

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 11

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 CLINICAL LABORATORY SCIENCE PRACTITIONERS  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA  
(As of July 1, 2001, the Department of Labor and Industry)

In the matter of the proposed ) NOTICE OF PUBLIC HEARING  
amendment of ARM 8.13.306 ) ON PROPOSED AMENDMENT  
pertaining to continuing )  
education requirements )

TO: All Concerned Persons

1. On July 5, 2001, at 10:00 a.m., a public hearing will be held in the Professional and Occupational Licensing conference room #487, 4th Floor, Federal Building, 301 South Park Avenue, 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 Board of Clinical Laboratory Science Practitioners no later than 5:00 p.m., on June 20, 2001, to advise us of the nature of the accommodation that you need. Please contact Lorri Sandrock, Board of Clinical Laboratory Science Practitioners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2386; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail compolcls@state.mt.us.

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

8.13.306 CONTINUING EDUCATION REQUIREMENTS (1) All applicants for renewal of licenses shall have completed continuing education as provided in this rule as a condition to establish eligibility for renewal. The continuing education requirement will not apply until the licensee's first full year of licensure. ~~Continuing education courses must be taken after October 1, 1993, to qualify under this rule.~~

(a) Fourteen hours of continuing education will be required annually for renewal of a license.

(b) Up to ~~14~~ seven hours earned in excess of the 14 hours required in a licensing year may be carried over into the succeeding year.

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

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

REASON: The Board is proposing this rule change to require that licensees obtain at least half of the required 14 hours of continuing education (CE) every year. It is the board's position that clinical laboratory science practitioners

(licensees) need to stay current with the changing trends in the profession on a yearly basis by participating in at least seven hours of CE every year. The board discussed eliminating carry-over CE hours in its entirety. They felt the alternative of allowing licensees to carry over seven hours of CE would accomplish this purpose while allowing the licensee to create a bank of CE that they could use in case of emergency.

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 Clinical Laboratory Science Practitioners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to [compolcls@state.mt.us](mailto:compolcls@state.mt.us) and must be received no later than 5:00 p.m. on July 5, 2001. If comments are submitted in writing, the Board requests that the person submit seven copies of their comments.

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

6. The Board of Clinical Laboratory Science 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 all Board of Clinical Laboratory Science Practitioners administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Clinical Laboratory Science Practitioners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to [compolcls@state.mt.us](mailto:compolcls@state.mt.us) or may be made by completing a request form at any rules hearing held by the agency.

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

BOARD OF CLINICAL LABORATORY  
SCIENCE PRACTITIONERS  
KAREN McNUTT, CHAIRPERSON

By: /s/ Richard M. Weddle  
Staff Attorney  
Department of Commerce

By: /s/ Richard M. Weddle  
Rule Reviewer

Certified to the Secretary of State, May 29, 2001.

BEFORE THE MONTANA STATE ELECTRICAL BOARD  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA  
(As of July 1, 2001, the Department of Labor and Industry)

In the matter of the proposed ) NOTICE OF PUBLIC HEARING  
amendment of ARM 8.18.402, ) ON PROPOSED AMENDMENT,  
8.18.404, 8.18.406, 8.18.407, ) ADOPTION AND REPEAL  
8.18.408, 8.18.409 and 8.18.413 )  
and the adoption of new rules )  
pertaining to definitions, )  
licensee responsibilities, )  
electrical contractor licensing, )  
licensure by reciprocity or )  
endorsement, renewals and the )  
repeal of ARM 8.18.403 and )  
8.18.411 pertaining to general )  
responsibilities and licensure )  
of out-of-state applicants )

TO: All Concerned Persons

1. On July 23, 2001 at 9:00 a.m., a public hearing will be held in the Professional and Occupational Licensing conference room B-07, Federal Building, 301 South Park Avenue, Helena, Montana to consider the proposed amendment, adoption and repeal of the above-stated rules.

2. The Department of 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 Montana State Electrical Board no later than 5:00 p.m., on July 13, 2001, to advise us of the nature of the accommodation that you need. Please contact Becky Salminen, Montana State Electrical Board, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2329; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail compolele@state.mt.us.

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

8.18.402 ELECTRICIAN APPLICATIONS AND RENEWALS (1) The practical experience requirement set forth in 37-68-304, 37-68-305 and 37-68-314, MCA, shall be of such nature as is satisfactory to the board.

(a) The board will only accept electrical experience in the construction field. Maintenance work, as defined in [New Rule I] which is exempt under 37-69-103, MCA, will not be accepted towards fulfillment of the practical experience requirement.

(2) For the journeyman license, a maximum of 50% of the electrical experience in the construction field may be residential in nature. The balance must be either a blend of commercial, industrial, and institutional or a combination

~~thereof. Maintenance work which is exempt under 37-68-103, MCA, will not be accepted towards fulfillment of the practical experience requirement.~~

~~(i) Maintenance is hereby defined as ordinary and customary in-plant or on-site installations, modification, additions or repairs which shall be limited to: relamping fixtures, replacing ballasts, trouble shooting motor controls, replacing motors, breakers, magnetic starters, in a kind for kind manner. Also included are connection of specific items of specialized equipment that can be directly connected to an existing branch circuit panel by means of factory installed leads. However, if a new circuit is required to operate the equipment, or if the size of the supply conductors need be increased, this shall be considered new work, if permitted and inspected by the appropriate building code authority.~~

~~(3) For the master electrician license, the experience must be either commercial, residential, industrial, institutional or a combination thereof.~~

~~(b) (4) An applicant will be given shall have one year from the date of his/her board approval to take the examination for which he/she is applying application was approved. If the examination is not taken within that one year period, the applicant will be required to submit a new application, provide written verification and pay the applicable fees.~~

~~(2) The board's requirements set forth in 37-68-312, MCA, shall include certification to the board of the following by the electrical contractor applicant before a license will be issued or renewed:~~

~~(a) worker's compensation coverage as required under 39-71-101, MCA;~~

~~(b) unemployment insurance coverage as required under 39-51-101, MCA.~~

~~(3) (5) All applications must be filed 15 days prior to the next scheduled board meeting. All applications shall be approved or disapproved on a case-by-case basis as the board may deem proper.~~

~~(4) Renewal dates shall be set forth in ARM 8.2.208.~~

Auth: Sec. 37-1-131, 37-68-201, MCA

IMP: Sec. 37-68-103, 37-68-201, 37-68-302, 37-68-304, 37-68-305, MCA

REASON: The Board is proposing to amend this rule for clarification and to provide a time frame when applications are due in the office in order to provide processing time prior to Board review. The Board is proposing to delete (4) from this rule and adopt a new rule for renewals.

8.18.404 TEMPORARY PRACTICE PERMIT (1) A temporary practice permit may be issued to an applicant for a residential or journeyman electrician license upon completion of an application, submission of verification of experience as required under 37-68-305, MCA, payment of the appropriate

fees, and approval by the board or designated board representative. An applicant for a master electrician license may be issued a journeyman temporary permit.

~~(2) An applicant for a residential or journeyman electrician license may act as a licensed residential an electrician after making application for residential electrician license, paying the appropriate fee, stating the applicant's qualifications to the board, being approved by the board and being issued in the category for which an application is approved, as long as the applicant is employed by a licensed electrical contractor and a temporary practice permit has been issued.~~

~~(a) (3) A temporary practice permit issued to an applicant for a residential an electrician license shall expire on the date the next scheduled licensure examination results are received or in the case of licensure by reciprocity or endorsement, on the date that notice is received of the board's decision.~~

~~(b) An applicant for a residential electrician license shall not be issued more than one temporary permit.~~

~~(2) An applicant for a journeyman electrician license may act as a licensed journeyman electrician after making application, paying the appropriate fee, stating the applicant's qualifications to the board, being approved by the board and being issued a temporary permit.~~

~~(a) A temporary permit issued to an applicant for a journeyman electrician license shall expire on the date the next scheduled licensure examination results are received.~~

~~(b) An applicant for a journeyman electrician license shall not be issued more than one temporary permit.~~

~~(3) An applicant for a master electrician license may act as a licensed master electrician after making application, paying the appropriate fee, stating his qualifications to the board, being approved by the board and being issued a temporary permit.~~

~~(a) A temporary permit issued to an applicant for a master electrician license shall expire on the date the next scheduled licensure examination results are received.~~

~~(b) An applicant for a master electrician license shall not be issued more than one temporary permit.~~

~~(4) An applicant who has been issued a temporary permit as a residential, journeyman or master electrician shall not be eligible for another temporary permit in any classification of licensure.~~

~~(5) (4) A temporary practice permit does not allow a journeyman or master applicant to act as a responsible electrician for an a limited electrical contractor, nor does it permit the applicant to obtain an electrical contractor license. A temporary practice permit allows an applicant only to work under a properly licensed electrical contractor.~~

~~(6) (5) An applicant for out-of-state licensure by endorsement or reciprocity may be issued a temporary practice permit under the conditions above.~~

~~(a) In the case of an out-of-state licensure applicant,~~



‡The temporary practice permit shall expire at such time as the board approves the application and a license is issued or the board denies the application.

(6) A second temporary practice permit may be issued at the discretion of the board, on a case-by-case basis, only to an applicant who has failed the examination with a score of 70 to 74%, is registered to take the next scheduled examination and upon receipt of:

(a) a letter from the applicant requesting a second temporary practice permit and submitting proof of registration to take the next scheduled examination; and

(b) a letter from the employer stating that the applicant is employed and under the supervision of a licensed journeyman or master electrician.

(7) If the applicant does not register for the next scheduled examination, the second temporary practice permit expires on the date the board office is notified by the testing agency of the registration of the applicants.

Auth: Sec. 37-1-319, 37-68-201, MCA

IMP: Sec. 37-1-305, MCA

REASON: The Board is proposing the amendments to this rule to clarify who can apply for a temporary practice permit and what type of work can be done under the different category of the permit. Additionally, the rule clarifies what is necessary to apply for a second permit.

8.18.406 APPRENTICE REGISTRATION (1) will remain the same.

(2) ~~All master electricians, (and residential journeyman electricians in the case of residential construction)~~ The responsible electrician for a licensed electrical contractor shall be responsible for assuring that all apprentices under their general direction and supervision comply with the requirements of this rule.

(3) will remain the same.

(a) ~~present evidence that he/she is enrolled of~~ enrollment in an apprentice training program registered by the apprenticeship bureau, Montana department of labor and industry, ~~state of Montana;~~ or

(b) present evidence directly to the board that ~~he/she is enrolled of enrollment~~ in an apprentice training program which is equivalent to programs of the Montana department of labor and industry.

(4) For purposes of determining whether a program is equivalent within the meaning of (3)(b) above, the board will consider and apply the current apprenticeship bureau standards. If the applicant employer's proposed program meets or exceeds the apprenticeship bureau's program then equivalency will be determined to have been met. In determining whether a proposed program meets or exceeds the apprenticeship bureau standards, the board will consider all factors used by the apprenticeship bureau. Interpretation of

existence of these ~~factors~~ standards will be made with an overall expectation that proper safety standards for the apprentice are met and that the consumer is receiving proper and adequate electrical installation services from the apprentice and ~~his/her~~ the apprentice's employer.

(5) With respect to the apprenticeship programs established directly through the board, the board reserves the right to monitor said programs and to demand and receive any and all necessary progress reports from the approved program.

(6) will remain the same.

Auth: Sec. 37-1-131, 37-68-201, MCA

IMP: Sec. 37-68-303, MCA

REASON: The Board is proposing the amendments to this rule for consistency, clarification and to use politically correct language.

8.18.407 FEE SCHEDULE

- (1) Examination fee (paid directly to the testing agency upon board approval of application) \$50 75
- (2) Application fee for a license by examination (non-refundable) (includes original license fee) 120
- (3) Contractor - original license fee 250
- (4) will remain the same.
- (5) Out-of-state license applicants 25 125  
Application by endorsement or reciprocity (includes original license fee)
- (6) through (8) will remain the same.
- (9) Fees are non-refundable.

Auth: Sec. 37-1-131, 37-1-134, 37-68-201, MCA

IMP: Sec. 37-68-312, MCA

REASON: The Board is proposing the amendments to this rule to provide that the examination fee has increased to \$75 and is paid directly to the testing agency. The number of applicants affected by this amendment is approximately 200 per year. The Board is proposing the amendment to (5) to combine the fee set forth in (4)(b), (c) or (d) and (5) into one fee rather than two. There is no net increase in revenue to the Board.

8.18.408 EXAMINATIONS (1) A person who has failed to pass any examination for which ~~he/she has applied application was made~~, may, upon the payment of the appropriate fee, take the next ~~subsequent scheduled~~ scheduled examination ~~scheduled by the state electrical board~~. However, if ~~he/she~~ the applicant fails the test a second time ~~he/she~~ they may not take the test again within a six-month period, and in addition, must:

(a) ~~D~~demonstrate to the board by ~~his~~ a sworn statement that ~~he~~ the applicant has conscientiously studied at least 20 hours ~~on in~~ in the areas of the examination that ~~he were~~ were failed; ~~to pass, since his latest failure to pass.~~

(b) Pprovide a signed and dated list of the books or

materials studied, specifying the name, author, edition (or latest copyright year). ~~The list is to be dated and signed by a librarian.; and~~

(c) ~~Provide evidence proof of having attended at least one eight-hour electrical code seminar approved by the board, since his/her the initial failure to pass.~~

(2) In the event an applicant fails to pass any examination three or more times, ~~the following rules shall apply applicant must:~~

(a) ~~He must wait at least one year from his last failure to be able to take the last failed exam before taking the exam again.;~~

(b) ~~He must make reapplication to the board.;~~

(c) ~~He must demonstrate to the board by his the applicant's sworn statement that he the applicant has conscientiously studied at least 40 hours on in all the areas covered by the last exam, 30 hours of which shall have been devoted to those test areas wherein the applicant failed to achieve a passing score.;~~

(d) ~~The applicant must provide a signed and dated list of the books or materials studied, specifying the name, author, edition (or latest copyright year). This list to be dated and signed by a librarian.; and~~

(e) ~~Provide evidence proof of having attended at least two eight-hour electrical code seminars approved by the board.~~

(3) will remain the same.

(4) ~~If an applicant has passed the examination, he/she must pay the required licensure fee within 60 days from the date applicant is notified that he/she has passed the examination. Failure to pay the license fee within that period will nullify the examination and the applicant must pass another examination to obtain his/her license. An applicant who fails to take an examination within 18 months from the date of the last examination that was failed will be required to submit a new application, provide written verification and pay the applicable fees. Upon receipt of a new application, the board will require the applicant to submit the documentation required in (1) or (2) depending on the number of times the applicant has failed the examination.~~

Auth: Sec. 37-1-131, 37-68-201, MCA

IMP: Sec. 37-68-201, 37-68-304, 37-68-305, MCA

REASON: The Board is amending this rule to update the language to delete gender specific references and to clarify how long an application is kept active without having to reapply.

8.18.409 CONTINUING EDUCATION (1) will remain the same.

(a) ~~If a licensee who let his/her license expire reapplies for re-licensure, within the next three year license period, he/she will be required to obtain the 24 hours of continuing education before he/she is issued another license.~~

(2) will remain the same.

Auth: Sec. 37-1-131, 37-1-319, 37-68-201, MCA  
IMP: Sec. 37-1-306, 37-68-201, MCA

REASON: The Board is proposing to delete (a) because it is in conflict with 37-68-310, MCA which allows a licensee one year from expiration to renew a license without having to re-take the examination.

8.18.413 COMPLAINT PROCEDURE (1) and (2) will remain the same.

(3) Upon receipt of ~~the written~~ a signed complaint form, the board office shall log in the complaint and assign it a complaint number. The complaint shall then be sent to the licensee complained about for a written response. Upon receipt of the licensee's written response, both complaint and response shall be considered by the screening panel of the board for appropriate action including dismissal, investigation or a finding of reasonable cause of violation of a statute or rule. The board office shall notify both complainant and licensee of the determination made by the screening panel.

(4) will remain the same.

(5) The screening panel ~~shall review will not consider~~ anonymous complaints to determine whether appropriate investigative or disciplinary action may be pursued, or whether the matter may be dismissed for lack of sufficient information.

Auth: Sec. 37-1-131, 37-68-201, MCA  
IMP: Sec. 37-1-304, MCA

REASON: The Board is proposing these amendments for clarification and to eliminate the obligation to accept anonymous unsigned complaints.

4. The proposed new rules provide as follows:

NEW RULE I DEFINITIONS For purposes of this subchapter, the following definitions apply:

(1) "Full-time employment" means employment wherein the responsible electrician is available to procure, perform, administer, and supervise all electrical work being performed by the electrical contractor.

(2) "Limited electrical contractor" means a licensed electrical contractor limited to residential construction consisting of less than five living units in a single structure.

(3) "Maintenance" means ordinary and customary in-plant or on-site installations, modifications, additions or repairs which shall be limited to relamping fixtures, replacing ballasts, trouble shooting motor controls, replacing motors, breakers, magnetic starters, in kind-for-kind manner. Also included are connection of specific items of specialized equipment that can be directly connected to an existing branch

circuit panel by means of factory installed leads. If a new circuit is required to operate the equipment or if the size of the supply conductors needs to be increased, it shall be considered new work if permitted and inspected by the appropriate building code authority.

(4) "Responsible electrician" means the person engaged in a full-time capacity that is responsible for all licensed electrical work performed by the electrical contractor.

(5) "Unlimited electrical contractor" means a licensed electrical contractor that is licensed to perform electrical work on commercial, residential, industrial and institutional electrical installations as covered by the national electrical code.

