

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 24

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the proposed)	NOTICE OF PROPOSED
amendment of ARM 4.12.1427)	AMENDMENT
relating to shipping point)	
inspection fees)	NO PUBLIC HEARING
)	CONTEMPLATED

TO: All Concerned Persons

1. On January 20, 2001, the Montana Department of Agriculture proposes to amend the above stated rule relating to shipping point inspection fees.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than 5:00 p.m. on January 4, 2001, to advise us of the nature of the accommodation that you need. Please contact Steve Baril, Bureau Chief, Field Services Bureau, Agricultural Sciences Division at the Montana Department of Agriculture, P.O. Box 200201, Helena, MT 59620-0201; Phone: (406) 444-3730; TDD: (406) 444-4687; Fax: (406) 444-7336; or E-mail: agr@state.mt.us.

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

4.12.1427 SHIPPING POINT INSPECTION FEES (1) All produce ~~(with exception of potatoes and cherries)~~..... ~~3.5~~ - 5.5¢ per unit.

~~(2) Potatoes; seed or table stock... 4¢ per cwt.~~
~~Cherries;..... 17.5¢ per cwt.~~

~~(3)(2) Minimum inspection fee per requested inspection trip..... \$10.00~~20.00 per trip.

~~(4)(3) Inspection tags..... 5 - 20¢ per tag.~~
(4) Additional fees may be charged as follows:
(a) hourly charge - \$20.00 per hour; and
(b) per diem and mileage per ARM Title 2, chapter 4.
(5) All fees are due within 30 days after billing. The department may assess a collection fee of 10 percent of any amount past due with a minimum charge of \$10.00. The department may require past due payment of fees prior to providing inspection services.

AUTH: 80-3-303, MCA
IMP: 80-3-315, MCA

Reason: Inspection fees are required by statute to be commensurate with the cost of providing the inspection. The fees have remained constant since 1989, however, the cost of providing inspections has been steadily rising over the years, particularly in the last couple of years in the areas of communications and transportation. The main inspection program on seed potatoes has seen costs rise to exceed income by over 35 percent. The fee amounts are being made equal per unit basis for all fruits and vegetables since the cost associated with the inspections is similar for all these commodities. Raising the per trip fee makes the fee closer to the cost of an inspection visit. The tag fee increase reflects a more current cost of tags. The additional fees will allow the department to charge for services when a shipping point inspection function is requested, but no certificate is actually issued. The additional fees will allow the department to charge for services when a shipping point inspection function is requested, but no certificate is actually issued; or when an inspection has been requested and upon arrival, the inspector is advised that services are not needed at the time but no reasonable effort was made to inform the inspector. The collection fee will compensate the shipping point inspection fund for the effort in trying to collect fees owing. This will provide incentive for users of the service to keep accounts current and is, therefore, fairer to those who are current and provide timely payment for services rendered.

4. Concerned persons may submit their data, views or arguments concerning this proposed action in writing to Steve Baril, Bureau Chief, Field Services Bureau, Agricultural Sciences Division at the Montana Department of Agriculture, 303 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-7336; or E-mail: agr@state.mt.us. Any comments must be received no later than January 18, 2001.

5. If persons who are directly affected by the proposed action wish to express their data, views and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Steve Baril, Bureau Chief, Field Services Bureau, Agricultural Sciences Division at the Montana Department of Agriculture, 303 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201; Phone: (406) 444-3730; TDD: (406) 444-4687; Fax: (406) 444-7336; or E-mail: agr@state.mt.us. A written request for hearing must be received no later than January 18, 2001.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25

members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 9 persons based on 90 seed potato, apple, cherry and other produce growers requesting this service.

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

8. Based on 90 produce growers, the proposed changes in shipping point inspection fees, which primarily affect seed potato inspections, will generate an additional \$38,000 in revenue per year. This will be commensurate with the current costs of the program.

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

DEPARTMENT OF AGRICULTURE

/s/ Ralph Peck
Ralph Peck
Director

/s/ Tim Meloy
Tim Meloy, Attorney
Rules Reviewer

Certified to the Secretary of State December 11, 2000.

BEFORE THE BOARD OF COSMETOLOGISTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to the general practice of cosmetology, schools, instructors applications, examinations, electrology schools, electrolysis, sanitary standards for electrology salons, and sanitary rules for beauty salons and cosmetology schools and the adoption of a new rule pertaining to aiding and abetting unlicensed practice and the repeal of rules pertaining to renewals, booth rental license applications, walls and ceilings, doors and windows and ventilation)	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT, OF ARM 8.14.402, 8.14.601 8.14.603, 8.14.604, 8.14.606 through 8.14.609 8.14.611 through 8.14.613, 8.14.801 through 8.14.805, 8.14.807, 8.14.812 through 8.14.814, 8.14.816, 8.14.817, 8.14.820, 8.14.823, 8.14.902, 8.14.903, 8.14.905, 8.14.1201, 8.14.1204 8.14.1206 through 8.14.1208, 8.14.1211, 8.14.1212, 8.14.1215, THE ADOPTION OF NEW RULE I AIDING AND ABETTING UNLICENSED PRACTICE AND THE REPEAL OF 8.14.403, 8.14.818, 8.14.1202, 8.14.1203 and 8.14.1205
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TO: All Concerned Persons

1. On January 23, 2001, at 9:00 a.m., a public hearing will be held in the Professional and Occupational Licensing Division conference room, 4th Floor, Federal Building, 301 South Park Avenue, Helena, Montana to consider the proposed amendment, adoption and repeal of the above-stated rules.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing and need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Cosmetologists no later than 5:00 p.m., on January 12, 2001, to advise us of the nature of the accommodation that you need. Please contact Jeannie Worsech, Board of Cosmetologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2335; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail compolcos@state.mt.us.

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

8.14.402 UNPROFESSIONAL CONDUCT (1) For purposes of implementing the provisions of Title 37, chapter 1, MCA, and in addition to the unprofessional conduct provisions set forth at 37-1-316, MCA, the board defines unprofessional conduct as ~~follows~~ set forth below. Unprofessional conduct is subject to discipline by the board.

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

~~(3)~~ (c) a breach of contract with a client, student, salon owner, booth renter, employee or employer, provided that such breach is established as a final judgment in a court of law;

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

~~(5)~~ (e) knowingly submitting false records or documents to the board or an employee of the division of professional and occupational licensing department; or

(6) through (8) will remain the same but be renumbered (f) through (h).

~~(9)~~ (i) violating, or attempting to violate, directly or indirectly, or assisting or abetting the violation of, or conspiring to violate any provision of Title 37, chapters 1 or 31, MCA, or rules promulgated thereunder, or any order of the board;

(10) will remain the same but be renumbered (j).

~~(11)~~ (k) using any dangerous drug, or controlled substance illegally or alcohol while providing professional services regulated under this chapter;

(12) through (15) will remain the same but be renumbered (l) through (o).

~~(16)~~ (p) removing a student from a scheduled class to perform cosmetology, manicuring or esthetics work on the public; and

~~(17)~~ (q) allowing a patron member of the public to be served by a student without an instructor present on the clinic service floor;

(r) failure to provide the board with a response to a board request or inquiry;

(s) failing to return a temporary permit upon request by the board;

(t) causing damage, destroying or attempting to destroy property or equipment of a licensee or a member of the public in a salon, booth or school facility;

(u) attempting to cause bodily harm to an individual by failing to use the appropriate scope of practice;

(v) failing to provide a booth rental contract in compliance with statutes and rules governing the practice of cosmetology, manicuring, esthetics and electrology and in compliance with state and federal regulations with regard to independent contractors;

(w) intentionally misrepresenting the board of cosmetologists' statutes or rules to the public, students or other licensees;

(x) recruitment of students currently enrolled in a school through the awarding of hours by a person associated with another school; or

(y) advertising or practices that intimate the licensee is providing treatment, healing, correction or diagnoses of any medical condition.

