determination must be by board resolution with a copy forwarded to the department. Interest charged to borrowers will be at a fixed rate for the term of the loan. MBDCs will report quarterly, in writing to the department, the interest rate(s) charged to borrowers.~~

~~(6) The department will establish guidelines for calculating annual percentage rates for the purpose of complying with microbusiness interest rate limits.~~

AUTH: 17-6-406, MCA

IMP: 17-6-407, MCA

REASON: Experience with the MBDCs has shown that they need to have the flexibility to price their microloans at interest rates that are both commensurate with the risk and that are competitive with market rates. An individual MBDC makes loans that involve a wide range of financial risk and therefore, it is appropriate to allow them to charge different interest rates for different types of loans. A MBDC may even choose to subsidize the interest rate on certain loans to achieve certain targeted regional economic development or social goals. One of the services offered by the MBDCs is pre-loan assistance and counseling. If an applicant does not appear to have a reasonable chance of obtaining a loan, they should be told as early as possible so as not to waste their time and resources, as well as the time and resources of the MBDC. Requiring that MBDCs adopt an appeal process for loan denials restricts their ability to counsel borrower's because frank advice might be misconstrued as a denial.

4. The Department is proposing to repeal the following rules:

8.99.402 COMPOSITION OF THE COUNCIL (Auth: Sec. 17-6-406, MCA; IMP, Sec. 17-6-411, MCA), located at pages 8-3642 through 8-3643, Administrative Rules of Montana.

REASON: This section merely repeats the statutory requirements and is no longer necessary.

8.99.405 CERTIFICATE OF A STATEWIDE MICROBUSINESS DEVELOPMENT CORPORATION (Auth: Sec. 17-6-406, MCA; IMP, Sec. 17-6-406, 17-6-408, MCA), located at pages 8-3647 through 8-3648, Administrative Rules of Montana.

REASON: The requirements for certification of a MBDC are generally the same whether the applicant proposes to serve a region or a specialized population or need. The new language in ARM 8.99.404 adequately describes the additional requirement for Certification of a Statewide MBDC.

8.99.510 MICROBUSINESS LOANS - LENDING OUTSIDE THE REGION (Auth: Sec. 17-6-406, MCA; IMP, Sec. 17-6-406, MCA), located at pages 8-3654, Administrative Rules of Montana.

REASON: The department has determined that it does not have clear statutory support for this rule. The rule could potentially limit the ability of a qualified microbusiness to obtain financing because it restricts the MBDCs to lending 90% of their loans within their own region. Now that the program is mature, there are regions that have excess funds to lend, and regions in which there is no longer an active MBDC. Repealing this rule should provide more access to loans especially in rural areas.

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 Microbusiness Finance Program, Department of Commerce, 1424 Ninth Avenue, PO Box 200501, Helena, Montana, 59620-0501, or by facsimile number (406) 444-1872, to be received no later than 5:00 p.m., March 24, 2000.

6. Peter Ohman, attorney, has been designated to preside over and conduct the hearing.

7. The Department of Commerce, Microbusiness Finance Program maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Program. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding the Microbusiness Finance Program. Such written request may be mailed or delivered to the Department of Commerce, faxed to the office at (406) 444-1872 or may be made by completing a request form at any rules hearing held by the Microbusiness Finance Program.

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

ECONOMIC DEVELOPMENT DIVISION
DEPARTMENT OF COMMERCE

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, February 14, 2000.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PUBLIC HEARING
proposed adoption and	)	ON THE PROPOSED ADOPTION
amendment of rules	)	OF RULE I AND AMENDMENT OF
relating to teacher	)	10.57.604 AND 10.57.701
certification	)	RELATED TO REPORTING OF
	)	NEGATIVE CERTIFICATION
	)	ACTIONS

TO: All Concerned Persons

1. On March 24, 2000 at 1:00 p.m. or as soon thereafter as it may be heard, a public hearing will be held at Havre Middle School Assembly Room, 1441 11th Street West, Havre, MT, to consider the adoption of new Rule I, and the amendment of ARM 10.57.604 and 10.57.701.

2. The Board of Public Education will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Public Education no later than 5:00 p.m. on March 9, 2000, to advise us of the nature of the accommodation that you need. Please contact Dr. Wayne Buchanan, 2500 Broadway, Helena, MT 59620, telephone: (406) 444-6576, FAX: 444-0847. TDD number will be available upon request.

3. Statement of Reasonable Necessity: The proposed changes to administrative rules update existing rules and clarify the link between certification actions, appeals to negative actions and the reporting of actions limiting or prohibiting certification.

4. The rule, as proposed to be adopted, provides as follows:

RULE I REPORTING OF DENIAL OF INITIAL CERTIFICATION, OF REINSTATEMENT OR OF RENEWAL OF CERTIFICATION (1) Actions which deny certification "for cause" will be reported to the national educator identification clearinghouse by the superintendent of public instruction.

(2) A denial "for cause" is defined as circumstances which:

(a) would, in the case of an actively certified Montana teacher, be grounds for reprimand, suspension, or revocation; or

(b) result in a determination that the "good moral and professional character" requirement for certification, 20-4-104(1)(b), MCA, has not been met.

(3) Reporting the surrender of certification is covered in ARM 10.57.605.

(4) Reporting of suspension or revocation of Montana educator certification is addressed in ARM 10.57.604.

(5) Appeals to the board of public education on the denial of initial certification, or of reinstatement or renewal of certification, are covered under ARM 10.57.701.

AUTH: 20-2-121, MCA

IMP: 20-4-102, MCA

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

10.57.604 AFTER HEARING BY MEMBER OF BOARD/HEARING EXAMINER/BOARD OF PUBLIC EDUCATION (1) After hearing by the board of public education, the board adopts findings of fact, conclusions of law and an order either suspending or revoking the teacher, specialist or administrator certificate or not suspending or revoking the teacher, specialist or administrator certificate. The board shall enter its decision on its minutes and shall serve a copy by certified mail on the party adversely affected and on any other involved party. ~~When a certificate is suspended or revoked, the superintendent of public instruction shall notify certifying agencies in each of the other states.~~

(a) When a certificate is suspended or revoked, the superintendent of public instruction shall notify the national educator identification clearinghouse that formal action has been taken regarding the certificate held by the teacher, specialist or administrator.

(b) The contents of that record shall be available for review by the certifying authority from other jurisdictions in which the teacher, specialist or administrator seeks certification.

AUTH: 20-2-121, MCA

IMP: 20-4-102, MCA

10.57.701 APPEAL FROM DENIAL OF A TEACHER, SPECIALIST OR ADMINISTRATOR CERTIFICATE (1) Appeal from the decision of the superintendent of public instruction to deny issuance or renewal of a teacher, specialist or administrator certificate shall be brought before the board of public education by written request from the applicant to the board received within 30 days of the notice to deny. ~~which:~~

(2) The written request must be in a form which:

(a) summarizes the appellant's response to the superintendent's denial of a certificate;

(b) states that the appellant meets the minimum qualifications for issuance of a license established by law; and

(c) if applicable, shows that the appeal satisfies the requirements of ARM 10.57.702.

(3) Upon receipt of an appeal from the decision of the superintendent of public instruction to deny an initial educator certificate, or reinstatement or renewal of certification, the reporting of the denial "for cause" to the national educator identification clearinghouse shall be in pending status until the board of public education takes action on the appeal. Should the appeal be upheld and the decision of the superintendent be overturned, no report shall be submitted on the action appealed.

AUTH: 20-2-121, MCA

IMP: 20-4-102, MCA

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 by mail to the Board of Public Education, 2500 Broadway, Helena, MT 59620, or by e-mail to wbuchanan@bpe.montana.edu and must be received no later than 5:00 p.m. on March 23, 2000.

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

8. The Board of Public Education maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding Board of Public Education rules. Such written request may be mailed or delivered to the Board of Public Education office, 2500 Broadway, Helena, MT 59620, or faxed to the office at (406) 444-0847, or may be made by completing a request form at any rules hearing held by the agency.

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

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

/s/ Wayne Buchanan
Rule Reviewer
Board of Public Education

Certified to the Secretary of State February 15, 2000.

4-2/24/00

MAR Notice No. 10-3-214

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

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

TO: All Concerned Persons

1. On March 15, 2000 at 10:00 a.m. in the Lewis Conference Room of the Phoenix Building, 2209 Phoenix Avenue, Helena, Montana, the Department of Environmental Quality will hold a public hearing to consider the proposed adoption, transfer, amendment and repeal of the above-captioned rules.

2. The Department will make reasonable accommodations for persons with disabilities who wish to participate in this hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department no later than 5 p.m., March 8, 2000 to advise us of the nature of the accommodation you need. Please contact the Department at P.O. Box 200901, Helena, Montana, 59620-0901; phone (406) 444-2544; fax (406) 444-4386.

3. The Department proposes the adoption of new rules and the transfer, amendment and repeal of existing rules in order to fulfill the 1999 Legislature's establishment of a third-party underground storage tank compliance inspection program and the requirement of issuance of operating permits for facilities who pass such inspections.

The existing subchapter 12 of the Department's underground storage tank rules incorporates both permitting and licensing requirements. Given the new permitting and licensing requirements resulting from the passage of Chapter 506, Laws of 1999, the Department is proposing to place all the existing permitting rules in new subchapter 13 and all the licensing requirements in new subchapter 14.

The Department already has rules for the licensing of installers and installation and closure inspectors. Therefore, it chose to consolidate those rules and add

provisions for the licensing of compliance and oversight inspectors required by the new law, rather than develop new rules that would be, in many instances, duplicative. Accordingly there is proposed in new subchapter 14 one set of licensing rules that incorporate all the various licenses issued by the Department relative to underground storage tanks. Because this rulemaking involved extensive revision of rules in subchapter 12, the Department proposes to amend, transfer or repeal other rules in that subchapter that are better placed in other subchapters, that were in need of amendment or that were unnecessary, duplicative or poorly worded.

Minor wording changes have been made throughout in order to improve readability. References to statutes and administrative rules have been corrected throughout. Where the responsibility for compliance with a rule was vague or incorrectly assigned, changes were made to improve clarity. Such changes are not called out in the rationale statement following each rule; however, where substantive changes are made, a statement of the rationale for the change follows the rule.

The Department worked closely with a task force made up of underground storage tank owners, operators, installers, inspectors and others to ensure that the proposed rules accomplished the legislative mandate in an acceptable manner.

4. The proposed new rules provide as follows:

NEW RULE I OPERATING PERMIT REQUIRED (1) After March 31, 2002, a person may not place a regulated substance in or dispense a regulated substance from an underground storage tank system unless the owner or operator has a current operating permit from the department issued pursuant to (2) or (4) indicating that the underground storage tank system is in compliance with Title 75, chapter 11, part 5, MCA and the rules adopted thereunder.

(2) The department shall issue an operating permit when the owner or operator has filed with the department an inspection report signed by a licensed compliance inspector that certifies that the operation and maintenance of the underground storage tank systems at that facility are in compliance with Title 75, chapter 11, part 5, MCA and the rules adopted thereunder.

(3) An operating permit must be issued for three years and is renewable upon demonstration that the underground storage tank system is in compliance with Title 75, chapter 11, part 5, MCA and the rules adopted thereunder.

(4) For an underground storage tank system installed after December 31, 2001, the Department shall issue a conditional operating permit upon the submission of all required documentation related to the installation of that underground storage tank system as required by ARM 17.56.1226 [17.56.1305]. A conditional operating permit expires 90 days after issuance.

(5) The department may suspend or revoke an operating permit issued under this rule upon its finding that there is substantial evidence that:

(a) the underground storage tank system for which the permit was issued is no longer in compliance with Title 75, chapter 11, part 5, MCA or the rules adopted thereunder; or

(b) the permittee committed fraud or deceit in applying for the operating permit.

(6) Except as provided in (7), the department shall suspend or revoke a permit issued under this rule according to the provisions of 75-11-512, MCA.

(7) If the department determines that noncompliance with Title 75, chapter 11, part 5, MCA or the rules adopted thereunder poses an immediate or substantial threat to the public health, safety or environment, it may immediately suspend the operating permit. A permittee whose license has been suspended may request a hearing before the department. The department shall schedule a hearing within 10 days of the request for hearing.

AUTH: 75-11-505, MCA

IMP: 75-11-509, MCA

Rationale: New Rule I specifies the conditions under which an operating permit will be issued, suspended or revoked and thereby implements the statutory intent that it is unlawful to operate an underground storage tank without an operating permit. The March 31, 2002, date for having an operating permit is based on the fact that Chapter 506, Laws of 1999, provides that owners and operators must have their facilities inspected by January 1, 2002. The Department believes it may take up to 90 days for owners and operators to correct inspection deficiencies and for the Department to process the inspection reports and issue operating permits, hence the March 31, 2002 deadline. New Rule I also provides for issuance of a conditional operating permit for underground storage tank systems that are installed after December 31, 2001. Conditional permits are necessary because an underground storage tank system cannot be filled with a regulated substance until an operating permit is issued, an operating permit cannot be issued until a compliance inspection is conducted, and a meaningful compliance inspection cannot be conducted until an underground storage tank system has been in service for a minimum of 30 days. Issuance of a conditional operating permit would allow a new underground storage tank system to operate until an inspection can be completed. The conditional permit would expire within 90 days, within which time a compliance inspection must be conducted and an operating permit must be issued if the tank system passes the compliance inspection.

NEW RULE II REQUIREMENTS FOR COMPLIANCE INSPECTIONS

(1) The owner or operator of an underground storage tank system shall have all underground storage tank systems at an

individual facility inspected by a licensed compliance inspector, certified under this chapter, at least every three years for compliance with Title 75, chapter 11, part 5, MCA and the rules adopted thereunder. The inspection must include examination, assessment, and documentation of release detection equipment, spill and overfill prevention devices, and cathodic protection equipment and verification of required testing, monitoring and recordkeeping.

(2) For an underground storage tank system that is installed before November 1, 2001, an initial inspection must occur no later than January 1, 2002. Subsequent inspections must be completed at least 90 days before the expiration date of the operating permit issued pursuant to [Rule I].

(3) For an underground storage tank system that is installed on or after November 1, 2001, an initial inspection must be completed at least 30 days, but no more than 60 days, after the date the conditional operating permit is issued. If the facility has other underground storage tank systems installed prior to November 1, 2001, all subsequent inspections of an underground storage tank system installed on or after November 1, 2001 must be conducted on the same schedule as the underground storage tank systems in existence prior to that date.

(4) Upon completion of the inspection, the inspector shall provide the owner or operator with a copy of the inspection report.

(5) No later than 10 days after any inspection conducted pursuant to this rule, the compliance inspector of an underground storage tank system shall provide to the department the results of the inspection on a form approved by the department. The form must be signed by the licensed compliance inspector and the underground storage tank system owner or operator.

(6) All underground storage tank systems at an individual facility, except as provided in (3), must be inspected at one time.

AUTH: 75-11-505, MCA

IMP: 75-11-509, MCA

Rationale: New Rule II specifies the requirements for the scope and timing of compliance inspections. In order to allow the owner time to make required corrections and to allow the Department adequate time to process a compliance inspection report and issue an operating permit, the compliance inspection must occur at least 90 days before an operating permit is first required (March 31, 2002) or at least 90 days before subsequent operating permits expire (three years after their date of issue). A 10 day timeframe for submitting the compliance inspection to the Department is proposed to ensure that the Department is timely notified of potential violations at underground storage tank facilities. The inspection form must be signed by the compliance inspector

and the underground storage tank owner or operator to verify that all parties having responsibilities relating to compliance know the results of the inspection. All underground storage tank systems at a facility must be inspected at the same time to prevent the need to issue multiple operating permits per facility.

5. The following rules are proposed to be transferred and amended as follows, stricken matter interlined and new matter underlined.

~~17.56.1202~~17.56.1301 DEFINITIONS For the purposes of ~~this subchapter~~ subchapters 13 and 14 and unless otherwise provided, the following terms have the meanings given to them in this ~~section~~ rule and must be used in conjunction with the definitions in subchapter 1 of this chapter and those in ~~75-10-403 and 75-11-203~~ and 75-11-503, MCA:

(1) remains the same.

(2) "External leak detection device" means a monitoring system ~~which~~ that is located external to and not attached to an underground storage tank system and ~~which~~ that is designed and installed to detect a release of the regulated substance stored in the underground storage tank system. Examples of external leak detection devices include, but are not limited to, soil vapor monitoring wells, observation wells, continuous monitoring equipment, if any, ~~that~~ which is installed within the wells to detect a release, and a groundwater monitoring well when constructed by a person holding a monitoring well constructor license issued by the board of water well contractors and in accordance with the provisions of ARM Title 36, chapter 21, and ARM 17.56.407(6).

(3) through (7) remain the same.

~~(8) "Small non-commercial farm and residential tank" means an underground storage tank system located at a farm or a residence, with a capacity of 1,100 gallons or less, and used either for storing motor fuel for non-commercial purposes or used for storing heating oil for consumption on the premises where stored.~~

AUTH: 75-11-204 and 75-11-505, MCA

IMP: 75-11-204, 75-11-209, 75-11-210, 75-11-212 and 75-11-509, MCA

Rationale for subchapter 13 generally: The creation of subchapter 13 is proposed to facilitate an interested party's location of the rules that address permitting issues. Currently the permitting rules are intermixed with installer and inspector licensing requirements in subchapter 12, making the permitting rules difficult to find and apply.

Rationale for ARM 17.56.1301: The definition for small non-commercial farm and residential tank is deleted as it is no longer necessary to differentiate between this category of underground storage tank and other underground storage tanks.

~~17.56.1222~~17.56.1303 INSTALLATION AND CLOSURE PERMIT REQUIREMENT--APPLICATION (1) No person may install or close an underground storage tank system without a permit ~~to be~~ issued by the department pursuant to ARM 17.56.1226 [17.56.1305] or 17.56.1227 [17.56.1306].

(2) Except as provided in (5) of this rule, a completed application for a permit must be filed by the permit applicant on a form provided by the department, at least 30 days prior to the proposed date of installation or closure. ~~The department may return any application form that is incomplete or otherwise does not contain sufficient information for issuance of the permit. Completed applications must be resubmitted at least 30 days prior to the proposed date of installation or closure.~~ If the installation or closure is to be conducted by:

(a) a licensed installer, the licensed installer shall sign the permit application;

(b) an owner or operator with an on-site installation or closure inspector, the owner or operator must sign the permit application.