Auth: Sec. 37-1-131, 37-68-201, MCA

IMP: Sec. 37-68-103, 37-68-201, 37-68-312, MCA

**REASON:** The Board is proposing to adopt this rule to define the term "maintenance" as referred to in 37-68-103, MCA; to provide definitions for the licensing categories of limited and unlimited contractors; and to define the terms "responsible electrician" and "full-time employment". This will assist the board to administer the laws set forth by legislation.

NEW RULE II LICENSEE RESPONSIBILITIES (1) Licensed residential, journeyman or master electricians shall have their license on their person at all times when employed at the trade. A licensed residential, journeyman, master or apprentice electrician who does not have the required proof of licensure while working in the electrical field may be subject to the issuance of a licensing citation under 37-68-316, MCA for failure to provide proof of licensure.

(2) Electrical contractors shall have their contractor's license posted at their place of business.

(3) A licensed residential electrician shall perform work only in the employment of a licensed electrical contractor. A licensed residential electrician shall perform work only on residential construction consisting of less than five living units in a single structure.

(4) A licensed journeyman or master electrician who is not the responsible electrician for a licensed electrical contractor, shall perform work only in the employment of a licensed electrical contractor.

(5) The responsible electrician of a licensed electrical contractor shall not allow any person to perform electrical work unless properly licensed or working with a valid temporary practice permit.

(6) The responsible electrician of a licensed electrical contractor is responsible for obtaining any permit required by the state of Montana or the state or local building code enforcement entity and is responsible for ensuring that the work performed meets the requirements of the state of Montana and the national electrical code.

(7) An electrical contractor, master, journeyman, or residential electrician may not allow their license to be used by another individual, firm, corporation or business for the purpose of obtaining electrical permits or for performing electrical work.

(8) An electrical contractor, master, journeyman, or residential electrician may not perform work outside of the scope of their license.

Auth: Sec. 37-1-131, 37-68-201, MCA

IMP: Sec. 37-1-308, 37-1-316, 37-1-317, 37-68-301, 37-68-315, MCA

REASON: This new rule, as proposed, moves general responsibilities for the licensees from ARM 8.18.403 to a new sub-chapter on general provisions.

NEW RULE III ELECTRICAL CONTRACTOR LICENSING (1) An applicant for an original license or renewal of an electrical contractor license shall submit a completed application, appropriate fees, and certification of the following:

(a) worker's compensation coverage as required under 39-71-101, MCA; and

(b) unemployment insurance coverage as required under 39-51-101, MCA.

(2) The board shall issue a limited electrical contractor license to an applicant who submits the required documentation listed in (1) above and there is a licensed journeyman designated on a form prescribed by the board as the responsible electrician.

(3) The board shall issue an unlimited electrical contractor license to an applicant who submits the required documentation listed in (1) above and there is a licensed master designated on a form prescribed by the board as the responsible electrician.

(4) An owner of an unlimited electrical contracting business not licensed as a master electrician, must employ a master electrician on a full-time basis. No holder of a master electrician's license shall be named as the responsible electrician for more than one unlimited electrical contractor.

(5) An owner of a limited electrical contracting business not licensed as a journeyman electrician shall employ a journeyman electrician on a full-time basis. No holder of a journeyman electrician's license may be named as the responsible electrician for more than one electrical contractor.

(6) A responsible electrician who leaves the employment of a licensed electrical contractor, for whatever reason, must provide written notification to the board office of that fact, within ten working days. The licensed electrical contractor must provide the board office within ten working days, on a prescribed form, of the change of responsible electrician. Failure to name another responsible electrician within ten

working days shall be cause for suspension of the electrical contractor license and cause for revocation.

(7) A licensed master or journeyman electrician, in the case of residential construction, may be relieved from further responsibility under any application or permit if the electrician has left or been discharged from the employment of an electrical contractor or owner, provided the electrician sends a notice in writing to that effect within ten working days to the state electrical board and the state or local building code enforcement entity, whichever is applicable.

Auth: Sec. 37-1-131, 37-68-201, MCA  
IMP: Sec. 37-68-312, MCA

REASON: The Board is proposing to adopt this rule to set forth the requirements for an electrical contractor's license and types of licenses depending on whether the responsible electrician is a journeyman or master and setting standard time frames to send notification to the board office.

NEW RULE IV LICENSURE BY RECIPROCITY OR ENDORSEMENT

(1) The board may, on a case-by-case basis, enter into a reciprocity agreement with another state or jurisdiction whose requirements are substantially equivalent or greater than the standards of this state for purposes of issuing a license as a residential or journeyman electrician.

(2) The board may issue a license by endorsement to an applicant provided that the applicant:

(a) files a completed application with the required fees;

(b) holds a current, valid and unrestricted license to practice in the category applied for in another state or jurisdiction;

(c) supplies a copy of the laws and rules in effect at the time of application to this state which shows that the standards in that state are equivalent to or greater than the standards in effect in this state; and

(d) provides official written verification directly from the other state(s) or jurisdiction(s) that the license has been held by the applicant for one year, that the license is active, that the license is in good standing, and that the test score received was equal to or greater than 75.

(3) A license that was issued by a city, county, or other similar municipality will not be considered for licensure by reciprocity or endorsement.

(4) The Montana electrical board does not reciprocate or endorse master electrician or electrical contractor licenses.

Auth: Sec. 37-1-131, 37-68-201, MCA  
IMP: Sec. 37-1-304, MCA

REASON: The contents of this rule are being moved from ARM 8.18.411 for easier location and will clarify what is

necessary for a person to submit when applying for licensure by reciprocity or endorsement.

NEW RULE V RENEWALS (1) Renewal dates shall be set forth in ARM 8.2.208. Renewal is the responsibility of the licensee and although the board may send out reminder notices to the last known address of the licensee, the lack of receipt of such notice does not relieve the licensee of the responsibility of renewal.

Auth: Sec. 37-1-131, 37-68-201, MCA  
IMP: Sec. 37-68-310, MCA

REASON: The Board is proposing to adopt this rule to move this provision from ARM 8.18.402 and to provide clarification that it is the responsibility of the licensee to ensure that their license is renewed timely.

5. ARM 8.18.403 GENERAL RESPONSIBILITIES, a rule proposed to be repealed is on ARM page 8-547.1 and 8-547.2.

Auth: Sec. 37-68-201, MCA  
IMP: Sec. 37-68-301, 37-68-302, 37-68-310, MCA

REASON: The Board is proposing to repeal this rule and has transferred parts of this rule into other rules amended and/or adopted in this notice.

ARM 8.18.411 LICENSURE OF OUT-OF-STATE APPLICANTS, a rule proposed to be repealed is on ARM page 8-553.

Auth: Sec. 37-1-131, 37-68-201, MCA  
IMP: Sec. 37-1-304, MCA

REASON: The Board is proposing to repeal this rule and adopt NEW RULE IV to include these provisions.

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 Montana State Electrical Board, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to compolele@state.mt.us and must be received no later than the close of the hearing on July 23, 2001. If comments are submitted in writing, the Board requests that the person submit eight copies of their comments.

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

8. The Montana State Electrical Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. Persons who wish to have their name added to the list shall make a written request to the board which includes the name and mailing



address of the person to receive notices and specifies that the person wishes to receive notices regarding all Montana State Electrical Board administrative rulemaking or other administrative proceedings. Such written request may be mailed or delivered to the Montana State Electrical Board, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to compolele@state.mt.us or may be made by completing a request form at any rules hearing held by the agency.

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

MONTANA STATE ELECTRICAL BOARD  
TODD STODDARD, CHAIRMAN

By: /s/ Richard M. Weddle  
Staff Attorney  
Department of Commerce

By: /s/ Richard M. Weddle  
Rule Reviewer

Certified to the Secretary of State, May 29, 2001.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the amendment )  
of ARM 17.8.514, pertaining to )  
air quality open burning fees )

NOTICE OF PUBLIC HEARING ON  
PROPOSED AMENDMENT  
(AIR QUALITY)

TO: All Concerned Persons

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

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

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

17.8.514 AIR QUALITY OPEN BURNING FEES (1) through (3) remain the same.

(4)(a) The major open burning air quality permit application fee shall be based on the actual or estimated actual amount of air pollutants emitted by the applicant in the last calendar year during which the applicant conducted open burning pursuant to an air quality open burning permit for major open burning sources, as required under ARM 17.8.610 (Major Open Burning Source Restrictions).

(a) The fee shall be the greater of the following, as adjusted by any amount determined pursuant to (4)(b), below:

(i) a fee calculated using the following formula:

tons of total particulate emitted in the previous  
appropriate calendar year,  
multiplied by ~~\$13.62~~ \$15.84; plus  
tons of oxides of nitrogen emitted in the previous  
appropriate calendar year,  
multiplied by ~~\$3.40~~ \$3.96; plus  
tons of volatile organic compounds emitted in the  
previous appropriate calendar year,  
multiplied by ~~\$3.40~~ \$3.96; or

(ii) and (b) remain the same.

AUTH: 75-2-111, MCA

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

4. In conjunction with the Montana Airshed Group, the Department of Environmental Quality operates a Smoke Management Program for major open burning. Pursuant to Section 75-2-220, MCA, the Department assesses fees for major open burning permit applications, to operate the program. The program establishes burning time restrictions based upon weather conditions, and compliance with the program is the required air quality control mechanism for open burning during the fall burning season.

Each year, the Department develops a budget for the program, in consultation with the Airshed Group, which includes state and federal land management agencies and private timber companies. Fees assessed to individual burners are based upon the budget and the burner's actual, or estimated actual, emissions during the previous calendar year in which the burner conducted open burning pursuant to a major open burning permit.

The current fee is the greater of \$13.62 per ton of total particulate emitted by the burner, plus \$3.40 per ton of nitrogen oxide, and \$3.40 per ton of volatile organic compounds (VOCs), or a minimum fee of \$250. The Board is proposing to increase the per ton fees for calendar year 2001 to \$15.84, \$3.96 and \$3.96, respectively.

The proposed fee increase is necessary due to increased costs to meet the budget for the Department to operate the program for the upcoming fall burning season. The Board expects the Department's costs related to the program to increase by \$3,075 in calendar year 2001. The primary portion of the proposed fee increase represents increased travel costs for Department staff to attend program meetings. In the past, all program meetings were held in Missoula, Montana. This year, two Department staff members will need to travel to Boise, Idaho, for one meeting and three staff members will need to travel to Missoula for approximately four meetings. The remainder of the proposed fee increase represents increased costs for publishing legal notices related to the major source opening burning program.

The Board expects there to be fourteen major open burners in the state this year, which would be the same number as last year. Under the proposed fee increase, the fourteen major open burners would pay a total of \$43,885.97 in fees for calendar year 2001, which represents a budget and fee increase of \$3,075 from the \$40,810.97 budget and fees paid for calendar year 2000.

5. Concerned persons may submit their data, views or arguments concerning the proposed action either in writing or orally at the hearing. Written data, views or arguments may also be submitted to the Board of Environmental Review, P.O. Box 200901, Helena, Montana, 59620-0901, no later than July 19, 2001. To be guaranteed consideration, the comments must be postmarked on or before that date. Written data, views or arguments may also be submitted electronically via e-mail

addressed to Leona Holm, Board Secretary, at "lholm@state.mt.us", no later than 5 p.m. July 19, 2001.

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

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

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

BOARD OF ENVIRONMENTAL REVIEW

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

Reviewed by:

David Rusoff  
David Rusoff, Rule Reviewer

Certified to the Secretary of State May 25, 2001.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the amendment )	NOTICE OF PUBLIC HEARING ON
of ARM 17.8.302 and 17.8.340, )	PROPOSED AMENDMENT
pertaining to emission )	
guidelines for existing small )	(AIR QUALITY)
municipal waste combustion )	
units )	

TO: All Concerned Persons

1. On July 12, 2001 at 10:30 a.m. in Room 35 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, the Board of Environmental Review will hold a hearing to consider the proposed amendment of the above-captioned rules.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5 p.m., July 9, 2001, to advise us of the nature of the accommodation you need. Please contact the Board at P.O. Box 200901, Helena, Montana, 59620-0901; phone (406) 444-2544; fax (406) 444-4386.

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

17.8.302 INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the board hereby adopts and incorporates herein by reference the following:

(a) remains the same.

(b) 40 CFR Part 60, which pertains to standards of performance for new stationary sources and modifications, including the final rule published at 65 FR 76378 on December 6, 2000, "Emission Guidelines for Existing Small Municipal Waste Combustion Units", to be codified at 40 CFR Part 60, subpart BBBB;

(c) through (f) remain the same.

(2) through (4) remain the same.

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-203, MCA

17.8.340 STANDARD OF PERFORMANCE FOR NEW STATIONARY SOURCES AND EMISSION GUIDELINES FOR EXISTING SOURCES (1) through (5) remain the same.

(6) Existing small municipal waste combustion units, as defined in 40 CFR 60.1550(a), and that are not exempt under 40 CFR 60.1555, must:

(a) comply with the applicable requirements in 40 CFR 60, subpart BBBB;

(b) achieve final compliance with the Montana small municipal waste combustion unit plan (state plan) or cease

operation as expeditiously as practicable but not later than the earlier of the following two dates:

(i) December 6, 2005; or

(ii) 3 years after the effective date of state plan approval by EPA; and

(c) for Class I units, as defined in 40 CFR 60.1940, for which construction was commenced after June 26, 1987, comply with the dioxins/furans and mercury limits specified in Tables 2 and 3 of 40 CFR 60, subpart BBBB, by the later of the following two dates:

(i) 1 year after the effective date of state plan approval; or

(ii) 1 year following the issuance of a revised construction or operation permit, if a permit modification is required.

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-203, MCA

4. The Board is proposing to amend ARM 17.8.302 and 17.8.340 to adopt and incorporate by reference federal emission guidelines for existing small municipal waste combustion (MWC) units, promulgated by the U.S. Environmental Protection Agency (EPA) on December 6, 2000, at Volume 65 of the 2000 Federal Register, pages 76378 through 76405. The federal regulations will be codified in the Code of Federal Regulations at 40 CFR Part 60, subpart BBBB.

The EPA guidelines do not directly regulate MWC units but require states to develop plans to limit air emissions from existing small MWC units that have a design combustion capacity of 35 to 250 tons per day of municipal solid waste and for which construction was commenced on or before August 30, 1999. (Small MWC units constructed after that date will be subject to the New Source Performance Standard for new small MWC units, also adopted on December 6, 2000, and to be codified in 40 CFR Part 60, subpart AAAA.).

The small MWC unit guidelines are intended to reduce emissions of certain harmful air pollutants, including organics (dioxins/furans), metals (cadmium, lead, mercury, and particulate matter), and acid gases (hydrogen chloride, sulfur dioxide, and nitrogen oxides), that are known, or suspected, to cause adverse health and environmental effects. Under the guidelines, emission limits are based on pollutant concentration. The guidelines provide alternative percentage reduction requirements for mercury, sulfur dioxide, and hydrogen chloride, provide opacity and fugitive ash requirements, and incorporate good combustion practice requirements, including requirements for operator training, operator certification, and operation of MWC units. As part of the good combustion practice requirements, the guidelines establish requirements for MWC operating load, flue gas temperature at the particulate matter control device inlet, and carbon feed rate.

There is one existing MWC unit in Montana that is subject to the emission guidelines in Subpart BBBB. The unit is located in Livingston and is known as the Park County Incinerator. Under 40 CFR 60.1505(b), states having small MWC units subject to Subpart BBBB must submit to EPA by December 6, 2001, a state plan containing enforceable state mechanisms for implementing the emission guidelines. The proposed amendment of ARM 17.8.302(1)(b) and the addition of ARM 17.8.340(6) would provide the enforceable mechanisms for a Montana state plan.

Under the emission guidelines, the Park County Incinerator would require acid gas (hydrogen chloride and sulfur dioxide) control. Probably, acid gas control would be achieved by installation of an acid gas scrubber. Also, a dioxin/furan control (carbon absorption) system would be required. The estimated total cost of these controls is \$800,000 - 1,000,000.

The proposed amendments to ARM 17.8.302 would adopt and incorporate by reference the federal emission guidelines. The proposed amendments to ARM 17.8.340 would add a new subsection (6) requiring compliance with 40 CFR 60, subpart BBBB, requiring compliance with the Montana Small Municipal Waste Combustion Unit Plan developed under subpart BBBB, and providing compliance dates.

Under 40 CFR 60.1525, if a state having a MWC unit subject to Subpart BBBB does not submit an approvable plan to implement the emission guidelines, EPA will develop a federal plan and implement the guidelines in that state. If Montana does not adopt the emission guidelines and submit an approvable state plan, the Park County MWC unit will be required to comply with a federal plan. The policy of the Montana legislature has been for the state to obtain and retain primacy over environmental protection programs. To enable the state to obtain primacy over implementation of the guidelines for existing small MWC units, it is necessary for the Board to amend the rules, as proposed.

5. Concerned persons may submit their data, views or arguments concerning the proposed action either in writing or orally at the hearing. Written data, views or arguments may also be submitted to the Board of Environmental Review, P.O. Box 200901, Helena, Montana, 59620-0901, no later than July 19, 2001. To be guaranteed consideration, the comments must be postmarked on or before that date. Written data, views or arguments may also be submitted electronically via e-mail addressed to Leona Holm, Board Secretary, at "lholm@state.mt.us", no later than 5 p.m. July 19, 2001.

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

7. The Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list

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

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

BOARD OF ENVIRONMENTAL REVIEW

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

Reviewed by:

David Rusoff  
David Rusoff, Rule Reviewer

Certified to the Secretary of State May 25, 2001.