Auth: Sec. 37-1-136, 37-1-137, MCA

IMP: Sec. 37-1-136, 37-1-137, MCA

REASON: The Board is proposing to amend this rule to further identify acts of unprofessional conduct as determined by the Board of Cosmetologists. Additions have been determined through board experiences and may consist of unfair trade practices or pose public health and safety risks.

8.14.601 APPLICATION FOR SCHOOL LICENSE (1) A board-prescribed application form will be mailed to the applicant upon request.

(a) The completed application with supporting documentation must receive preliminary approval from a majority of the board members before an inspection will be scheduled and conducted.

(b) If the board denies preliminary approval, the applicant shall correct any deficiencies and re-submit the school application. Failure to re-submit the school application within 90 days shall be treated as a voluntary withdrawal of the application and the fees shall be forfeited.

(2) The applicant shall designate the type of school and which courses shall be offered according to the following options:

(a) school of cosmetology consisting of a:

(i) cosmetology course; and

(ii) will remain the same.

(iii) esthetics course; and/or

(iv) teacher training course;

(b) will remain the same.

(c) school of esthetics; or

(d) school of electrology.

(3) The school shall present a bond in the amount of \$5,000. The bond shall provide a refund of prepaid tuition to enrolled students in the event the school ceases to operate or otherwise is unable to complete the course of instruction. A cosmetology school offering courses in manicuring and/or esthetics shall be required to post one \$5,000 bond. The state of Montana board of cosmetologists shall be named as the beneficiary of the \$5,000 bond.

(4) The school shall not allow the bond to be cancelled or expire as long as the school is licensed and must submit to the board a continuous annual renewal of the \$5,000 bond in the form of a "certificate of insurance."

(5) The school must provide a true and accurate copy of all of the school's current policies, procedures, rules, student contract, tuition costs and required deposits including but not limited to policies, procedures and rules addressing students, school operating standards, disciplinary procedures, attire, ethics/conduct, leaves of absence, attendance, holidays, school closures, hours of operation, refunds, withdrawals, grounds for termination, grading standards, requirements for satisfactory progress, release of information, instructional demonstrations and policies pursuant to ARM 8.14.603(17).

(6) The school shall submit all changes, deletions and new school policies, procedures and rules to the board for approval prior to the school's implementation of those policies, procedures and rules.

(7) As part of the application, the proposed school shall submit a financial report prepared by a certified public accountant (CPA) indicating the financial solvency of the proposed school.

(8) The school shall be subject to unscheduled on-site inspections or audits by a designee directed by the board for the following purposes:

(a) financial stability of the school; and/or

(b) compliance with board statutes, rules, policies and procedures; and/or

(c) student files and required school documentation; and/or

(d) class instruction, curriculum and/or lesson plan evaluations.

(9) The board or screening panel of the board may direct that an audit be performed for the purpose of monitoring conditions found during an inspection or audit which may have been unfavorable, warrant re-inspection or verification of compliance.

(10) As part of the inspection, investigation or audit process the board may use information found by or prepared for the department of education or national accrediting commission of cosmetology arts and sciences (NACCAS) reviews.

Auth: Sec. 37-1-134, 37-31-203, 37-31-204, 37-31-301, 37-31-302, 37-32-201, MCA

IMP: Sec. 37-31-301, 37-31-311, 37-32-304, MCA

REASON: The proposed rule amendments have been established to add clarification for applicants of the cosmetology, manicuring, esthetics and electrology schools. The proposed amendments provide clarification of the supporting documentation required with the submission of a school application, including school policies, procedures and rules for conduct of the schools, which will assist the board in determining whether to approve applications for school licenses. The proposed amendments provide clarification of the on-site inspection process as required under 37-31-312, MCA.

8.14.603 SCHOOL OPERATING STANDARDS (1) and (2) will remain the same.

(3) The school shall maintain a file, for not less than five years, for each student who attended the school. This file must contain records and documentation pertaining to the student's registration, including the student's current name, address, phone number, course of study, enrollment date, daily attendance records, academics, grades, evaluations, breakdown of curriculum requirements and completion, disciplinary action, student counseling, contracts, tuition costs, accepted

transfer of hours from another school, withdrawals and leaves of absence. The school must protect these files from loss, damage or against tampering.

~~(3)~~ (4) The school must submit ~~S~~student registrations ~~must be submitted~~ to the board office prior to the first day of instruction. The board will accept a facsimile copy of a registration provided that the original is received in the board office within five working days from the original enrollment date. A student who is not registered appropriately will receive no credit for hours ~~of credit~~ from the board until such time as the student's registration is received, ~~and~~ The student may begin accruing hours from the date the registration is received.

~~(4)~~ (5) Students shall be furnished with a completed contract setting forth the enrollment date, a current and complete tuition schedule, which shall include all charges, a deposit policy and a deposit refund policy. A copy of the contract shall be placed in the student's attendance record and the original provided to the student.

(6) Students must be furnished a complete and current copy of all school policies, procedures and rules, which affect students. In the event that the school finds it necessary to amend or add policies, procedures or rules, the students must be furnished with a current copy. The school must obtain the student's signature and date of receipt for each copy of the rules and/or amendments received by the student.

(7) The school shall keep accurate verifiable daily attendance records and track the number of hours received within the course curriculum as set forth in ARM 8.14.605 for each student.

~~(5)~~ (8) Each student's ~~D~~daily attendance records must be recorded onto a monthly hour sheet, provided by the board. The school may use their own form provided it contains all of the information requested by the board's monthly hour sheet. The monthly hour sheets must be received in the board office on or before the 15th of each month. These records must be accurate, available on request of the inspector or designee and reflect attendance by all students.

(a) will remain the same.

(b) Student attendance policies must be applied fairly and uniformly. Clock hours must be verified by a time-keeping system sufficient to protect against tampering and capable of rounding attendance to the nearest quarter hour. Monthly hour calculations must be submitted to the board office in hours and minutes (00:00).

~~(6)~~ (9) Records Monthly hours sheets must be signed by both the student and the school owner. The owner may designate an individual, who is not a student, to maintain attendance records and, after notifying the board in writing of the individual so appointed, authorize that individual to sign in the owner's absence.

~~(7)~~ (10) There shall be a qualified an appropriately licensed instructor directly supervising students on the

school premises in the classroom and on the clinic floor at all times. In no event may an instructor supervise more than 25 students at any time. ~~In determining the appropriate number of students supervised by an instructor, under no circumstances may the number of students include more than 10 manicure students and/or six esthetician students.~~

~~(8)~~ (11) The department board office shall be notified by the school of all instructors, including substitutes, employed by the school either full, ~~or part-time or temporary~~. The board must receive this information and must be notified of any changes immediately within five working days of the change. Instructors must possess teaching credentials and post a copy of the their instructor license in a central location where it may be inspected by members of the public. Instructors must wear name badges and insignia indicating that they are instructors.

(12) The school shall not allow instructors to practice on members of the public, unless strictly for educational demonstration purposes to instruct students in a classroom setting, pursuant to ARM [New Rule I(5), MAR Notice No. 8-14-54].

(9) will remain the same but be renumbered (13).

~~(10)~~ (14) Each cosmetology student shall must complete 300 hours of basic training, each manicuring student shall must complete 80 hours of basic training and each esthetician student must complete 150 hours of basic training prior to working or performing any services on members of the public with or without compensation to the school.

(11) and (12) will remain the same but be renumbered (15) and (16).

~~(13)~~ (17) Schools shall adopt written policies and procedures describing each area of responsibility, administrative lines of authority, ~~and~~ operating procedures for the administration of the school and student guidelines. The policies shall include provisions guaranteeing students are provided access to their records, written consent from the student for release of records to third parties unless required by law, written requests for all information and maintenance of records for no less than five years. All school records must be protected against loss or damage.