(3) The department shall notify an applicant if it determines that an application is incomplete and provide an explanation of what information is needed for the application to be considered complete. The department shall hold incomplete applications pending the receipt of additional information. The applicant must provide any information required by the department before the application will be considered complete.

(4) The application must be accompanied by the permit application review fee required by ARM 17.56.1229 [17.56.1304] and any applicable inspection fee required by ARM 17.56.1232 [17.56.1309].

(5) The department, in its discretion, may waive the 30-day requirement in (2) of this rule if the applicant makes a sufficient showing of unforeseen and unforeseeable circumstances and if the applicant does not qualify for an emergency permit under ARM 17.56.1227 [17.56.1306].

AUTH: 75-11-204, MCA

IMP: 75-11-204, 75-11-209 and 75-11-212, MCA

Rationale: The Department proposes to amend the signatory requirements of this rule to clarify what person is responsible for providing and ensuring the accuracy of the information requested in the permit application. The rule is also amended to provide that the Department will retain incomplete applications because retention is probably required by laws relating to public documents and records.

~~17.56.1229~~17.56.1304 PERMIT APPLICATION REVIEW FEES

(1) ~~A Ppersons~~ applying for an underground storage tank installation or closure permit ~~or both~~ shall pay to the department the applicable permit application review fee(s) provided in (2)- through ~~(6)~~ (5) of this rule, and, if a

licensed installer ~~is not used to~~ will not conduct the installation or closure, the applicable inspection fee(s) provided in ARM 17.56.1232 [17.56.1309].

(2) If a permit is denied or an application is determined by the department to be incomplete, and the application is not resubmitted within 30 days of the department's determination, the department shall refund 50% of the permit application and review fee and 100% of any inspection fee paid by the applicant will be returned to the applicant.

(3) Subject to the limitation in (4), For for the installation or closure of an underground storage tank system, the permit applicant shall pay the following permit application review fees:

~~(a) farm and residential tank systems used for storing motor fuel for non-commercial purposes and heating oil tanks with a capacity of 1,100 gallons or less \$35/permit~~

(a) tank installations or closures \$50/permit plus \$.01/gallon of tank capacity

~~(b) all other underground storage tank systems . . . \$50/permit plus \$.005 per gallon of tank capacity~~

~~(c) (b) piping only \$25/50 feet (\$25-min, \$100 200-max)~~

~~(d) (c) other modifications & and repairs only . . . \$35-50~~

~~(2) The permit application review fee shall be calculated using only the fee structure provided in (3)(b) of this rule, whenever the permit covers tank systems identified in both (3)(a) and (b) of this rule.~~

~~(5)(4) Permit application review fees for installations, closures or both, at one facility or location must shall not exceed \$500 \$750 per permit issued by the department.~~

~~(6)(5) For the issuance of a duplicate of any permit, the permittee shall pay a fee of \$10.~~

AUTH: 75-11-204, MCA

IMP: 75-11-204, 75-11-209 and 75-11-212, MCA

Rationale: The permit fee schedule is simplified and modified to conform with statutory definitions. The separate fee category allowing lower permit fees for certain farm, residential and heating oil tank systems is deleted as the limited number of these permits requested no longer justifies a separate fee category. The resulting increase in the base fee from \$35.00 to \$50.00 and the increase in fee based on tank capacity from \$0.00 to \$0.01/gallon will result in a maximum fee increase per tank of \$26.00, or a cumulative effect of \$260.00, based on an estimate of ten installations or closures per year.

The Department is proposing to increase the fee based on tank capacity from \$0.005 to \$0.01/gallon for all other tanks. This will result in a permit fee increase of \$50.00 for a typical tank of 10,000 gallons, or a cumulative effect of

\$5000.00, based on an estimate of one hundred installations or closures per year.

The Department is proposing to increase the maximum permit fee for piping only installations or closures from \$100.00 to \$200.00. This will result in a permit fee increase of up to \$100.00, or a cumulative effect of \$500.00, based on an estimate of five such installations or closures per year.

The Department is proposing to increase the maximum permit fee for any permit from \$500.00 to \$750.00. This will result in a permit fee increase of up to \$250.00, or a cumulative effect of \$2,500.00, based on an estimate of ten such permits per year.

Permit fees are increased slightly and the permit fee cap is increased so that the fees will more closely cover Department costs of permit review. Permit fees have not historically fully funded administration of the permit program. For example, the permit fees collected by the Department during calendar year 1999 covered less than 60% of the cost of administering the program. The remainder has been provided by underground storage tank registration fee revenue and EPA grants. The proposed fee increase will not make the permit program fully self-supporting, but will decrease the dependence of the program on other funding sources. The proposed fee increase is based on a per gallon charge and on increasing the upper limit on the total permit fee. Structuring the fee in this manner is intended to have a greater effect on larger and more complex installations and closures, which are those that are likely to place a greater demand on Department resources.

17.56.122617.56.1305 PERMIT ISSUANCE, TERMS, CONDITIONS

(1) Upon receipt of a completed permit application and the fees required by ARM 17.56.1229 or 17.56.1232 [17.56.1304 or 17.56.1309] for the installation or closure of an underground storage tank system, the department shall review the application and determine whether the proposed installation or closure meets the criteria for approval in (2) of this rule.

(2) A permit must be issued by the department upon its determination that the proposed installation or closure will:

(a) ~~comply with applicable statutes and rules of the department, the state fire prevention and investigation bureau, and any local fire prevention authority which has adopted the uniform fire code;~~

(b) and (c) remain the same.

(3) A permit issued to an applicant under this rule ~~shall must~~ state ~~on its face~~:

(a) through (e) remain the same.

(f) ~~any special conditions for the installation or closure necessary to ensure compliance with (2) of this rule.~~

(4) ~~A copy of the permit must be returned to the department with the signature of the licensed installer, licensed local inspector or department inspector, certifying that the installation or closure was conducted in accordance~~

~~with applicable statutes and rules and any conditions of the permit. If the installation or closure is conducted by a licensed installer, the licensed installer must sign and return a copy of the permit to the department within 30 days of the installation or closure. If the installation or closure is conducted by the owner or operator with an on-site installation or closure inspector, the owner or operator must sign and return a copy of the permit together with any compliance checklist or other documents included with the permit to the department within 30 days of the installation or closure. The signee must certify that the installation or closure was conducted in accordance with applicable statutes and rules and any conditions of the permit.~~

(5) remains the same.

~~(6) If the department deems it necessary to protect public health or the environment, the department may require any installation to be inspected by a department inspector or a local government licensed installation or closure inspector. Whenever this occurs, the fee must be paid by the owner, operator, installer, or any other person who made the inspection necessary.~~

~~(6)(7)~~ A permit issued by the department under this rule or under ARM 17.56.1227 [17.56.1306] is issued subject to the accuracy of the information provided by the applicant in the permit application, the information stated or referenced on the permit pursuant to (3) of this rule, compliance with all applicable statutes and rules and any conditions applied by the department. Any installation or closure not conducted in accordance with any information, condition(s), statute or rule will be considered to be conducted without a permit, and in violation of the law.

~~(7) The department may also impose any other condition necessary to insure compliance with (2) of this rule. Any such conditions must be written or referenced upon the permit.~~

(8) remains the same.

~~(9) Unless extended in writing by the department, a permits are is valid for 6 months from the date of issuance. In no event will a permit be valid for longer than 7 months except that, when the department determines an extension is necessary to facilitate a department approved corrective action, the permit may be extended further.~~

~~(10) The owner or operator shall keep a copy of the signed permit at the place where the installation or closure was conducted or at the owner or operator's place of business if that place is different from the installation or closure location and copies cannot safely be kept at the location of the installation or closure. The copy of the permit must be kept for as long as the tank system is used to store a regulated substance in the same location, or for at least 3 years after a closure is completed at that site.~~

~~(10)(11)~~ A Ppermits issued under this subchapter are is non-transferable.

AUTH: 75-11-204, MCA

IMP: 75-11-204, 75-11-209 and 75-11-212, MCA

Rationale: Because the Department has adopted rules regarding the public health and environmental concerns of underground storage tanks similar to those of state and local fire authorities, it proposes to delete the requirement that the Department must determine if the proposed installation or closure will comply with the applicable statutes and rules of those authorities. Duties of the licensed installer and the owner or operator are clarified in order to assign responsibility to a specific individual and to eliminate confusion. Authorization for the Department to inspect permitted activities and to recover its costs in doing so when required to protect public health and the environment is transferred here from ARM 17.56.1233.

~~17.56.1227~~ 17.56.1306 EMERGENCY PERMIT APPLICATION AND ISSUANCE (1) In the event of an emergency requiring immediate installation or closure of an underground storage tank system, the applicant may contact the department, provide the information required by ARM 17.56.1222 [17.56.1303] and explain the nature of the emergency and the consequences of non-issuance. An emergency permit may be issued orally by the department and it will be valid for a maximum of 10 days. Whenever ~~If~~ an emergency permit is ~~approved~~ issued, the applicant shall pay the appropriate fees as provided in 17.56.1229 [17.56.1304], and submit a completed permit application form to the department within 10 days of issuance of the emergency permit.

(2) If the department determines that an emergency exists under (1) and (3) of this rule and that the requirements of ARM 17.56.1222(2) [17.56.1303(2)] have been satisfied, it must issue the permit in the manner provided by this rule and subject to any conditions imposed pursuant to this subchapter.

(3) remains the same.

AUTH: 75-11-204, MCA

IMP: 75-11-204, 75-11-209 and 75-11-212, MCA

Rationale: See general rationale in Section 3 of this notice.

~~17.56.1228~~ 17.56.1307 PERMIT CONDITIONING, MODIFICATION, SUSPENSION, REVOCATION (1) The department may condition, modify, suspend or revoke any permit previously issued under ARM 17.56.1226 or 17.56.1227 [17.56.1305 or 17.56.1306] upon its determination that:

(a) the permittee owner, operator or licensee failed to meet the standards for issuance of a permit under ARM 17.56.1222 [17.56.1303], 17.56.1226 [17.56.1305], or 17.56.1227 [17.56.1306], as appropriate;

(b) the permittee owner, operator or licensee committed fraud or deceit in applying for a permit;

(c) the permittee owner, operator or licensee violated any statute or rule governing the installation or closure of an underground storage tank system of the department, ~~the United States or the state fire prevention and investigation bureau or a local fire prevention authority which has adopted the uniform fire code;~~

(d) the permittee owner, operator or licensee violated the terms of any permit or order issued by the department relating to the installation or closure of an underground storage tank system;

(e) the permittee owner, operator or licensee lacks the education, training or experience necessary to conduct any installation or closure for which a permit was previously issued;

(f) and (g) remain the same.

(2) Action by the department ~~under this rule pursuant to~~ (1) must be accompanied by a written statement of the reason(s) for the department action. ~~Upon written demand by the department, the permittee shall surrender his or her permit to the department, whereupon the department shall retain the revoked permit or issue a modified or conditional permit in accordance with (3) of this rule.~~

(3) Upon revocation of a permit and written demand by the department, the owner, operator or licensee shall surrender his or her permit to the department. The department shall retain the revoked permit or issue a modified or conditional permit in accordance with this rule.

~~(3)(4) Whether or not a permit is surrendered, the department may issue a conditional or modified permit and the~~ permittee owner, operator or licensee shall comply with the conditions or modifications stated or referenced on or modification(s) to the new permit. imposed by the department.

~~(4)(5) Whether or not a permit is surrendered, the department may revoke a permit~~ The conditioning, modification, suspension or revocation of a permit is effective upon mailing notice to the permittee delivery to the owner, operator or licensee at the address shown on the permit application whether or not the permittee actually takes possession of the notice. When a permit is revoked in accordance with this rule, the owner or operator may not install or close the tank system for which the permit was originally issued without again applying for and receiving a new permit.

AUTH: 75-11-204, MCA

IMP: 75-11-204, 75-11-209 and 75-11-212, MCA

Rationale: The term "permittee" is replaced with "owner, operator, or licensee" to make it consistent with the overall regulatory scheme that places responsibilities with regard to the operation or installation of underground storage tanks on owners, operators and licensees. Because the department has adopted rules regarding the public health and environmental concerns relating to underground storage tanks similar to those of state and local fire authorities, it proposes to

delete the provision that allows the department to condition, modify, suspend or revoke a permit on the basis of violations of the uniform fire code.

~~17.56.1223~~ 17.56.1308 INSPECTION IN LIEU OF LICENSED INSTALLER (1) ~~If an inspector licensed under ARM 17.56.1238 exists within the local governmental unit where the installation or closure will occur, the owner or operator may arrange for an inspection by the local inspector, in lieu of a department inspection. The owner or operator must state on the permit application submitted to the department that the licensed local inspector will conduct the inspection. The inspection services scheduled by the local inspector must be requested and scheduled in a manner similar to department inspection services under (2) below. An owner or operator intending to install or close an underground storage tank system without the services of a licensed installer in accordance with 75-11-213, MCA, must have the installation or closure inspected by a licensed department or local government installation or closure inspector.~~

(2) An owner or operator intending to have the department provide an inspector for the installation or closure of an underground storage tank system installation or closure inspected by the department in lieu of obtaining the services of a licensed installer shall so state on the permit application submitted to the department. The permit application must be accompanied by the applicable permit review fee required by ARM 17.56.1229 [17.56.1304] and the inspection fee required by ARM 17.56.1232 [17.56.1309]. As soon as practicable after a permit is approved for issuance issued by the department, the department owner or operator must either schedule an inspection for one of the date(s) indicated on the permit application or schedule the inspection for another a date mutually agreeable to both the department and the applicant and then notify the applicant of the inspection date.

(3) A licensed department or licensed tank system local government installation or closure inspector need not be present when concrete or pavement is being removed from over an underground storage tank system in preparation for a closure or repair so long as the tank and its associated piping are not disturbed by the activity.

AUTH: 75-11-204, MCA

IMP: 75-11-204, 75-11-209, 75-11-212 and 75-11-213, MCA

Rationale: The Department proposes to amend this rule to shift the responsibility for scheduling an inspection from the Department to the owner or operator because the owner or operator is better positioned to know when an installation or closure is likely to take place.

~~17.56.1232~~ 17.56.1309 INSTALLATION AND CLOSURE INSPECTION FEES (1) ~~Except as provided in (2) and (3) of this rule, aAn~~

inspection fee deposit of \$ ~~62.50~~ 90.00 for the use of a local ~~inspector government~~ and \$70 for the use of or a department ~~installation or closure~~ inspector must be submitted to the department for each installation or closure not conducted by a licensed installer. The owner or operator shall submit the inspection fee deposit must be submitted with the permit application in accordance with ARM 17.56.1222, 17.56.1226, 17.56.1227, and 17.56.1229 17.56.1223 [17.56.1308] and the fee must be paid in the form of a check or money order made payable to the Montana department of environmental quality.

~~(2) Closures of small tank systems are subject to the following fees:~~

~~(a) Owners of underground storage tank systems identified in (b) of this subsection shall pay an inspection fee of \$125 per permit for closures of such tank systems whenever the closures are conducted without a licensed installer. An additional fee may be required if an inspection exceeds 4 hours. The fee provided by this subsection covers inspections of all closures covered by a permit provided that:~~

~~(i) the \$125 inspection fee is submitted with the permit application and is paid in the form of a check or money order made payable to the Montana department of environmental quality; and~~

~~(ii) the permit does not cover any other tank handling operation or include underground storage tank systems of any other category.~~

~~(b) The \$125 fee provided by this subsection applies only to underground storage tank systems that are:~~

~~(i) farm and residential underground storage tank systems with a capacity of 1,100 gallons or less used for the storage of motor fuel for non-commercial purposes; or~~

~~(ii) underground storage tank systems with a capacity of 1,100 gallons or less used for storing heating oil for consumption on the premises where stored.~~

~~(3) Closures of underground piping attached to above-ground tanks are subject to the following fees:~~

~~(a) Owners of underground piping attached to aboveground tanks identified in (b) of this subsection shall pay a total inspection fee of \$62.50 per permit for closures of underground piping attached to such tanks whenever the closures are conducted without a licensed installer. The fee provided by this subsection covers inspections of all closures of underground piping covered by a single permit provided that:~~

~~(i) the \$62.50 inspection fee is submitted with the permit application and is paid in the form of a check or money order made payable to the Montana department of environmental quality; and~~

~~(ii) the permit does not cover other tank handling operations or include underground storage tank systems or above-ground tanks of any other category.~~

~~(b) The \$62.50 fee provided by this subsection applies only to aboveground tanks that are:~~

~~(i) farm and residential aboveground storage tanks with a capacity of 1,100 gallons or less used for the storage of motor fuel for non commercial purposes; or~~

~~(ii) aboveground storage tanks with a capacity of 1,100 gallons or less used for storing heating oil for consumption on the premises where stored.~~

~~(4)(2)~~ If a permit applicant changes the method of installation or closure from inspection to use of a licensed installer or cancels the installation or closure, the department shall refund the inspection fee deposit to the applicant, without payment of interest, upon the applicant's request if:

(a) the department receives from the applicant submits a written request for a refund ~~which is received by the department~~ not later than 2 weeks after the expiration of the permit; and

(b) the applicant surrenders the unused permit to the department.