BEFORE THE BOARD OF COSMETOLOGISTS  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the amendment ) NOTICE OF AMENDMENT  
of ARM 8.14.401, 8.14.602, ) AND ADOPTION  
8.14.605, 8.14.1209, 8.14.1210,) )  
8.14.1213, 8.14.1214, and ) )  
8.14.1216 pertaining to ) )  
general requirements, ) )  
inspections - school layouts, ) )  
curriculum, construction of ) )  
utensils and equipment, ) )  
cleaning and sanitizing tools ) )  
and equipment, storage and ) )  
handling of salon preparations,) )  
disposal of waste, premises ) )  
and the adoption of new rule I ) )  
pertaining to definitions ) )

TO: All Concerned Persons

1. On December 21, 2000, the Board of Cosmetologists published a notice of the proposed amendment and adoption of the above-stated rules at page 3467, 2000 Montana Administrative Register, issue number 24. The hearing was held January 23, 2001.

2. The Board has amended ARM 8.14.1214 exactly as proposed. The Board has amended 8.14.401, 8.14.602, 8.14.605, 8.14.1209, 8.14.1210, 8.14.1213 and 8.14.1216 as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

8.14.401 GENERAL REQUIREMENTS (1) through (6) remain the same as proposed.

~~(7) Establishments shall prominently post a notice of all services offered that are not regulated by this board and are performed by individuals who are not licensed by this board.~~

(8) remains the same as proposed but will be renumbered (7).

8.14.602 INSPECTION - SCHOOL LAYOUT (1) through (5) remain the same as proposed.

(6) For all schools or courses licensed after ~~March~~ April 1, 2001, a separate classroom, other than the clinic floor, must be provided for a theory/basic class for each course licensed. Each classroom must be equipped with course appropriate charts or posters, a blackboard or white board, chairs and writing surfaces sufficient for the school's instruction needs. The school shall maintain a reference library which may be located in the classroom, containing up-to-date books on theory for each course taught, medical dictionary, current beauty culture magazines, as well as a

current copy of the Montana state cosmetology laws and rules. The classroom may be used as a recitation, demonstration or study room.

(7) remains the same as proposed.

8.14.605 CURRICULUM - COSMETOLOGY, MANICURING AND ESTHETICS STUDENTS (1) through (6)(e) remain the same as proposed.

(f) waxing (face, neck, and hands, and 20 hours superfluous hair anywhere on the body, including tweezing

(g) through (11) remain the same as proposed.

8.14.1209 IMPLEMENTS, TOOLS, INSTRUMENTS, SUPPLIES AND EQUIPMENT (1) Effective ~~March~~ April 1, 2001, any new machine or device used in the practice of cosmetology, esthetics, manicuring or electrology must first have approval by the board.

(2) through (7) remain the same as proposed.

8.14.1210 CLEANING AND SANITIZING TOOLS AND EQUIPMENT

(1) through (9) remain the same as proposed.

(10) Aluminum oxide crystals or manufacturer approved corundum used in microdermabrasion machines may not be reused or recycled. Aluminum oxide crystals or approved corundum are for single use purposes and must be discarded after each use in accordance with federal, state and local disposal regulations for such substances. Abrasives, other than aluminum oxide crystals or approved corundum, must be approved by the board prior to use.

(11) through (15) remain the same as proposed.

8.14.1213 STORAGE AND HANDLING OF SALON PREPARATIONS

(1) through (6) remain the same as proposed.

(7) The use of methyl methacrylate monomers for artificial nails is prohibited.

(7) remains the same as proposed but is renumbered (8).

~~(a) methyl methacrylate monomers;~~

(b) and (c) remain the same as proposed but are renumbered (a) and (b).

~~(d) (c) salicylic acid at more than 2%;~~

(e) and (f) remain the same as proposed but are renumbered (d) and (e).

~~(g) (f) lactic acid at more than 5%.~~

~~(8) (9) Glycolic Glycolic acids for use in chemical exfoliation shall only be used in concentrations of 30% or less, a pH level of not less than 3.0 and for a duration of not longer than two minutes is permitted as recommended by the manufacturer.~~

(9) through (13) remain the same as proposed but are renumbered (10) through (14).

8.14.1216 PREMISES AND GENERAL REQUIREMENTS (1) through (8) remain the same as proposed.

(9) Food is not to be prepared, ~~kept or~~ and sold or stored in a salon or booth. Beverages that are prepared, beyond the addition of water, are prohibited. Exceptions ~~would be~~ are:

(a) food and non-alcoholic beverages that the licensee has for the licensee's own consumption ~~or;~~

(b) items that may be dispensed from vending machines if said machines comply with federal, state and local laws; or

(c) if the establishment is licensed as a food purveyor in accordance and in compliance with all state and county regulations.

(10) through (12) remain the same as proposed.

(13) Licensees ~~practicing~~ seeking to practice in the area of mechanical exfoliation must obtain endorsement by the board prior to practicing. In order to obtain the endorsement, the licensee must have a minimum of three years experience as a cosmetologist or esthetician and provide the board office with a notarized copy of a certificate of completion of training for each machine or device intended to be used by the licensee, prior to the licensee's use of the machine or device on members of the public. The certificate must bear the name of the licensee, date training was completed, number of hours of training, name of manufacturer and the model number of the machine.

(14) through (17) remain the same as proposed.

3. The Board adopted NEW RULE I (ARM 8.14.301) DEFINITIONS as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

8.14.301 DEFINITIONS (1) through (6) remain the same as proposed.

(7) "Demonstration" means a planned educational instruction that illustrates and explains with examples, showing merits of products or services to a group of one or more enrolled students. Members of the public may not be charged for any service performed in connection with a demonstration.

(8) and (9) remain the same as proposed.

(10) "Direct supervision" means the physical presence in the clinic and basic areas of the school, where educational activities and services requiring licensure are being performed by a student. Direct supervision requires ~~face-to-~~ face on-site communication, direction, observation and evaluation on a consistent basis.

(11) through (20) remain the same as proposed.

4. The Board received written comments from 140 persons and 18 persons testified at the hearing. The comments received and the Board's response are as follows:

8.14.401 GENERAL REQUIREMENTS

COMMENT NO. 1: One commentor objected to the 30 day requirement to notify the board of an address or name change.

RESPONSE: The Board acknowledged the comment and stated that the Board staff needed to be advised of a change of address in a timely manner to ensure that the licensee receives renewal notices and other information that the Board is required to mail to the licensee.

COMMENT NO. 2: One commentor felt that (7), requiring the salon owner to notify the public of services offered that were not licensed by the board was unnecessary.

RESPONSE: The Board acknowledged the comment and although the Board felt that the public had a right to know what services are not regulated by the board, following discussion the board agreed with the commentor and deleted (7). The Board will advise the salons that this is something they should do.

COMMENT NO. 3: One hundred eight commentors signed a petition requesting that (3) read ..."each licensee practicing mechanical exfoliation must display the original certificate of completion of training in public view in the establishment."

RESPONSE: The Board acknowledged the comment and stated that it was necessary that the certificate have the name of the licensee so that the Board can determine who completed the certification course.

8.14.602 INSPECTION - SCHOOL LAYOUT

COMMENT NO. 4: One commentor objected to the requirement for a separate classroom for teacher training courses. The commentor also felt that 30 dozen perm rods was not enough for a student doing perms for an entire year and that their school had many different types in a central location for all students. This commentor would like the perm rod requirement to be optional.

RESPONSE: The Board acknowledged the comment and stated that the requirement for a classroom for each course of study taught was necessary because for each course students would be at different levels and taught different curriculum. For example, the teacher training course of study cannot be taught to basic cosmetology students or the esthetics curriculum cannot be taught to manicure students. Since the curriculums are based on clocked hours of study a separate classroom for each course of study is necessary. In the beginning of the curriculum study theory is required to be taught to basic students anywhere from 300 to 80 hours prior to them working

on the general public. A separate classroom is not new to the rules with regard to the clinic floor and practice area. Sub-section (6)(1)(xxvii) is not being amended in this proposal. The Board agreed that 30 dozen perm rods may not be enough to cover all the students' needs. The rule was implemented because some students did not have perm rods available to them. The 30 dozen limit was set to ensure that the students had enough to cover the basics. The cost is not prohibitive for students or the school to obtain more, if necessary.

COMMENT NO. 5: One commentor objected to the requirement to have a separate classroom stating that the clinic floor was the classroom. The commentor also felt that as long as the equipment was available to the students, it was not necessary to personally issue them a kit. The commentor also stated that 30 dozen perm rods was not realistic because of the many different sizes that were needed.

RESPONSE: The Board acknowledged the comment and referenced the response to Comment No. 4.

COMMENT NO. 6: One commentor requested clarification as to why estheticians were required to have one sink for 1-5 students while cosmetologists and manicurists were required to have one sink for 1-15 students.

RESPONSE: The Board acknowledged the comment and stated that esthetics students are constantly changing water, prepping towels, washcloths, etc. and most of the esthetic practice requires the use of water, therefore more sinks are needed. This has always been a requirement, the amendments were for clarification/housekeeping purposes only. The Board also noted that cosmetologists are required to have two sinks per 1-15 students, which would be 1-7 students per sink for cosmetologists and manicurists.

COMMENT NO. 7: One commentor felt that the schools should have the equipment available to teach the students, but that it should be the student's responsibility to buy their own equipment.

RESPONSE: The Board acknowledged the comment and stated that the students need to have a kit available with all the equipment that they will need to complete their course. This requirement also provides uniformity in equipment for schools and that in most schools the cost of the kit is included in the tuition and it was noted that currently all schools licensed in the state charge students for their kits.

8.14.605 CURRICULUM - COSMETOLOGY, MANICURING AND ESTHETICS STUDENTS

COMMENT NO. 8: One commentor wanted to know the rationale behind requiring 200 hours to be taught in theory and thought

that five days was too short a time period to send in final grades and that 30 days would be more appropriate.

RESPONSE: The Board acknowledged the comment and stated that 10% is the minimum requirement to be taught in theory and that there should be some in-classroom theory instruction specifically with respect to anatomy, diseases, disorders and bacteriology, practice ethics, business methods and laws and rules, which are requirements of all curriculums. The Board stated that some schools were having the students read the book and take a test while others never taught theory to the students at all and felt that these procedures were not sufficient, nor provided for the health, safety or welfare of the public. The Board stated that there has to be a certain amount of theory taught before the student can start hands on training. The Board stated that the five day requirement with respect to withdrawals or graduation is not a new rule. The rule has been in effect since December, 1997 and all currently licensed schools have complied. To extend this to 30 days would result in delaying the student's ability to take the test, get a temporary permit and/or transfer to a new school. Also, in order for the student to have graduated, the grades would have to be calculated and therefore it was just a matter of sending the grades in which they felt could be accomplished in the five day time frame.

COMMENT NO. 9: One commentor felt that listing massage as one of the curriculum items was contradictory since you don't have to be licensed to do massage.

RESPONSE: The Board acknowledged the comment and stated that although licensees don't have to be licensed to do massage, massage is an integral part of the manicure, pedicure, facials and scalp treatment and students need to be properly trained with respect to the practice of cosmetology, manicuring and esthetics.

COMMENT NO. 10: One hundred twenty commentors requested that the board amend (6)(f) to provide: "waxing (face, neck, hands, and superfluous hair anywhere on the body, including tweezing).

RESPONSE: The Board acknowledged the comment and following discussion voted to amend (6)(f) as requested.

#### 8.14.1209 IMPLEMENTS, TOOLS, SUPPLIES AND EQUIPMENT

COMMENT NO. 11: One commentor was concerned about the requirement that any new machine or device had to be approved by the Board. He felt that having the board approve new sinks or perm rods was unnecessary.

RESPONSE: The Board acknowledged the comment and stated that it is not requiring approval of all new items, just machines

and devices such as mechanical microdermabrasion machines, nail drills, electric nail files, etc., furthermore that sinks and perm rods are not new devices.

COMMENT NO. 12: Dr. Lawrence McEvoy, President of the Board of Medical Examiners testified that the Board of Medical Examiner's position was that any procedure which involves or invades living tissue or cells or which produces blood or tissue fluid will constitute the practice of medicine in violation of the Medical Practice Act.

RESPONSE: The Board acknowledged the comment and stated that definitions contained in ARM 8.14.405(8), (9), (15), (16) and (20) and ARM 8.14.1213(12) and (13) prohibit licensees from any procedures which may invade living tissue.

COMMENT NO. 13: One commentor requested clarification on how long the board would take to approve a new machine or device used in the practice of cosmetology, esthetics, manicuring or electrology.

RESPONSE: The Board acknowledged the comment and stated that the amount of time would depend on the type of machine or device the Board is being asked to approve. It will also depend on the amount of information and documentation the individual requesting approval provides to the board and how much further information or supporting documentation is required.

#### 8.14.1210 CLEANING AND SANITIZING TOOLS AND EQUIPMENT

COMMENT NO. 14: Several commentors addressed the issue of roller or roll-on waxing systems being prohibited for use by estheticians. The commentors felt that if the prescribed sanitary precautions are taken the product should not be prohibited. The commentors feel that the product is user friendly for the clients and that if the roller is sanitized between each use they feel the product is safe for the clients.

RESPONSE: The Board acknowledged the comment and stated that when the roller is rolling back into the wax system, whatever bacteria or contaminant is on the client's skin is rolled back into the wax system. The wax would have to be heated to a temperature of 212° F or 100° C to kill the bacteria. Sanitizing the roller after each use does not eliminate the bacteria that comes into contact with the wax during use on one client. When the licensees use sticks or spatulas, they are supposed to be using a new stick or spatula each time they dip into the wax and apply it to the skin. Licensees should never re-dip using the same applicator. Sanitizing the roller after each service would not sanitize the wax.

COMMENT NO. 15: One commentor testified regarding (15)

requiring the blood spill procedure to be posted in public view and didn't feel the patrons needed to see the blood spill procedure.

RESPONSE: The Board acknowledged the comment and stated that the public has a right to know that there is a blood spill procedure for their protection. If the procedure is posted they can determine if the practitioner is following the procedure for their safety. The Board further stated that it is the Board's responsibility to protect the public health, safety and welfare.

COMMENT NO. 16: Dr. McEvoy testified that the Board of Medical Examiners feels that there must be scrupulous adherence to the OSHA guidelines in connection with blood spills.

RESPONSE: The Board acknowledged the comment and thanks Dr. McEvoy for the comment. The Board's proposed amendments under 8.14.1210 and 8.14.1214 require the licensee to follow OSHA standards for cleaning, sanitizing and disposal of wastes.

COMMENT NO. 17: One commentor questioned the granule size for aluminum oxide crystals and the use of only plastic tips on microdermabrasion machines and wanted to know if these rules would limit the type of machines that could be used.

RESPONSE: The Board acknowledged the comment and stated that the Board's research shows that a granule size of 120-150 is recommended and for sanitation purposes disposable plastic tips are required. The Board acknowledges that these requirements may limit the type of machines that can be used. However, the requirements for granular size and plastic disposable tips are deemed necessary by the Board for public safety and protection.

COMMENT NO. 18: One commentor testified that some people are inappropriately using baking soda and salt in microdermabrasion.

RESPONSE: The Board acknowledged the comment and voted to amend (10) by adding "Abrasives other than aluminum oxide crystals or approved corundum must be approved by the board prior to use."

#### 8.14.1213 STORING AND HANDLING OF SALON PREPARATIONS

COMMENT NO. 19: Several commentors testified, and produced a petition signed by several people, that there are products that can be purchased over the counter that contain glycolic acid, salicylic acid and lactic acid and yet under these rules professional estheticians can't use them. The commentors felt that it would be better for the public to have a professional use professional products and get the client into a line



that's going to be best for them rather than using over the counter products with no experience. The commentors also questioned the two minute limit and suggested that they be allowed to follow the manufacturer's directions on the product. They were concerned that someone might stick to the two minute limit, wash the product off and then reapply for additional two minute increments which could result in skin damage. One commentor stated that it appeared unlicensed people could do more and use stronger products than estheticians who had received training and were licensed. Several commentors felt that the restrictions would limit them on the ability to do their jobs and thus restrict their incomes.

RESPONSE: The Board acknowledged the comment and following discussion, voted to amend the rule to provide that salicylic acid at no more than 2% and lactic acid at no more than 5% would be allowed. The Board further amended the rule to provide that the duration for glycolic acids would be as recommended by the manufacturer. The Board also agreed that reapplying the product would not be appropriate practice.

COMMENT NO. 20: Several commentors testified and provided written comments in opposition to the requirement to have the full product label on the smaller bottles when the salons are buying in bulk and transferring to smaller bottles such as perm bottles. The commentors stated that although the bottles were labeled with the type of product the full product label won't fit. One commentor also questioned if this rule applies to products that are put into dampen dishes for use on a single client.

RESPONSE: The Board acknowledged the comment and stated that the requirement was only for product that is moved into smaller containers for the purpose of "storage", not containers for use by the practitioners during service. Containers for use during service do not have to have the label.

COMMENT NO. 21: One commentor requested clarification on (9) stating that some products are sold to be used together and that others are used to give a boost to some products. The commentor also stated her support of the roll on waxing systems if the proper sanitary precautions are taken after each client's use.

RESPONSE: The Board acknowledged the comment and stated that there was no restriction on premixed products, if the manufacturer allows or recommends that the product line be used in a 1 - 2 - 3 step application process. However, the Board does not want to allow mixing of chemicals or services because of public safety concerns, such as a chemical exfoliation of glycolic acid followed by a microdermabrasion service. The Medical Journal for Skin Care Professionals

highly recommends that exfoliate chemicals and services not be mixed during the same service for a "boost." In fact, the mixing or combining of services and chemicals can be harmful, such as glycolic and salicylic acids. In connection with the comment on roll on waxing systems, the Board references its response to Comment No. 14.