~~(14)~~ (18) Schools shall not deduct hours earned by a student as a form of disciplinary sanction or for any other reason.

(19) The school must fairly and uniformly apply all of the school's policies, procedures and rules to all students.

Auth: Sec. 37-1-131, 37-31-203, 37-31-311, MCA

IMP: Sec. 37-31-301, 37-31-303, 37-31-311, 37-31-312,

MCA

REASON: The Board is proposing the amendments to this rule to require schools to maintain a student file of all enrolled students for inspection and verification purposes; to require that the student will be furnished appropriate information

regarding current school policies, procedures, rules, and contract and tuition information; to clarify the procedures to be followed by the schools for tracking student daily and monthly attendance records which directly affect the ability for students to graduate and/or qualify for the board's licensing examination; and to require schools to apply rules and policies regarding student conduct in a fair and uniform manner.

8.14.604 SUBSTITUTE INSTRUCTOR (1) Instructors with inactive licenses may not substitute for more than 10 days ~~for an active instructor~~ in any calendar year.

(2) The school shall keep documentation subject to inspection or audit for all substitute instructors used in the current calendar year, including the date(s) the instructor taught and the instructor's license number.

Auth: Sec. 37-1-131, 37-31-203, 37-31-322, MCA
IMP: Sec. 37-31-311, 37-31-322, MCA

REASON: The Board is proposing the amendment to this rule to provide further clarification of the board's existing rule regarding the school's use of inactive instructors for substitutes for active instructors.

8.14.606 STUDENT REGISTRATION (1) Upon enrollment of a student, the school shall submit student registration papers to the board office ~~of the department~~ prior to beginning the course of instruction pursuant to ARM 8.14.603.

(2) A student ~~disenrolling withdrawing~~ from a school must obtain a statement of good standing from the school in order for the student's hours to transfer. The school must and provide a copy of the statement to the board within three days of the withdrawal. Such statement shall be issued after the student has complied with all exit standards imposed by the school from which the student is ~~disenrolling withdrawing~~, including processing of all necessary paperwork, time sheets and payment of fees. The board shall not issue an any hour verification until such time as a copy of the statement is received in the board office.

(3) Upon the ~~disenrollment withdrawal~~ of a student, the school must submit to the board office a statement of total hours and grades within the required curriculum areas and standing received by the student on a form prescribed by the board. The verification must set forth the hours of training in which the student was enrolled as provided in ARM 8.14.605. The board will not issue a verification until the statement provided by the school is reconciled against the board's records.

~~(4) A licensed school must accept the verified statement of the board indicating the number of training hours the student has received.~~

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

~~(7)~~ (6) Students must comply with the policies, procedures and rules of the school and the board of cosmetologists. Any infraction which would result in a complaint of unprofessional conduct if the student were licensed must be reported to the board.

~~(8)~~ (7) Any student may file a complaint with the department concerning the school in which they are enrolled. The complaint shall be filed on the department's form and bear the signature of the student. The complaint will be processed in accordance with the department's complaint procedure manual.

(9) will remain the same but be renumbered (8).

Auth: Sec. 37-1-131, 37-31-203, 37-31-311, MCA
IMP: Sec. 37-31-304, 37-31-311, 37-31-312, 37-31-323,

MCA

REASON: The Board is proposing the amendments to this rule to provide clarification regarding student withdrawal and require grades along with documented hours within the established curriculum areas.

8.14.607 APPLICATIONS FOR AUTHORITY TO OFFER TEACHER-TRAINING COURSES (1) will remain the same.

(2) Student teachers or cadet instructors must not be registered or enrolled, until the teacher-training unit has been inspected and has received notice from the department board approving the licensed school as an approved teacher-training unit.

Auth: Sec. 37-31-203, MCA
IMP: Sec. 37-31-305, 37-31-311, MCA

REASON: The Board is proposing the amendments to this rule for clarification and consistency with other Board rules.

8.14.608 INSTRUCTOR REQUIREMENTS - TEACHER-TRAINING PROGRAMS (1) Each school, licensed by the board to offer a teacher-training program must have at least one full-time, licensed instructor per student, teacher cadet or temporary instructor on the premises of the school at all times that the school is open.

(2) All instructors in the licensed school must wear an insignia or badge indicating that they are instructors ~~for the teacher-training program~~. Student, teachers cadet or temporary instructors must wear badges or insignia indicating that they are student, teachers cadet or temporary instructors.

(3) Student, teachers cadet and temporary instructors must be under the direct on-site supervision of a full-time licensed instructor while practice teaching and shall not be allowed to work on members of the public during their teacher-training course program.

(4) Upon application by the student teacher or cadet instructor enrolled in a licensed school of cosmetology, manicuring or esthetics, the board may grant credit for hours toward the teacher-training curriculum when the student teacher or cadet instructor has completed, with not less than a "C" grade, a teacher-training course offered by an accredited post-secondary educational institution.

(5) All student teachers or cadet instructors must register with the board prior to enrollment and identify the school in which they are enrolling.

(6) Daily records of attendance, all subjects, and classes taught and practiced by the student teacher or cadet instructor shall be kept and such records shall be signed by the student teacher or cadet instructor and the supervising licensed instructor. These records are to be maintained by the school and kept on the school's premises, until the applicant has become a licensed instructor and are subject to inspections by the board.

(7) Upon completion of 650 hours of teacher-training, student teachers or cadet instructors may apply for a temporary permit and may continue to function as student teachers or cadet instructors until the examination results are available from the next regularly scheduled examination for instructors.

Auth: Sec. 37-31-203, MCA

IMP: Sec. 37-31-305, 37-31-311, 37-31-312, MCA

REASON: The Board is proposing the amendments to this rule for clarification and consistency with other Board rules.

8.14.609 TEACHER TRAINING EQUIPMENT (1) No school shall be approved by the board as a teacher-training unit having less than the following equipment available for the teacher-training station:

(a) visual aids of various kinds for the use of teaching theory of cosmetology, manicuring or esthetics;

(b) a ~~movie projector with film~~ VCR or DVD player, television, an overhead projector and screen, computer, printer, or a slide projector with slides;

(c) a ~~chalk~~ black board or white board;

(d) will remain the same.

(e) tape recorder or ~~record player for playing records~~ or other audio/visual equipment, tapes, videos and/or DVD disks on subjects required for the curriculum;

(f) and (g) will remain the same.

Auth: Sec. 37-31-203, MCA

IMP: Sec. 37-31-305, 37-31-311, 37-31-312, MCA

REASON: The Board is proposing the amendment to this rule to include manicuring and esthetic schools or courses and to update the equipment to current standards of practice for educational needs.