~~(5)(3)~~ ~~Except for inspections of small tank systems and piping pursuant to (2) and (3) of this rule, w~~Within 5 days after completion of the inspection, the installation or closure inspector shall send to the department a report on a form provided by the department. The inspector's report must state the total time required for the inspection, including the inspector's travel time to and from the inspection site, reported to the nearest one-half hour. Upon receipt of the report, the department shall calculate the total inspection fee owing to the department based upon the following formula rates for closures and installation inspections:

Type of Fee	Local Inspector	Department Inspector
Minimum fee (fee deposit)	\$62.50 90	\$70
Per hour fee for each hour over 2 hours	\$31.25 45	\$35

~~(6)(4)~~ ~~Except for inspections of small tank systems and piping pursuant to (2) and (3) of this rule, t~~The total inspection fee must be calculated by multiplying the actual inspection and travel time that is greater than 2 hours, calculated to the nearest one-half hour, times the hourly fee provided in ~~(5)(3)~~ above and adding the result to the fee deposit. Any amount calculated greater than the deposit paid to the department must be billed by state invoice to the permittee and must be paid by the permittee within 30 days of receipt of the state's invoice. ~~In addition to the provisions of ARM 17.56.1001(5), no person may allow a regulated substance to be deposited into an underground storage tank system unless the total inspection fee has been paid to the department, with the exception that a regulated substance may be deposited into the system for testing purposes before the entire fee has been paid, so long as the department has given prior written permission.~~

AUTH: 75-11-204, MCA

IMP: 75-11-204, 75-11-209, 75-11-212 and 75-11-213, MCA

Rationale: The Department proposes to amend the fee schedule to delete the separate fee categories allowing lower inspection fees for certain tank systems as the majority of these systems have been closed or deregulated and the limited number of these inspections requested no longer justifies a separate fee category. The fee categories for Department and local government inspectors are combined as it is not appropriate to differentiate between Department and local government unit inspections on the basis of the resources needed to conduct such inspections. The Department proposes to increase the inspection fee to \$45.00 per hour to provide adequate funding to maintain knowledgeable and trained inspectors and to cover the costs of transportation and equipment needed to conduct inspections. The reimbursement amount is limited by statute to up to 80% of the inspection fee collected by the Department. Local governments active in performing inspections had requested that their reimbursement be increased because the \$25.00 per hour they are currently receiving is insufficient to meet their costs. The department first proposed to increase the inspection fee to \$50.00 per hour to allow for a \$40.00 per hour reimbursement to local governments. Local governments commenting on that proposal indicated that an increase to \$35.00 would be sufficient to cover their costs. The actual minimum fee necessary to allow for a \$35.00 per hour reimbursement would be \$43.75 per hour. The increase in the fee for use of a local government inspector will result in an inspection fee increase of \$13.75 per hour, or a cumulative effect of \$1100.00, based on an estimate of twenty inspections at an average of four hours per inspection. The Department is also proposing to increase the fee for use of a department inspector from \$35.00 to \$45.00 per hour so that there is no cost advantage in utilizing a department inspector over a local government inspector and to encourage the use of a local government inspector wherever available. This will result in an inspection fee increase of \$10.00 per hour, or a cumulative effect of \$800.00, based on an estimate of twenty inspections at an average of four hours per inspection.

17.56.120517.56.1401 INSTALLER GENERAL LICENSE
REQUIREMENTS GENERALLY; DEFINITIONS (1) Unless exempted
under 75-11-217, MCA, no one A person may not install, or
close, or inspect an underground storage tank system unless
that individual has a valid license issued by the department
under 75-11-210 or 75-11-214, MCA, and this subchapter.

(2) All installation, closure, compliance or oversight
inspections must be personally performed by a licensed
inspector in accordance with this chapter.

(3) Installation or closure inspectors shall ensure that
the installation or closure of underground storage tank
systems is performed according to Title 75, chapter 11, part

2, MCA, the rules adopted thereunder and any permit conditions.

(4) Compliance and oversight inspectors shall examine, assess, and document the presence, condition and performance of all the facility's underground storage tank systems, including, but not limited to, release detection equipment, spill and overfill prevention devices, and cathodic protection equipment. Compliance and oversight inspectors shall also verify that testing, monitoring and recordkeeping are being performed as required.

~~(2)~~(5) The requirements of this subchapter do not prohibit the employment by a licensed installer of any assistants, helpers, or apprentices who have not been issued their own installer license to work at any installation or closure site so long as the licensed installer is physically present at the installation or closure and personally exercises supervisory control over those unlicensed persons.

~~(3)~~(6) ~~Installer~~ Licenses issued under this subchapter are non-transferable.

(7) The definitions contained in ARM 17.56.1202 [17.56.1301] are applicable to this subchapter.

AUTH: 75-11-204 and 75-11-505, MCA

IMP: 75-11-204, 75-11-209, 75-11-210, 75-11-212, 75-11-214 and 75-11-509, MCA

Rationale for subchapter 14 generally: Currently subchapter 12 has separate, but similar, licensing requirements relating to installer licensing and inspector licensing. Subchapter 12 also includes requirements relating to permits to install, modify or close an underground storage tank. Chapter 506, Laws of 1999, requires the Department to develop licensing requirements relating to private sector compliance inspectors, as well as for individuals who provide oversight to the compliance inspectors. Rather than adopt additional, duplicative rules for these new license categories, the Department proposes to transfer, amend and repeal the existing licensing rules and to consolidate the requirements for all license categories in one comprehensive set in new subchapter 14.

The scope of each of the amended or transferred rules is expanded to include requirements relating to all license categories. In most instances a licensing rule will now provide general requirements in its first few provisions and then provide requirements specific to a particular type of license in later provisions within the rule.

Rationale for ARM 17.56.1401: Inspectors are required to personally perform the inspection to ensure that only fully training and qualified persons conduct inspections. The general scope of inspections is set forth to provide guidance to inspectors.

~~17.56.1206~~17.56.1402 ELIGIBILITY FOR INSTALLER LICENSE

(1) ~~No~~ A person may not be granted a license under this subchapter unless that person:

(a) is a natural person at least 18 years old;

(b) ~~except as provided in (2) of this rule,~~ has submitted a completed license application to the department in accordance with ARM 17.56.1207 [17.56.1403];

(c) has paid the appropriate license and examination fees as provided in ARM 17.56.1217 [17.56.1404] to the department; and

(d) ~~except as provided in (2) of this rule,~~ has successfully completed the licensing examination required by ARM 17.56.1208 [17.56.1405]; and

(e) has not been cited for violations of state and federal underground storage tank laws and has not had a similar license suspended or revoked in this state, another state, or US territory.

~~(2) An applicant for an installer license need not comply with the continuing education requirements of ARM 17.56.1210 if the applicant:~~

~~(a) holds a current monitoring well constructor's license which has been issued by the board of water well contractors pursuant to the requirements of ARM Title 36, chapter 21;~~

~~(b) requests that his or her installer license be restricted to the installation of external leak detection devices; and~~

~~(c) passes, in lieu of the examination required of other applicants, a department-approved test designed for licensed monitoring well constructors concerning underground storage tank law and regulations, safety, and leak detection monitoring well installation; and, prior to each license renewal at the end of every third year since the applicant was initially licensed, demonstrates to the department a continuing competency in the installation of leak detection monitoring wells through evidence of at least 3 successful installations performed within the 3 years prior to renewal.~~

(2) A person may not be granted an installation or closure inspector's license unless that person:

(a) meets the criteria of (1); and

(b) is a department employee or an employee or independent contractor of a local governmental unit designated for the purpose of this subchapter as an implementing agency in the manner provided in ARM 17.56.1004.

(3) A person may not be granted a compliance inspector's license unless that person:

(a) meets the criteria of (1); and

(b) successfully completes the licensing training and practical examination required by ARM 17.56.1208 [17.56.1405].

(4) A person may not be granted an oversight inspector's license unless that person:

(a) meets the eligibility requirements in (3); and

(b) is a department employee or an employee or independent contractor of a local governmental unit designated for the purpose of this subchapter as an implementing agency

in the manner provided in ARM 17.56.1004, unless otherwise approved by the department.

AUTH: 75-11-204, MCA

IMP: 75-11-204, 75-11-210 and 75-11-509, MCA

Rationale: The criteria under which various licenses can be issued are consolidated in a single rule. Continuing education requirements now addressed in ARM 17.56.1210 [17.56.1407] are deleted.

17.56.1207~~17.56.1403~~ INSTALLER LICENSE APPLICATION

(1) There are five categories of licensees:

(a) installers, who install or close underground storage tank systems;

(b) installation inspectors, who inspect underground storage tank installations;

(c) closure inspectors, who inspect underground storage tank closures;

(d) compliance inspectors, who inspect operating underground storage tank facilities for compliance with underground storage tank regulations; and

(e) oversight inspectors, who conduct oversight inspections to verify accuracy of inspection reports submitted by compliance inspectors.

(2) An applicant for an installer license may apply to restrict that license to any one or more of the following categories:

(a) lining;

(b) corrosion protection;

(c) external leak detection; or

(d) closure.

~~(1)~~(3) An Application for an installer's license under this subchapter must be made on a the appropriate form provided by the department. On the form the applicant must provide all the information required by the department.

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

~~(3)~~(5) The An application for an installer license must be accompanied by at least 3 references from other persons attesting to the applicant's experience in the installation and closure of underground tank systems. The references must be written on forms provided by the department, and must show that the applicant actively participated in at least 2 underground storage tank system installations and 1 closure that were completed in accordance with applicable statutes and rules.

~~(4)~~(6) References for an applicant seeking an installer license must show that the applicant actively participated in at least 3 underground storage tank system installations and 2 closures that were completed in accordance with applicable statutes and rules in the last 3 years, unless the applicant requests to have his or her license restricted. If an applicant requests to have his or her license restricted, the following application and reference require-

~~ments apply: (a) If the request is to restrict the license to tank lining, cathodic protection system installation, external leak detection device installation, or closure, or installation, closure, or repair of underground piping associated with heating oil tank systems; the applicant shall so state on the application, and the references need only address the applicant's requested area of restricted professional work. The following application and reference requirements also apply:~~

~~(b)(a) References for an applicants seeking a license restricted to conducting only tank system closures, lining, or installations, closures, or repairs of underground piping associated with heating oil tanks systems must establish that the applicant actively participated in at least 2 3 closures, installations, or closures or repairs of underground piping associated with heating oil tank systems, or at least 2 tank linings in at least 2 closures or installations in the last 5 3 years.~~

~~(c)(b) References for an applicants seeking a license restricted to conducting only cathodic protection system installations must establish that the applicant actively participated in at least 2 cathodic protection system installations in the last 5 3 years.~~

~~(d)(c) References for an applicants conducting only external leak detection device installations, except as provided in ARM 17.56.1206(d), must establish that the applicant participated in at least 2 external release detection device installations in the past 5 3 years. An Applicants holding a current monitoring well constructor's license shall may provide a copy of it that license in lieu of the 3 required references, required for licenses restricted to external release detection device installations.~~

~~(d) References for an applicant seeking a license restricted to conducting tank system linings must establish that the applicant actively participated in at least 2 tank linings in the last 3 years.~~

~~(7) An application for an installation or closure inspector license must, in addition to the other requirements of this rule, be accompanied by at least 3 references attesting to the applicant's experience in inspections and underground storage tank regulations relating to installation and closure. The references must be written on forms provided by the department.~~

~~(8) An application for a compliance or oversight inspector license must, in addition to the other requirements of this rule, be accompanied by at least 3 references attesting to the applicant's experience in underground storage tank regulations, operation, maintenance, and inspections. The references must be written on forms provided by the department.~~

~~(5)(9) The department shall evaluate applications and attachments for conformity with this rule and the applicable statutes subchapter and Title 75, chapter 11, part 2, MCA. Applications failing to provide all the information required~~

~~for licensure may either be returned to the applicant with an explanation of the reasons for return or may be held by the department pending receipt of the omitted information. The department shall notify an applicant if it determines that an application is incomplete and shall provide an explanation of what information is needed for the application to be considered complete. The department shall hold incomplete applications pending the receipt of additional information.~~

~~(6) Except as provided in ARM 17.56.1206(2), no license may be granted unless the department determines, on the basis of the application and attachments and the examination given under ARM 17.56.1208, that the applicant possesses the necessary competence and experience. The applicant must be able to understand and comply with the rules governing the type of tank system installations or closures, or both, for which the applicant intends to be licensed, and must understand the techniques of these installations or closures that will protect public health, welfare, safety and the environment.~~

AUTH: 75-11-204, MCA

IMP: 75-11-204, 75-11-210 and 75-11-509, MCA

Rationale: The Department proposes to amend this rule to delete the provision that allowed the restriction of an installer license to installation, closure, or repair of underground piping associated with heating oil tank systems as the category has not historically been used. The requirement for references to accompany license applications is clarified and made specific to each license category to make the reference material more meaningful. Requirements relating to license issuance now handled in ARM 17.56.1209 [17.56.1406] are deleted. The rule is also amended to provide that the Department will retain incomplete applications because retention is probably required by laws relating to public documents and records.

~~17.56.1217~~ 17.56.1404 LICENSE FEES

(1) Remains the same.

(2) ~~Installer~~ Licensing fees are as follows:

(a) through (e) remain the same.

(3) "Actual cost of production and distribution" includes reproduction costs, bindery charges, purchase and shipment of copyrighted material, and the cost of postage, packing and shipping guides to requesters. ~~Every 6 months,~~ The department will shall annually review and re-calculate the actual production and distribution costs for the various study guide materials. The department shall make the most recent data and calculations used will be available for public inspection at the underground storage tank program office.

(4) Department and local government installation, closure and oversight inspectors are exempt from the licensing fees described in this rule.

(5) Failure to pay license fees may result in the denial, non-renewal or revocation of a license issued under this subchapter.

AUTH: 75-11-204, MCA

IMP: 75-11-204, 75-11-210, 75-11-211 and 75-11-509, MCA

Rationale: The Department proposes to amend this rule to change the frequency with which the Department must review and re-calculate production and distribution costs to annually as costs have not historically fluctuated significantly within the current six month cycle. Department and local government inspectors are exempted from the licensing fees in accordance with 75-11-204(2), MCA.

Existing installer licensing fees that have been in place since October 1990 are now applied to the new inspector categories. This is accomplished through deletion of the word "Installation" in section (2). The proposed license fee of \$100.00 is expected to affect forty persons in the first year for a cumulative effect of \$4000.00, and is expected to affect ten persons per year in subsequent years for a cumulative effect of \$1000.00. The proposed annual renewal fee of \$50.00 is expected to affect forty persons per year for a cumulative effect of \$2000.00. The actual cost of production and distribution of study guides of \$210.00 is expected to affect thirty persons in the first year for a cumulative effect of \$6300.00, and is expected to affect ten persons per year in subsequent years for a cumulative effect of \$2100.00. The proposed reexamination fee of \$35.00 is expected to affect five persons per year for a cumulative effect of \$175.00. The proposed duplicate license fee of \$10.00 is expected to affect five persons per year for a cumulative effect of \$50.00.

~~17.56.1208~~ 17.56.1405 INSTALLER LICENSE EXAMINATION AND RE-EXAMINATION (1) ~~Except as provided in (3) of this rule and ARM 17.56.1206(2),~~ To become licensed an applicants for an installer's license shall must successfully complete a written examination, which must be offered The department shall offer the examination a minimum of 2 times per year ~~by the department~~ at such time(s) and place(s) as the department determines. The department shall give public notice of the time and place of the examination by submitting a news release to ~~all the daily~~ newspapers of general circulation within the state of Montana.

(2) To take the examination, the ~~An applicant who does not hold an installer license, and an applicant who intends to apply for a license with a different or no restrictions,~~ must register with the department for the examination at least 20 days before an examination is scheduled by providing submitting a completed license application to the department and paying the license application and examination fee provided in ARM 17.56.1217 [17.56.1404].

~~(3) An applicant who holds an installer license and does not intend to request a change in any restrictions of the license will not be required to take an examination before the~~

~~license is renewed if the applicant has satisfactorily met the continuing education requirements in ARM 17.56.1210(3).~~

~~(a) An applicant who holds an installer license and has not satisfactorily met the continuing education requirements provided in ARM 17.56.1210(3) must reapply for a license as if a new applicant.~~

~~(4)(3)~~ An applicant may obtain an examination study guide from the department by paying the study guide fee as provided in ARM 17.56.1217 [17.56.1404]. The study guide must contain such material as the department determines will assist individuals in preparing for the licensing examination.

~~(5)(4)~~ The examination given by the department must test the applicant's on his or her knowledge of the applicable statutes, rules, governing the type of installation or closure of underground storage tank systems for which the license application is being made and for knowledge of the proper procedures for the disposal of tank system components and their contents. It must also test the applicant's knowledge of current technology and industry recommended practices for the installation and closure of underground storage tank systems. applicable to the type of license sought.

(5) An applicant for an installer license who:

(a) holds a current monitoring well constructor's license which has been issued by the board of water well contractors pursuant to the requirements of ARM Title 36, chapter 21; and

(b) requests that the installer license be restricted to the installation of external leak detection devices, must pass, in lieu of the examination required of other applicants, a department-approved test designed for licensed monitoring well constructors concerning underground storage tank law and regulations, safety, and leak detection monitoring well installation.

(6) To qualify for licensing, an applicant for a compliance and oversight inspector license must have completed an inspector training course approved by the department that includes training in the operation and maintenance of release detection, corrosion protection, spill and overfill equipment; regulatory compliance; and field testing of inspection abilities. The applicant must also successfully complete a field practical examination.

(6) remains the same but is renumbered (7).

~~(7)(8)~~ A score of 80% or higher on the examination and on the compliance and oversight inspector field practical constitutes a passing grade. The department shall notify Applicants will be notified of their examination score within 30 days of the date when the department receives the score. An applicant who requests on a license application that his or her license be restricted to conducting tank system closures or lining; installation, closure or repair of underground piping associated with heating oil tank systems; installation of cathodic protection systems; or the installation of external leak detection devices, need obtain a passing grade

~~only on the sections of the examination pertinent to the requested restriction.~~

(9) Department and local implementing program installation or closure inspectors licensed as of January 1, 2000 are not required to complete the installation or closure inspector licensing examination.

~~(8)(10)~~ An applicant who fails the examination may retake it the examination only twice at any subsequently the next scheduled examination date by registering for the examination in the same manner as for the original examination, and by paying the reexamination fee provided in ARM 17.56.1217 [17.56.1404].

AUTH: 75-11-204, MCA

IMP: 75-11-204, 75-11-210, 75-11-211 and 75-11-509, MCA

Rationale: The Department proposes to amend this rule to: clarify public notice requirements; specify the training requirements for applicants for compliance and oversight inspector licenses to ensure licensees have adequate training; coordinate the requirements for monitoring well constructor's license with the requirements of the Board of Water Well Contractors pursuant to the ARM Title 36, chapter 21; to exempt licensed installation and closure inspectors from the new examination because their past training and experience qualifies them to be licensed; and to prevent applicants from re-taking the test an indefinite number of times in an attempt to achieve a passing score. Allowing applicants to take licensing examinations until they eventually pass does not ensure that they will conduct the activities for which they are licensed in a manner that will protect the public health and the environment.

~~17.56.1209~~ 17.56.1406 INSTALLER LICENSE ISSUANCE, TERM AND RESTRICTIONS (1) The department shall issue a license upon the applicant's satisfaction of the applicable provisions of this subchapter and ~~any statutory prerequisites~~ Title 75, chapter 11, part 2, MCA. The license must set forth the name of the licensed installer licensee, a license identification number, the type of license issued, and the dates of issuance and expiration of the license and any restrictions.

~~(2) Licenses for applicants who request that their licenses be restricted to conducting closures, lining, installation, closure or repair of underground piping connected to heating oil tanks, installation of cathodic protection systems, or installation of external leak detection devices, must specify the restriction(s).~~

~~(3)(2)~~ An installer license issued under this subchapter will expires on the third anniversary of its issuance.