COMMENT NO. 22: One commentor testified in opposition to using the roll on wax method and supplied data regarding unsanitary conditions with this method. The commentor also requested clarification of the prohibition against mixing products as with some products they are taught to mix a glycolic with an enzyme to create an exfoliation boost.

RESPONSE: The Board acknowledged the comment. The Board stated that adding enzymes to a chemical exfoliant or using different bases, such as aloe, water, lotions, etc., would not be prohibited. Combining or mixing two or more chemical exfoliants is prohibited. Combining or mixing services is prohibited for exfoliation.

COMMENT NO. 23: One commentor stated that it seemed the board was trying to prevent the licensees from doing business and that some of the requirements were going to be costly for the licensees and ultimately the clients. The commentor suggested that the licensees be required to follow the manufacturer's directions.

RESPONSE: The Board acknowledged the comment and stated that the Board's responsibility is to public safety as opposed to the benefit of the profession.

COMMENT NO. 24: One commentor stated her support of not allowing the use of MMA in (7)(a) and stated her agreement with the proposed rules; that she felt estheticians did not want to go into the medical area. They want to use the products to beautify their clients and don't want to go below the epidermis.

RESPONSE: The Board acknowledged the comment and stated that the Board adopted rules with regard to the epidermis. The word epidermal may go beyond the stratum corneum.

COMMENT NOS. 25-26: Two commentors testified that they were concerned with the medical clinic using assistants that are not licensed estheticians performing services that are regulated by the esthetician statutes and rules.

RESPONSE: The Board acknowledged the comment and stated that the Board does not have jurisdiction over medical assistants.

COMMENT NO. 27: One commentor stated that salicylic acid, Jessner's solution and lactic acid should be allowed as long

as they are regulated by percentages to be used and should require advanced training.

RESPONSE: The Board acknowledged the comment and stated that the Board has amended (7) to allow salicylic and lactic acid in certain percentages however Jessner's solution will still be prohibited since Jessner's solution is a combination of chemical exfoliants and is prohibited because of ARM 8.14.1213(9).

COMMENT NO. 28: One hundred seventeen commentors signed a petition requesting that the board adopt the following language: "Estheticians and students of esthetics within their field of practice, may use chemicals or products, natural or synthetic, which act on or affect the epidermal division of the skin. Products may not penetrate or cause damage to the deeper dermal division." The commentors also stated that (8) state that "Glycolic acids for use in chemical exfoliation shall be in concentrations of 30% or less, a pH level of not less than 3.0 and duration of no longer than the manufacturer's instructions."

RESPONSE: The Board acknowledged the comment and stated that the Board adopted rules with regard to non-living tissue. The word epidermal may go beyond the stratum corneum. In connection with the amendments to (8) the Board references its response to Comment No. 14.

COMMENT NO. 29: Jeannie Worsech, Board Administrator of the Board of Cosmetologists suggested that (7) read "The use of methyl methacrylate monomer for the purposes of artificial nails is prohibited" and that (7)(a) be eliminated and the subsections following be renumbered.

RESPONSE: The Board acknowledged the comment and amended ARM 8.14.1213 as suggested.

COMMENT NO. 30: One commentor requested clarification on whether cosmetic testers used in salons are sanitary or if testing should be allowed only by licensed personnel or staff. The commentor's salon has instructions posted for single use applicators and disposable items; however, they feel that contamination does occur by direct contact with some of the client's hands.

RESPONSE: The Board acknowledged the comment and suggested that the cosmetic testers be regulated by salon policy.

COMMENT NO. 31: One commentor requested clarification as to whether or not the items referred to in (7)(f) and (g) were acceptable if contained in commercially available products.

RESPONSE: The Board acknowledged the comment and stated that as to Jessner's solution, it is not allowed at all and lactic

acid is only allowed if it is not in excess of 5% concentration. Regardless of the manufacturer's products, the licensee is limited to the chemical restrictions provided by rule. Not all commercially available products may be used in accordance with Board rules.

8.14.1214 DISPOSAL OF WASTE - SEWAGE

COMMENT NO. 32: One commentor testified that there were no rules relating to how to dispose of certain chemicals such as acetone that would eat through plastic garbage bags, or aluminum oxide crystals, powders and liquids that are used on nails or sharp implements.

RESPONSE: The Board acknowledged the comment and stated that such products have to be disposed of in accordance with OSHA standards as required by ARM 8.14.1214(5). Furthermore, that OSHA has strict guidelines with regard to disposal of wastes and chemicals. Licensees are required to follow OSHA standards.

COMMENT NO. 33: One commentor testified that it was unreasonable to require all of the garbage cans to be fly-tight. The commentor also stated that the rule goes too far and that the public is the final judge as to whether a salon is clean and the garbage taken out timely and that if the owner doesn't keep their establishments looking good out of pride that it won't happen with all the rules either.

RESPONSE: The Board acknowledged the comment and stated that the Board's function is to protect the public health, safety and welfare and requiring appropriate sanitation is part of that protection, through the inspection and complaint process.

8.14.1216 PREMISES AND GENERAL REQUIREMENTS

COMMENT NO. 34: Several commentors expressed concern about the requirement that an esthetician have three years experience before being allowed to practice in the area of mechanical exfoliation and felt that the student coming out of school where the courses on mechanical exfoliation are taught is better prepared to practice mechanical exfoliation than an esthetician who has three years or more experience but none in mechanical exfoliation. The commentors felt that the requirement should be more in the line of the amount of education that the person has, not how long they have practiced and many recommended additional hours of training specific to mechanical microdermabrasion before being licensed to practice that procedure. The commentors suggested that a more appropriate requirement would be 50 hours of additional training in microdermabrasion services and an endorsement then placed on the license.

RESPONSE: The Board acknowledged the comment and following

discussion amended (13) as set forth above. The Board will continue to work on the microdermabrasion issue to develop criteria for demonstrating and proving proficiency in using microdermabrasion machines. Interested persons are invited to attend a meeting for this purpose to be held in July or August of 2001. Please contact the Board office for further information.

COMMENT NO. 35: One commentor suggested that the estheticians have one year minimum experience in practicing skin care together with additional classes on mechanical microdermabrasion.

RESPONSE: The Board acknowledged the comment and referenced their response to Comment No. 34.

COMMENT NO. 36: One commentor testified in opposition to (9) restricting food and beverages in the salon. The commentor felt that food should be kept in a separate area in a salon, but that to eliminate the ability to sell food items was cutting into his ability to have a retail establishment in his salon.

RESPONSE: The Board acknowledged the comment and following discussion amended (9) as set forth above.

COMMENT NO. 37: One commentor testified in opposition to (3) which requires that no other business be conducted in an establishment except those regulated by the board or fashion industry. The commentor felt that this would eliminate the possibility of having massage therapists, which many salons have. The commentor also pointed out that many clients are in a salon or day spa for several hours and do want to have food to eat while they are there and didn't feel they should be restricted in serving food.

RESPONSE: The Board acknowledged the comment and stated that it is not restricting other businesses as long as the requirements in (3), (9) and (10) are met.

COMMENT NO. 38: One commentor stated that the salons should be allowed to serve pop and cookies or other food items and that the clients appreciated the service. The commentor stated that serving items that were prepared was not the same as preparing sandwiches in the salon.

RESPONSE: The Board acknowledged the comment and stated that the rules specify that you cannot prepare and sell or store food items. Salons are not restricted from serving pop, cookies or other food items that are not prepared on the premises.

COMMENT NO. 39: One commentor stated that there was a conflict between 8.14.1216(3) which requires that only

businesses regulated by the board be in the establishment and the rule considered in MAR Notice No. 8-14-53 which provided that a salon and school are to be kept completely separate.

RESPONSE: The Board acknowledged the comment and stated that 37-31-311(9), MCA provides that schools and salons shall be kept separate.

COMMENT NO. 40: One commentor testified in opposition to the three year rule for estheticians to practice mechanical microdermabrasion stating that estheticians that have the education should be allowed to practice and that the esthetics field needs the support of the board to create an environment that is safe for the client and profitable for the industry.

RESPONSE: The Board acknowledged the comment and referenced its response to Comment No. 33.

COMMENT NO. 41: One commentor testified in opposition to (10) regarding the prohibition of alcoholic beverages in an establishment. The commentor did not feel that serving a glass of wine to a client who requested it should be prohibited by the board.

RESPONSE: The Board acknowledged the comment and stated that serving alcohol is not prohibited for client consumption if the licensee is in compliance with the Department of Revenue, Liquor Division rules and regulations.

COMMENT NO. 42: One commentor stated that one of the big sellers for her spa was a full day spa treatment. The commentor did not feel that it was reasonable to expect clients to go without food for seven hours or to expect them to get dressed and go out and eat and then come back to finish the spa treatments. The food is delivered by a neighboring restaurant and eaten in the waiting area, not the treatment rooms. The commentor also stated that the manufacturer's training for use of microdermabrasion needs to be carefully looked at because some training programs are not adequate.

RESPONSE: The Board acknowledged the comment and referenced its responses to Comments No. 36, 37 and 38.

COMMENT NO. 43: One commentor testified that if microdermabrasion is going to be allowed that lancets should as well because she felt lancets are just as effective as crystals.

RESPONSE: The Board acknowledged the comment and stated that using lancets involves the practice of medicine. This is beyond the esthetician's scope of practice and is not allowed.

COMMENT NO. 44: One hundred eight commentors signed a petition requesting that (13) be changed to read: "licensees

practicing in the area of mechanical exfoliation must have a minimum of fifty hours of training by a qualified instructor and provide the board office with a notarized copy of a certificate of completion of training for any machine or device intended to be used by the licensee prior to the licensee's use of any machine or device on members of the public." They also requested that (14) be changed to read: "the licensee practicing mechanical exfoliation must display, in public view in the licensed establishment, the original certificate of completion of training from the manufacturer, or licensed qualified instructor, which must be approved by the board."

RESPONSE: The Board acknowledged the comment and following discussion amended (13) as set forth above. The Board references its response to Comment No. 34 in connection with the comment regarding (14).

COMMENT NO. 45: One commentor questioned whether they were allowed to serve food from gifts brought in by customers during the holidays, such as trays of cookies, candies or other food items. The commentor also questioned whether clients were allowed to bring alcoholic beverages into the salon for their own or other clients' consumption.

RESPONSE: The Board acknowledged the comment and referenced its response to Comment No. 38 and stated that the Board cannot regulate food/beverage items that clients bring into the salon.

#### NEW RULE I DEFINITIONS

COMMENT NO. 46: One commentor testified in connection with (3) that the booth rental does not fit with the IRS rule of an independent contractor and that since it had to be in a licensed salon that it was a part of that establishment not a separate establishment. The commentor did not feel that booth renters should be forced to get two licenses. In connection with (7) the commentor questioned if the demonstration had to be for a group or if it could be for one individual. The commentor felt that the beauty schools in the state would be out of business because every client that comes in is a demonstration because the instructor checks the services that are performed by the student. In connection with (10) the commentor objected to the use of the term "basic area" and felt that if you're teaching something it's a classroom. The commentor also objected to the face-to-face contact requirement. In connection with (14) the commentor stated that students and instructors should also be considered members of the public.

RESPONSE: The Board acknowledged the comment and stated that there was a statutory requirement for licensure of booth renters at 37-31-301 and 37-31-302, MCA. In connection with

(7) and (10) the Board has amended the language accordingly. The Board also stated that for the purpose of this rule, enrolled students and instructors at a particular school are not considered members of the public for that school.

COMMENT NO. 47: One commentor testified in opposition to the requirement of a group for a demonstration in (7).

RESPONSE: The Board acknowledged the comment and amended (7).

BOARD OF COSMETOLOGISTS  
WENDELL PETERSON, CHAIRMAN

By: /s/ Richard M. Weddle  
Staff Attorney  
Department of Commerce

By: /s/ Richard M. Weddle  
Rule Reviewer

Certified to the Secretary of State, May 29, 2001.



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

In the matter of the amendment of ARM ) CORRECTED NOTICE  
8.58.301, 8.58.415A, 8.58.415B, ) OF AMENDMENT AND  
8.58.419, and 8.58.714 pertaining to ) ADOPTION  
definitions, continuing education, )  
continuing education course approval, )  
grounds for license discipline, )  
grounds for discipline of property )  
management licensees and the adoption )  
of a new rule pertaining to internet )  
advertising )

TO: All Concerned Persons

1. On February 22, 2001, the Board of Realty Regulation published a notice of proposed amendment and adoption of the above-stated rules at page 319, 2001 Montana Administrative Register, issue number 4, and on May 10, 2001 published notice of the amendment and adoption of said rules at page 785 of the 2001 Montana Administrative Register, issue number 9.

2. This corrected notice is being filed to correct an error in the amendment of ARM 8.58.301 in that the renumbering of the definitions was incorrect.

8.58.301 DEFINITIONS The terms used in this chapter shall have their common meaning as used in the real estate industry, and, unless the context other requires, the following meanings shall also apply:

(1) and (2) remain as adopted.

(b) through (h) remain the same but are renumbered (3) through ~~(10)~~ (9).

(11) through (20) will remain as adopted but be renumbered (10) through (19).

BOARD OF REALTY REGULATION  
JOHN BEAGLE, CHAIRMAN

By: /s/ Richard M. Weddle  
Staff Attorney  
Department of Commerce

By: /s/ Richard M. Weddle  
Rule Reviewer

Certified to the Secretary of State, May 29, 2001.

BEFORE THE BOARD OF HOUSING  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the adoption ) NOTICE OF ADOPTION  
of a rule pertaining to )  
confidentiality and disclosure )  
of information in possession )  
of the Board of Housing )

TO: All Concerned Persons

1. On January 25, 2001, the Board of Housing published a notice of the proposed adoption of the above-stated rule at page 144, 2001 Montana Administrative Register, issue number 2.
2. No public hearing was held.
2. The Board of Housing has adopted New Rule I (ARM 8.111.203) exactly as proposed.
3. No comments or testimony were received.

MONTANA BOARD OF HOUSING  
BOB THOMAS, CHAIR

By: /s/ Richard M. Weddle  
Staff Attorney  
Department of Commerce

By: /s/ Richard M. Weddle  
Rule Reviewer

Certified to the Secretary of State, May 29, 2001.

BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the	)	
adoption, amendment and	)	
repeal of rules relating	)	
to content and performance	)	NOTICE OF ADOPTION,
standards for career and	)	AMENDMENT AND REPEAL
vocational/technical	)	
education, program area	)	
standards, curriculum and	)	
assessment, and standards	)	
review schedule	)	

TO: All Concerned Persons

1. On February 8, 2001, the Board of Public Education (the Board) published notice of the proposed adoption, amendment, and repeal of rules concerning content and performance standards for career and vocational/technical education, program area standards, curriculum and assessment, and standards review schedule, at page 214 of the 2001 Montana Administrative Register, Issue Number 3.

2. The Board has adopted the following new rules exactly as proposed:

- RULE II (10.54.8010)
- RULE VI (10.54.8020)
- RULE VII (10.54.8021)
- RULE VIII (10.54.8022)
- RULE IX (10.54.8023)
- RULE X (10.54.8030)
- RULE XII (10.54.8032)
- RULE XIII (10.54.8033)
- RULE XIV (10.54.8040)
- RULE XV (10.54.8041)
- RULE XVI (10.54.8042)
- RULE XVII (10.54.8043)
- RULE XVIII (10.54.8050)

3. After consideration of the comments received, the Board has adopted the following new rules as proposed with the following changes, stricken matter interlined, new matter underlined:

RULE I (10.54.2503) STANDARDS REVIEW SCHEDULE

(1) Montana's content and performance standards shall be reviewed and revised on a five-year cycle beginning July 1, 2003~~5~~.

(2) and (3) remain the same.

COMMENT 1: Glen Monson, Superintendent of Glasgow Public Schools; Jerry Pauli, Superintendent of Thompson Falls Public Schools; and Kathy Pfister, Musselshell County Superintendent, commented that this might cost additional money that schools don't have. They are concerned about unfunded mandates and school funding issues such as declining enrollment, the cuts that are being made in most schools and budget caps.

COMMENT 2: Bob Vogel, Montana School Boards Association, is concerned that all Montana schools meet the standards.

RESPONSE 1 and 2: The Board has made a change to extend the start date for implementation of the standards review schedule. The purpose of this rule is to establish a common, systematic standards review schedule for the State and school districts to follow. Such a common schedule of standards review would allow measured and gradual review of the standards rather than a review of all standards within a short timeline. This process will be more cost effective and possibly could require fewer changes in the standards. If focus is placed on specific subject areas in the standards revision process, then professional development, instructional materials, models and examples, other resources, and materials and assistance can be coordinated and concentrated to maximize successful implementation.

RULE III (10.54.8011) BENCHMARK FOR CAREER AND VOCATIONAL/TECHNICAL EDUCATION CONTENT STANDARD 1 FOR END OF BENCHMARK 1 (1) remains the same as proposed.

(a) describe and demonstrate the importance of goal setting and career and life planning;

(b) and (c) remain the same as proposed.

COMMENT 3: Cindy Bergum, Billings, commented that there is a lapse of content standards or information about the non-paid vocation. For example, there is no mention of child development, parenting skills, etc., that seem to be needing more attention in light of today's activities in the high school.

RESPONSE 3: The Board and the Office of Public Instruction (OPI) agree and have made changes to the career and vocational technical education content and performance standards to include career and life plans or goals in (1)(a).

RULE IV (10.54.8012) BENCHMARK FOR CAREER AND VOCATIONAL/TECHNICAL EDUCATION CONTENT STANDARD 1 FOR END OF BENCHMARK 2 (1) remains the same as proposed.