<u>8.14.611 CURRICULUM - TEACHER-TRAINING UNITS</u>	
(1) Chemistry	40 hours
(a) General chemistry	
(b) Nail chemistry	
(i) Solutions on nails	
(c) Hair chemistry	
(i) Solutions on hair	
(d) Skin chemistry	
(i) Solutions on skin	
(e) Cosmetic chemistry	
(2) (1) Education Teaching methods;	100 375 hours
(a) Method of teaching task analysis;	
(b) Counseling developing instructional objectives;	
(c) Visual aids and their construction;	
(d) Job analysis motivational tools;	
(e) Preparation of instructive materials;	
(f) Lesson planning;	
(i) practical theory classes;	
(ii) practical demonstration classes;	
(g) Fundamentals of speech and public speaking;	
(i) Techniques of public speaking	
(ii) Voice	
(iii) Speech Organization	
(h) methods of test construction;	
(i) methods of evaluation or grading;	
(j) curriculum planning and development; and	
(2) General psychology;	100 hours
(a) General principles in relation to teaching	
and counseling;	
(b) conflict resolution;	
(c) student counseling;	
(d) student and teacher relationships;	
(e) public relations; and	
(3) Small Business methods management	50 100 hours
(a) Public relations recruitment;	
(b) Office behavior job analysis;	
(c) Enrollment forms and hours (tracking)	
student registration and withdrawal forms and hours	
(tracking, completing, calculating and verifying);	
(d) Ethical employee and employer relationship;	
(e) Labor relations salon/booth rental relationship;	
(f) Contracts professional ethics; and	
(g) Tax forms	
(h) Assistant placement	
(i) Bookkeeping	
(4) Communicable diseases	10 hours
(a) Skin, hair, scalp, nails	
(b) Public health	
(4) Advanced Theory of cosmetology,	20 75 hours
manicuring or esthetics and the chemistry, safety,	
sanitation, bacteriology, physiology, anatomy, diseases	
and disorders that apply to each course; and	
(5) Current state board laws and rules	50 hours
(6) Practice teaching	380 hours

~~(a) At least 3 hours per week for basic students~~

~~(7) Instructor's discretion~~ 50 hours

~~(8) (6)~~ When a student or cadet instructor has completed 650 hours of teacher training, the school must send his or her final hours record to the department within five days. All student or cadet instructors shall have completed the specified minimum required hours and operations upon completion of the 650 hour course.

~~(9) Each graduate of a teacher training unit must demonstrate a proficiency in basic English, including grammar and simple composition and general mathematics related to the area of cosmetology.~~

Auth: Sec. 37-31-203, MCA

IMP: Sec. 37-31-305, 37-31-311, MCA

REASON: The Board is proposing the amendments to this rule to update the instructor training curriculum to currently accepted practices and standards and to include advanced training in the field of cosmetology, manicuring and esthetics. The proposed amendments to the instructor's curriculum reflect appropriate current practice areas such as methods of teaching, motivational techniques, practical theory, demonstration classes, test construction, evaluation, business methods, student/teacher relationship, counseling and Montana laws and rules as well as providing the break down of hours and deleted the instructor's discretion from the curriculum.

8.14.612 TRANSFER POLICIES - RECRUITMENT - FIELD TRIPS

(1) If, for any reason, a student ~~disenrolls~~ withdraws, the school shall notify the board office within three days and provide a current statement of the student's hour records.

~~(2) A student wishing to re-enroll may not do so until the school receives a verified statement of the student's hours from the board office.~~

~~(3) (2)~~ Schools shall not allow a student who re-enrolls to practice on members of the public until the school receives, from the board office, a verified transcript of the student's hours and grades within the required curriculum areas and standing demonstrating compliance within the training time set forth in ARM 8.14.603 above.

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

~~(6) (5)~~ Credit for hours spent in alternative educational offerings is available if students are accompanied by an instructor from the school in which the student is enrolled. Alternative education must relate to the required curriculum specified in this chapter under ARM 8.14.605 for cosmetology, manicuring or esthetics. Names of attendees must be supplied on a form provided by the board. Attendance must be taken at the beginning and ending of each program segment and provided to the board.

Auth: Sec. 37-31-203, MCA
IMP: Sec. 37-31-311, 37-31-312, MCA

REASON: The Board is proposing the amendments to this rule to provide clarification regarding student/cadet instructor withdrawals and to require grades along with documented hours within the established curriculum areas. The Board is also adding manicuring and esthetic instruction to this rule.

8.14.613 INSTRUCTIONAL SPACE AND FACILITIES (1) will remain the same.

(a) if the salon and the school are located in the same building and/or has the same owner(s), the salon and school must be separated by a permanently affixed wall making it impossible for an individual to move from the salon to the school without exiting the building. The salon and school must maintain separate entrances, appointment books, telephone lines, equipment, tools, products, restrooms, break room, storage and visitor reception areas are maintained; and

(b) will remain the same.

(2) will remain the same.

Auth: Sec. 37-31-203, MCA
IMP: Sec. 37-31-311, 37-31-312, MCA

REASON: The Board is proposing the amendments to this rule to add further clarification to 37-31-311, MCA regarding the separation of business operations for salons and schools.

8.14.801 APPLICATION FOR INSTRUCTOR'S LICENSE

(1) Applications to take the examination for an instructor's license must be completed mailed to the examination service company, indicated on the application, so that it is received no later than the application deadline date for the examination the applicant has selected. The application must be complete and accompanied with proper by the appropriate fees and credentials within the designated deadline date. The examination application cannot be submitted earlier than 90 days prior to the scheduled examination date the applicant has selected.

(2) Applicants who have graduated from a teacher training course must apply and take the instructor's examination within three years of the applicant's graduation date from the licensed school and course.

~~(2)~~ (3) Applications which are incomplete shall be returned to the applicant and not considered received by the board or the examination administration service company. Applicants will not be scheduled for the examination until their application is complete.

~~(3)~~ (4) Completed Applications received after the deadline date shall be scheduled for the following examination. The applicant will be notified of the examination schedule with an admission letter not later than five working days after the deadline date.

~~(4)~~ (5) In order to pass the national examination for a cosmetology, manicuring or esthetics instructor, an applicant must obtain a scaled score of not less than 85 on the written examination and a scaled score of not less than 85 on the practical examination.

~~(5)~~ (6) Applicants will be notified in writing by mail of a pass or fail for each examination. Actual scores will not be released.

~~(6)~~ (7) Applicants who have taken the examination and failed any part thereof in accordance with 37-31-308(4), MCA, must apply to be re-examined and pay the necessary examination fee.

(8) Applicants with special needs must file a request for modification in the administration of the examination for reasonable accommodations in accordance with the Americans with Disabilities Act of 1990 with the board's examination administration service company on or before the deadline date of the examination.

(9) An applicant that is registered and scheduled for a specific examination date and fails to appear on that examination date, must have provided a medical excuse at least 10 days prior to the examination date or fees will be forfeited. The applicant may reapply for the next examination and pay the appropriate fees.

(10) Pursuant to 37-31-305(2)(b)(ii), MCA, the board defines "immediately before taking the teacher's examination" as not more than 90 days prior to taking the teacher's examination and "full-time employment" as not less than 32 hours per week.

Auth: Sec. 37-31-203, MCA

IMP: Sec. 37-31-301, 37-31-302, 37-31-303, 37-31-305, 37-31-308, MCA

REASON: The Board is proposing the amendments to this rule to clarify the instructor license application procedures and Americans with Disabilities Act (ADA) requirements.

8.14.802 LICENSE EXAMINATIONS (1) Applications to take the examination for a cosmetology, manicuring, esthetic or electrology license must be mailed to the examination administration service company, indicated on the application, so that it is received no later than the application deadline date for the examination the applicant has selected. The application must be complete and accompanied by the appropriate fees and credentials. The examination application cannot be submitted earlier than 90 days prior to the scheduled examination date the applicant has selected.

(2) Applicants who have graduated from a course of study in cosmetology, manicuring, esthetics or electrology must apply and take the appropriate examination within three years of the applicant's graduation date from the licensed school or course.

(3) Applications which are incomplete shall be returned to the applicant and not considered received by the board or the examination administration service company. Applicants will not be scheduled for the examination until their application is complete.

(4) Completed applications received after the deadline date shall be scheduled for the following examination. The applicant will be notified of the examination schedule with an admission letter no later than five working days after the deadline date.

(1) through (3) will remain the same but be renumbered (5) through (7).

~~(4)~~ (8) Any cosmetologist applicant, failing twice to pass the examination for license to practice, must take 200 hours of additional training at a licensed school of cosmetology or must wait a period of six months before re-taking the examination.

~~(5)~~ (9) Any manicurist applicant, failing twice to pass the examination for a license to practice, must complete 35 hours of additional training at a licensed school of manicuring or licensed manicuring course or must wait a period of six months before re-taking the examination.