~~(4)(3)~~ Licenses may be revoked, suspended, modified or restricted prior to expiration in accordance with 75-11-211, MCA, as applicable, (5)(4) of this rule, and ARM 17.56.1253

through 17.56.1256 [17.56.1423 through 17.56.1426], and 17.56.1260 as applicable.

~~(5)(4)~~ If the department determines that restrictions are necessary to protect the public's or licensee's health, safety or welfare, or to protect the environment, upon issuance or renewal of a license or at other times in accordance with ARM 17.56.1253 [17.56.1423], the department may restrict or condition a license limiting the licensee in the time, type or manner of work to be performed pursuant to the license or impose any other conditions it deems appropriate ~~if the department determines the restrictions or conditions are necessary to protect the public's or licensee's health, safety, or welfare, or the environment.~~

(5) No license may be granted unless the department determines, on the basis of the application and attachments and the examination given under ARM 17.56.1208 [17.56.1405], that the applicant possesses the necessary competence and experience. The applicant must be able to understand and comply with the rules governing the subject area in which the applicant intends to be licensed, and must understand the techniques required to ensure that the applicant's actions will protect public health, safety and the environment.

~~(6) Installer licenses issued under this rule are non-transferable.~~

AUTH: 75-11-204, MCA

IMP: 75-11-204, 75-11-210, 75-11-211 and 75-11-509, MCA

Rationale: The Department proposes to amend this rule to delete requirements relating to a license category not historically used. Section (6) has been moved to ARM 17.56.1205(7) [17.56.1401(7)], General License Requirements. Applicant qualifications in ARM 17.56.1207 are transferred to ARM 17.56.1209 [17.56.1406] to improve readability.

~~17.56.1210~~ 17.56.1407 INSTALLER LICENSE RENEWAL (1) ~~An installer license may be renewed twice by the licensee during each 3 year period since s/he was initially licensed by paying the renewal fee required by ARM 17.56.1217 at least 30 days prior to the license's expiration date. A license for which an annual renewal fee is not paid is void. A licensee not requesting a change from the type of license currently held may renew the license if the licensee completes a renewal application form provided by the department, pays the license renewal application fee required by ARM 17.56.1217 [17.56.1404], and provides sufficient proof that the applicant has satisfactorily completed the continuing education requirements required by (3), (4) or (5) of this rule.~~

~~(2) At the end of each third consecutive year s/he is licensed, a licensed installer applying for renewal of a license and not requesting a change in any restrictions or conditions of the license may be issued another license if s/he completes a new application form provided by the department, pays the license renewal application fee required by ARM~~

~~17.56.1217, and provides proof that the applicant has satisfactorily completed the continuing education requirements required by (4) of this rule. The department shall renew the license of any person who complies with the provisions of (1) within 30 days of receipt of the renewal application.~~

~~(3) A licensee must apply for renewal within 6 months before the expiration of his or her current license, and not later than 30 days prior to expiration.~~

~~(4) With every third application for renewal of a license, at or before the time the licensee applies for the renewal, he or she must also provide, on forms furnished by the department, documentation of his or her completion of at least 2 department-approved or sponsored continuing education courses for a total of 16 credit hours of continuing education within the 3 years prior to the date the current license expires. Except for applicants who request that their licenses be restricted to conducting the installation of cathodic protection systems, the installation of external leak detection devices, or lining, 8 credit hours of the continuing education must be earned by successfully passing a department-approved refresher training course. Renewal applicants who are currently licensed water well constructors and who request that their licenses continue to be restricted to external leak detection devices need not take formal continuing education courses to demonstrate continuing competency in petroleum leak detection monitoring well installation if they submit to the department a copy of their current water well constructor license and evidence of at least 3 successful installations performed within the 3 years prior to the date the current installer license expires.~~

~~(3) Licensed installers whose licenses are restricted to closures and licensed closure inspectors must provide documentation of completion of 2 department-approved training courses for a total of 8 credit hours of continuing education within the 3 years prior to the date the current license expires. Four credit hours of the continuing education must be a department-approved closure refresher training course.~~

~~(4) A licensed installer whose license is restricted to the installation of external leak detection devices need not take formal continuing education courses to demonstrate continuing competency in monitoring well installation if the installer:~~

~~(a) is currently a licensed water well constructor;~~

~~(b) submits to the department a copy of the current water well constructor license; and~~

~~(c) provides evidence of at least 3 successful installations performed within the 3 years prior to the date the current installer license expires.~~

~~(5) All licensees not subject to (3) or (4) must provide documentation of completion of at least 2 department-approved or sponsored continuing education courses for a total of 16 credit hours of continuing education within the 3 years prior to the date the current license expires. Eight credit hours of the continuing education must be earned by completing a~~

department-approved refresher training course for the type of license held.

~~(5)~~(6) The department shall notify a licensee of the impending expiration of the ~~person's~~ license at least 60 days prior to the expiration date of the license. ~~Such notification will be considered complete when the notification is sent by certified mail to either the address given on the licensee's last application letter of intent to request renewal of a license or renewal application or to the licensee's latest indicated current address.~~ The licensee shall keep the department informed of the licensee's current address for notification purposes. Failure of the department to notify the licensee does not affect the expiration of the license.

(6) Remains the same but is renumbered (7).

AUTH: 75-11-204, MCA

IMP: 75-11-204, 75-11-210, 75-11-211 and 75-11-509, MCA

Rationale: The Department proposes to amend this rule to include some of the renewal requirements formerly found in ARM 17.56.1239, to improve readability and to amend the continuing education requirements to reflect actual need. The last sentence of (6) is proposed in order to clarify that notice given under this rule is strictly a courtesy.

~~17.56.1215~~17.56.1408 APPROVAL OF CONTINUING EDUCATION COURSES (1) An entity offering a continuing education course intended to fulfill the requirements of ARM 17.56.1210(4) ~~[17.56.1407]~~, or an installer a licensee planning to take the course, must submit a detailed description of the course to the department for approval of the course at least 15 days before the beginning of the course.

~~(2) A course in continuing education submitted to the department for approval will not be approved unless the course~~
The department shall approve the continuing education course if it finds that it:

(a) and (b) remain the same.

AUTH: 75-11-204, MCA

IMP: 75-11-204 and 75-11-210, MCA

Rationale: See general rationale in Section 3 and rationale for ARM 17.56.1205 [17.56.1401].

~~17.56.1216~~17.56.1409 DUPLICATE LICENSES (1) The department shall issue a duplicate license to replace a lost, damaged, or destroyed license upon receipt of sufficient evidence indicating the loss, damage or destruction and upon payment of the duplicate licensing fee provided in ARM 17.56.1217 [17.56.1404]. The duplicate license must be designated as a duplicate and contain the same information and restrictions as the original license. A duplicate license is

subject to the same rules and requirements as an original license.

AUTH: 75-11-204, MCA

IMP: 75-11-204, 75-11-210 and 75-11-509, MCA

Rationale: See general rationale in Section 3 and rationale for ARM 17.56.1205 [17.56.1401].

~~17.56.1218~~ 17.56.1410 LICENSED INSTALLER LICENSEE RECORD KEEPING (1) remains the same.

(a) one copy of the completed department inspection checklist, or 1 copy of the completed manufacturer's installation checklist, and;

(b) one copy of the installation or closure permit signed by the installer certifying that the work was completed according to the applicable state statutes, rules and any permit conditions;

(c) for installations, one copy of the certificate of compliance signed by the installer; and

(d) for closures, one copy of each closure form signed by the licensed installer and owner and one copy of the laboratory results for the site assessment.

~~(2) The owner or operator shall keep a copy of the documents required by (1) of this rule at the location of the installation or closure, or at the owner or operator's place of business or residence if that place is different from the installation or closure location and the copies cannot safely be kept at the location of the installation or closure. The copies required by (1) of this rule shall be kept as provided in this subsection for as long as a tank system is used to store a regulated substance at the storage site, or for at least 3 years after a closure is completed at that site. If the installation or closure is conducted by the owner or operator with an on-site installation or closure inspector, the documents specified in (1) above must be signed by the installation or closure inspector and underground storage tank system owner or operator and a copy returned to the department by the owner or operator.~~

~~(3) In addition to the provisions of ARM 17.56.1001(5), no person may allow a regulated substance to be deposited into an underground storage tank system during the calendar year in which the tank system was installed unless the department has received the checklist and signed permit and approved the same to the owner or operator, with the exception that a regulated substance may be deposited into the system for testing purposes so long as the department has given prior written permission.~~

AUTH: 75-11-204, MCA

IMP: 75-11-204, 75-11-210 and 75-11-211, MCA

Rationale: Owner record-keeping requirements are moved to ARM 17.56.1226 [17.56.1305]. Signatory requirements for documents associated with installations or closures conducted by the owner are clarified to ensure that responsible persons are knowledgeable of the requirements. Restrictions on tank filling now covered by the operating permit described in NEW RULE I are deleted.

~~17.56.1252~~17.56.1421 DISCIPLINARY AND OTHER LICENSING ACTION GENERALLY (1) through (1)(b) remain the same.

(c) a violation of any statute or rule governing the installation, closure or inspection of an underground storage tank system of the department, the United States, or any other state or US territory, ~~or the state fire prevention and investigation bureau, or any local fire prevention authority which has adopted the uniform fire code;~~

(d) remains the same.

(e) a violation of the terms of any license, permit, order or stipulation issued or agreed to by the department relating to the installation, closure or inspection of an underground storage tank system or installer's or inspector's license; ~~or~~

(f) had a similar license suspended or revoked in this state, another state or US territory; or

(g) fails to pay the license fees required by ARM 17.56.1217 [17.56.1404].

(2) The department may also restrict, condition or modify any license, ~~previously granted under this subchapter~~ upon its finding that there is substantial evidence that:

(a) the licensee lacks the education, training or experience necessary to conduct any installation, ~~or closure, or inspection for which a license was previously issued;~~ and

(b) the condition or modification is necessary to protect the environment or the health, welfare or safety of the licensee, the licensee's employee(s) or the public.

(3) In determining whether to restrict, condition, modify, suspend, revoke or refuse to renew a license under this rule, the department shall consider:

(a) the type and seriousness of any violation, including the degree of culpability of the licensee;

(b) ~~the degree of threat of or actual injury,~~ to the health, welfare, or safety of the licensee, the licensee's employee(s), the public, or to the environment; and

(c) any past or pending disciplinary actions against the licensee.

(4) The department shall restrict, condition, modify, suspend, revoke or refuse to renew any license under this rule in the manner provided by this rule and ARM 17.56.1253 through 17.56.1256 [17.56.1423 through 17.56.1426] ~~and 17.56.1260.~~

(5) An order issued by the department under this rule must be sent to the licensee and must be accompanied by a written statement of the reasons for and term(s) and condition(s) of the department's action and a written statement of

the rights of the licensee, including the right to appeal to the board in accordance with ~~ARM 17.56.1260~~ 75-11-218, MCA.

(6) Remains the same.

AUTH: 75-11-204, MCA

IMP: 75-11-204, 75-11-211 and 75-11-509, MCA

Rationale: Because the Department has adopted rules regarding the public health and environmental concerns relating to underground storage tanks similar to those of state and local fire authorities, it proposes to delete the provision that allows the department to discipline licensees on the basis of violations of the uniform fire code.

ARM 17.56.1252 [17.56.1421] is also proposed to be amended to make clear that injury or the threat of injury to public health, safety or the environment is a factor the department will consider when considering disciplinary action against a licensee. The failure to pay license fees is also added as grounds for disciplinary action.

~~17.56.1221~~ 17.56.1422 PROHIBITION OF UNPROFESSIONAL LICENSEE CONDUCT (1) Any of the following acts of a person licensed under this subchapter constitute unprofessional conduct, and are prohibited and may result in the department conditioning, restricting, suspending or revoking a license issued under this subchapter:

- (a) remains the same.
- (b) misrepresentation or fraud in any aspect of the installation, closure, ~~modification~~ or repair inspection of an underground storage tank system;
- (c) through (h) remain the same.
- (i) aiding or abetting an unlicensed person to install, ~~or close, or inspect~~ an underground storage tank system;
- (j) and (k) remain the same.
- (l) failure to adequately inspect an underground storage tank system;
- (l) and (m) remain the same, but are renumbered (m) and (n).

AUTH: 75-11-204, MCA

IMP: 75-11-204 and 75-11-211, MCA

Rationale: ARM 17.56.1221 [17.56.1422] is proposed to be amended to add standards for inspectors and to clarify that unprofessional conduct committed by a licensee may result in disciplinary action.

~~17.56.1253~~ 17.56.1423 RESTRICTING OR CONDITIONING OF LICENSE (1) Upon making the finding required by ARM 17.56.1252 [17.56.1421], the department may restrict or condition a new or previously issued license.

(2) Upon a written demand by the department, a licensee shall surrender his or her license to the department, whereupon the department ~~may~~ shall issue a new license with the

restrictions or conditions imposed by the department stated or referenced on the license. Whether or not a license is surrendered, the department may issue a restricted or conditional license in accordance with this subchapter and the licensee shall comply with the restrictions or conditions stated or referenced thereon. The department shall inform the licensee in writing of the reasons for and term(s) of any restrictions or condition(s).

(3) Remains the same.

AUTH: 75-11-204, MCA

IMP: 75-11-204 and 75-11-211, MCA

Rationale: See general rationale in Section 3 and rationale for ARM 17.56.1205 [17.56.1401].

~~17.56.1254~~ 17.56.1424 MODIFICATION OF LICENSE (1) Upon making the finding required by ARM 17.56.1252 [17.56.1421], the department may modify the terms, restrictions, or conditions of any previously issued license.

(2) Upon written demand by the department, a licensee shall surrender his or her license to the department, whereupon the department ~~may~~ shall issue a new license with any modification imposed by the department. Whether or not a license is surrendered, the department may issue a modified license in accordance with this subchapter and the licensee shall comply with the terms of the modified license. The department shall inform the licensee in writing of the reasons for and term(s) of the modification(s).

(3) The modification of a license by the department may be appealed as provided in 75-11-218, MCA.

AUTH: 75-11-204, MCA

IMP: 75-11-204 and 75-11-211, MCA

Rationale: ARM 17.56.1254 [17.56.1424], 17.56.1255 [17.56.1425] and 17.56.1256 [17.56.1426] are proposed to be amended to specifically provide that licensees may appeal disciplinary actions taken pursuant to these rules. This provision was previously included in ARM 17.56.1260 which is proposed for repeal because it duplicates 75-11-218, MCA.

~~17.56.1255~~ 17.56.1425 SUSPENSION OF LICENSE (1) Upon making the finding required by ARM 17.56.1252 [17.56.1421], the department may suspend any previously issued license.

(2) Remains the same.

(3) A licensee may not practice or undertake the acts for which he or she was licensed during the term of the license suspension. The department may determine to issue a modified, restricted or conditional license, during the term of the suspension, upon consideration of the factors provided in and in accordance with ARM 17.56.1252 [17.56.1421].

(4) Upon expiration of the term of suspension, the department shall return the license to the licensee and inform

him or her in writing of the reinstatement of the license. The reinstated license may contain such restrictions, conditions, or modifications as the department may impose in accordance with ARM 17.56.1253 and 17.56.1254 [17.56.1423 and 17.56.1424].

(5) The suspension of a license issued under this subchapter may be appealed as provided in 75-11-218, MCA.
AUTH: 75-11-204, MCA; IMP: 75-11-204 and 75-11-211, MCA

Rationale: See rationale for ARM 17.56.1254 [17.56.1424].

~~17.56.1256~~ 17.56.1426 LICENSE REVOCATION (1) Upon making the finding required by ARM 17.56.1252 [17.56.1421], the department may revoke a previously issued license.

(2) through (4) remain the same.

(5) The revocation of a license issued under this subchapter may be appealed as provided in 75-11-218, MCA.

AUTH: 75-11-204, MCA

IMP: 75-11-204 and 75-11-211, MCA

Rationale: See rationale for ARM 17.56.1254 [17.56.1424].

6. The following rules are proposed to be amended. Text of present rule with matter to be stricken interlined and new matter underlined.

17.56.1003 DESIGNATION OF LOCAL UST PROGRAMS (1) A local governmental unit may apply to the department for designation as an implementing agency for the purposes of an implementing underground storage tank inspection and enforcement program systems leak prevention and inspection programs conducted by and within that local governmental unit. Upon designation under this rule, an implementing agency may apply to the department for reimbursement of authorized services, in the manner provided by ARM 17.56.1004, ~~for inspection services~~ and may enforce any rule in ARM Title 17, chapter 56, which it is authorized or required by any such rule to administer, in the same manner in which the department is authorized to enforce these rules ~~and may apply to the department for reimbursement for authorized enforcement services.~~

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

~~(6) Within 30 days of approval or disapproval of an application for designation, the department shall notify the applicant of the department's determination. If the department approves an application for designation it shall within 30 days of approval issue a letter of designation to the local governmental unit designating the unit as an implementing agency authorized to seek and receive reimbursement for inspection services, authorized to enforce the rules which it is authorized or required by any rule to administer, and authorized to seek and receive reimbursement for enforcement services. The letter shall set forth any conditions or~~

limitations determined necessary by the department. Within 30 days of approval of an application for designation the department shall issue a letter to the local governmental unit designating it as an implementing agency. The designation letter shall state that the local governmental unit is enabled to seek and receive reimbursement for authorized services and shall set forth any conditions or limitations determined necessary by the department. A designated local governmental unit shall enforce rules governing underground storage tank systems that it is authorized or required by any rule to administer.

(7) A local governmental unit designated by the department pursuant to this rule as an implementing agency shall immediately notify the department in writing when its ability to perform ~~inspection services or conduct enforcement~~ authorized by these rules and the designation letter is lost, diminished or otherwise jeopardized by the loss or unavailability of trained personnel or equipment. Upon notification, the designation of the local governmental unit may be suspended by the department until such time as the local governmental unit provides evidence satisfactory to the department that the condition resulting in suspension has been remedied. The department may request, and the local governmental unit shall provide, information determined necessary ~~by the department for department~~ to re-designate a local unit of government following suspension under this subsection.