(a) explore and identify personal interests, aptitudes, and abilities and develop strategies to achieve tentative career and life goals;

(b) and (c) remain the same as proposed.

COMMENT: See Comment and Response No. 3.

RULE V (10.54.8013) BENCHMARK FOR CAREER AND VOCATIONAL/TECHNICAL EDUCATION CONTENT STANDARD 1 FOR END OF BENCHMARK 3 (1) remains the same as proposed.

(a) develop, evaluate, and modify personal career and life plans;

(b) and (c) remain the same as proposed.

COMMENT: See Comment and Response No. 3.

RULE XI (10.54.8031) BENCHMARK FOR CAREER AND VOCATIONAL/TECHNICAL EDUCATION CONTENT STANDARD 3 FOR END OF BENCHMARK 1 (1) remains the same as proposed.

(a) serve as a positive role model by following the rules, regulations, and policies of the school community and management strategies for school, family, and community;

(b) through (f) remain the same as proposed.

COMMENT 4: Cindy Bergum commented that she believes the component of home, family and parenting should be included in content standard 3, where students acquire individualized leadership skills to become successful in a productive system.

RESPONSE 4: The Board and the OPI agree and have made changes to this rule.

RULE XIX (10.54.8051) BENCHMARK FOR CAREER AND VOCATIONAL/TECHNICAL EDUCATION CONTENT STANDARD 5 FOR END OF BENCHMARK 1 (1) through (1)(c) remain the same as proposed.

(d) use acceptable industry standard appropriate equipment and processes reflecting industry standards for in a school setting or other learning environment.

COMMENT 5: Jerry Pauli and Glen Monson commented that they are concerned about unfunded mandates. The standards will require additional staff and more money to implement. They strongly urge that these standards and recommendations keep in mind the funding of schools and the declining enrollment.

RESPONSE 5: The Board and the OPI agree that clarification is needed and have made changes to the career and vocational technical education content and performance standards. School districts are not required to purchase industry standard equipment for their programs. However, districts have a responsibility to provide students with processes and equipment that are at least reflective of what today's workplace uses.

RULE XX (10.54.8052) BENCHMARK FOR CAREER AND VOCATIONAL/TECHNICAL EDUCATION CONTENT STANDARD 5 FOR END OF BENCHMARK 2 (1) through (1)(c) remain the same as proposed.

(d) use acceptable industry standard appropriate equipment and processes reflecting industry standards for in a school setting or other learning environment.

COMMENT: See Comment and Response No. 5.

RULE XXI (10.54.8053) BENCHMARK FOR CAREER AND VOCATIONAL/TECHNICAL EDUCATION CONTENT STANDARD 5 FOR END OF BENCHMARK 3 (1) through (1)(c) remain the same as proposed.

(d) use acceptable industry standard appropriate equipment and processes reflecting industry standards for in a school setting or other learning environment.

COMMENT: See Comment and Response No. 5.

RULE XXII (10.54.8087) ADVANCED CAREER AND VOCATIONAL/TECHNICAL EDUCATION PERFORMANCE STANDARDS FOR END OF BENCHMARK 1 (1) remains the same as proposed.

(a) consistently and independently demonstrates the skills needed to research a career and identify a life goal;

(b) through (d) remain the same as proposed.

(e) consistently and independently applies acceptable industry standards appropriate equipment and processes to a classroom project.

COMMENT: See Comment and Response No. 3.

COMMENT: See Comment and Response No. 5.

RULE XXIII (10.54.8088) PROFICIENT CAREER AND VOCATIONAL/TECHNICAL EDUCATION PERFORMANCE STANDARDS FOR END OF BENCHMARK 1 (1) remains the same as proposed.

(a) demonstrates the skills needed to research a career and identify a life goal;

(b) through (d) remain the same as proposed.

(e) usually applies acceptable industry standards appropriate equipment and processes to a classroom project.

COMMENT: See Comment and Response No. 3.

COMMENT: See Comment and Response No. 5.

RULE XXIV (10.54.8089) NEARING PROFICIENCY CAREER AND VOCATIONAL/TECHNICAL EDUCATION PERFORMANCE STANDARDS FOR END OF BENCHMARK 1 (1) remains the same as proposed.

(a) usually demonstrates the skills needed to research a career and, with guidance, identifies a life goal;

(b) through (d) remain the same as proposed.

(e) with assistance, applies acceptable industry standards appropriate equipment and processes to a classroom project.

COMMENT: See Comment and Response No. 3.

COMMENT: See Comment and Response No. 5.

RULE XXV (10.54.8090) NOVICE CAREER AND VOCATIONAL/TECHNICAL EDUCATION PERFORMANCE STANDARDS FOR END OF BENCHMARK 1 (1) remains the same as proposed.

(a) sometimes demonstrates the skills needed to research a career, but has difficulty identifying a life goal;

(b) through (d) remain the same as proposed.

(e) with difficulty, ~~applies acceptable industry standards~~ appropriate equipment and processes to a classroom project.

COMMENT: See Comment and Response No. 3.

COMMENT: See Comment and Response No. 5.

RULE XXVI (10.54.8091) ADVANCED CAREER AND VOCATIONAL/TECHNICAL EDUCATION PERFORMANCE STANDARDS FOR END OF BENCHMARK 2 (1) remains the same as proposed.

(a) clearly utilizes local resources and identifies his/her interests, aptitudes, and personal needs as related to career and life plans;

(b) through (e) remain the same as proposed.

COMMENT: See Comment and Response No. 3.

RULE XXVII (10.54.8092) PROFICIENT CAREER AND VOCATIONAL/TECHNICAL EDUCATION PERFORMANCE STANDARDS FOR END OF BENCHMARK 2 (1) remains the same as proposed.

(a) usually utilizes local resources and identifies his/her interests, aptitudes, and personal needs as related to career and life plans;

(b) through (e) remain the same as proposed.

COMMENT: See Comment and Response No. 3.

RULE XXVIII (10.54.8093) NEARING PROFICIENCY CAREER AND VOCATIONAL/TECHNICAL EDUCATION PERFORMANCE STANDARDS FOR END OF BENCHMARK 2 (1) remains the same as proposed.

(a) sometimes locates local resources and identifies his/her interests, aptitudes, and personal needs as related to career and life plans;

(b) through (e) remain the same as proposed.

COMMENT: See Comment and Response No. 3.

RULE XXIX (10.54.8094) NOVICE CAREER AND VOCATIONAL/TECHNICAL EDUCATION PERFORMANCE STANDARDS FOR END OF BENCHMARK 2 (1) remains the same as proposed.

(a) with assistance, finds local resources and identifies his/her interests, aptitudes, and personal needs as related to career and life plans;

(b) through (e) remain the same as proposed.

COMMENT: See Comment and Response No. 3.

RULE XXX (10.54.8095) ADVANCED CAREER AND VOCATIONAL/TECHNICAL EDUCATION PERFORMANCE STANDARDS FOR END OF BENCHMARK 3 (1) remains the same as proposed.

(a) purposefully develops and evaluates a career and life plans that includes work experience;

(b) through (d) remain the same as proposed.

(e) independently transfers academic and technical skills to industry standards practical experience related to his/her career and life plans.

COMMENT: See Comment and Response No. 3.

COMMENT: See Comment and Response No. 5.

RULE XXXI (10.54.8096) PROFICIENT CAREER AND VOCATIONAL/TECHNICAL EDUCATION PERFORMANCE STANDARDS FOR END OF BENCHMARK 3 (1) remains the same as proposed.

(a) completes a career and life plans that includes work experience;

(b) through (d) remain the same as proposed.

(e) often transfers academic and technical skills to industry standards practical experience related to his/her career and life plans.

COMMENT: See Comment and Response No. 3.

COMMENT: See Comment and Response No. 5.

RULE XXXII (10.54.8097) NEARING PROFICIENCY CAREER AND VOCATIONAL/TECHNICAL EDUCATION PERFORMANCE STANDARDS FOR END OF BENCHMARK 3 (1) remains the same as proposed.

(a) develops a partial career and/or life plans that includes work experience;

(b) through (d) remain the same as proposed.

(e) with assistance, transfers academic and technical skills to industry standards practical experience related to his/her career and/or life plans.

COMMENT: See Comment and Response No. 3.

COMMENT: See Comment and Response No. 5.

RULE XXXIII (10.54.8098) NOVICE CAREER AND VOCATIONAL/TECHNICAL EDUCATION PERFORMANCE STANDARDS FOR END OF BENCHMARK 3 (1) remains the same as proposed.

(a) rarely develops a complete career and/or life plans;

(b) through (d) remain the same as proposed.

(e) struggles to transfer academic and technical skills to industry standards practical experience related to his/her career and/or life plans.

COMMENT: See Comment and Response No. 3.

COMMENT: See Comment and Response No. 5.

RULE XXXIV (10.55.1003) PROGRAM FOUNDATION STANDARDS

(1) The purpose of all programs is to develop and apply knowledge and skills necessary to pursue lifelong goals and opportunities. Program foundation standards are the common conditions, practices, and resources that cross all programs



within a school system to ensure that all students have educational opportunity to learn, develop, and demonstrate learning to the content and performance standards. All programs shall follow the content and performance standards in the accreditation rules of Montana. In addition, all programs shall work to:

(a) through (a)(ii) remain the same as proposed.

~~(iv)~~(iii) ensure an educational climate that promotes academic freedom and respect for diversity (e.g., gender, race, ethnicity, economic status, native language, disability, special gift and talent);

~~(v)~~(iv) maintain high expectations for student performance and behavior, and challenge every student at his/her level of need that stimulates a desire for lifelong learning; and

~~(vi)~~(v) ~~support~~ encourage collaboration among school personnel to plan, assess, and support instruction; and

~~(iii)~~(vi) build school calendars and schedules based upon instructional needs.

(b) and (b)(i) remain the same as proposed.

(ii) offer engaging experiences that enable students to develop communication skills for fulfillment in their personal lives, workplaces, and communities;

(ii) and (iii) remain the same as proposed but are renumbered (iii) and (iv).

~~(iv)~~(v) encourage the use of the inquiry process and the application of multiple thinking, decision-making, and problem-solving skills;

(vi) emphasize common unifying themes or principles that build on students' prior experiences;

(v) and (vi) remain the same as proposed but are renumbered (vii) and (viii).

(c) and (c)(i) remain the same as proposed.

(ii) ~~highly~~ qualified staff necessary to support the instructional process;

(iii) equitable access to all facilities, technology, equipment, materials, and services necessary to support the instructional process; and

(iv) time for ~~ongoing~~ and ~~sustained~~ professional development that supports learning for all;

(v) a well-conceived mentoring program for teachers in the first three years of teaching; and

(vi) access to a variety of current technologies and informational resources (e.g., libraries, databases, computer networks, videos).

COMMENT 6: Jerry Pauli commented that the proposed program delivery standards will require additional funding and interfere with local control. They appear to require districts to meet all of the standards immediately upon adoption.

RESPONSE 6: Schools need flexibility and time to implement these changes. The Board has revised the language in (1) to allow districts to "work to" meet the conditions, practices, and resources of the program foundation standards, and in (1)(a)(v)

to "encourage" collaboration among school personnel to plan, assess, and support instruction.

COMMENT 7: Jerry Pauli commented that some of the requirements within each program delivery standard seem to be in conflict with the local master contract at the district level. He suggests that there be one set of delivery standards for all teachers regardless of their teaching assignments.

RESPONSE 7: The Board and the OPI believe that some sections of the program delivery standards (ARM 10.55.1101 through 10.55.1901 and 10.55.2101) apply to all teaching assignments across all curricular areas and have moved those sections from the program delivery standards to this rule.

COMMENT 8: Kathy M. Pfister questioned who would be responsible to pay for access to professional development - the district or the teacher.

RESPONSE 8: The Board and the OPI believe that this is a local decision and made changes to the rule at (c)(iv) to reflect flexibility for district options. Professional development is defined in ARM 10.55.714.

RULE XXXV (10.55.2101) WORLD LANGUAGES PROGRAM DELIVERY STANDARDS (1) through (1)(a)(i) remain the same as proposed.

~~(ii) classes that accommodate a variety of teaching and learning styles, methods, and materials access to native speakers or experts, authentic cultural contact, and culturally authentic materials (e.g., print, video, audio, literature, music, art); and~~

~~(iii) classes of novice and nearing proficiency students that are not combined with other levels access to technology that provides contact with the target language.~~

(b) remains the same as proposed.

~~(c) provide the following resources:~~

~~(i) access to native speakers or experts and authentic cultural contact;~~

~~(ii) access to culturally authentic materials, (e.g., print, video, audio, literature, music, art); and~~

~~(iii) access to technology that provides contact with the target language.~~

COMMENT 9: Jerry Pauli commented that some of the requirements within each program delivery standard seem to be in conflict with the local master contract at the district level. He suggests that there be one set of delivery standards for all teachers regardless of their teaching assignments.

RESPONSE 9: The Board and the OPI agree that some of these standards apply to all program areas and to all teaching assignments. After careful consideration, the Board and the OPI determined that there was duplication within the rules. In an effort to reduce duplication and maintain consistency the Board

has relocated, merged, or deleted some sections of the program delivery standards. This action resulted in the deletion of the resource section, (1)(c), in the program delivery standards.

COMMENT 10: Jennifer Harrison, President of Montana Association of Language Teachers, commented that the following conditions should be included: 1) instructors that are certified and exhibit proficiency in the communicative use of the language, and 2) the physical facility accommodates diverse classroom activities. Practices should include aligning oral and/or written assessments with content and performance standards and instruction. Teachers with a variety of teaching and learning styles, methods, and materials, and an articulated plan with curriculum guide should be included under both practices and resources.

RESPONSE 10: The Board and the OPI believe that these are important conditions, practices, and resources, however, each are not the exclusive domain of world language teachers or classrooms and are addressed elsewhere in administrative rule. No changes are made as a result of this comment.

COMMENT 11: Jerry Pauli commented that he has concerns that the rule mandates that each district provide native speakers or experts and authentic cultural contact to teach foreign languages.

RESPONSE 11: The Board and the OPI agree and have made a change to the rule at (1)(a)(ii) to describe the flexibility with which a district might choose to meet this requirement.

COMMENT 12: Bob Vogel commented that he questions the meaning of the term in (1)(b)(iii) of "authentic cultural ambiance."

RESPONSE 12: The Board's definition of the term "authentic cultural ambiance" is a learning environment reflective of the target culture.

4. The Board has amended ARM 10.54.2501, 10.54.2502, 10.55.602 and 10.55.1001 as proposed.

5. After consideration of the comments received, the Board has amended the following rules as proposed with the following changes, stricken matter interlined, new matter underlined:

10.55.603 CURRICULUM AND ASSESSMENT (1) through (3)(c) remain the same as proposed.

(d) Not later than the school year immediately following the completion of written sequential curricula aligned with the content and performance standards in a program area in accordance with ARM 10.55.601(6), the school district shall begin the development of a student assessment process for that

program area. The assessment process must be in place the following year two years following the development of written curriculum.

(4) remains the same as proposed.

COMMENT 13: Glen Monson, Jerry Pauli, and Kathy M. Pfister commented that this might cost additional money that schools don't have. They are concerned about unfunded mandates and school funding issues such as declining enrollment, the cuts that are being made in most schools and budget caps.

RESPONSE 13: The Board and the OPI agree and have made changes providing for two years following development of written curriculum for districts to complete their assessment process for all program areas.

COMMENT 14: Kathy M. Pfister questioned whether the State will review these assessments and how they are rated.

RESPONSE 14: The Board will encourage the OPI to establish criteria and procedures with which to review local district assessments and their results.

COMMENT 15: Bob Vogel commented that larger districts might be able to incorporate all content and performance standards into their curriculum as required. However, many school districts, particularly small districts, may find this challenging. What type of assistance is available in helping districts meet this mandate?

RESPONSE 15: School districts are currently expected to develop and revise local written curriculum, incorporating all the content and performance standards. The Board will encourage the OPI to work with school districts to deliver regional and state professional development opportunities that clearly meet school districts' needs.

COMMENT 16: Bob Vogel is concerned with the difficulties some small districts may have in collecting supplementary information about graduates and other students no longer in attendance.

RESPONSE 16: The Board and the OPI believe that to promote continuous improvement, districts need to use many data sources to ensure the effectiveness of their educational programs. This section of the rule has been in effect since 1989.

COMMENT 17: Jerry Pauli questioned whether there is a need for written curriculum.

RESPONSE 17: The Board and the OPI are committed to ensuring that all students are provided a high quality education regardless of where they may live in this State. To foster high quality education, the Board adopts and enforces standards to

guide schools. Included in the requirements since 1989 is the expectation that all districts will have written curricula from which their teachers will instruct. These curriculum guides define what will be taught to students in public schools.

10.55.1101 COMMUNICATION ARTS PROGRAM DELIVERY STANDARDS

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

~~(i) encourage an understanding of and respect for varying points of view and for diversity (e.g., gender, race, ethnicity, economic status, native language, disability, special gifts and talents); and~~

~~(ii)(i) promote literacy and language excellence in the spoken, written, and visual form; and~~

(ii) make available a variety of print and non-print materials encompassing fiction and non-fiction, classic and contemporary works, and diverse perspectives including Montana American Indian works.

(b) through (b)(ii) remain the same as proposed.

~~(iii) offer engaging experiences that enable students to develop communications skills for fulfillment in their personal lives, workplaces, and communities;~~

~~(iv) select high-quality materials that are appropriate to ability and developmental levels;~~

(v) through (vii) remain the same as proposed but are renumbered (iii) through (v).

~~(viii)(vi) support~~ encourage co-curricular offerings in drama, speech, debate, journalism, literary publications, and other related activities.