~~(6)~~ (10) Any esthetics applicant, failing twice to pass the examination for a license to practice, must complete 65 hours of additional training at a licensed school of esthetics or licensed esthetics course or must wait a period of six months before re-taking the examination.

(7) and (8) will remain the same but be renumbered (11) and (12).

(13) Applicants with special needs must file a request for modification in the administration of the examination for reasonable accommodations in accordance with the Americans with Disabilities Act of 1990 with the board's examination administration service company on or before the deadline date of the examination.

(14) An applicant that is registered and scheduled for a specific examination date and fails to appear on that examination date, must have provided a medical excuse at least 10 days prior to the examination date or fees will be forfeited. The applicant may reapply for the next examination and pay the appropriate fees.

Auth: Sec. 37-1-131, 37-31-203, MCA

IMP: Sec. 37-31-303, 37-31-308, 37-31-321, MCA

REASON: The Board is proposing the amendments to this rule to clarify the cosmetology, manicuring and esthetics license application procedures and ADA requirements.

8.14.803 APPLICATIONS FOR EXAMINATION - TEMPORARY

PERMITS (1) With respect to cosmetology students, no application for examination will be accepted unless complete and accompanied by the proper appropriate fees, credentials, the student's hour records showing that the 2,000 hours have

been completed, a cosmetology school diploma issued, proof of applicant's high school graduation or equivalency and a photostatic copy of birth certificate or other verifiable evidence of applicant's birth date.

(2) With respect to manicuring students, no application for examination will be accepted unless complete and accompanied by the ~~proper~~ appropriate fees, credentials, the student's hour records showing that 350 hours have been completed and a school diploma issued, proof of applicant's high school graduation or equivalency, and a photostatic copy of applicant's birth certificate or other verifiable evidence of birth date.

(3) With respect to esthetic students, no application for examination will be accepted unless complete and accompanied by the ~~proper~~ appropriate fees, credentials, the student's hour records showing that the 650 hours have been completed and a school diploma issued, proof of applicant's high school graduation or equivalency and a photostatic copy of applicant's birth certificate or other verifiable evidence of birth date.

(4) When an examination Applicants who registers for the first available Montana licensing examination and are has been accepted, the applicant is eligible for a one 90-day temporary permit for one location only.

(a) A completed temporary permit application must be submitted with appropriate fees to the board office in order to receive a 90-day temporary permit. The applicant must be registered and accepted for the examination before a temporary permit can be issued to the applicant.

(b) Temporary permit holders may not move from one salon to another while under the 90-day temporary permit.

(c) Under no circumstances may an applicant have more than one temporary permit.

(5) Out-of-state licensed applicants who do not qualify for a license by endorsement under 37-1-304, MCA, and who have chosen to take the license examination in lieu of additional education and training, may apply for a temporary practice permit as prescribed in (4) and (4)(a) above. A temporary practice permit is not available for applicants taking additional training or re-taking the examination.

(6) A graduate of a cosmetology, manicuring, ~~or~~ esthetics or teacher training school or course may work under a temporary practice permit pursuant to 37-1-305, MCA.

(7) Any person holding a temporary practice permit must practice under the direct, on-premises supervision of a licensee in the same scope of practice for as the applicant temporary permit holder. Supervision must be evidenced by the signature of the supervising licensee on the application for the temporary practice permit.

(8) will remain the same.

(9) If the applicant does not register for the first available examination, temporary permit holder fails any portion of the examination or does not appear for their scheduled examination, for any reason, the temporary practice

permit will be voided and must be returned to the board office immediately following the missed examination or the receipt of the examination failure notice.

Auth: Sec. 37-1-131, 37-31-203, MCA
IMP: Sec. 37-1-304, 37-1-319, 37-31-304, 37-31-308, 37-31-311, MCA

REASON: The Board is proposing the amendments to this rule to add clarification to the board examination application procedures and Board policies in connection with temporary permits.

8.14.804 EXAMINATION - OUT-OF-STATE STUDENTS

(1) Student applicants from out-of-state must meet the same requirements as Montana cosmetology, manicuring or esthetic students as prescribed in this chapter.

(2) Temporary licenses may be issued to out-of-state cosmetology, manicuring or esthetic students, ~~pending examination~~ as prescribed in this chapter.

Auth: Sec. 37-31-203, MCA
IMP: Sec. 37-1-303, 37-1-304, 37-1-308, MCA

REASON: The Board is proposing the amendments to this rule to provide further clarification to out-of-state examination applicants in that they are required to meet the same standards as set forth for Montana examination applicants.

8.14.805 APPLICATION - OUT-OF-STATE COSMETOLOGISTS/MANICURISTS, ESTHETICIANS (1) An out-of-state licensed applicant requesting licensure in Montana must complete an endorsement application provided by the board which must be submitted to the board office together with the required supporting documentation and appropriate fees.

(a) If the application is incomplete, the application will be returned and the applicant shall correct any deficiencies and re-submit the endorsement application. Failure to re-submit the endorsement application within 90 days shall be treated as a voluntary withdrawal of the application and fees will be forfeited.

~~(1)~~ (2) For the purposes of 37-1-304, MCA, the board defines "substantially equivalent" for cosmetologists as 2,000 hours of formal training and successful completion of a state written and practical examination by a passing score set forth by board rule. Applicants who do not possess 2,000 hours of formal training shall either take and successfully pass the written and practical examinations, or obtain additional hours as may be directed by the board to achieve the total 2,000 hours. Work experience obtained in the profession may not be considered as part of a cosmetologist applicant's qualifications.

(a) To qualify for licensure by endorsement, an out-of-state cosmetologist must submit an application prescribed by

the board with the appropriate fees and proof of completion of 2,000 hours of training in an approved school of cosmetology, a ~~certified true~~ copy of applicant's birth certificate or other verifiable proof of birth date, a ~~certified true~~ copy of applicant's high school graduation or equivalency, a ~~certified true~~ copy of a current out-of-state license and an original board transcript or verification from each state in which ~~you~~ the applicant holds or ever held a license. The applicant will be credited for the number of hours currently required in that state or the number of hours in the transcript or verification.

~~(2)~~ (3) For the purposes of 37-1-304, MCA, the board defines "substantially equivalent" for estheticians as 650 hours of formal training and successful completion of a written and practical examination by a passing score set forth by board rule. Applicants who do not possess 650 hours of formal training shall either take and successfully pass the state written and practical examinations, or obtain additional hours as may be directed by the board to achieve the total 650 hours. Work experience obtained in the profession may not be considered as part of an esthetician applicant's qualifications.

(a) To qualify for licensure by endorsement, an out-of-state esthetician must submit an application prescribed by the board with the appropriate fees and proof of completion of 650 hours of training in an approved school of esthetics or esthetics course, a ~~certified true~~ copy of applicant's birth certificate or other verifiable proof of birth date, a ~~certified true~~ copy of applicant's high school graduation or equivalency, a ~~certified true~~ copy of a current out-of-state license and an original board transcript or verification from each state in which the applicant holds or ever held a license. The applicant will be credited for the number of hours currently required in that state or the number of hours in the transcript or verification.

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

~~(4)~~ (5) Out-of-state esthetic applicants with less than the 650 hours of training must take the national practical and written examinations for ~~cosmetology~~ esthetics or obtain additional hours as may be directed by the board to achieve the total of 650 hours.

~~(5)~~ (6) Applicants who tested and are licensed in a state which administers the a national practical and written examination ~~provided by the national interstate council of state boards of cosmetology, inc.,~~ and the applicant received a scaled score of the minimum score required for licensure in Montana may qualify for licensure by endorsement.

~~(6)~~ (7) Any out-of-state applicant whose license has lapsed, and is not currently licensed in another state, must meet the requirements of the state of Montana and satisfy the statutes and rules of the board, with regard to the hour requirements and They must apply and pass the national written and practical examinations in the field in which the hours were received.