AUTH: 75-11-505, MCA

IMP: 75-11-505 and 75-11-213, MCA

Rationale for subchapter 10 generally and ARM 17.56.1003: Chapter 506, Laws of 1999, significantly changes the role of local government units designated by the Department under ARM 17.56.1003. Compliance inspections formerly conducted by local government units designated by the Department will now be conducted by inspectors licensed by the Department. Local government staff can be licensed as compliance inspectors, but will no longer conduct such inspections as designated by the Department. References to compliance inspections and related enforcement conducted by local government units are therefore deleted. Local government units having licensed installation or closure inspectors on staff will be authorized by the Department to provide installation and closure inspection services as provided for in ARM 17.56.1223 [17.56.1308]. Local government units having licensed oversight inspectors on staff will be authorized by the Department to provide oversight to compliance inspectors. Local government units having persons knowledgeable of underground storage operation and maintenance rules and related industry standards will be authorized by the Department to provide education and outreach services to underground storage tank owners and operators.

17.56.1004 IMPLEMENTING AGENCY PROGRAM SERVICES AND REIMBURSEMENT (1) Upon receipt of the department's designa-

tion of a local governmental unit as an implementing agency, the implementing agency office or program personnel shall at the request of the department and at other times as necessary, conduct authorized services on behalf of the department ~~inspections of the installation, maintenance, operation and closure of underground storage tanks to determine compliance with ARM Title 17, chapter 56, applicable industry standards, and subject to the limitations or conditions contained in the department's letter of designation, and may enforce any rule in ARM Title 17, chapter 56 as it is authorized or required by such rule to administer, in the same manner as the department.~~

(2) ~~Inspections and enforcement~~ Services conducted by an implementing agency shall be conducted in accordance with ARM Title 17, chapter 56, applicable industry standards, and limitations or conditions contained in the department's letter of designation. An implementing agency shall, during the first 10 days of every calendar quarter, prepare and send to the department a report summarizing, in a manner acceptable to the department, all ~~inspections and enforcement~~ activity undertaken in the immediately preceding calendar quarter. Implementing agency personnel shall, at the request of the department, provide the department with copies of any inspection report, record, statement, time sheet, enforcement document or other document relating to ~~inspection or enforcement~~ services for which reimbursement is or may be sought under these rules.

(3) Each implementing agency shall maintain accurate and complete records of the time and services for which reimbursement will be sought under this rule. By the tenth day of each calendar quarter, the implementing agency shall send to the department on a form determined by the department a statement showing the number of hours, to the nearest one-half of an hour, spent by each person in the performance of ~~inspection or enforcement duties or both~~ authorized services during the previous calendar quarter for which reimbursement is being claimed. The form shall designate the ~~inspection site and date for which the inspection or enforcement activity was conducted and shall designate or include a reference to the appropriate inspection report.~~ The chief financial officer of each implementing agency submitting a statement shall on the face of the statement attest to the validity and accuracy of the statement. Upon receipt of the statement, the department shall determine whether sufficient information is contained in the statement and supporting material for reimbursement to be paid under this rule. The department shall notify the implementing agency of any deficiency. Upon receipt of sufficient information showing ~~inspections or enforcement or both~~ authorized services were carried out during the previous calendar quarter in accordance with ARM Title 17, chapter 56, applicable industry standards and any limitations or conditions contained in the department's designation letter, the department shall reimburse the local governmental unit at the rate of \$25.00 35.00 per hour. Claims for reimbursement not in accordance with this rule

shall be denied. Claims shall be paid only within the limitations of departmental budgets and legislative appropriations.

(4) Payments made under this rule shall be made no more frequently than quarterly by state warrant to the treasurer of the implementing agency. An implementing agency receiving reimbursement under this rule shall use the payment received only for expenses incurred in conducting ~~inspections or enforcement or both~~ authorized services under these rules.

AUTH: 75-11-505, MCA

IMP: 75-11-505 and 75-11-213, MCA

Rationale: The Department proposes to increase the inspection fee reimbursement to local governmental units from \$25 per hour to \$35 per hour as suggested by local governments to provide funding to maintain knowledgeable and trained inspectors and to cover the costs of transportation and equipment needed to conduct inspections. The rationale for the increase and the effect of the increase are fully discussed in the rationale statement following ARM 17.56.1232 [17.56.1309].

17.56.1005 REVOCATION AND SURRENDER OF DESIGNATION

(1) The department shall issue a letter to an implementing agency ~~revoking~~ revoking the designation issued pursuant to ARM 17.56.1003 whenever the department determines that there is substantial evidence that:

(a) The implementing agency is not conducting ~~inspections or enforcement or both~~ authorized services in accordance with ARM Title 17, chapter 56, applicable industry standards or limitations or conditions contained in the department's designation letter;

(b) through (d) remain the same.

(2) A revocation of designation by the department is effective upon written or oral notice to the local governmental unit. Following revocation, the local governmental unit may not submit claims for ~~reimbursement of inspection or enforcement~~ services to the department which services were performed following revocation. Any claims so submitted are considered denied. The department shall reimburse the local unit of government for services performed in accordance with these rules prior to revocation of designation.

(3) An implementing agency designated under ARM 17.56.1003 may surrender the designation of its ~~inspection and enforcement~~ program by giving 30 days written notice to the department accompanied by the surrender of its current designation letter. Inspection Services shall be conducted by the local governmental unit and reimbursement made pending receipt by the department of the notice required by this ~~subsection~~ rule. Upon receipt of the notice, no reimbursement may be made for subsequent ~~inspections services~~ by the local governmental unit. The department shall reimburse the local

governmental unit for services performed in accordance with these rules prior to surrender of designation.

(4) remains the same.

AUTH: 75-11-505, MCA

IMP: 75-11-505, MCA

Rationale: See general rationale in Section 3 and rationale for ARM 17.56.1003.

7. The Department is proposing to repeal the following rules:

17.56.1201 PURPOSE (Auth: 75-11-204, MCA; IMP, 75-11-204, MCA), located at page 17-6425, Administrative Rules of Montana.

Rationale: The purpose statement for subchapter 12 was deleted as the rules formerly contained in the subchapter have been transferred or repealed.

17.56.1233 REQUIREMENTS FOR INSPECTION GENERALLY (Auth: 75-11-204, MCA; IMP, 75-11-204, 75-11-213, MCA), located at page 17-6473, Administrative Rules of Montana.

Rationale: All requirements formerly contained in this rule have been moved to ARM 17.56.1226 [17.56.1305] and ARM 17.56.1223 [17.56.1308] for the purpose of readability.

17.56.1235 ELIGIBILITY FOR INSPECTOR LICENSING (Auth: 75-11-204, MCA; IMP, 75-11-204, 75-11-217, MCA), located at page 17-6479, Administrative Rules of Montana.

Rationale: Requirements formerly contained in this rule are moved to ARM 17.56.1206 [17.56.1402], where they are combined with similar requirements already contained in ARM 17.56.1206. The requirement that inspectors be an employee or independent contractor of a local governmental unit is deleted as private sector individuals will now be licensed as compliance inspectors.

17.56.1236 INSPECTOR LICENSE APPLICATION (Auth: 75-11-204, MCA; IMP, 75-11-204, MCA), located at page 17-6479, Administrative Rules of Montana.

Rationale: Requirements formerly contained in this rule are moved to ARM 17.56.1207 [17.56.1403], where they are combined with similar requirements already contained in ARM 17.56.1207. Language relating to conflict of interest is deleted as it conflicts with and is replaced by statutory language passed by the 56th legislature in Chapter 506, Laws of 1999.

17.56.1237 INSPECTOR LICENSE EXAMINATION (Auth: 75-11-204, MCA; IMP, 75-11-204, MCA), located at page 17-6483, Administrative Rules of Montana.

Rationale: Requirements formerly contained in this rule are moved to ARM 17.56.1208 [17.56.1405] where they are combined with similar requirements already contained in ARM 17.56.1208.

17.56.1238 INSPECTOR LICENSE ISSUANCE, TERM, RESTRICTIONS, CONDITIONS (Auth: 75-11-204, MCA; IMP, 75-11-210, 75-11-204, 75-11-213, MCA), located at page 17-6484, Administrative Rules of Montana.

Rationale: Requirements formerly contained in this rule are moved to ARM 17.56.1209 [17.56.1406] where they are combined with similar requirements already contained in ARM 17.56.1209.

17.56.1239 INSPECTOR LICENSE RENEWAL (Auth: 75-11-204, MCA; IMP, 75-11-204, MCA), located at page 17-6484, Administrative Rules of Montana.

Rationale: Requirements formerly contained in this rule are moved to ARM 17.56.1210 [17.56.1407] where they are combined with similar requirements already contained in ARM 17.56.1210.

17.56.1240 INSPECTOR DUPLICATE LICENSES (Auth: 75-11-204, MCA; IMP, 75-11-204, MCA), located at page 17-6485, Administrative Rules of Montana.

Rationale: Requirements formerly contained in this rule are moved to ARM 17.56.1216 [17.56.1409] where they are combined with similar requirements already contained in ARM 17.56.1216.

17.56.1242 PROHIBITION OF UNPROFESSIONAL INSPECTOR CONDUCT (Auth: 75-11-204, MCA; IMP, 75-11-204, MCA), located at page 17-6485, Administrative Rules of Montana.

Rationale: Requirements formerly contained in this rule are moved to ARM 17.56.1221 [17.56.1422] where they are combined with similar requirements already contained in ARM 17.56.1221.

17.56.1245 DESIGNATION OF IMPLEMENTING AGENCIES (Auth: 75-11-204, MCA; IMP, 75-11-204, 75-11-213, MCA), located at page 17-6491, Administrative Rules of Montana.

Rationale: Requirements formerly contained in this rule are duplicative of requirements found in 75-11-213 MCA, ARM 17.56.1003 and ARM 17.56.1004.

17.56.1246 INSTALLATION AND CLOSURE INSPECTION REQUIREMENTS--REPORTS (Auth: 75-11-204, MCA; IMP, 75-11-204, MCA), located at page 17-6491, Administrative Rules of Montana.

Rationale: This rule was deleted and consolidated into ARM 17.56.1004, 17.56.1218 [17.56.1410], and 17.56.1227 [17.56.1306]. The inspector is required to be on site for the entire installation or closure except for concrete removal as stated in the permitting rules. ARM 17.56.1246 had some sections that are confining and specific and conflict or may conflict in the future with industry recommended practices referenced as guidance in the underground storage tank rules, ARM 17.56.101 through 17.56.1007.

17.56.1247 INSPECTION REIMBURSEMENT (Auth: 75-11-204, MCA; IMP, 75-11-204, 75-11-213, MCA), located at page 17-6494, Administrative Rules of Montana.

Rationale: The Department proposes to repeal this rule because its requirements are redundant to those in ARM 17.56.1004.

17.56.1250 NOTICE OF VIOLATION--WRITTEN ORDER TO TAKE CORRECTIVE ACTION (Auth: 75-11-204, MCA; IMP, 75-11-204, 75-11-218, MCA), located at page 17-6499, Administrative Rules of Montana.

Rationale: This rule is proposed to be repealed because it is unnecessary in that it essentially duplicates the requirements of 75-11-218, MCA.

17.56.1251 THIRD PARTY COMPLAINTS--INVESTIGATIONS (Auth: 75-11-204, MCA; IMP, 75-11-204, MCA), located at page 17-6499, Administrative Rules of Montana.

Rationale: This rule is proposed to be repealed because complaints are pursued in accordance with the statute and enforcement policy.

17.56.1260 REQUEST FOR HEARING (Auth: 75-11-204, MCA; IMP, 75-11-204, 75-11-211, MCA), located at page 17-6509, Administrative Rules of Montana.

Rationale: This rule is proposed for repeal because it is unnecessary in that it essentially duplicates the requirements of 75-11-218, MCA.

8. Concerned persons may submit their data, views or arguments concerning the proposed action either in writing or orally at the hearing. Written data, views or arguments may also be submitted to David Scrimm, Attorney Specialist, Department of Environmental Quality, P.O. Box 200901, Helena, Montana, 59620-0901, no later than March 23, 2000. To be

guaranteed consideration, the comments must be postmarked on or before that date.

9. David Scrimm, attorney for the Department, has been designated to preside over and conduct the hearing.

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

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

DEPARTMENT OF ENVIRONMENTAL QUALITY

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

Reviewed by:

John F. North
John F. North, Rule Reviewer

Certified to the Secretary of State February 14, 2000.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

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

TO: All Concerned Persons

1. On March 21, 2000 at 10:00 a.m. in Room 35 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, the Department of Environmental Quality will hold a public hearing to consider the proposed amendment of the above-captioned rules.

2. The Department will make reasonable accommodations for persons with disabilities who wish to participate in this hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department no later than 5 p.m., March 14, 2000, to advise us of the nature of the accommodation you need. Please contact the Department at P.O. Box 200901, Helena, Montana, 59620-0901; phone (406) 444-2544; fax (406) 444-4386.

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

17.36.101 DEFINITIONS (1) through (9) Remain the same.

(10) "Local health officer" means health officer as defined in 50-2-101, MCA, or the health officer's designee.

(10) through (27) Remain the same, but are renumbered (11) through (28).

AUTH: 76-4-104, MCA

IMP: 76-4-104, MCA

17.36.102 APPLICATION--GENERAL (1) To initiate review of a subdivision under 76-4-125, MCA, a person must submit a complete application:

(a) for review of major subdivisions, to the department;

(b) for review of minor subdivisions:

(i) to the local government, if the department has certified the local government to review minor subdivisions pursuant to 76-4-104, MCA; and

(ii) in all other cases, to the department.

(2) A copy of the complete application, including all supporting information supplied to the department or local government, and all resubmittals of the application, must be submitted concurrently to the local health officer having jurisdiction for purposes of reviewing compliance with local laws and regulations, as provided in ARM 17.36.108.

~~(1)(3)~~ A complete application must contain ~~is an application that contains~~ a properly completed application form signed and dated by the owner(s) of the subdivision, plans and specifications for water supply, sewage disposal and stormwater systems, payment of a subdivision review fee as set forth in subchapter 8 of this chapter, and other information required by this chapter. ~~A copy of the plat suitable for filing need not be submitted before review commences.~~ However, the suitable plat must be submitted before the department can take favorable final action on the submittal.

AUTH: 76-4-104, MCA

IMP: 76-4-104, MCA

17.36.108 LOCAL REVIEW (1) The applicant shall provide the department with evidence, as set out in (2), as to whether facilities for the supply of water, disposal of sewage, and disposal of solid waste are in compliance with applicable laws and regulations of local government. A facility that has an MPDES surface water discharge permit issued pursuant to ARM Title 17, chapter 30, subchapter 13 is exempt from the requirements of this rule.

(2) The evidence required by (1) must show whether the facilities are in compliance with the laws and regulations of local government relating to water quality, water supply, sewage disposal, solid waste disposal, and storm water drainage, which are in effect at the time of the submittal of the application to the department or other reviewing authority pursuant to this chapter. The evidence must be in one of the following forms:

(a) a certificate of compliance or a denial letter, in a format approved by the department, signed by the local health officer having jurisdiction. A certificate of compliance may contain conditions of approval;

(b) if the proposed subdivision is reviewed by the local health officer under authority delegated by the department under Title 76, chapter 4, MCA, a signed certificate of plat approval; or

(c) a written demonstration by the applicant, in a format approved by the department, that the applicant has requested a certificate of compliance from the local health officer having jurisdiction and the health officer has not issued a denial letter or a certificate of compliance within 50 days of receiving a copy of the application. The department shall presume in such cases that the facilities in the proposed subdivision application are in compliance with the applicable laws and regulations of local government.

(3) The department shall identify, in its certificate of subdivision approval, all conditions of approval imposed by the local health officer in its review pursuant to this rule. Requirements of the local health officer may not be less stringent than state standards for the control and disposal of sewage promulgated pursuant to 75-5-305(2), MCA.

(4) As provided in ARM 17.36.110, the department may not issue a certificate of subdivision approval if non-public facilities for the disposal of sewage are proposed, unless the applicant has submitted evidence, in accordance with this rule, that the design for the non-public sewage disposal facilities complies with applicable laws and regulations of local government.

(1) through (3) Remain the same but are renumbered (5) through (7).

AUTH: 76-4-104, MCA

IMP: 76-4-104, MCA

17.36.110 CERTIFICATION OF APPROVAL (1) Subject to the local certification requirements set out in (2) and (3), the department shall issue a certificate of subdivision approval if:

(a) an applicant has submitted all of the information required by this chapter;

(b) A certificate of plat approval will be issued when an approval statement from the local health officer or his designated representative has been received, the requirements of this chapter and of the Montana Environmental Policy Act have been met; and

(c) the department determines that: is satisfied that the following conditions will be met:

(a)(i) sewage will not pollute or degrade state waters water or endanger public health;

(ii) all sewage disposal facilities are sufficient in terms of capacity and dependability;

(b)(iii) the water supply will be adequate sufficient in terms of quality, quantity, and dependability;

(c)(iv) solid waste disposal will be in accordance with applicable state laws and rules; and

(d)(v) storm drainage will have proper drainage ways and the drainage will not pollute state waters.

(2) The department may not issue a certificate of subdivision approval if non-public facilities for the disposal of sewage are proposed, unless the applicant has submitted evidence, in accordance with ARM 17.36.108, that the design for the non-public sewage disposal facilities complies with applicable laws and regulations of local government.

(3) The department shall identify, in its certificate of subdivision approval, all conditions of approval imposed by the local health officer in its review pursuant to ARM 17.36.108. Requirements of the local health officer may not be less stringent than state standards for the control and disposal of sewage promulgated pursuant to 75-5-305(2), MCA.

AUTH: 76-4-104, MCA

IMP: 76-4-104, MCA

5. The proposed amendments create a procedure for consultation between the Department and local health officers

during the Department's review of proposed subdivisions under the Sanitation in Subdivisions Act, Sections 76-4-101, et seq., MCA. The consultation procedure gives local health officers an opportunity to concurrently review subdivision applications submitted to the Department. The purpose of concurrent review by the health officer is to timely determine whether the proposed subdivision complies with applicable laws and regulations of local government.

The proposed amendments give local health officers an opportunity to notify the Department whether the proposed subdivision complies with local laws, and the amendments require the Department to incorporate this information in its own review under the Sanitation in Subdivisions Act. The amendments also require the Department to deny the proposed subdivision if the applicant fails to provide evidence that non-public sewage systems are in compliance with local laws.