~~(c) provide the following resources:~~

~~(i) make available a variety of print and non-print materials encompassing fiction and non-fiction, classic and contemporary works, and diverse perspectives including Montana American Indian works; and~~

~~(ii) provide student access to a variety of current technological and informational resources (e.g., libraries, databases, computer networks, videos).~~

COMMENT: See Comment and Response No. 9.

COMMENT 18: Jerry Pauli and Kathy M. Pfister have concerns that the rule appears to require districts to fund speech and drama.

RESPONSE 18: The Board and the OPI believe that a clarification is required and have made changes to the rule at (1)(b)(vi) to reflect this.

10.55.1201 ARTS PROGRAM DELIVERY STANDARDS (1) through (1)(b) remain the same as proposed.

(i) structure activities to allow students to develop techniques in the arts; and

(ii) allow students to explore the elements of artistic composition and a variety of media, functions, styles, and presentation forms;

(iii) provide access to exemplary works of art from diverse cultures and historical periods and access to current materials, techniques, technology, and processes in the arts; and

~~(c) provide the following resources:~~

~~(i) access to exemplary works of art from diverse cultures and historical periods;~~

~~(ii) access to current materials, techniques, technology, and processes in the arts;~~

~~(iii)(iv) provide real audiences for student performance and products, display areas, and appropriately equipped performance areas (e.g., stages, galleries, fairs);~~

~~(iv) adequate and secure storage (i.e., portfolios) including digital, audio, video, and physical space; and~~

~~(v) adequate materials (e.g., visual arts media and supplies, performance texts, costumes and equipment, musical scores, instruments).~~

COMMENT: See Comment and Response No. 9.

COMMENT 19: Bob Vogel commented that in (1)(c)(iii), (iv), and (v), he is concerned about districts having a clear understanding of the OPI's definition of "appropriately" and "adequate."

RESPONSE 19: To avoid confusion, the Board has deleted the term "appropriately equipped" in (1)(c)(iii), which has been renumbered (1)(b)(iv). Sections (1)(c)(iv) and (v), which contain the term "adequate," have been deleted because they duplicate similar resource requirements in the program foundation standards.

COMMENT 20: Barbara Good, Bozeman Public Schools, commented that she supports the arts program delivery standards.

RESPONSE 20: No response needed.

10.55.1301 HEALTH ENHANCEMENT PROGRAM DELIVERY STANDARDS

(1) through (1)(a)(ii) remain the same as proposed.

(iii) integrate and include components of the traditional "health" and "physical education" disciplines; and

(iv) maintain a program that meets the educational requirements of health enhancement; and

(v) maintain adequate first aid materials and communication device capabilities.

(b) remains the same as proposed.

~~(c) provide the following resources:~~

~~(i) adequate classroom and physical activity space and the resources necessary to accomplish the curriculum; and~~

~~(ii) adequate first aid materials and telephone communication.~~

COMMENT: See Comment and Response No. 9.

COMMENT 21: Bob Vogel and Glen Monson are concerned about unfunded mandates such as telephones in the classrooms.

RESPONSE 21: The Board and the OPI believe that all classrooms need some form of communication capabilities/devices available to contact the school's office or outside agency in emergencies. Language of this section of the rule has been expanded to provide flexibility to districts to meet the requirements in a variety of ways.

10.55.1401 MATHEMATICS PROGRAM DELIVERY STANDARDS (1) and (1)(a) remain the same as proposed.

~~(i) maintain a mathematics program that supports learning for all students;~~

(ii) and (iii) remain the same as proposed but are renumbered (i) and (ii).

(b) remains the same as proposed.

~~(i) select high quality materials that are appropriate to ability and developmental levels;~~

~~(ii) utilize a variety of pedagogical and assessment strategies;~~

(iii) through (vi) remain the same as proposed but are renumbered (i) through (iv).

~~(c) provide the following resources:~~

~~(i) time and resources so that all teachers have access to high quality professional development as an integral part of their job;~~

~~(ii) well aligned curriculum materials, along with the appropriate technology needed to meet the standards;~~

~~(iii) a well conceived mentoring program for teachers in the first three years of their practice; and~~

~~(iv) time for teachers to collaborate and work with colleagues to prepare high quality lessons.~~

COMMENT: See Comment and Response No. 9.

COMMENT 22: Jerry Pauli and Glen Monson questioned if each district must provide a well-conceived mentoring program for its math teachers in their first three years of teaching.

RESPONSE 22: The Board and the OPI believe that a well-conceived mentoring program should serve teachers in all disciplines, not just the mathematics program. Therefore, the section has been relocated to the program foundation standards.

COMMENT 23: Kathy M. Pfister commented that the new math standards conflict with district contract language. She wonders if the mentor time comes from district time or after school personal time.

RESPONSE 23: The language of the rule does not require any set approach to mentoring. It requires that districts work to provide a well-conceived mentoring program, but does not tell districts how to implement such a program. This section has

been moved to the program foundation standards rule (See Comment and Response No. 22.)

10.55.1501 SCIENCE PROGRAM DELIVERY STANDARDS (1) through (1)(b)(iii) remain the same as proposed.

(iv) emphasize experimentation, data analysis, and the communication of findings to build new understandings by classifying ongoing observations, modeling natural phenomena, and developing the capacity to make inferences about unexplored concepts; and

~~(v) emphasize common unifying themes or principles that build on students' prior experiences; and~~

(vi) remains the same as proposed but is renumbered (v).

~~(c) provide the following resources:~~

~~(i) access to appropriate materials, resources, and internet access for the acquisition of current scientific content and research;~~

~~(ii) adequate time for students to set up and complete scientific investigations and discovery; and~~

~~(iii) physical facility to accommodate inquiry-based scientific learning.~~

COMMENT: See Comment and Response No. 9.

COMMENT 24: Jerry Pauli is concerned that the science program delivery standards tell the districts what type of facility should be provided to teach inquiry-based science in subsection (1)(c)(iii).

RESPONSE 24: The Board and the OPI believe that many disciplines are engaged in inquiry-based learning and there is a need for appropriate physical facilities to accommodate this type of learning. This resource was incorporated into the program foundation standards so that it refers to all learning environments, not just science.

10.55.1601 SOCIAL STUDIES PROGRAM DELIVERY STANDARDS

(1) through (1)(b) remain the same as proposed.

~~(c) provide the following resources:~~

~~(i) variety of primary and secondary resources;~~

~~(ii) children and young adult literature that contain social studies themes and topics;~~

~~(iii) computer software and internet access; and~~

~~(iv) community resources (e.g., speakers, museums, parks, businesses, government agencies).~~

COMMENT: See Comment and Response No. 9.

10.55.1701 CAREER AND VOCATIONAL/TECHNICAL EDUCATION PROGRAM DELIVERY STANDARDS (1) and (1)(a) remain the same as proposed.

(i) skill development leading to employment-based on workforce needs lifelong pursuits;



- (ii) program development in consultation with an advisory council; and
- (iii) opportunities for authentic application, work experience, and/or articulation with postsecondary education;
- ~~(iv) opportunities for professional development;~~
- ~~(v) safe work and learning environment; and~~
- ~~(vi) equal access for all students.~~
- (b) remains the same as proposed.
- (i) foster skill development for employment, ~~as well as~~ advanced training, and lifelong learning;
- (ii) through (vi) remain the same as proposed.
- ~~(c) provide the following resources:~~
- ~~(i) student contact and teacher preparation time necessary to achieve content standards;~~
- ~~(ii) learning environment and equipment reflective of authentic application;~~
- ~~(iii) facilities, supplies, and materials reflective of industry and/or content standards; and~~
- ~~(iv) career counseling and exploration, including utilization of community resources.~~

COMMENT: See Comment and Response No. 9.

COMMENT 25: Cindy Bergum commented that there is no mention of non-paid vocations such as home, family, parenting. This needs to be addressed here and in the content and performance standards.

RESPONSE 25: The Board and the OPI agree that preparing for a career and for life are both important and changes were made to the rule to reflect this. Specific references to home, family and parenting are best placed in local curriculum guides.

10.55.1801 LIBRARY MEDIA PROGRAM DELIVERY STANDARDS

- (1) through (1)(a)(ii) remain the same as proposed.
- ~~(iii) create and sustain a climate that fosters the love of reading, listening, and viewing and stimulates a desire for lifelong learning;~~
- ~~(iv)(iii) model and support the ethical use of information, adherence to copyright laws, and respect for intellectual property; and~~
- (iv) advise the board of trustees on policy and rule pertaining to:
- ~~(v)(A) develop developing and maintain maintaining a library collection that is current, balanced, and reflects authentic historical and cultural contributions of Montana's American Indians and other minority and ethnic groups; and~~
- ~~(vi)(B) engage engaging in comprehensive long range planning to effectively administer and manage, in a secure area, the human, financial, and physical resources of the library to locate, access, and use on-site resources that are organized and cataloged; and~~
- (C) implementing a viable collection development policy which includes the following components:

- (I) materials selection and de-selection;
- (II) challenged materials procedure;
- (III) intellectual/academic freedom statement;
- (IV) confidentiality assurance;
- (V) copyright guidelines; and
- (VI) gifts and donations.

(b) and (b)(i) remain the same as proposed.

~~(ii) write and implement a viable collection development policy adopted and supported by the school board which includes the following components:~~

- ~~(A) materials selection and de-selection;~~
- ~~(B) challenged materials procedure;~~
- ~~(C) intellectual/academic freedom statement;~~
- ~~(D) confidentiality assurance;~~
- ~~(E) copyright guidelines; and~~
- ~~(F) gifts and donations;~~

~~(iii) appropriately use paraprofessionals and volunteers in order to maximize the professional skills and time of the librarian;~~

(iv) remains the same as proposed but is renumbered (ii).

~~(v)(iii) partner and merge encourage partnerships with information centers that use electronic information systems which adhere to cataloging standards and networking protocols; and~~

(vi) remains the same as proposed but is renumbered (iv).

~~(c) provide the following resources:~~

- ~~(i) equitable access to the library facilities, resources, staff, and equipment;~~
- ~~(ii) centralized, secure area to locate, access, and use on site resources that are organized and cataloged;~~
- ~~(iii) access to a professionally staffed school library both during school hours and beyond the instructional day; and~~
- ~~(iv) maintain par with national norms for school library expenditures.~~

COMMENT: See Comment and Response No. 9.

COMMENT 26: The Montana Library Association commented that it supports the proposed library media program delivery standards as outlined in ARM 10.55.1801. The Montana Library Association (MLA) believes that the library media standards propose conditions and practices that focus on collaboration, cooperation and making connections across curricular areas as the core of the library media program.

RESPONSE 26: The Board and the OPI agree.

COMMENT 27: The Montana Library Association commented that it supports the need for school libraries to have a professionally written collection development policy. The MLA believes that such a policy is necessary for library collection development to establish priorities for the purchase of materials, guidelines for weeding, and criteria for accepting gifts. A well drafted, professionally written collection

development policy will be seen as very beneficial to all school districts and libraries.

RESPONSE 27: The Board and the OPI agree that the professional library staff shall advise the board of trustees in the development of the school library collection development policy.

COMMENT 28: The Montana Library Association commented that deferrals and poorly crafted alternative standards have resulted in drastically weakened libraries that have no professionally trained staff and no predictable funding. It is the belief of the MLA that an application for variance should meet or exceed the intended goal of the original standard, not circumvent it.

RESPONSE 28: The Board and the OPI agree that an application for variance should describe a plan to meet or exceed the intended goal of the original standard.

COMMENT 29: The Montana Library Association commented that funding for libraries is critical. The MLA believes that the proposed language in the library media program standards seeks to measure Montana school library funding against national norms. It is important that Montana school libraries measure their potential collection quality and currency with respect to average state and national funding levels.

RESPONSE 29: The Board and the OPI agree that national norms for funding levels may provide local school districts context for school library funding. However, the Board and the OPI believe that such funding decisions are the responsibility of the local boards of trustees.

COMMENT 30: Bob Vogel commented, in reference to (1)(a)(i), and the term "establish flexible scheduling," that he feels districts need to have discretion on setting appropriate hours.

RESPONSE 30: The Board and the OPI believe that flexible scheduling allows school districts the discretion to set appropriate hours.

COMMENT 31: Bob Vogel commented that in (1)(b)(ii), he feels school personnel should be involved in developing new district policies. He suggested changing the language to "suggest and work with the school board to develop a viable collection development policy."

RESPONSE 31: The Board and the OPI agree and have made changes to the rule.

COMMENT 32: Bob Vogel questioned the word "centralized" in (1)(c)(ii).

RESPONSE 32: This section has been deleted and moved to (1)(a)(iv)(B). The word "centralized" is no longer used.

COMMENT 33: Bob Vogel and Kathy M. Pfister commented that budgeting is a local district consideration and these standards should be what districts strive for, but not a mandate. Additional library time for student access and a maintained collection would be an asset to any district, but this is additional cost to the district.

RESPONSE 33: The Board and the OPI agree and (1)(c)(iii) has been deleted. Flexible scheduling allows schools discretion to establish hours for student access and to establish local policy to maintain collections.

COMMENT 34: Bob Vogel commented that districts should strive to get the most out of their library resources based on local budget realities and local considerations.

RESPONSE 34: The Board and the OPI agree and changes have been made to reflect this at (1)(b)(iii).

COMMENT 35: Jerry Pauli and Bob Vogel commented, in referencing (1)(c)(iv), that they have concerns about the language that requires each school district to maintain par with national norms for school library expenditures.

RESPONSE 35: The Board and the OPI agree and have deleted this section of the rule.

COMMENT 36: Cheryl J. Heser, Rosebud County Librarian, and Niki Whearty, Montana Library Association, commented that they are concerned about the lack of enforcement of standards for schools in regard to their school libraries. Enforcement of library standards must take place to maintain truly excellent education in Montana.

RESPONSE 36: The Board and the State Superintendent are working together to develop a peer-review system to ensure that all students in Montana public schools are provided a high quality education. This effort includes the library media content and performance standards and program delivery standards.

COMMENT 37: Teresa Marchant, Johanna Freivalds, and Diane Slagsvold, Lockwood Public Schools; and Niki Whearty commented that they support the draft for library media program delivery standards.

RESPONSE 37: No response needed.

10.55.1901 SCHOOL COUNSELING PROGRAM DELIVERY STANDARDS

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

(i) ~~provide advocacy for students and enable positive~~

change; and provide a comprehensive developmentally planned program;

(ii) advocate for all students and encourage students to develop to their full potential;

(ii)(iii) respect the worth and dignity of all individuals by building trust and respecting confidentiality; and

(iv) contribute as an integral part of the education process that is delivered through a variety of systems by school staff, students, parents, business, and industry.

(b) remains the same as proposed.

~~(i) provide a comprehensive and developmental counseling program that includes personal, social, educational, and career life planning skills; and maximize students' potential in the areas of academics, career, and personal/social development;~~

~~(ii) promote the shared commitment of many individuals such as parents, teachers, administrators, counseling staff, and students develop a guidance curriculum presented through structured groups and classroom presentations;~~

~~(iii) conduct individual planning using assessment, advisement, placement, and follow-up;~~

~~(iv) deliver responsive services through individual and group counseling, consultation, and referral; and~~

~~(v) provide system support through management, consultation with staff, community outreach, and public relations.~~

~~(c) provide the following resources:~~

~~(i) adequate human resources to include counselors, teachers, parents, administrators, students, community personnel, business and labor personnel; and~~

~~(ii) adequate materials, equipment, facilities to accomplish the program goals.~~

COMMENT: See Comment and Response No. 9.

COMMENT 38: Mark Nelson, MSU-Bozeman, representing Montana School Counseling Association, commented that an effective school counseling program involves the whole school community to integrate academic, career, and personal/social development of students into the academic program. He stated that school counseling programs are essential to prepare students for a wide range of postsecondary options, including college. Montana's school counseling program delivery standards need to more clearly describe these three essential elements to ensure the implementation of high quality and effective school counseling programs in all Montana public schools.

RESPONSE 38: The Board agrees and has made changes to the school counseling program delivery standards.

6. The Board has repealed ARM 10.55.1002 as proposed.

7. The Board 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 to the proposed rules.

General

COMMENT 39: Bob Vogel commented that he was impressed by the concepts in several of the program foundation standards, e.g., "maintaining high expectations for student performance and behavior and challenge every student at his/her own level of need;" "collaboration among school personnel to plan, assess, and support instruction;" "providing learning experiences that connect with disciplines and transfer learning from one content to another." He hopes that these standards will bring those concepts forward upon their adoption.

RESPONSE 39: The Board and the OPI agree.

Career and Vocational/Technical Education Content and Performance Standards

COMMENT 40: Jerry Pauli and Ron Rude, Superintendent of Plains Public Schools, commented that there are no beneficial career and vocational education standards.

The proposed five career and vocational/technical education standards downplay the importance of our current vocational education classes taught in intermediate grades and high schools. Some of the requirements within these five standards would require additional staffing or a complete change in our present vocational offerings.

RESPONSE 40: The Board and the OPI do not agree. There are no new rules requiring additional staffing or course offerings for career and vocational technical education. Since 1989, school districts have been required to offer all students coursework in this program area. School districts offer career and vocational technical education coursework to all students beginning in middle school, junior high school or 7 & 8 school, and offer two units of career and vocational technical education at the high school level. Currently districts use a variety of ways to meet this requirement.

To ensure that all students taking classes in career and vocational technical education receive the same core knowledge, no matter what the content area, the standards describe the overarching content, skills and abilities that are common to all of the disciplines within this program area, (e.g., agriculture education, family consumer sciences). Districts will deliver the standards through the content of each of these disciplines. The model learner goals from Project Excellence served as the foundation to the revision of the proposed rules. Vocational and technical educators from across Montana developed the career and vocational technical education content and performance standards.