~~(7)~~ (8) Applicants from foreign countries will be granted a license on the same basis as out-of-state applicants. The applicant must first receive board approval for the foreign hours of training in accordance with the established curriculum in ARM 8.14.605.

~~(8)~~ (9) Out-of-state licensed instructor applicants will be required to take and pass both the national interstate council of state boards of cosmetology's written and practical examinations for instructors.

~~(9)~~ (10) The Out-of-state licensed electrologist applicants will be required to take and pass the national interstate council of state boards of cosmetology's written examination for electrologists.

(11) Out-of-state manicuring applicants must take the national practical and written examinations for "manicuring and other nail techniques." If the out-of-state manicuring applicant has less than 350 hours of training, the applicant must obtain additional hours as may be directed by the board to achieve the total 350 hours of training regardless of licensure in another state and must take the national practical and written examinations as stated above.

Auth: Sec. 37-1-131, 37-31-203, MCA

IMP: Sec. 37-1-304, 37-31-303, 37-31-304, 37-31-308,
MCA

REASON: The Board is proposing the amendments to this rule for clarification and consistency with other board rules and to provide further application procedures for out-of-state applicants.

8.14.807 TRANSFER STUDENTS - OUT-OF-STATE - COSMETOLOGY, MANICURING, ESTHETICS (1) Students from out-of-state must furnish the board with an original transcript of hours at the time of enrolling in the school and grades within the required curriculum areas prior to beginning classes.

(2) Transfer students and out-of-state students will be considered entry level basic students until the board office has received and reviewed their transcript of hours and grades within the required curriculum areas, enrollment registration form and/or any other papers or documents which the board may deem necessary and may not be permitted to work on members of the public until approval from the board or the completion of the prescribed hours as set forth in ARM 8.14.603(10).

Auth: Sec. 37-31-203, MCA

IMP: Sec. 37-31-311, MCA

REASON: The Board is proposing the amendments to this rule to provide clarification for schools and students regarding student transfers from one school to another and requires that grades, together with documented hours within the established curriculum areas be provided.

8.14.812 DUPLICATE LICENSES (1) Any licensee may receive a duplicate of his or her license upon payment of a proper ~~the appropriate fee and verification stating why such a duplicate license is needed.~~ licenses may not be duplicated for purposes of meeting posting requirements in establishments.

Auth: Sec. 37-31-203, MCA
IMP: Sec. 37-31-323, MCA

REASON: The Board is proposing the amendments to this rule to provide further clarification to licensees regarding the board's intent for duplicate licenses when the licensee works in more than one establishment.

8.14.813 LAPSED LICENSE (1) will remain the same.
(2) A completed lapsed license application must be submitted to the board with the appropriate fee.
(3) Lapsed licenses may not be renewed after three years.

Auth: Sec. 37-1-131, 37-31-203, MCA
IMP: Sec. 37-1-141, MCA

REASON: The Board is proposing the amendment to this rule to provide clarification to lapsed licensees that an application for renewing a lapsed license is required by the Board.

8.14.814 FEES - INITIAL, RENEWAL, PENALTY AND REFUND FEES (1) through (13) will remain the same.
(14) Examination fees will be paid to the examination administration service company contracted by the board. In the event the board does not contract the examination services, the fees will be paid to the board.
(15) will remain the same.
(16) All cosmetologist, manicurist, esthetician, instructor and electrologist licenses will be renewed on a biennial basis and will expire on December 31 of that year.
(a) Incomplete renewal applications will be returned to the licensee and will not be considered received by the board.
(b) If the completed renewal application is postmarked after December 31 of the renewal year, the licensee (cosmetologist, manicurist, esthetician, instructor or electrologist) will be assessed a late renewal fee in addition to the license renewal fee.
(17) All school licenses will be renewed on an annual basis and will expire on December 31 of each year.
(a) Incomplete renewal applications will be returned to the licensee and will not be considered received by the board.
(b) If the completed school renewal application is postmarked after December 31 of the renewal year, the licensee will be assessed a late renewal fee in addition to the license renewal fee.

(18) All salon and booth rental licenses will be renewed on an annual basis and will expire on July 1 of each year.

(a) Incomplete renewal applications will be returned to the licensee and will not be considered received by the board.

(b) If the completed salon or booth renewal application is postmarked after July 1 of the renewal year, the licensee will be assessed a late renewal fee in addition to the license renewal fee.

(19) and (20) will remain the same.

Auth: Sec. 37-1-134, 37-31-203, 37-31-323, 37-32-201,
MCA

IMP: Sec. 37-31-302, 37-31-303, 37-31-304, 37-31-305,
37-31-309, 37-31-311, 37-31-312, 37-31-321, 37-31-322, 37-32-
301, 37-32-302, 37-32-304, 37-32-305, 37-32-306, MCA

REASON: The Board is proposing the amendments to this rule for clarification of the Board and Department's processes with regard to fees when the Board office is in receipt of incomplete applications submitted to the Board. No fees have been changed or increased.

8.14.816 SALONS/BOOTH RENTAL - COSMETOLOGICAL COSMETOLOGY, MANICURING OR ESTHETICS (1) A salon application must be completed and submitted on a form prescribed by the board, including required supporting documentation and appropriate fees.

(a) Incomplete applications will be returned to the applicant and will not be considered received by the board.

(b) The applicant shall correct any deficiencies and re-submit the salon application. Failure to re-submit the salon application within 90 days shall be treated as a voluntary withdrawal of the application and the fees will be forfeited.

(1) (c) A licensed manicurist or esthetician may work in a cosmetological establishment without a manicure or esthetics salon license, if such service by the licensee is limited to manicuring or esthetics only.

(d) Mobile homes, moveable trailers and structures on skids will not be considered fixed places of business for the purpose of enforcing ARM 8.70.505.

(e) The board shall enforce ARM 8.70.505 prohibiting the use of mobile homes for commercial or business purposes in accordance with applicable state building codes.

(2) will remain the same.

(a) The ~~current~~ latest annual inspection report will be made available to the inspector or designee upon request.

(b) Inspection report violations must be addressed and a response, including the corrective action taken, provided to the board office, by the salon owner/manager or booth renter, within 30 days of the inspection date.

(3) The applicant must furnish the board with a blueprint or detailed scale drawing of the floor plan when filing a salon application.

(4) and (4)(a) will remain the same.

(b) one wet sterilizer sanitizer consisting of one covered cleanser and one covered disinfectant of suitable size and depth for complete immersion of all implements, tools and equipment. Non-covered cleansers and disinfectants may be used, provided that the cleansing and disinfecting solution is changed after each use;

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

(i) a cosmetology salon must be equipped with at least one shampoo bowl for every four work stations within the confines of the salon. The shampoo bowl must have hot and cold running water and be connected to an appropriate sewer system.

(ii) a manicuring, esthetics and electrology salon must be equipped with at least one sink basin for every four work stations within the confines of the salon. The sink basin must have hot and cold running water and be connected to an appropriate sewer system.

(g) will remain the same.

(5) All residential cosmetology, manicuring or esthetic salons shall have outside entrances. Any entrances into the residence shall have a self-closing door. This door must be latched during business hours. Residential salons licensed after March 1, 2001 shall have their own separate restrooms within the confines of the salon that are is not available for the personal use of the residence residents.

(6) All salons licensed after March 1, 2001, must have restroom facilities within the confines of the salon.

(6) and (7) will remain the same but be renumbered (7) and (8).

~~(8)~~ (9) Salon and booth rental licenses are not transferable. Any If there is a change in ownership and/or salon/booth location, the applicant must submit a new salon/booth application be accompanied by a new application for registration and with a new license and inspection fee the appropriate fees. The new license must be received by the applicant before commencing operations under the new ownership or at the new salon/booth location.

(9) and (10) will remain the same but be renumbered (10) and (11).

(12) All salons must comply with the state of Montana building codes requirements for commercial use.