The rationale for the proposed amendments is twofold. First, the amendments implement a requirement in 76-4-104(6)(i), MCA, that the Department consider evidence as to whether non-public sewage systems comply with local laws. Second, past experience has shown that a formal consultation procedure between the Department and local health officers regarding proposed subdivisions is necessary. Consultations are needed to coordinate state and local review of proposed subdivisions, and to reduce conflicts between state and local subdivision approvals. The proposed consultation procedure is intended to make the subdivision review process more efficient, which will provide a benefit to subdivision applicants and to the public. The amendments will also facilitate compliance with local requirements and conditions by providing timely notice to applicants of those requirements and conditions.

The rationale for each proposed amendment is provided in more detail below:

ARM 17.36.101 is amended to add a definition for "local health officer". The definition incorporates the definition in Section 50-2-101, MCA, and allows the local health officer to designate a representative for purposes of the proposed consultation procedure. This definition is necessary to implement the rules, and to allow the health officer flexibility in delegating compliance determinations.

ARM 17.36.102 is amended to include new sections (1) and (2), which identify the reviewing authority to which subdivision applications must be sent, and which require the applicant to submit a concurrent copy of the application, together with all supporting information and resubmittals, to the local health officer. These requirements are necessary to initiate the proposed local consultation procedure.

Former ARM 17.36.102(1) is amended to delete unnecessary language, to require that applications be signed and dated, and to require that plans be submitted with the application. These amendments are necessary to ensure that applications are properly authenticated and dated and that they contain sufficient information to enable the Department and the local health officer to review the application. The proposed amendments to former ARM 17.36.102(1) also deletes a reference to filing of plats. The requirement is deleted because it duplicates, and is partially inconsistent with, existing requirements in ARM 17.36.104.

ARM 17.36.108 is amended to include new sections (1)-(4), which set out the local health officer consultation procedure. ARM 17.36.108(1) requires the applicant to present evidence whether facilities for water supply, sewage disposal, and solid waste disposal are in compliance with local laws and regulations. This requirement is necessary to ensure that all of the facilities reviewed by the Department under the Sanitation in Subdivisions Act are presented to the local health officer for review. Facilities with MPDES discharge permits are exempted because local sewage disposal laws do not apply to those facilities.

The proposed ARM 17.36.108(2) specifies which local laws are to be reviewed for purposes of the compliance determination. Such specification is necessary to provide guidance to the applicant and to local health officers.

The proposed ARM 17.36.108(2)(a) and (b) state that evidence of compliance can be in the form of a certificate of compliance signed by the local health officer, a denial letter, or a certificate of plat approval issued by the local government under delegated authority from the Department. Specification of the form of compliance evidence is necessary to provide guidance to the applicant and to local health officers.

The proposed ARM 17.36.108(2)(c) allows the applicant to show that an application was submitted to the local health officer but that there was no response within 50 days. The amendments provide that, in that instance, the Department will presume that the subdivision application complies with local laws. This procedure is necessary to allow the local health officer to voluntarily respond, but not to require the officer to do so if, for example, the health officer's resources are limited or the health officer has no relevant information for the department. The stated presumption of compliance is necessary to meet the evidentiary requirement in 76-4-104(6)(i), MCA, and to inform local health officers of the consequences of their failure to respond within 50 days. Limiting the local review period to 50 days is necessary in order to allow the Department to complete its own review within the 60-day period required by 76-4-125(1)(b), MCA.

The proposed ARM 17.36.108(3) requires the Department to identify, in its subdivision approval document, all conditions of approval imposed by the local health officer. This requirement is necessary in order to give timely notice to the applicant of local requirements and conditions, and to facilitate compliance with local requirements and conditions.

The proposed ARM 17.36.102(4) is a cross-reference to the proposed new provisions of ARM 17.36.110, which require the department to deny a subdivision application if the applicant has not submitted evidence that the non-public sewage systems are in compliance with local laws. The rationale for that provision is provided below.

ARM 17.36.110(1) is amended to incorporate the local certification requirements set out in the new sections (2) and (3), to reformat for clarity, and to make minor changes in style.

The proposed ARM 17.36.110(1)(c)(i) adds "or degrade" to the requirements for approval of sewage systems. Pursuant to 75-5-301(5)-(7), MCA, discharges from sewage systems are subject to nondegradation requirements in the water quality statutes. Current Department subdivision rules incorporate the nondegradation requirements, together with the other requirements set out in Title 75 chapter 5, MCA, and rules adopted thereunder. See ARM 17.36.312. This amendment is necessary to reflect current Department practice, and to be consistent with the requirements of 75-5-301(5)-(7), MCA and ARM 17.36.312.

ARM 17.36.110(1)(c)(ii) and (iii) modify the existing approval criteria to conform to the statutory language in 76-4-104(6)(b) and (d), MCA. This amendment is necessary to avoid inconsistency between the language of the statute and the rules.

The proposed ARM 17.36.110(2)(a) prohibits the Department from issuing a certificate of subdivision approval unless the applicant has submitted evidence that non-public sewage systems are in compliance with local laws. This implements the requirement contained in 76-4-104(6)(i), MCA. The rule and statutory requirement are necessary to help achieve consistency between state and local requirements for non-public sewage systems.

The proposed ARM 17.36.110(2)(b) requires the Department to identify, in its certificate of subdivision approval, all conditions of approval imposed by the local health officer. This requirement is necessary to provide timely notice to the applicant of local requirements and conditions, which will facilitate compliance with those requirements and conditions. This section also states that the requirements of the health

officer may not be less stringent than the state minimum standards for sewage disposal adopted by the Board of Environmental Review pursuant to 75-5-305(2), MCA. This provision implements 50-2-116(1)(i), MCA. Implementing the statutory requirement in these rules is necessary to help prevent conflicts between state and local regulation of sewage systems.

6. Concerned persons may submit their data, views or arguments concerning the proposed action either in writing or orally at the hearing. Written data, views or arguments may also be submitted to James Madden, Department of Environmental Quality, P.O. Box 200901, Helena, Montana, 59620-0901, no later than March 24, 2000. To be guaranteed consideration, the comments must be postmarked on or before that date.

7. James Madden, attorney for the Department, has been designated to preside over and conduct the hearing.

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

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

DEPARTMENT OF ENVIRONMENTAL QUALITY

Reviewed by:

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

John F. North
John F. North,
Rule Reviewer

Certified to the Secretary of State February 14, 2000.

BEFORE THE DEPARTMENT OF CORRECTIONS
OF THE STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PUBLIC
amendment of ARM 20.9.101, 20.9.103,	)	HEARING ON PROPOSED
20.9.106, 20.9.110, 20.9.113,	)	AMENDMENT AND ADOPTION
20.9.115, 20.9.117, 20.9.120,)	
20.9.122, and adoption of new)	
rules I and II pertaining to Youth)	
Placement Committees)	

TO: All Concerned Persons

1. On March 15, 2000 at 9:00 a.m. a public hearing will be held in the first floor conference room of the Department of Corrections, 1539 11th Ave., Helena, Montana, to consider the proposed amendment and adoption of the above stated rules.

2. The Department of Corrections will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Corrections no later than 5:00 p.m. on March 10, 2000, to advise us of the nature of the accommodation that you need. Please contact Cj Johnson, Department of Corrections, 1539 11th Ave., Helena, Montana 59620; telephone 406-444-7917; fax 406-444-1976.

3. The changes in these rules are necessary because the Youth Court Act that contains the statutes these rules implement was substantially changed both in the 1995 and 1997 Legislatures. The changes in 1995 were part of the departmental reorganization, which moved the responsibility for juvenile corrections and the youth placement committees from the Department of Family Services to the Department of Corrections. In 1996 these rules were changed merely to reflect the change of departments. Since the department has had the opportunity to work with the Youth Placement Committee process, there are now substantive changes needed. The changes in the 1997 session were pursuant to a study by the Interim Committee on Juvenile Justice and Mental Health. There were also less extensive statutory changes to the Youth Court Act during the 1999 legislative session. Most of the changes in these rules are necessary either to bring the rules current with the law or reflect operational changes now that the Department of Corrections is the agency responsible for these rules. The rest of the changes are simply for clarification.

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

20.9.101 DEFINITIONS ~~(1)~~ For the purpose of this rule, the following definitions apply.

(1) "Change in placement" means the release, transfer or physical movement of an offender from a previously approved residential placement to another placement at the same level of supervision. It does not include an emergency placement of 45 days or less.

~~(a)~~(2) "Committee" means a youth placement committee appointed by the department pursuant to 41-5-121, MCA.

(3) "Committee chair" means a member of the youth placement committee representing the department, or the chief juvenile probation officer delegated by the department member to serve in the department member's place.

(4) "Committee records" means written documents submitted to the committee by the juvenile probation or parole officer, but does not include recordings or documents required by the department for audits of the committee process.

(b) and (c) remain the same but are renumbered (5) and (6).

(7) "Referral packet" means written or electronic information provided to the committee by a juvenile probation or parole officer for the purpose of supporting a recommendation as provided for in 41-5-121 and 41-5-122, MCA.

(8) "Referred to the department" means the process of submission from the chair of a youth placement committee to the department's regional administrator of a written request for placement of a youth in out-of-home care intended to last longer than 45 days.

(9) "Referring worker" means the youth court probation officer or department of corrections juvenile parole officer or case manager charged with supervision and case management of an offender at the time of referral.

~~(d)~~(10) "Residential placement" means placement in a youth care facility or a youth correctional facility ~~for a period exceeding 45 days.~~

~~(e)~~(11) "Residential treatment" means treatment provided by a licensed youth care facility and or a child placing agency approved by the department of public health and human services to provide intensive treatment to youth who are ~~seriously mentally, emotionally or behaviorally disturbed~~ suffering from a mental disorder.

~~(f)~~(12) "Youth care facility" (YCF) means a licensed facility in which foster care is provided and includes youth foster homes, youth group homes, and child care agencies and youth assessment centers.

~~(g)~~(13) "Youth correctional facility" means a residential facility for the rehabilitation of delinquent youth such as the Pine Hills youth correctional facility and Mountain View School, Riverside youth correctional facility, or a youth correctional facility under contract with the department of corrections.

AUTH: 53-1-203, MCA

IMP: 41-5-121, 41-5-123, 41-5-125, 53-1-202, 53-1-203, and 53-21-102, MCA

20.9.103 COMPOSITION AND MEMBERSHIP REQUIREMENTS DUTIES OF THE YOUTH PLACEMENT COMMITTEE (1) The A department representative shall act as ~~coordinator~~ for the committee chair and shall be responsible for performing the following tasks:

(a) review referral packets for completeness and compliance with department referral policy prior to convening meetings;

(a) through (c) remain the same but are renumbered (b) through (d).

~~(d)~~(e) record information relating to committee deliberations for audit and oversight purposes; and

~~(e)~~(f) forward primary and alternative recommendations to the department's regional administrator and juvenile placement bureau, as well as, the county attorney, the youth's attorney and the youth court judge prior to any scheduled disposition hearing;

(g) forward a copy of the regional administrator's agreement or disagreement and any subsequent court orders to the department's juvenile placement bureau;

(h) notify supervising case managers of placement reviews required by 41-5-122, MCA;

(i) present to the committee, as the referring worker, all juvenile offenders under department care and custody in state correctional facilities whose change of placement is pending as established by 41-5-121, MCA; and

(j) ensure that six-month reviews are conducted for each youth in placement.

(2) If a second department representative is a member of the youth placement committee, that person shall act as a resource agent for the committee. This second representative shall be a non-voting member of the committee.

(2) remains the same, but is renumbered (3).

~~(3)~~(4) The department regional administrator shall appoint each Ccommittee members who shall serve a term of two years. ~~however,~~ aA member may be reappointed to additional terms.

(4) remains the same, but is renumbered (5).

(6) The chief juvenile probation officer may also convene the youth placement committee and chair it at the request of the department representative.

AUTH: 53-1-203, MCA

IMP: 41-5-121, 41-5-122, and 41-5-123, MCA

20.9.106 REFERRALS TO THE COMMITTEE (1) The ~~probation officer~~ referring worker shall submit a referral as defined in (3) to the committee chair for any youth who will be placed in a residential placement for a period exceeding 45 days pursuant to 41-5-121, MCA. ~~a consent adjustment without petition under 41-5-401, MCA, or an informal adjustment under 41-5-403, MCA.~~

(2) Prior to the disposition hearing Tthe probation officer referring worker shall submit a referral as defined in (3) to the committee for any youth that may be committed to

the department pursuant to ~~41-5-523~~ 41-5-1512 or 41-5-1513, MCA.

(3) A referral must include a primary and alternative recommendation which are comparable in levels of care and security. The referral shall must be made in writing and shall must include the following information:

(a) through (f) remain the same.

(g) ~~the probation officer's~~ referring worker's recommendations as to available facilities which may be appropriate for the youth, including information regarding estimated costs of care and proposed length of treatment necessary for the youth.

(4) In the case of a change of placement under 41-5-121, MCA, the person responsible for supervision pursuant to 41-5-1523, MCA, shall submit a referral to the committee chair when change in a placement lasting longer than 45 days is contemplated. Discharge of a youth from a state youth correctional facility is not a change of placement under this rule.

~~(4)~~ (5) Five copies of the referral form and the social summary or predisposition report must shall be submitted to the placement committee chair prior to the scheduled meeting coordinator.

(6) The referring worker must provide any other referral information relative to the youth and the recommended placements to the committee chair prior to the scheduled meeting.

(7) The committee chair must convene the youth placement committee meeting within 10 working days of the chair's receipt of the referral.

AUTH: 53-1-203, MCA

IMP: 41-5-121, 41-5-122, and 41-5-123, MCA

20.9.110 PROCEDURES FOR YOUTH PLACEMENT COMMITTEE MEETINGS (1) The committee shall conduct regular meetings as necessary within 10 working days of receipt of the referral by the chair, provided that the committee shall meet within 72 hours (excluding weekends and holidays) of the submission of a referral when the youth is in a detention facility or in cases identified by the probation officer and coordinator as an emergency referral. All other referrals shall be considered by the committee within 10 working days from the time the referral is submitted.

(2) Meetings may be conducted by telephone conference.

(3) Each committee member shall be provided a copy of the referral form, the social summary, predisposition report and any other relevant information prior to the meeting.

(4) through (7) remain the same.

AUTH: 53-1-203, MCA

IMP: 41-5-122, MCA

20.9.113 PLACEMENT RECOMMENDATION PROCEDURES (1) The committee chair shall submit a written in writing the primary

and alternative recommendations to the department within 48 hours of the meeting, excluding weekends and legal holidays. ~~A copy of the recommendation shall be sent to the district court judge with jurisdiction over the youth, the county attorney and the youth's probation officer.~~

(2) and (3) remain the same.

(4) Within 72 hours of receipt of the recommendations, excluding weekends and legal holidays ~~Upon receipt of the written recommendation~~, the department shall determine if it will accept the committee's recommendation ~~within 48 hours of receipt of the recommendation, excluding weekends and legal holidays~~. The department shall notify the committee chair of its decision within three working days.

(a) If the department ~~accepts~~ approves either of the committee's recommendations, ~~it the department~~ shall notify the committee chair who shall notify the referring worker and the youth's probation officer who will make the necessary arrangements to place the youth in the recommended approved facility.

(b) ~~If the department rejects the committee's recommendation, it shall notify the committee in writing of the reasons for rejecting the recommendation and shall send a copy of the notice to the district court judge, the county attorney and the youth's probation officer. The committee chair will send a copy of the department's approval for placement to the district court judge who has jurisdiction over the youth, the county attorney and the youth's referring worker.~~

~~(5) Upon receipt of a notice of rejection from the department, the committee shall recommend an alternative placement for the youth and submit its recommendation in writing within 48 hours of receipt of the notice of rejection.~~

~~(6) At the time of submitting the original recommendation, the committee may recommend a placement and an alternative placement to be considered in the event the recommended placement is not accepted by the department. If the department accepts the alternative placement, it shall notify the committee in writing of the reasons for rejecting the recommended placement.~~

~~(7)~~ (5) If the department rejects both of the committee's recommended placements ~~and the alternative placement recommended by the committee~~, the department shall notify the committee chair in writing of the reasons for rejecting each placement and shall make arrangements with the youth's probation officer for the placement of the youth in an appropriate facility determined by the department. The department shall notify the committee chair, the county attorney and the appropriate district court judge in writing of the facility selected for the placement of the youth within 72 hours of the department's decision.

~~(8) If the committee fails to act within the time limits set forth in this rule, the department may select an appropriate placement for the youth without the benefit of the committee's recommendation.~~

AUTH: 53-1-203, MCA
IMP: 41-5-123, MCA

20.9.115 CRITERIA FOR APPROVING RECOMMENDATIONS

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

(e) The placement is in the best interests of the youth;
and

(f) The placement has taken into consideration any victim statement under 41-5-1511, MCA and other victim impact;

~~(f)(g)~~ The placement is in a facility which has a contract with the department to accept youths placed by the department at the rate determined by the department, or has otherwise been approved by the department-;

~~(g)(h)~~ The region that will be financially responsible for the placement costs has adequate funding resources with which to pay for the placement without overspending that judicial district or region's allocated foster-care juvenile residential placement budget-; and

(i) The placement recommended is in accordance with a disposition under 41-5-1512 and 41-5-1513, MCA, pursuant to an adjudication under 41-5-1502, MCA.

(2) If there has been no final disposition of a case referred to the youth placement committee within 120 days of the date of the initial referral the referring worker must submit a new referral to the committee chair and the case must be reviewed again.

AUTH: 53-1-203, MCA
IMP: 41-5-123, MCA

20.9.117 TEMPORARY AND EMERGENCY PLACEMENTS (1) Any temporary or emergency placement of a youth pursuant to 41-5-124, MCA ~~which will not exceed 45 days~~ is exempt from the requirements of ARM 20.9.110 and 20.9.113.

(2) If the temporary or emergency placement ~~shall~~ continues for more than 45 days, the youth's case ~~shall~~ must be referred by the placing worker to the placement committee pursuant to ARM 20.9.110.

AUTH: 53-1-203, MCA
IMP: 41-5-124, MCA

20.9.120 RECOMMENDATIONS FOR RESIDENTIAL TREATMENT

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

(c) intensive residential treatment is necessary to restore or develop an acceptable personal or community adjustment; and

(d) all other lesser restrictive alternatives cannot meet the needs of the youth-; and

(e) a current mental health assessment indicates that there is a diagnosis, which supports the recommended placement.

(2) Placement in any residential treatment outside of Montana will not be approved, unless:

(a) through (c) remain the same.

(3) Placement in residential treatment shall not exceed

12 6 months, unless extension of the placement is authorized in writing by the department. Any extension may only be made following the placement committee review and recommendation to the department.