The Career and Vocational/Technical Education Division of the OPI is engaged in an effort to develop guidelines that align

to the state standards and tie directly to the requirements for Carl Perkins Program funding. The goal date for implementing standards/guidelines is November 2001. This work is facilitated by the OPI and involves hundreds of educators from across Montana.

The guidelines will provide explicit content, abilities, and skills specific to each of the disciplines in career and vocational technical education.

COMMENT 41: Jim Carroll, Conrad, commented that some proposed changes in the vocational/practical arts standards will have a less than desirable impact on traffic education. His concern is that traffic education might lose its identity completely. He proposes that the OPI look at a way to keep the traffic education standards within ARM 10.55.1701. If this is not possible, perhaps it should be moved to the health enhancement area.

RESPONSE 41: The Board and the OPI agree that districts maintain current options so that the traffic education programs work and provide flexibility for districts and students. However, traffic education is not a discipline within career and vocational/technical education. Traffic education may be an option for students as an elective course; it may be offered as a service to students within or outside the school day; or traffic education may be offered as a separate non-school based program. The Board recognizes the need for consistent traffic education curriculum and professional development and encourages the OPI to work in cooperation with the Montana Traffic Education Association to provide guidance to districts through curriculum development and professional development to instructors.

#### Assessments

COMMENT 42: Fred Anderson, Principal of Custer County High School, commented that the Iowa assessment is only a single measure of student achievement and is not a primary benchmark for ranking schools in this state.

RESPONSE 42: The Board and the OPI believe that the norm-referenced test (NRT) is only one measure of student progress toward meeting or exceeding the standards. Certainly there are many other indicators that provide information on how well students are doing and how well education programs are doing. It is important to place the test scores, from this single measure, into context to avoid the rank ordering of schools, a practice that does not provide a comprehensive view of student learning. Assessment is a shared responsibility of the education community at the State, district, school, and classroom levels.

COMMENT 43: Kathy M. Pfister commented that she has a concern about the future cost to the district for assessment, as there is no direction on funding help from the State. She is

also concerned that assessment procedures for students are not defined.

RESPONSE 43: The Board and the OPI believe that definition and direction are needed to assist districts with assessment. The OPI will convene a task force to examine current practice, procedures and processes in assessing student progress in reading and mathematics. From this work, the OPI, with advice from the school districts, will establish criteria, procedures, and models to select and implement multiple measures.

#### Accountability

COMMENT 44: Kathy M. Pfister and Paul Wagner, Superintendent of Richey Public Schools, wondered if there were repercussions to the districts if students do not perform to a standard. They were concerned about how schools will be monitored and by whom to determine if schools are meeting the standards.

RESPONSE 44: The Board and OPI believe that to improve teaching and learning in Montana requires an ongoing commitment from the education community, from local districts to institutions of higher education, from professional education organizations to parents and community members. The issue of student learning is at the heart of what we do. The Board and the State Superintendent are working together to develop a peer-review system to ensure that all students in Montana public schools are provided a high quality education. There is no movement in Montana toward high-stakes testing.

COMMENT 45: Fred Anderson commented that the Board of Public Education and the Office of Public Instruction need to focus on informing the public about how the levels of student achievement in the standards are determined, how these levels relate to traditional letter grades, and that the standards are not intended to become the curriculum for K-12, but a basic component of the curriculum in every school.

RESPONSE 45: The Board and the OPI agree. There will be ongoing efforts at the state level to provide information to the general public regarding state standards and local district implementation. The Montana standards framework provides a common set of learning expectations for what all students should know, understand, and be able to do by the time they leave Montana's K-12 system. These are minimum standards. Local school districts are expected to use these standards to develop, implement, and assess written curriculum in all subject areas. In most cases, districts go beyond the basic requirements of the state standards.



By: /s/ Kirk Miller  
Kirk Miller, Chairman  
Board of Public Education

/s/ Jeffrey A. Weldon  
Jeffrey A. Weldon, Rule Reviewer  
Office of Public Instruction

Certified to the Secretary of State May 29, 2001.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the amendment ) NOTICE OF AMENDMENT AND  
of ARM 17.8.101 and 17.8.301, ) REPEAL  
and the repeal of ARM )  
17.8.315, pertaining to odors ) (AIR QUALITY)  
that create a public nuisance )

TO: All Concerned Persons

1. On February 8, 2001, the Board of Environmental Review published notice of the proposed amendment of ARM 17.8.101 and 17.8.301 and the repeal of ARM 17.8.315, pertaining to odors that create a public nuisance, at page 291 of the 2001 Montana Administrative Register, Issue No. 3.

2. The Board has amended ARM 17.8.101 and 17.8.301 and repealed ARM 17.8.315 as proposed.

3. The Board received the following comments (Board responses follow each comment):

COMMENT #1: The Missoula City-County Health Department (MCCHD) commented that it opposes repeal of the odor nuisance rule. MCCHD commented that the odor rule is an important tool for protecting air quality in Montana. MCCHD stated that, in the 1960s, odors were a driving force behind the first air pollution regulations, both in Montana and nationally and that, over the years, standards and permit limits have been established for industries to protect the public and communities from offensive odors. MCCHD commented that these measurements don't apply to all air pollutant sources or to all odorous compounds, so there is a need for an odor rule. MCCHD stated that the odor rule was established to cover those air pollutant sources for which there are no permit limits controlling odors and that these sources can exist today.

RESPONSE: In developing a position on the odor rule, the Department of Environmental Quality considered the fact that odors may occur from small air pollutant sources that are not subject to emission limits under an air quality permit. The Department also included the employee from its Small Business Assistance Program in the discussions. However, with repeal of the odor rule, the civil remedies for public and private nuisances in Sections 27-30-101 through 27-30-302, MCA, and the criminal remedies for public nuisances in Sections 45-8-111 and 45-8-112, MCA, would still apply to odors from sources not subject to an air quality permit. The Board believes that air quality is adequately protected through standards other than the odor nuisance rule and through air quality permit limits on sources large enough to require a permit. The Board believes that the civil and criminal remedies cited above for nuisances are adequate to deal with odors from smaller sources or from types of facilities not requiring an air quality permit.

COMMENT #2: MCCHD commented that, although repeal of the odor rule would not remove all remedies for odors and citizens could seek civil and criminal remedies for nuisances either through private attorneys or the county attorney's office, citizens would lose the assistance of the Department in assessing the complaint, working with the offending party to try to find a solution, and issuing orders to require a solution, when necessary.

RESPONSE: The Board expects the Department to continue to investigate odor complaints after repeal of the odor rule. If an investigation establishes that the odor is from a source regulated by the Department, the Department will still have authority to ensure that the source complies with applicable rules and permit conditions enforced by the Department. If the investigation establishes that the odor is from an unregulated source, the Department will suggest possible remedies to the complainant.

BOARD OF ENVIRONMENTAL REVIEW

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

Reviewed by:

David Rusoff  
David Rusoff, Rule Reviewer

Certified to the Secretary of State May 25, 2001.

BEFORE THE MONTANA TRANSPORTATION COMMISSION  
AND THE DEPARTMENT OF TRANSPORTATION  
OF THE STATE OF MONTANA

In the matter of the amendment ) NOTICE OF AMENDMENT  
of ARM 18.3.101 through )  
18.3.106 and 18.3.201 )  
concerning debarment of )  
contractors due to violations )  
of department requirements and )  
determination of contractor )  
responsibility )

TO: All Concerned Persons

1. On October 26, 2000, the Department of Transportation and Montana Transportation Commission published notice of the proposed amendment of the existing rules referenced above at page 2860 of the 2000 Montana Administrative Register, Issue Number 20. Following a request by the Montana Contractors' Association (MCA) for a public hearing, a Notice of Public Hearing was published on December 7, 2000, at page 3330 of the 2000 Montana Administrative Register, Issue Number 23. Due to the MCA's request for a delay in the scheduled hearing, an Amended Notice of Public Hearing was published on December 21, 2000, at page 3496 of the 2000 Montana Administrative Register, Issue Number 24.

2. A public hearing was held in Helena on January 16, 2001, presided over by Jodi Harrison, hearing officer. Testimony was provided by the Department of Transportation, the Federal Highway Administration, and the MCA. Written comments were accepted by the hearing officer through January 31, 2001.

3. The hearing officer's report found that: the determination of procedures for suspension and debarment of contractors from bidding on Department/Commission contracts is within the authority of the Department and Commission; the proposed amendments are within the scope of that authority and comply with Montana's rulemaking requirements; and the proposed amendments are not only constitutional on their face, but also provide adequate due process to contractors facing disciplinary action.

4. The Department and Commission have amended ARM 18.3.101, 18.3.102, 18.3.103, 18.3.104, 18.3.105, 18.3.106, and 18.3.201, as proposed.

5. Written comments (condensed here) were provided by the MCA and the Department of Transportation. The following comments were received from the MCA, and appear with the Department's and Commission's responses:

Comment No. 1: The MCA asked for a longer suspension

process, more removed from the Department, arguing that the proposed process was both too fast and inadequate to meet due process needs, and asking that the only hearing be before the Montana Transportation Commission, not by a hearing officer for the Department Director.

Response: The proposed suspension process provides adequate due process, substantially more than the existing process. (The due process provisions of the existing process was approved by the Legal Services Office of the Montana Legislative Services Division in 1999.) The MCA's proposed process would take a prohibitively long time, largely eliminating the efficacy of any proposed suspension. The process as adopted provides a hearing before an independent hearing officer from outside the Department, with review by the Director and appeal to the Transportation Commission.

Comment No. 2: The MCA objected to the entire process of finding a contractor "not responsible." This objection was not just directed to the proposed amendments, but also raised doubts as to the constitutionality of the entire process. No alternate process was proposed.

Response: Because there is a statutory (and federal) requirement that bidders on public works projects must be "responsible," a process for finding a contractor "non-responsible" is required. The Department and Commission based the existing rule on one already in place by the Montana Department of Administration. The adopted amendments to the rule provide clarification of its requirements, including specific examples of conduct for which a contractor might be found "non-responsible." As noted above, the constitutionality of the process was approved by the hearing officer. The process has also been carefully structured to provide adequate notice and an opportunity to be heard.

MONTANA DEPARTMENT OF TRANSPORTATION

By: David A. Galt

DAVID A. GALT, Director

MONTANA TRANSPORTATION COMMISSION

By: Shiell W. Anderson

SHIELL ANDERSON, Chairman

Lyle Manley

LYLE MANLEY, Rule Reviewer

Certified to the Secretary of State May 29, 2001.

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

In the matter of the repeal ) NOTICE OF REPEAL  
of ARM 16.24.901 through )  
16.24.905 pertaining to state )  
plans for maternal and child )  
health (MCH), ARM 16.38.1501 )  
pertaining to lab services )  
and ARM 16.48.101 through )  
16.48.103 pertaining to )  
Montana health care authority )

TO: All Interested Persons

1. On March 8, 2001, the Department of Public Health and Human Services published notice of the proposed repeal of the above-stated rules at page 379 of the 2001 Montana Administrative Register, issue number 5.

2. The department has repealed ARM 16.24.901, 16.24.902, 16.24.903, 16.24.904, 16.24.905, 16.38.1501, 16.48.101, 16.48.102, and 16.48.103 as proposed.

3. No comments or testimony were received.

/s/ Dawn Sliva  
Rule Reviewer

/s/ Gail Gray  
Director, Public Health and  
Human Services

Certified to the Secretary of State May 29, 2001.

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

In the matter of the transfer ) NOTICE OF TRANSFER  
of ARM 16.26.101 through )  
16.26.105, 16.26.201 through )  
16.26.203, 16.26.301 through )  
16.26.303 and 16.26.401 and )  
16.26.402 pertaining to )  
women, infants and children )  
(WIC) )

TO: All Interested Persons

1. Pursuant to Chapter 546, Laws of Montana 1995, effective July 1, 1995, the women, infants and children (WIC) program is transferred from the Department of Health and Environmental Sciences to the Department of Public Health and Human Services ARM Title 37, Chapter 59.

2. The Department of Public Health and Human Services has determined that the transferred rules will be numbered as follows:

<u>OLD</u>	<u>NEW</u>	
16.26.101	37.59.101	Purpose of Rules
16.26.102	37.59.105	Incorporations by Reference
16.26.103	37.59.109	Program Administration and Guidance
16.26.104	37.59.110	Nutrition Services Standards
16.26.105	37.59.102	Definitions
16.26.201	37.59.201	Selection of Local Agencies
16.26.202	37.59.202	Agreements with Local Agencies
16.26.203	37.59.203	Periodic Review and Disqualification of Local Agencies
16.26.301	37.59.301	Requirements for Local Agency Selection of Food Vendors
16.26.302	37.59.303	Periodic Review and Disqualification of Food Vendors
16.26.303	37.59.302	Agreements with Food Vendors
16.26.401	37.59.401	Appeals by Program Participants



16.26.402 37.59.402 Appeals by Local Agencies and Food Vendors

3. The transfer of these rules is necessary because this program was transferred from the Department of Health and Environmental Science to the Department of Public Health and Human Services by the 1995 legislature by Chapter 546, Laws of Montana 1995.

/s/ Dawn Sliva  
Rule Reviewer

/s/ Gail Gray  
Director, Public Health and Human Services

Certified to the Secretary of State May 29, 2001.

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

In the matter of the ) NOTICE OF AMENDMENT  
amendment of ARM 37.85.212 )  
pertaining to resource based )  
relative value scale (RBRVS) )  
reimbursement )

TO: All Interested Persons

1. On April 26, 2001, the Department of Public Health and Human Services published notice of the proposed amendment of the above-stated rule at page 612 of the 2001 Montana Administrative Register, issue number 8.

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

37.85.212 RESOURCE BASED RELATIVE VALUE SCALE (RBRVS)  
REIMBURSEMENT FOR SPECIFIED PROVIDER TYPES (1) through  
(3)(f)(ii) remain as proposed.

(4) The conversion factor used to determine the medicaid payment amount for the services covered by this rule for state fiscal year 2002 is:

(a) ~~33.15~~ 34.15 for medical and surgical services, as specified in (2); and

(b) through (7)(b)(iii) remain as proposed.

(8) Except for physician administered drugs as provided in ARM 37.86.105(3), if neither medicare nor medicaid sets RVUs, then reimbursement is by report.

(a) remains as proposed.

(b) For state fiscal year 2002, the "by-report" rate is ~~53%~~ 55% of the provider's usual and customary charges.

(9) through (14) remain as proposed.

AUTH: Sec. 53-2-201 and 53-6-113, MCA

IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-113, MCA

3. The conversion rate used to determine the payment amount for services covered by the RBRVS rule is specified in subsection (4)(a) of ARM 37.85.212. The Department originally proposed to change the conversion factor, which is \$34.15 for fiscal year 2001, to \$33.15 for fiscal year 2002, based on the information available to the Department at the time. The conversion factor is based on several factors, including the amount appropriated by the Montana Legislature for Medicaid reimbursement, the Medicare RVUs, and the volume of claims submitted by providers for services covered by this rule. At the time the proposed amendments were filed, the Legislature was still in session so the final amount of the appropriation was

not known. Additionally, the Department had not yet finished reviewing the volume data. Therefore the conversion factor originally proposed was the Department's best estimate.

When the computations were done based on the Medicare RVUs, the final appropriation from the Legislature and the volume data, the Department determined that the conversion factor would remain the same as the factor for the previous fiscal year rather than being reduced.

Similarly, the Department originally proposed to reduce the reimbursement rate for services billed "by-report", which is specified in subsection (8)(b), from 55% of the provider's usual and customary charges for fiscal year 2001 to 53% for fiscal year 2002, based on the Department's best estimate at that time. Subsequently the Department determined that the "by-report" rate would remain at 55% of the provider's usual and customary charges for fiscal year 2002.

4. No comments or testimony were received.

/s/ Dawn Sliva  
Rule Reviewer

/s/ Gail Gray  
Director, Public Health and  
Human Services

Certified to the Secretary of State May 29, 2001.

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

In the matter of the ) NOTICE OF AMENDMENT  
amendment of rules )  
37.86.1802, 37.86.1806 and )  
37.86.1807 pertaining to )  
medicaid fees and )  
reimbursement requirements )  
for prosthetic devices, )  
durable medical equipment )  
(DME) and medical supplies )

TO: All Interested Persons

1. On April 26, 2001, the Department of Public Health and Human Services published notice of the proposed amendment of the above-stated rules at page 604 of the 2001 Montana Administrative Register, issue number 8.

2. The Department has amended rules 37.86.1802, 37.86.1806 and 37.86.1807 as proposed.

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

COMMENT #1: Several providers commented on the Department's proposal to reduce the fee paid for wheelchairs and wheelchair accessories from 83% to 80% of the provider's usual and customary charge. They commented that this rate does not adequately compensate providers for the cost of providing more expensive wheelchairs, although one provider stated that the Department's proposed reimbursement is fair in regard to less expensive wheelchairs and another provider commended the Department on eliminating the competitive bid process. The commentators indicated that the proposed reimbursement is inadequate for more expensive wheelchairs due to the large investment of time, knowledge and labor involved in set up, fitting, follow up, and service after the sale.

The commentators made several alternative proposals for reimbursement for more expensive wheelchairs. Several providers suggested that it would be more reasonable for the Department to pay 80% of the provider's usual and customary charge for wheelchairs which cost \$3,500 or less and 80% plus the cost of labor to fit all wheelchairs costing more than \$3,500. Another provider suggested that a flat fee of \$600 to cover labor be paid in addition to 80% of the usual and customary charge for manual wheelchairs costing more than \$3,500 and that a flat fee of \$850 to cover labor be paid in addition to 80% of the usual and customary charge for power wheelchairs costing more than \$5,500. This same provider suggested in the alternative that

the Department pay 100% of the provider's usual and customary charge for manual wheelchairs costing more than \$3,500 and 100% of the usual and customary charge for power wheelchairs costing more than \$5,500.