Auth: Sec. 37-1-131, 37-31-203, MCA

IMP: Sec. 37-31-301, 37-31-302, 37-31-312, MCA

REASON: The Board is proposing the amendments to this rule to reflect the Board's policy on incomplete applications, enforcement of the State of Montana Building Code's statutes regarding the use of mobile homes for commercial businesses and further establishing facility requirements for salons in order to comply with generally accepted standards of practice.

8.14.817 BOOTH RENTAL LICENSES - APPLICATIONS

(1) Licenses must be obtained for each location a licensee works practices. Booth rental licenses are not transferable from one salon location to another salon or one salon ownership to another.

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

(5) A booth renter shall submit to the board a booth rental application, as prescribed by the board, with appropriate fees. Incomplete applications will be returned to the licensee and will not be considered received by the board.

Auth: Sec. 37-1-131, 37-31-203, MCA
IMP: Sec. 37-31-301, 37-31-302, MCA

REASON: The Board is proposing the amendments to this rule to provide further clarification of the booth rental application process due to the repeal of ARM 8.14.818.

8.14.820 RESPONSIBILITY OF SALON OWNER (1) The salon owner is responsible for all conduct and conditions in his or her salon except these sanitation and safety violations caused by the booth renter or taking place in the booth.

(2) The salon owner is responsible for ensuring that all licenses required pursuant to chapters 30, 31, and 32 of Title 8 are current. The salon owner is responsible to ensure that all booth rental licenses are appropriate for the current salon location and ownership.

Auth: Sec. 37-1-131, 37-31-203, MCA
IMP: Sec. 37-31-203, 37-31-302, MCA

REASON: The Board is proposing the amendments to this rule to clarify the responsibility of salon owners with respect to all individual licensees practicing in the salon.

8.14.823 EDUCATION EXCEPTION (1) and (1)(a) will remain the same.

(b) ~~successful passage completion~~ of the TABY TABE examination or pre-GED examination.

Auth: Sec. 37-31-203, MCA
IMP: Sec. 37-31-304, MCA

REASON: The Board is proposing the amendments to this rule for clarification purposes and to correct the name of the pre-GED examination from TABY to TABE.

8.14.902 SCHOOL REQUIREMENTS (1) through (5) will remain the same.

(6) Electrology students must receive written progress evaluations at the completion of 225 and 450 hours of instruction. Copies of the progress evaluations, signed by the student and the school designee, must be maintained in the student's academic record. In the board's discretion, the student's academic records may be audited for compliance with

statutes and rules. Such audits may include student and instructor interviews, record reviews and other information gathering processes the board deems appropriate.

(6) through (11) will remain the same but be renumbered (7) through (12).

Auth: Sec. 37-1-131, 37-32-201, 37-32-304, 37-32-305, 37-32-306, MCA

IMP: Sec. 37-32-302, 37-32-304, MCA

REASON: The Board is proposing the amendments to this rule to provide regulation with regard to school evaluations of student progress with the electrology schools. This will provide the same standard for electrology schools as is currently required for cosmetology, manicuring and esthetics.

8.14.903 INSPECTION AND EQUIPMENT (1) through (4) will remain the same.

(a) through (e) remain the same except the ending punctuation is changed from commas to semicolons.

(f) liquid sterilizers sanitizer and an autoclave_{ti}

(g) through (j) remain the same except the ending punctuation is changed from commas to semicolons.

(k) through (12) will remain the same.

Auth: Sec. 37-1-131, 37-32-201, 37-32-304, 37-32-306, MCA

IMP: Sec. 37-32-302, 37-32-304, MCA

REASON: The Board is proposing the amendment to this rule to correct the terminology from sterilizers to sanitizers.

8.14.905 STUDENT OR CADET INSTRUCTOR REGISTRATION

(1) ~~Upon Prior to enrollment of a student or cadet instructor, the school shall submit student registration papers to the board office of the department within 10 days.~~

~~(2) A registered school shall accept the verified statement of the school from which the student has withdrawn, indicating the number of hours the student has had in training when the student transfers to a different registered school. This verified statement must agree with the department records. If a student transfers from one registered school to a different registered school, the prior registered school must grant full credit for all hours and any minute thereof successfully completed by the transferring student.~~

Auth: Sec. 37-1-131, 37-32-201, 37-32-302, MCA

IMP: Sec. 37-32-201, 37-32-302

REASON: The Board is proposing the amendments to this rule for clarification and to delete language that is inconsistent with current policies and procedures regarding student registration.

8.14.1201 FLOORS SANITATION FOR FACILITIES (1) ~~Floors in salons, booth rentals, and schools shall be constructed to be smooth, sound, easily cleanable and kept in good repair surfaces in the working area, dispensary area and restroom facility of the establishment must be of a washable, non-absorbent material. Wooden floors may be acceptable if they have a water-proof finish.~~

(2) ~~All floors, walls, ceilings, doors, windows, screens, entrances, and receptacles in need of structural repair such as sags, humps, worn spots, broken boards or cracks will not be considered easily cleanable an establishment, including the restroom, must be kept clean, sanitary and in a safe condition at all times.~~

(a) ~~Acceptable floor coverings are cement, tile, hardwood (well kept), linoleum, vinyl or suitable carpeting.~~

(3) ~~Floors will be considered clean when free of accumulated soil, hair and other materials. Effective March 1, 2001, in the case of any new establishment, change of location or ownership of an existing establishment, the use of carpeting in the work area, dispensary area and restroom facilities is prohibited and a non-porous hard surface must be provided.~~

(a) ~~Dustless method of cleaning shall mean the use of sweeping compounds, treated dust mops or other cleaning method that prevents dust and hair from flying.~~

Auth: Sec. 37-1-131, 37-31-203, 37-31-204, MCA
IMP: Sec. 37-31-204, 37-31-331, MCA

REASON: The Board is proposing the amendments to this rule to provide updated and current practices and standards with regard to the cosmetology, manicuring, esthetic and electrology professions. These amendments provide for updated and appropriate sanitation procedures, current public protection procedures, current health and safety standards and for the prevention of spreading communicable diseases to the public. These sanitation and safety procedures apply to all salons, schools, booth renters and licensees within the jurisdiction of the Board.

8.14.1204 LIGHTING (1) will remain the same.

(2) All toilet restrooms shall be adequately lighted sufficient to prevent injury or harm to the public.

Auth: Sec. 37-1-131, 37-31-203, MCA
IMP: Sec. 37-31-204, 37-31-331, MCA

REASON: The Board is proposing the amendment to this rule to clarify the Board's intent.

8.14.1206 RESTROOM FACILITIES (1) ~~Every salon or school shall~~ establishment must provide adequate restroom facilities, including a hand washing basin for its employees

and patrons clients in a convenient location, with a self-closing door. The door is to remain closed.

(2) ~~Durable and legible h~~Hand washing instructions shall must be posted above the sink in each restroom used by employees, ~~directing them to wash their hands before returning to work. as follows:~~

(a) "Employees must thoroughly wash their hands and the exposed portions of their arms with anti-bacterial soap and water before providing services to each client and after smoking, drinking, eating and using the restroom."

(3) ~~Restrooms facilities~~ shall be completely enclosed by walls, door and ceilings and plumbing must comply with the Montana plumbing code.

(a) ~~Rooms and Restroom~~ fixtures shall must be kept clean, sanitary and in a safe condition at all times and reasonably free of odors.

(4) ~~No articles shall be stored in rest room that will interfere with cleaning it.~~

(a) ~~If restroom facilities is are~~ used for storage of cleaning equipment, a closet or cabinet shall be provided. The closet or cabinet must be locked if used for storage of chemicals or salon preparations.

(5) All restroom facilities shall have mechanical ventilation.

(6) Single service sanitary towels or a workable hot air blower is required. The use of a communal or cloth towel is prohibited.