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

(4) No youth shall be placed in residential treatment unless there is an individual placement agreement signed by the provider and the placing agency which contains the following:

(a) through (d) remain the same.

(e) the requirement for a discharge plan that includes provisions for any medically necessary or recommended mental health services to be provided in the community.

AUTH: 53-1-203, MCA

IMP: 41-5-122 and 41-5-1513, MCA

20.9.122 CONFIDENTIALITY OF COMMITTEE MEETINGS AND RECORDS (1) remains the same.

(2) Information presented to the committee about a youth and committee records are confidential and ~~shall~~ may not be disclosed to persons other than:

(a) through (h) remain the same.

(3) Information such as psychiatric reports, child abuse or neglect reports, or police reports containing confidential information may not be disclosed to any parties named in those reports unless authorized by order of the district court judge.

(4) Recordings or records of committee deliberations used by the department for audit purposes may not be disclosed to persons outside of the department unless such disclosure is authorized by order of the youth court judge.

AUTH: 53-1-203, MCA

IMP: 41-5-125, MCA

5. The proposed rules provide as follows:

RULE I SIX-MONTH REVIEWS OF YOUTH CONTINUING IN PLACEMENT (1) The youth placement committee shall conduct a review at the end of each six-month period during which a youth remains in out-of-home placement. These reviews are conducted to determine whether:

(a) the conditions which necessitated the original placement still exist;

(b) the placement continues to be in the best interests of the youth and the community; and

(c) continued placement can be maintained within the resources of the department.

AUTH: 53-1-203, MCA

IMP: 41-5-122, MCA

RULE II CHANGE OF PLACEMENT BY DEPARTMENT FACILITY

(1) Any department facility that changes placement of a youth must notify the youth court in writing within 72 hours of the change in placement. This includes changes between

secure correctional facilities and changes from secure care to transitional care or independent living.

AUTH: 53-1-203, MCA

IMP: 41-5-123, MCA

6. Concerned persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the address listed in 8, and must be received no later than March 23, 2000.

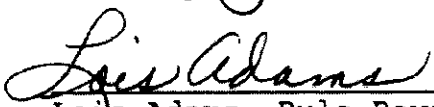
7. Lois Adams, Rule Reviewer, will preside over and conduct the hearing.

8. The Department of Corrections 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 community corrections, juvenile corrections, management services, board of pardons and parole, youth placement committees or general departmental rulemakings. Such written request may be mailed or delivered to Lois Adams, Rule Reviewer, Department of Corrections, 1539 11th Ave., Helena Montana, 59620, faxed to 406-444-1976, or may be made by completing a request form at any rules hearing held by the Department of Corrections.

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

DEPARTMENT OF CORRECTIONS

By: 
Rick Day, Director


Lois Adams, Rule Reviewer

Certified to the Secretary of State February 14, 2000

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

In the Matter of the Proposed) NOTICE OF PUBLIC HEARING
Amendment of a Rule Pertaining) ON THE PROPOSED AMENDMENT
to the Definition of Customer) OF ARM 38.5.1401
Under Termination of)
Gas and Electric Service)

TO: All Concerned Persons

1. On Thursday, March 23, 2000, at 9:00 a.m., a public hearing will be held in the Bollinger Room, Public Service Commission (PSC) offices, 1701 Prospect Avenue, Helena, Montana, to consider the amendment of ARM 38.5.1401.

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 March 16, 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:

38.5.1401 DEFINITIONS ~~(1)~~ For purposes of this rule subchapter:

(a) remains the same, but is renumbered (1).

~~(b) (2)~~ "Customer" means any purchaser of gas or electric service supplied by a utility for residential purposes. A person who requests disconnection of service at his or her current address in order to move service to his or her new address with no break in the service is an existing customer, not an applicant for new service.

(c) through (e) remain the same, but are renumbered (3) through (5).

(e) (i) and (ii) remain the same, but are renumbered (5) (a) and (b).

(f) through (j) remain the same, but are renumbered (6) through (10).

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

4. Rationale: Adoption of this rule is necessary to ensure that customers of regulated energy utilities who move from one location to another with no break in service are treated for utilities' collection purposes as existing customers who are transferring their service to a new address, not as new

customers who are initiating new service. Consumer complaints to the PSC indicate that at least one utility's practice is to, at its discretion, require a customer who is moving from one address to another with no break in service to pay any outstanding balance in full as a condition of turning on service at the new address. This rule clarifies that a customer in this circumstance is an existing customer, to whom the notice and disconnection provisions of ARM 38.5.1405 and ARM 38.5.1410 apply.

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 March 23, 2000. (PLEASE NOTE: When filing comments pursuant to this notice please reference "Docket No. L-00.1.1-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 the Public Service Commission, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, or faxed to (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.


Nancy McCaffree, Vice-Chair


Reviewed By Robin A. McHugh

CERTIFIED TO THE SECRETARY OF STATE FEBRUARY 11, 2000.

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

In the matter of the amend-) NOTICE OF AMENDMENT
ment of a rule pertaining) AND ADOPTION
to definitions and the)
adoption of rules pertaining)
to post-graduate training)
programs)

TO: All Concerned Persons

1. On October 7, 1999, the Board of Medical Examiners published a notice of the proposed amendment of the above-stated rule and the adoption of new rules at page 2143, 1999 Montana Administrative Register, issue number 19. The hearing was held November 10, 1999.

2. The Board has adopted ARM 8.28.1501 as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

"8.28.1501 DEFINITIONS As used in this sub-chapter the following definitions apply:

(1) through (5) will remain the same as proposed.

(6) "Medical student" means a person currently enrolled in a school of allopathic or osteopathic medicine approved by the council on medical education of the American medical association, the equivalent body bureau of professional education of the American osteopathic association, or the board.

(a) through (8)(b)(ii) will remain the same as proposed.

(c) holds a certificate from the educational commission for foreign medical graduates (ECFMG) where applicable, ~~or the American osteopathic association equivalent;~~ and

(d) through (11) will remain the same as proposed."

Auth: Sec. 37-1-131, 37-3-203, MCA

IMP: Sec. 37-3-102, 37-3-203, MCA

3. The Board adopted NEW RULE I (ARM 8.28.1507) MEDICAL STUDENT'S PERMITTED ACTIVITIES, NEW RULE II (ARM 8.28.1508) INTERN'S SCOPE OF PRACTICE, NEW RULE III (ARM 8.28.1509) RESIDENT'S SCOPE OF PRACTICE, and NEW RULE IV (ARM 8.28.1510) APPROVED RESIDENCY as proposed.

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

COMMENT: The American Osteopathic Association commented that they did not feel the proposed rules make osteopathic requirements explicit in a number of instances. They requested the following changes: (deletions interlined, additions underlined)

8.28.1501 DEFINITIONS, (3)(a): "An intern has passed USMLE Steps 1 and 2 and is preparing for, or awaiting the results of, USMLE Step 3, or the ~~American osteopathic equivalent~~ the intern has passed COMLEX-USA, Levels 1 and 2, and is preparing for, or awaiting the results of, COMLEX-USA Level 3."

8.28.1501 DEFINITIONS, (6) "Medical student" means a person currently enrolled in a school of allopathic or osteopathic medicine approved by the council on medical education of the American medical association, ~~the equivalent body of the American osteopathic association~~ the Bureau of Professional Education of the American Osteopathic Association (AOA) or the board."

8.28.1501 DEFINITIONS, (6)(b)(i) "has been awarded a doctorate degree and successfully completed the United States Medical Licensing Examination (USMLE) Steps 1 and 2, or the ~~equivalent level of testing by the American osteopathic association, or the Comprehensive Osteopathic Medical Licensing Examination (COMLEX) Levels 1 and 2 or Parts 1 and 2 of the predecessor examination of the National Board of Osteopathic Medical Examiners (NBOME).~~"

8.28.1501 DEFINITIONS, (6)(b)(ii) "has passed USMLE Step 3, or the ~~equivalent testing by the American osteopathic association~~ COMLEX-USA Level 3 or Part 3 of the predecessor examination of the National Board of Osteopathic Medical Examiners (NBOME)."

8.28.1501 DEFINITIONS, (8)(c) "holds a certificate from the educational commission for foreign medical graduates (ECFMG) where applicable, ~~or the American osteopathic association equivalent; and...~~"

Additionally, the AOA commented that due to the time necessary for successful completion of all levels of the COMLEX examination, that requiring an additional year of post graduate training for licensure purposes placed an unnecessary burden on the physician.

RESPONSE: The Board responded in writing advising the AOA that it had determined to adopt their proposed correction of ARM 8.28.1501(6) and 8.28.1501(8)(c). The Board further stated that it had decided to retain the references to the "American osteopathic equivalent" in the remaining subsections of the rules due to the requirements contained in ARM 8.28.416.

BOARD OF MEDICAL EXAMINERS
LAWRENCE R. McEVoy, M.D.,
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, February 14, 2000

BEFORE THE BOARD OF COUNTY PRINTING
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the) NOTICE OF AMENDMENT AND
amendment and repeal of rules) REPEAL OF THE RULES
pertaining to county printing) PERTAINING TO COUNTY
) PRINTING

TO: All Concerned Persons

1. On October 21, 1999, the Board of County Printing published a notice of proposed amendment and repeal to the above-stated rules on page 2339, 1999 Montana Administrative Register, Issue No. 20.

2. The Board has amended ARM 8.91.301 and 8.91.302 and repealed 8.91.304 exactly as proposed, and has amended ARM 8.91.303 with the following changes, stricken matter interlined, new matter underlined.

"8.91.303 OFFICIAL PUBLICATIONS AND LEGAL ADVERTISING

(1) will remain as proposed.

(2) Subsection (1) will become effective on July 1, 2000
January 1, 2000.

(3) through (6) will remain the same."

AUTH: Sec. 7-5-2404, MCA

IMP: Sec. 7-5-2404, MCA

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

COMMENT #1: One comment supported the proposed increase that the initial folio charge be increased from \$8 to \$9 and the charge for subsequent publications be increased from \$6 to \$7 per folio. The comment further requested an automatic escalator that would increase the folio rates every two years by whatever rate has been approved by the board for baseline cost adjustments during that time.

RESPONSE: The board accepted the comment which concurred with the proposed increase as set forth in the notice of public hearing on the proposed amendment of rules pertaining to county printing. However, the board did not concur with an automatic escalator to the rates, as the escalator would bind the board in the future without providing the public with an opportunity to comment on any rate increase.

COMMENT #2: One comment did not support the proposed rate increase, and proposed that the board consider a 10% increase in the rates rather than the proposed increases. This would

allow newspapers to recover a major portion of increased operating costs while lessening the effect of the rate increase on local governments and taxpayers.

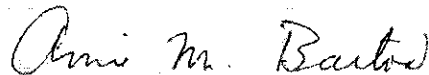
RESPONSE: The board did not concur, and determined that the proposed increase for the initial folio charge from \$8 to \$9 and for subsequent publications from \$6 to \$7 was necessary based upon the adjustment in the consumer price index.

COMMENT #3: The board commented that the rules should become effective July 1, 2000 and not January 1, 2000 as proposed in the Notice of Public Hearing on the Proposed Amendment of Rules Pertaining to County Printing.

RESPONSE: The timing of the January 6, 2000 board meeting to consider all comments following the rulemaking hearing on November 18, 1999 required that the rule become effective after the publication of the adoption of the rules. The July 1, 2000 effective date was within the authority of the board to set.

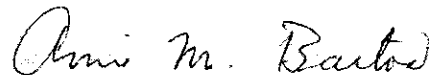
BOARD OF COUNTY PRINTING

BY:



ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

BY:



ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, February 14, 2000.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF ADOPTION,
adoption, amendment, and	)	AMENDMENT, AND REPEAL
repeal of rules relating	)	OF RULES RELATING TO
to school funding, budgeting	)	SCHOOL FUNDING, BUDGETING,
and transportation	)	AND TRANSPORTATION

TO: All Concerned Persons

1. On December 2, 1999, the Superintendent of Public Instruction published notice of the proposed adoption, amendment, and repeal of rules concerning school funding, budgeting and transportation, at page 2694 of the 1999 Montana Administrative Register, Issue Number 23.

2. After consideration of the comments received, the agency has adopted new RULE I, ARM 10.10.317, with the following changes, stricken matter interlined, new matter underlined:

10.10.317 INVESTMENT POOLS (1) and (2) remain the same.

(3) Before participating in an investment pool a school district must have written documentation that the investment firm or entity contracted to administer the pool:

(a) remains the same.

(b) Is either the state board of investments or an investment firm that is ~~licensed by~~ either registered with or has filed notice with the state auditor under the provisions of Title 30, chapter 10, MCA;

(c) and (d) remain the same.

(4) remains the same.

(5) When directed by a school district participating in an investment pool, a county treasurer shall invest the district's money within 3 days in an investment pool by issuing a treasurer's check, warrant, or wire transfer of funds to the state board of investments or ~~licensed investment firm~~ that has registered or filed notice with the state auditor administering the investment pool.

(a) and (b) remain the same.

(6) A school district will direct the ~~licensed investment firm~~ that has registered or filed notice with the state auditor or state board of investments to deposit redeemed investments and interest income with the county treasurer, to the credit of the specific and appropriate school district fund.

(a) and (b) remain the same.

(7) remains the same.

AUTH: 20-9-102, 20-9-201, MCA

IMP: 20-9-212, MCA

Comment 1: The State Auditor's Office, Securities Department, commented that the statutes governing regulation of

investment adviser firms use the term "license" although 20-9-213, MCA, uses the term, "registered." Investment firms doing business in Montana that are not registered with the Federal Securities and Exchange Commission (SEC) must register with the State Auditor's Office; they are not licensed by the State Auditor's Office. Firms with more than \$25 million under management must register with the SEC but are not required to register with the State Auditor. If that category of firm does business in Montana it must "notice file" with the State Auditor's Office.

Also, Montana's security regulation statutes do not require a firm to register with the State Auditor's Office if its clients are institutional investors. Registered or notice filed investment firms can advise school district investment pools but it would not be a violation of Title 30 for a firm that was not registered with the Securities Division to sell investment advice to a school district investment pool.

Response 1: The Office of Public Instruction (OPI) agrees that the terms "registered" or "notice filed" should replace "licensed" in this rule and has made the necessary changes. The rule will continue to require that investment pools use investment firm advisers who are either "registered" or "notice filed" with the State Auditor's Office. OPI has authority to implement the Legislative intent of 20-9-213, MCA. By referring to licensed firms in statute, OPI believes the Legislature was stating its intent to protect the interests of the school district, its trustees, and taxpayers by requiring that investment firms engaged in the business of advising school district investment pools be subject to the regulatory oversight of the State Auditor's Office.

3. The agency has amended as proposed, the following rules: 10.7.101, 10.7.106, 10.7.107, 10.7.110, 10.7.112, 10.7.113, 10.7.116, 10.7.118, 10.10.206, 10.10.301, 10.10.306, 10.10.308, 10.10.311, 10.10.401, 10.10.502, 10.15.101, 10.20.102, 10.20.103, 10.20.104, 10.20.105, 10.21.101B, 10.21.101C, 10.21.101D, 10.21.101E, 10.21.101F, 10.21.101G, 10.21.101I, 10.21.102A, 10.22.103, 10.22.105, 10.22.204, 10.22.205, 10.23.102, 10.23.103, 10.30.403, and 10.30.404.

4. After consideration of the comments received, the agency has amended ARM 10.22.102 with the following changes, stricken matter interlined, new matter underlined:

10.22.102 GENERAL FUND SPENDING LIMITS (1)(a) ~~The trustees of a district that's current year budget does not exceed its ensuing year's maximum budget~~ If a district's current year budget does not exceed the maximum budget allowed by statute for the ensuing year, the trustees must adopt a budget for the ensuing year that is at least equal to the ensuing year's BASE budget, but not greater than the ensuing year's maximum budget.

(b) remains the same.

(2) through (9) remain the same.

AUTH: 20-9-102, MCA
IMP: 20-9-308, MCA

Comment 2: Rachel Vielleux, Missoula County Superintendent, commented that the word "that's" in (1)(a) cannot be substituted for the possessive pronoun "whose."

Response 2: OPI agrees and has reworded the sentence.

5. The agency has repealed ARM 10.21.101A, 10.22.107, and 10.23.105 as proposed.

6. The Office of Public Instruction has thoroughly considered the comments and testimony received on the proposed rules. The following is a summary of the comments received and responses that do not result in a change in wording of the proposed rules.

Comment 3: Rachel Vielleux, Missoula County Superintendent, and Bill Parker, Superintendent of Malta Public Schools, commented that the rules use "19__" instead of "20__" when referring to year.

Response 3: The Office of Public Instruction agrees that the date reference is incorrect. This reference appears throughout Title 10. If the notation causes substantive problems for ARM users the problem will be addressed through a revision of Title 10 rather than piece-meal corrections.

Comment 4: Referring to ARM 10.7.112, Bill Parker, Superintendent of Malta Public Schools, commented that many existing school district boundaries were arbitrarily set without consideration of the geography of the region, distance to the school, number of students to be served, or a reasonable distribution of tax base. Without a rational system of establishing school district tax base and boundaries, issues related to students attending school out of district become controversial. Bus routes and bus route funding should be tools for efficient transportation of students to school not barriers to prevent students from attending school out-of-district. It is naïve to expect districts to agree about controversial bus routes. Instead, a district should be paid for all miles within its boundaries and written agreements should only pertain to mileage incurred within another district. There should be an independent review of all routes in the state.

Response 4: OPI agrees that in areas with open enrollment many districts have been unable to reach agreements about inter-district bus routes and some districts attempt to discourage parents from enrolling their children out-of-district by making transportation difficult. The requirement of ARM 10.7.112 is statutory, however, and cannot be changed by administrative

rule.

Comment 5: Referring to ARM 10.21.101I(11), Bill Parker, Superintendent of Malta Public Schools, commented that the rule should be revised to clarify whether the formula for school facility reimbursement considers school district funding sources other than property tax revenue.

Response 5: OPI thinks the rule in its entirety clearly describes the method of determining eligibility for school facility reimbursements.

Comment 6: Referring to ARM 10.7.113(1)(c), Rachel Vielleux, Missoula County Superintendent, commented that the rule should not require a duplicate TR4 for reimbursement of an additional trip for qualifying kindergarten transportation.

Response 6: OPI has revised the rule to require a "kindergarten contract" in order to facilitate smoother processing of reimbursements for families who must transport a kindergarten student separately from other siblings due to different kindergarten schedules and days of attendance. Current practice causes confusion when a contract that is "shared," or split between a high school and elementary school results in the additional kindergarten expense being handled by the high school. Additionally, the necessary information is not being properly filed and could be better monitored on a separate contract.