RESPONSE: The Department has considered the comments regarding additional reimbursement to cover labor charges and additional costs associated with providing high-end wheelchairs. The Department understands that there are costs associated with the provision of these high-end wheelchairs and that the providers would like to be reimbursed for this cost. However, after considering these comments the Department believes the proposed payment methodology provides reasonable and adequate payment for all services provided by the DME provider.

Under the Department's original proposal, the Department paid DME providers an average of 70% of usual and customary charges for wheelchairs provided under the bid chair process. This included all wheelchairs with a cost greater than \$3,499.99, i.e. high-end wheelchairs. Under the 70% proposal the Department excluded several wheelchairs that were paid at a cost greater than expected. When we include the cost of these wheelchairs in the analysis, the average payment to charges was 79%. The Department believes that DME providers participated in the bid chair process and accepted payment for the high-end wheelchairs that averaged 79% of UCC. Under this payment level the DME providers were willing to participate and be reimbursed their cost for the product that also included costs for labor charges and additional costs associated with providing high-end wheelchairs.

The proposed payment of 80% of usual and customary charges represents the weighted average of allowed charges for all wheelchairs under the Medicaid program. This includes all wheelchairs covered under the bid chair process and other wheelchair rentals and purchases. The Department made this change based upon comments and discussions with the DME workgroup and providers in response to our original proposal to reimburse for these services at 70% of usual and customary charges.

The proposed methodology provides for reasonable and adequate reimbursement for the services provided to the Medicaid client. This includes the cost of the wheelchair and related costs incurred by the DME provider. The proposed methodology results in a cost neutral solution to the Medicaid program while eliminating the problematic bid chair process for providers. In addition, providers will no longer run the risk of incurring costs to prepare the information and specifications for a wheelchair, only to lose the bid to a competitor. Under the proposed changes providers will be able to work with a client and "spec out" a chair knowing they will be able to provide the chair to the client and be adequately reimbursed for their services.

COMMENT #2: One provider had questions about the Notice of Public Hearing on Proposed Amendment published in regard to these rules. The provider asked if the underlined items were the changes the Department was proposing and if the items that were interlined were intended to be deleted.

RESPONSE: Yes, the provider is correct. Interlined material is existing text the Department intends to delete and the underlined material is the text the Department intends to add. This is the standard method used by state agencies to show proposed text changes. The Department understands this can be confusing, which is why on the Notice of Public Hearing on Proposed Amendment in paragraph 2, the Department includes the phrase, "matter to be added to the rule is underlined. Matter to be deleted is interlined".

/s/ Dawn Sliva  
Rule Reviewer

/s/ Gail Gray  
Director, Public Health and  
Human Services

Certified to the Secretary of State May 29, 2001.

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

In the matter of the ) NOTICE OF AMENDMENT  
amendment of ARM 37.86.2207, )  
37.86.3001, 37.86.3502, )  
37.86.3702, 37.88.1101, )  
37.88.1106 and 37.89.103 )  
pertaining to mental health )  
services )

TO: All Interested Persons

1. On March 22, 2001, the Department of Public Health and Human Services published notice of the proposed amendment of the above-stated rules at page 436 of the 2001 Montana Administrative Register, issue number 6.

2. The Department has amended rules 37.86.2207, 37.86.3001, 37.86.3502, 37.86.3702, 37.88.1101, 37.88.1106 and 37.89.103 as proposed.

3. No comments or testimony were received.

/s/ Dawn Sliva  
Rule Reviewer

/s/ Gail Gray  
Director, Public Health and  
Human Services

Certified to the Secretary of State May 29, 2001.

VOLUME NO. 49

OPINION NO. 2

CONSTITUTIONS - Scope of construction by attorney general in opinion;  
STATUTORY CONSTRUCTION - Construction of statute's provisions in manner which gives meaning and effect to each;  
STATUTORY CONSTRUCTION - Construing intent of legislature;  
STATUTORY CONSTRUCTION - Statutes presumed constitutional;  
MONTANA CODE ANNOTATED - Sections 1-2-101, 17-6-305, -306 (1983), 17-6-308 (1983), -308 (1999), -308(4) (1989);  
MONTANA CONSTITUTION - Article II, section 31;  
MONTANA LAWS OF 1997 - Chapter 549;  
MONTANA LAWS OF 1999 - Chapter 66;  
OPINIONS OF THE ATTORNEY GENERAL - 48 Op. Att'y Gen. No. 12 (Mont. 2000).

HELD: The Board of Investments may complete the payment of grants to the Montana University System from interest and income derived from the Montana Board of Science and Technology Development loans.

April 24, 2001

Mr. Mark Simonich, Director  
Montana Department of Commerce  
P.O. Box 200501  
Helena, MT 59620-0501

Dear Mr. Simonich:

Your predecessor presented the following question for my opinion:

May the Board of Investments complete the payment of grants to the Montana University System from interest and income derived from the Montana Board of Science and Technology Development loans that the legislature directed be deposited in the coal tax permanent trust fund?

It is my opinion that the loans can be paid.

I.

In 1983, the Montana legislature established the Montana in-state investment fund. Mont. Code Ann. § 17-6-306. To establish the fund, the legislature directed that "25% of the revenue deposited after June 30, 1983 into the permanent coal tax trust fund" would be appropriated into the Montana in-state investment fund. Mont. Code Ann. § 17-6-306 (1983). Section 17-6-305 directed that the money "shall be invested in the Montana



economy with special emphasis on investments in new or expanding locally owned enterprises." Mont. Code Ann. § 17-6-305 (1983). Section 17-6-308 set forth the authorized investment for which the fund could be utilized:

The Montana in-state investment fund must be invested in the securities authorized as permissible investments under 17-6-211 and in any other type of in-state investment authorized by rules adopted by the board.

Mont. Code Ann. § 17-6-308 (1983).

In 1989, the legislature created the Montana Board of Science and Technology Development (MSTD). During the same session, the legislature expanded the investments authorized by § 17-6-308 as follows:

(4) The board shall allow the Montana board of science and technology development provided for in 2-15-1818 to administer \$7.5 million of the in-state investment fund for seed capital project loans pursuant only to the provisions of Title 90, chapter 3. This authority does not extend beyond June 30, 1994. Until such time as the Montana board of science and technology development makes a loan pursuant to those provisions, the funds under its administration must be invested by the board of investments pursuant to the provisions of 17-6-201.

Mont. Code Ann. § 17-6-308(4) (1989).

From 1989 to 1997 the legislature continued to grant MSTD the authority to administer a statutorily set amount of funds from the Montana in-state investment fund. Based upon the information provided by the Montana University System and the Department of Commerce, it appears that MSTD used the funds it administered to enter into research and development loans with different units of the Montana University System from approximately 1992 until 1997. This practice changed in 1997, when the legislature amended § 17-6-308.

In 1997, the legislature deleted MSTD's authority to make research and development loans that had been authorized in prior sessions. The effective date of the amendment was July 1, 1999. In the interim period between the 1997 session and July 1, 1999, the legislature authorized MSTD to "grant up to \$2 million of interest and income from investments to research and development projects at Montana public universities." 1997 Mont. Laws, ch. 549.

Relying on this language, MSTD and the Montana University System entered into six separate grant agreements. In the agreements,

MSTD agreed to grant \$2 million in funds to Montana University System campuses in exchange for the campuses' meeting the milestones outlined in the grant agreements. The Montana University System campuses relied on these grant funds to secure matching federal funds for their research and development projects.

The agreements were signed by the appropriate representatives from both MSTD and the Montana University System. Unlike the agreements of past years, these post-1997 agreements contained no reference to the grant awards being loans or to any repayment provisions. In my opinion, the agreements constitute fully-integrated, binding contracts.

In 1999, the legislature dismantled MSTD and enacted amendments to § 17-6-308. The amendments directed the Board of Investments to administer the agreements entered into by MSTD and at the same time eliminated the funds set aside for the completion of such agreements. This opinion arises out of the question of whether, given the 1999 changes, the Board of Investments can complete the research and development agreements MSTD entered into with the Montana University System.

## II.

In 1999, the legislature amended the 1997 version of § 17-6-308, which was to become effective on July 1, 1999. The amendments, in relevant part, are as follows:

(3) ~~The department board shall manage the seed capital and research and development loan portfolios created by the former Montana board of science and technology development. The department board shall establish an appropriate repayment schedule for all outstanding research and development loans made to the university system. The department shall report the schedule to the 56th legislature. The department shall develop a business investment strategy for investing in Montana business and shall present the proposal to the 56th legislature. The department board is the successor in interest to all agreements, contracts, loans, notes, or other instruments entered into by the Montana board of science and technology development as part of the seed capital and research and development loan portfolios, except agreements, contracts, loans, notes or other instruments funded with coal tax permanent trust funds. The board shall administer the agreements, contracts, loans, notes or other instruments funded with coal tax permanent trust funds. Until the department makes a loan pursuant to the provisions of part 5 of this chapter, the \$915,000 in funds under its administration must be invested by the board pursuant to the provisions of 17-6-201. As~~

loans made pursuant to part 5 of this chapter are repaid, ~~the department may reinvest the principal in new loans pursuant to part 5 of this chapter~~ board shall deposit the proceeds or loans made from the coal severance tax trust fund in the coal severance tax permanent fund until all investments are paid back with 7% interest.

(5) ~~Beginning July 1, 1999, all repayments of proceeds in excess of 4.395 million of investments made from the coal severance tax trust fund must be deposited in the coal severance tax permanent fund. In the fiscal year ending June 30, 1998, the department shall transfer \$250,000 from the interest and earnings from job investment loans to the Montana supreme court to be used to fund the judges' retirement system.~~

1999 Mont. Laws, ch. 66.

The ultimate codification of these changes appears as follows:

(3) The board shall manage the seed capital and research and development loan portfolios created by the former Montana board of science and technology development. The board shall establish an appropriate repayment schedule for all outstanding research and development loans made to the university system. The board is the successor in interest to all agreements, contracts, loans, notes, or other instruments entered into by the Montana board of science and technology development as part of the seed capital and research and development loan portfolios, except agreements, contracts, loans, notes, or other instruments funded with coal tax permanent trust funds. *The board shall administer the agreements, contracts, loans, notes, or other instruments funded with coal tax permanent trust funds.* Until the department makes a loan pursuant to the provisions of part 5 of this chapter, the \$915,000 in funds under its administration must be invested by the board pursuant to the provisions of 17-6-201. As loans made pursuant to part 5 of this chapter are repaid, the board shall deposit the proceeds or loans made from the coal severance tax trust fund in the coal severance tax permanent fund until all investments are paid back with 7% interest.

(6) All repayments of proceeds pursuant to subsection (3) of investments made from the coal severance tax trust fund must be deposited in the coal severance tax permanent fund.

(Emphasis added.)

The 1999 legislative changes result in an inherent conflict between subsections (3) and (6). The amendments, on the one hand, have the effect of directing the Board of Investments to administer the agreements made by MSTD which were funded with coal tax permanent trust funds, and, on the other hand, eliminating the source of funding set aside to accomplish administration. This opinion relies on well-accepted principles of statutory construction to resolve that conflict.

III.

Generally, because an opinion cannot invalidate the constitutionality of a statute and because his duties may include at some point defending the constitutionality of a statute, the Attorney General must decline to issue an opinion as to the constitutionality of a particular statute. 48 Op. Att'y Gen. No. 12, 17 (Mont. 2000). But within that context, I remain obligated to construe statutes to avoid constitutional infirmities if reasonably possible. State v. Nye, 283 Mont. 505, 510, 943 P.2d 96, 99 (1997). In particular, I must adhere to the general rule that whenever there are differing possible interpretations of a statute, an interpretation that avoids constitutional issues is favored over one that creates them. Department of State Lands v. Pettibone, 216 Mont. 361, 374, 702 P.2d 948, 956 (1985).

In this case, my conclusion that the Board of Investments may complete the grants that were entered into between MSTD and the Montana University System is based in large part on my conclusion that any alternative interpretation would render § 17-6-308 constitutionally infirm.

The contract clauses of the Montana and United States Constitutions have been interpreted as "interchangeable guarantees against legislation impairing the obligation of contract." City of Billings v. County Water Dist., 281 Mont. 219, 227, 935 P.2d 246, 251 (1997). Article 2, section 31 of the Montana Constitution provides:

*No ex post facto law nor any law impairing the obligation of contracts, or making any irrevocable grant of special privileges, franchises, or immunities, shall be passed by the legislature.*

(Emphasis added.)

The Montana Supreme Court has employed a three-part test when analyzing a contract clause challenge:

- (1) Is the state law a substantial impairment to the contractual relationship?
- (2) Does the state have a significant and legitimate purpose for the law?

- (3) Does the law impose reasonable conditions which are reasonably related to achieving the legitimate and public purpose?

Id. at 228, 935 P.2d at 251.

Addressing part (1), I conclude that elimination of the Board of Investments' ability to complete the \$2 million grant obligation to the Montana University System meets the substantial impairment standard. Without the funds, the Montana University System will not be able to complete research and development projects and will likely jeopardize matching federal funding.

Part (2) is more difficult. In order to glean the legislative intent and purpose of the 1999 law, a review of its legislative history is necessary. Unfortunately, that history is quite short and not generally helpful. The one thing that is clear from the March 3, 1999 hearing in the Senate Committee on Finance and Claims is that the bill's sponsor intended the law to be an attempt at making the coal tax permanent trust fund whole. This rationale alone serves as a legitimate and significant purpose for the law.

However, the analysis of impairment does not end with part (2). With respect to part (3), I must consider whether the application of the statute to the facts at issue is reasonably related to achieving the legitimate and public purpose of the statute. City of Billings v. County Water Dist., 281 Mont. at 227, 935 P.2d at 251. A heightened level of scrutiny applies when a governmental entity is a party to the contract. Id. Additionally, in a case such as this where the impairment is severe, the level of scrutiny to which the legislation is subject increases. Id.

While the legislature's ultimate intent to make the coal tax permanent trust fund whole is a legitimate goal, it is unreasonable to read the 1999 legislative changes to abrogate contracts the legislature had expressly authorized two years earlier. A Massachusetts court articulated the standard the United States Supreme Court has relied upon when determining the reasonableness of a statutory change that has the effect of impairing a contract obligation. The court stated:

An impairment is not a reasonable one if the problem sought to be resolved by an impairment of a contract existed at the time the contractual obligation was incurred. If the foreseen problem has changed between the time of the contracting and the time of the attempted impairment, but has changed only in degree and not in kind, the impairment is not reasonable.

Massachusetts Community College Council v. Commonwealth, 649 N.E.2d 708, 713 (Mass. 1995). The legislative history of neither the 1997 legislation nor the 1999 legislation gives any

indication that factors in the state's economic, fiscal, or political climate had changed so significantly in the intervening two years as to justify such an impairment.

In my opinion, if § 17-6-308 is construed to prohibit the Board of Investments from completing the grant awards entered into between MSTD and the Montana University System, the statute would be in violation of the contract clause and rendered unconstitutional as applied to the Montana University System.

However, as stated above, when construing a statute I must seek a constitutional interpretation whenever reasonably possible. In this case, applying ordinary rules of statutory interpretation, I believe a constitutional interpretation can be found.

#### Conclusion

When it amended § 17-6-308 in 1999, the legislature created an apparent conflict between subsections (3) and (6). To the extent that the two subsections are in conflict, they should be interpreted to harmonize them and give effect to both. See Mont. Code Ann. § 1-2-101; see also Albright v. State, 281 Mont. 196, 206, 933 P.2d 815, 821 (1997). This can be accomplished if subsection (3) is read to allow the use of income from MSTD investments to complete the grants to the Montana University System, and subsection (6) is read to require that all income in excess of that needed to fund the grants be deposited in the coal tax permanent trust fund.

This construction gives effect to all parts of the enactment and avoids an interpretation that yields an unconstitutional result.

THEREFORE, IT IS MY OPINION:

The Board of Investments may complete the payment of grants to the Montana University System from interest and income derived from the Montana Board of Science and Technology Development loans.

Very truly yours,

/s/ Mike McGrath

MIKE McGRATH  
Attorney General

mm/ans/jym

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee:

- Department of Agriculture;
- Department of Commerce;
- Department of Labor and Industry;
- Department of Livestock;
- Department of Public Service Regulation; and
- Office of the State Auditor and Insurance Commissioner.

Education and Local Government Interim Committee:

- State Board of Education;
- Board of Public Education;
- Board of Regents of Higher Education; and
- Office of Public Instruction.

Children, Families, Health, and Human Services Interim Committee:

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration, and Veterans' Affairs Interim Committee:

- Department of Administration;
- Department of Military Affairs; and
- Office of the Secretary of State.

Environmental Quality Council:

- Department of Environmental Quality;
- Department of Fish, Wildlife, and Parks; and
- Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is PO Box 201706, Helena, MT 59620-1706.



HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA  
AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions: Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

- |                                     |   |
|-------------------------------------|---|
| Known<br>Subject                    | 1. Consult ARM topical index.<br>Update the rule by checking the accumulative<br>Matter table and the table of<br>contents in the last Montana Administrative<br>Register issued. |
| Statute<br>Number and<br>Department | 2. Go to cross reference table at end of each<br>title which lists MCA section numbers and<br>corresponding ARM rule numbers.   |

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The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 2001. This table includes those rules adopted during the period April 1, 2001 through June 30, 2001 and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 2001, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 2000 and 2001 Montana Administrative Registers.

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