By: /s/ Nancy Keenan
Nancy Keenan
Superintendent
Office of Public Instruction

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

Certified to the Secretary of State February 14, 2000.

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

In the matter of the) NOTICE OF AMENDMENT
amendment of ARM 36.12.102,)
36.12.103, 36.12.202,)
36.12.501, 36.12.502,)
36.12.503, 36.12.1202,)
36.12.1209, and 36.12.1210)
pertaining to the water)
rights bureau)

TO: All Concerned Persons

1. On January 13, 2000, the Department of Natural Resources and Conservation published notice of the proposed amendment to ARM 36.12.102, 36.12.103, 36.12.202, 36.12.501, 36.12.502, 36.12.503, 36.12.1202, 36.12.1209 and 36.12.1210 pertaining to the Water Rights Bureau at page 33 of the 2000 Montana Administrative Register, Issue Number 1.

2. The agency has amended ARM 36.12.102, 36.12.103, 36.12.202, 36.12.501, 36.12.502, 36.12.503, 36.12.1202, 36.12.1209 and 36.12.1210 as proposed.

AUTH: Sec. 85-2-113, MCA
IMP: Sec. 85-2-113, MCA

3. No comments or testimony were received.

Donald D. MacIntyre

DONALD D. MACINTYRE
Rule Reviewer

Arthur R. Clinch

ARTHUR R. CLINCH
Director

Certified to the Secretary of State February 14, 2000.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE
Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Business and Labor Interim Committee:

- ▶ Department of Agriculture;
- ▶ Department of Commerce;
- ▶ Department of Labor and Industry;
- ▶ Department of Livestock;
- ▶ Department of Public Service Regulation; and
- ▶ Office of the State Auditor and Insurance Commissioner.

Education Interim Committee:

- ▶ State Board of Education;
- ▶ Board of Public Education;
- ▶ Board of Regents of Higher Education; and
- ▶ Office of Public Instruction.

Children, Families, Health, and Human Services Interim Committee:

- ▶ Department of Public Health and Human Services.

Law, Justice, and Indian Affairs Interim Committee:

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

Revenue and Taxation Interim Committee:

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

State Administration, Public Retirement Systems, and Veterans' Affairs Interim Committee:

- ▶ Department of Administration;
- ▶ Department of Military Affairs; and
- ▶ Office of the Secretary of State.

Environmental Quality Council:

- ▶ Department of Environmental Quality;
- ▶ Department of Fish, Wildlife, and Parks; and
- ▶ Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is PO Box 201706, Helena, MT 59620-1706.

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

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

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through December 31, 1999, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1999 and 2000 Montana Administrative Registers.

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- I-VIII Implementing Senate Bill 406 ("Electricity Buying Cooperative Act") and House Bill 221 pertaining to Electricity Default Suppliers - Electricity Default Supplier Licensing and Selection, p. 2228, 2770
- 38.2.314 Practice Before the Public Service Commission, p. 2559
- 38.5.2201 and other rule - Pipeline Safety, p. 2608

REVENUE, Department of, Title 42

- I and other rule - Intangible Personal Property, p. 2620
- I-III and other rules - Class Eight Property Exemption - Depreciation Schedules for Personal Property, p. 2351, 2909

- I-VII and other rules - Centrally Assessed Property and Telecommunications Excise Tax, p. 2405, 2914
- I-VII Ethics of Department of Revenue Employees, p. 1651, 2576
- I-IX and other rules - Office of Dispute Resolution, p. 2374, 2900
- I-XII Universal System Benefits Programs, p. 2396, 2927
- 42.14.101 and other rules - Lodging Facility Use Tax Rules, p. 2561, 2904
- 42.15.507 Elderly Homeowner Credit, p. 2035, 2581

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- 1.2.419 Scheduled Dates for the Montana Administrative Register, p. 2432, 2777

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- 44.10.321 and other rules - Reporting of Contributions and Expenditures, p. 635, 2287
- 44.10.331 Limitations on Receipts from Political Committees, p. 2241, 2934

BOARD APPOINTEES AND VACANCIES

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

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

In this issue, appointments effective in January 2000, appear. Vacancies scheduled to appear from March 1, 2000, through May 31, 2000, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

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

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of February 10, 2000.

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

BOARD AND COUNCIL APPOINTEES FROM JANUARY, 2000

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Alternative Livestock Advisory Council (Fish, Wildlife and Parks)			
Mr. Jeremy Kinross-Wright	Governor	Braaten	1/12/2000
Big Timber			1/1/2001
Qualifications (if required): representative of the Board of Livestock			
Ms. Elaine Allestad	Governor	Marchion	1/12/2000
Big Timber			1/1/2002
Qualifications (if required): representative of sportspeople			
Dr. Duane Douglas	Governor	Johnson	1/12/2000
Sidney			1/1/2002
Qualifications (if required): veterinarian			
Mr. Stanley F. Meyer	Governor	not listed	1/12/2000
Great Falls			1/1/2001
Qualifications (if required): representative of the Fish, Wildlife and Parks Commission			
Mr. Chuck Taylor	Governor	Nyby	1/12/2000
Moore			1/1/2002
Qualifications (if required): representative of the alternative livestock industry			
Board of Chiropractors (Commerce)			
Ms. Jo Ausk	Governor	Mitchell	1/24/2000
Terry			1/1/2003
Qualifications (if required): public member			
Dr. Pamela Blanchard	Governor	Berish	1/24/2000
Great Falls			1/1/2003
Qualifications (if required): practicing chiropractor			

BOARD AND COUNCIL APPOINTEES FROM JANUARY, 2000

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Horse Racing (Commerce)			
Ms. Barbara Cole Shelby	Governor	Scott	1/25/2000 1/20/2003
Qualifications (if required): representing District 3			
Mr. Tim Donnelly Miles City	Governor	Devlin	1/25/2000 1/20/2003
Qualifications (if required): representing District 1			
Board of Occupational Therapy Practice (Commerce)			
Ms. Debra J. Ammondson Great Falls	Governor	Leonard	1/24/2000 12/31/2003
Qualifications (if required): occupational therapist			
Board of Personnel Appeals (Labor and Industry)			
Mr. Jack Holstrom Clancy	Governor	reappointed	1/10/2000 1/1/2004
Qualifications (if required): attorney with labor-management experience			
Board of Public Education (Education)			
Ms. Patty Myers Great Falls	Governor	Keim	1/25/2000 1/1/2007
Qualifications (if required): Democrat from District 3			
Capitol Restoration Commission (Administration)			
Ms. Jeanne Michael Billings	Governor	reappointed	1/10/2000 12/3/2003
Qualifications (if required): public member appointed by the Lieutenant Governor			

BOARD AND COUNCIL APPOINTEES FROM JANUARY, 2000

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Capitol Restoration Commission (Administration) cont.			
Mr. Walter (Howdie) S. Murfitt	Governor	reappointed	1/10/2000
Helena			12/3/2003
Qualifications (if required): public member appointed by the Governor			
Ms. Gayle Shanahan	Governor	reappointed	1/10/2000
Helena			12/3/2003
Qualifications (if required): public member appointed by the Governor			
Mr. Loren Smith	Governor	reappointed	1/10/2000
Great Falls			12/3/2003
Qualifications (if required): public member appointed by the Lieutenant Governor			
District Court Judge, 11th Judicial District (District Court)			
Mr. Stewart Evans Stadler	Governor	appointed	1/1/2000
Whitefish			1/1/2001
Qualifications (if required): none specified			
District Court Judge, 22nd Judicial District (District Court)			
Mr. Blair Jones	Governor	appointed	1/1/2000
Park City			1/1/2001
Qualifications (if required): none specified			
Electric Utility Industry Restructuring Advisory Committee (Legislative Services)			
Mr. Stephen E. Bradley	Governor	not listed	1/20/2000
Crow Agency			1/1/2001
Qualifications (if required): representing Montana's Indian tribes			
Mr. Neil Colwell	Governor	Johansen	1/20/2000
Boise, ID			1/1/2001
Qualifications (if required): representing the electric power market industry			

BOARD AND COUNCIL APPOINTEES FROM JANUARY, 2000

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Electric Utility Industry Restructuring Advisory Committee (Legislative Services) cont.			
Mr. Stan Dupree	Governor	not listed	1/20/2000
Butte			1/1/2001
Qualifications (if required): representing organized labor			
Ms. Kathy Hadley	Governor	not listed	1/20/2000
Butte			1/1/2001
Qualifications (if required): representing the community comprising environmental and conservation interests			
Mr. Gene Leuwer	Governor	not listed	1/20/2000
Helena			1/1/2001
Qualifications (if required): representing a low-income program provider			
Mr. Donald Quander	Governor	not listed	1/20/2000
Billings			1/1/2001
Qualifications (if required): representing the industrial community			
Ms. Roma Taylor	Governor	not listed	1/20/2000
Bigfork			1/1/2001
Qualifications (if required): representing the nonindustrial retail electric consumer sector			
Hail Insurance Board (Agriculture)			
Auditor Mark O'Keefe	Governor	reappointed	1/10/2000
Helena			1/1/2001
Qualifications (if required): State Auditor			
Mr. W. Ralph Peck	Governor	reappointed	1/10/2000
Helena			1/1/2001
Qualifications (if required): Director of the Department of Agriculture			

BOARD AND COUNCIL APPOINTEES FROM JANUARY, 2000

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Judicial Nomination Commission (Justice)			
Mr. Tony Harbaugh	Governor	reappointed	1/10/2000
Miles City			1/1/2004
Qualifications (if required): public member			
Local Government Records Committee (Secretary of State)			
Ms. Kay Johnson	Secretary of State	Van Ausdol	1/1/2000
Chinook			12/31/2001
Qualifications (if required): Blaine County Clerk of Court			
Ms. Bonnie Ramey	Secretary of State	reappointed	1/1/2000
Boulder			12/31/2001
Qualifications (if required): Jefferson County Clerk and Recorder			
Ms. Peggy Bourne	Director,	not listed	1/1/2000
Great Falls	Historical Society		12/31/2001
Qualifications (if required): none specified			
Ms. Marcia Porter	Director,	not listed	1/1/2000
Missoula	Historical Society		12/31/2001
Qualifications (if required): none specified			
Montana Geographical Information Council (Administration)			
Mr. Richard Aspinwall	Governor	not listed	1/12/2000
Bozeman			1/12/2002
Qualifications (if required): representative of the University System			
Mr. Harold Blattie	Governor	not listed	1/12/2000
Columbus			1/12/2002
Qualifications (if required): representative of local government			

BOARD AND COUNCIL APPOINTEES FROM JANUARY, 2000

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Geographical Information Council (Administration)			
Mr. Stuart Blundell	Governor	not listed	1/12/2000
Helena			1/12/2002
Qualifications (if required): representative of private business active in land information systems			
Mr. Rick Breckenridge	Governor	not listed	1/12/2000
Kalispell			1/12/2002
Qualifications (if required): chair of the Montana Local Government GIS Coalition			
Ms. Mary Bryson	Governor	not listed	1/12/2000
Helena			1/12/2002
Qualifications (if required): Director of a state agency			
Ms. Pam Case	Governor	not listed	1/12/2000
Missoula			1/12/2002
Qualifications (if required): federal representative			
Mr. Lance Clampitt	Governor	not listed	1/12/2000
Denver			1/12/2002
Qualifications (if required): federal representative			
Mr. Steve Hellenenthal	Governor	not listed	1/12/2000
Billings			1/12/2002
Qualifications (if required): representative of local government			
Mr. Steven Henry	Governor	not listed	1/12/2000
Lewistown			1/12/2002
Qualifications (if required): chair of the Montana GIS Interagency Technical Working Group			

BOARD AND COUNCIL APPOINTEES FROM JANUARY, 2000

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Geographical Information Council (Administration) cont.			
Mr. Dan Mates	Governor	not listed	1/12/2000
Billings			1/12/2002
Qualifications (if required): federal representative			
Ms. Lois A. Menzies	Governor	not listed	1/12/2000
Helena			1/12/2002
Qualifications (if required): Director of the Department of Administration			
Mr. Jon Sesso	Governor	not listed	1/12/2000
Butte			1/12/2002
Qualifications (if required): representative of local government			
Mr. Steve Shannon	Governor	not listed	1/12/2000
Butte			1/12/2002
Qualifications (if required): representative of public utilities			
Mr. Chris Smith	Governor	not listed	1/12/2000
Helena			1/12/2002
Qualifications (if required): designee of a director of a state agency			
Ms. Karen Strege	Governor	not listed	1/12/2000
Helena			1/12/2002
Qualifications (if required): State Librarian			
Ms. CloAnn Villegas	Governor	not listed	1/12/2000
Pablo			1/12/2002
Qualifications (if required): representative of Native American tribes			
Montana Heritage Preservation and Development Commission (Montana Historical Society)			
Mr. F. W. Howell	Governor	Mihalic	1/6/2000
West Yellowstone			5/23/2000
Qualifications (if required): managing a facility catering to tourists			

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BOARD AND COUNCIL APPOINTEES FROM JANUARY, 2000

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
State Compensation Insurance Fund Board of Directors (Administration)			
Ms. Wendy Susott	Governor	Sample	1/20/2000
Missoula			4/28/2003
Qualifications (if required): representing private enterprise			
Tourism Advisory Council (Commerce)			
Mr. Rick McCamley	Governor	Dompier	1/10/2000
Whitefish			7/1/2002
Qualifications (if required): representing the Montana Innkeepers			
Mr. Richard J. Young	Governor	Redgrave	1/10/2000
Brockton			7/1/2000
Qualifications (if required): representing Missouri River Country and tribal government			
Vocational Rehabilitation Advisory Council (Public Health and Human Services)			
Mr. Don Judge	Director	not listed	1/5/2000
Helena			1/5/2002
Qualifications (if required): representing the State Workforce Investment Board			

VACANCIES ON BOARDS AND COUNCILS -- MARCH 1, 2000 through MAY 31, 2000

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Architects (Commerce) Mr. John W. Peterson, Kalispell Qualifications (if required): registered architect	Governor	3/27/2000
Board of Dentistry (Commerce) Dr. Thad Langford, Bozeman Qualifications (if required): dentist	Governor	3/29/2000
Board of Nursing Home Administrators (Commerce) Ms. Donna Kay Jennings, Missoula Qualifications (if required): nursing home administrator	Governor	5/28/2000
Board of Real Estate Appraisers (Commerce) Mr. A. Farrell Rose, Helena Qualifications (if required): certified real estate appraiser	Governor	5/1/2000
Ms. Jeannie Flechsenhar, Cascade Qualifications (if required): public member	Governor	5/1/2000
Board of Veterans' Affairs (Military Affairs) Mr. Ruben McKinney, Havre Qualifications (if required): veteran	Governor	5/18/2000
Executive Board of University of Montana (Education) Mr. Leonard Landa, Missoula Qualifications (if required): public member	Governor	4/15/2000
Montana Heritage Preservation and Development Commission (Montana Historical Society) Mr. F. W. Howell, West Yellowstone Qualifications (if required): managing a facility catering to tourists	Governor	5/23/2000

VACANCIES ON BOARDS AND COUNCILS -- MARCH 1, 2000 through MAY 31, 2000

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Source Water Assessment Program Advisory Council (Environmental Quality)		
Rep. Roger DeBruycker, Floweree	Director	5/20/2000
Qualifications (if required): none specified		
Mr. Pat Graham, Helena	Director	5/20/2000
Qualifications (if required): none specified		
Mr. Robert E. Willems, Harlowton	Director	5/20/2000
Qualifications (if required): none specified		
Mr. Bruce Farling, Missoula	Director	5/20/2000
Qualifications (if required): none specified		
Mr. Douglas Parker, Missoula	Director	5/20/2000
Qualifications (if required): none specified		
Montana-Alberta Boundary Advisory Council (Commerce)		
Rep. Ernest Bergsagel, Malta	Governor	3/9/2000
Qualifications (if required): representing the legislative branch		
Dr. Peter Blouke, Helena	Governor	3/9/2000
Qualifications (if required): representing the Department of Commerce		
Mr. Brian Cockhill, Helena	Governor	3/9/2000
Qualifications (if required): representing the Montana Historical Society		
Rep George Heavy Runner, Browning	Governor	3/9/2000
Qualifications (if required): representing the legislative branch		
Mr. Mark A. Simonich, Helena	Governor	3/9/2000
Qualifications (if required): representing the Department of Environmental Quality		

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VACANCIES ON BOARDS AND COUNCILS -- MARCH 1, 2000 through MAY 31, 2000

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana-Alberta Boundary Advisory Council (Commerce) cont.		
Mr. Marvin Dye, Helena	Governor	3/9/2000
Qualifications (if required): representing the Department of Transportation		
Rep. Linda J. Nelson, Medicine Lake	Governor	3/9/2000
Qualifications (if required): representing the legislative branch		
Mr. W. Ralph Peck, Helena	Governor	3/9/2000
Qualifications (if required): representing the Department of Agriculture		
Lt. Governor Judy Martz, Helena	Governor	3/9/2000
Qualifications (if required): representing the executive branch		
Montana-Alberta Boundary Advisory Council (Commerce) cont.		
Ms. Lisa Perry, Shepherd	Governor	3/9/2000
Qualifications (if required): representative of the Tourism Advisory Council		
Public Employees' Retirement Board (Administration)		
Mr. Terry Teichrow, Helena	Governor	4/1/2000
Qualifications (if required): public employee		
State Employees' Combined Campaign Steering Committee (Administration)		
Ms. Barbara Proulx, Helena	Director	3/30/2000
Qualifications (if required): none specified		
Ms. Joy McGrath, Helena	Director	3/30/2000
Qualifications (if required): none specified		
Upper Clark Fork River Basin Remediation and Restoration Education Advisory Council (Environmental Quality)		
Mr. Jack Lynch, Butte	Governor	4/23/2000
Qualifications (if required): local government representative		

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VACANCIES ON BOARDS AND COUNCILS -- MARCH 1, 2000 through MAY 31, 2000

Board/current position holderAppointed byTerm endUpper Clark Fork River Basin Remediation and Restoration Education Advisory Council
(Environmental Quality) cont.

Commissioner Gail Jones, Deer Lodge

Governor

4/23/2000

Qualifications (if required): local government representative

Ms. Sally Johnson, Missoula

Governor

4/23/2000

Qualifications (if required): member of the public who does not represent one of the
above

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