(7) A soap dispenser containing anti-bacterial soap must be provided. The use of bar soap is prohibited.

(8) A covered waste container must be provided.

(9) Effective March 1, 2001, any new establishment, change in ownership or change of location, must provide suitable restroom facilities for clients and employees within the confines of the establishment. In the case of a residential establishment, clients may not walk through any living area of the residence to get to the restroom.

Auth: Sec. 37-1-131, 37-31-203, 37-31-204, MCA

IMP: Sec. 37-31-204, 37-31-331, MCA

REASON: The rationale is the same as for ARM 8.14.1201.

8.14.1207 WATER SUPPLY (1) ~~Running water under at least 20 pounds of pressure shall be easily accessible to all work rooms and plumbing fixtures and of sufficient quantity to supply all needs.~~

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

Auth: Sec. 37-1-131, 37-31-203, MCA

IMP: Sec. 37-31-204, 37-31-331, MCA

REASON: The rationale is the same as for ARM 8.14.1201.

8.14.1208 HANDWASHING FACILITIES (1) Handwashing facilities, other than in the restroom, shall be convenient to the work area, including hot and cold running water, connected to an approved sewer with a soap dispenser and sanitary towels. Employees shall wash their hands after using the restroom and before and after touching a patron each client.

(a) A soap dispenser for soap is preferred, however, a soap dish supplied with soap will be considered satisfactory containing anti-bacterial soap must be provided. The use of bar soap is prohibited.

(b) Sanitary towels approved may be individual use of paper towels, sanitary type roller or approved air dryer Single service towels or a workable hot air blower is required. The use of communal towels is prohibited.

(2) The use of an instant waterless anti-bacterial hand sanitizer may be used in place of hand washing before and after servicing each client, but does not void the requirement in (1) above.

Auth: Sec. 37-1-131, 37-31-203, MCA
IMP: Sec. 37-31-204, 37-31-331, MCA

REASON: The rationale is the same as for ARM 8.14.1201.

8.14.1211 SANITIZING AGENTS (1) Chemical sanitizers are most generally used in beauty salons and schools, although other sanitizing methods may be used. Other sanitizing methods may require additional facilities as recommended by the department of health and environmental science. The following chemical compounds are desirable sanitizers: All tools, equipment and implements used in the practice of cosmetology, esthetics, manicuring or electrology which come into contact with blood, body fluids and/or mucous membrane must be cleaned and disinfected, at a minimum, by complete immersion in an EPA-registered disinfectant that is effective against HIV-1 and human hepatitis B virus and tuberculocidal. The disinfectant must be mixed and used according to the manufacturer's directions.

(a) Chlorine compounds - hypochlorites in liquid or powder form are among the most effective sanitizers in terms of bacterial and fungicidal action, fast acting (2-3 minutes at 200 parts per million concentration), are compatible in hard water, and are readily available in form of household bleaches (example - Purex and Chlorox).

(i) Limitation - highly corrosive on certain metal tools and instruments, but can be used efficiently on other materials.

(b) Iodine compounds - iodophors are as effective as the chlorine compounds in relation to bactericidal and fungicidal action, contact time and compatibility with hard water. In addition, it is relatively non-corrosive with metal surfaces and gives a color to the solution while it is effective (should be at least 25 parts per million concentration and at least 2-3 minutes contact time).

~~(i) Limitation — it may stain light or clear colored plastic brushes or combs.~~

~~(c) Quaternary ammonium compounds — quats are more widely known to beauty salons as sanitizers (example — Barbicide and Roccal). They can be buffered to prevent corrosive action on metals. Under standard conditions they are effective for bactericidal and fungicidal action (should be at least 1,000 parts per million concentration and at least 2-3 minutes for contact time).~~

~~(i) Limitation — quats are not compatible in hard water (water having 500 parts per million hardness or more). To minimize corrosion of metal instruments when using quaternary ammonium as a sanitizer: 1% sodium nitrate — 1 1/4 oz. sodium nitrate to 1 gallon of formula.~~

~~(d) Combination compounds — These are sanitizers containing a mixture of several chemical compounds. Many of these have been developed specifically for use in hospitals or veterinary laboratories. For example: amphyl is a very effective bactericidal and fungicidal agent, is compatible in hard water, is relatively non-corrosive on metal tools.~~

~~(i) Limitations — none known.~~

(2) All tools, equipment and implements used in the practice of cosmetology, esthetics, manicuring or electrology, except those which have come in contact with blood, body fluids and/or mucous membrane must be disinfected by either complete immersion in an EPA registered, bactericidal, virucidal, fungicidal, and pseudomonacidal (formulated for hospitals) disinfectant that is mixed and used according to the manufacturer's directions.

(3) All detergent solutions, disinfectants and sanitizing agents used in the establishment shall be available for inspection and clearly labeled to disclose contents and manufacturer's directions.

~~(e) (4) Alcohol — alcohol used at 70% or more strength can be used as a sanitizer (at least 20 minutes for contact time). It is non-corrosive to metal tools.~~

~~(i) Limitations — commercially prepared 70% alcohol can be easily reduced in effectiveness by introduction of water or organic matter and it takes longer contact time.~~

~~(f) The following chemical compounds are not desirable sanitizers for tools and instruments: phenols — mercurical compounds — pine oil compounds.~~

~~(i) These compounds can be used for sanitizing floors, sink bowls, wall, shelves, etc.~~

~~(g) NOTE: A dry cabinet containing an ultraviolet lamp would not be considered as a sanitizer of tools and utensils, but would be considered proper storage area for articles that have been cleaned and sanitized. Any questions concerning approved sanitizers should be submitted to the department of health and environmental sciences; otherwise manufacturers instructions of the sanitizer should be closely followed.~~

Auth: Sec. 37-1-131, 37-31-203, MCA
IMP: Sec. 37-31-204, 37-31-331, MCA

REASON: The rationale is the same as for ARM 8.14.1201.

8.14.1212 STORAGE AND HANDLING OF TOOLS AND EQUIPMENT

(1) After being subjected to the sanitizing process, all sanitized implements and tools shall must be stored at a sufficient height above the floor in a clean sanitized, dry, place covered container protected from dust and other contamination contaminates, such as food, currency, paper and other foreign objects.

(a) Soiled implements, tools and equipment shall be stored separately from sanitized implements, tools and equipment.

~~(a) (2) A dust-free cabinet shall be provided for all clean towels, linens, coverings and aprons. Single service articles shall be purchased in sanitary containers and stored above the floor in a clean dry place until used.~~

~~(b) There shall be an adequate supply of combs and brushes for each operator, consisting of at least 6 brushes and 18 combs provided for each operator.~~

(3) A separate and clean towel shall be used for each client. Soiled towels shall be kept in an appropriate container and laundered regularly.

(4) A sanitary neck strip or towel shall be used to keep hair clippings and capes from coming in contact with the client's neck.

(5) The use of combs and brushes on more than one client without being sanitized first is prohibited.

(6) The use of a brush with dusting powder is prohibited.

(7) With the exception of disposable items, instruments and tools used in direct contact with a client shall be sanitized after each use.

(8) Establishments shall provide a supply of combs, brushes and implements to allow for proper sanitizing practices.

(9) It is prohibited to place tools, instruments and any other implements used in connection with cosmetology, esthetics, manicuring and electrology onto garments or in pockets.

(10) Any instruments, tools, implements and equipment having been dropped on the floor shall be cleaned and sanitized before reusing.

(11) Single service disposable cups are to be used for all clients.

Auth: Sec. 37-1-131, 37-31-203, 37-31-204, MCA

IMP: Sec. 37-31-204, 37-31-331, MCA

REASON: The rationale is the same as for ARM 8.14.1201.

8.14.1215 PERSONAL HYGIENE OF PERSONNEL (1) All persons working in ~~schools, salons and booths~~ establishments shall keep their hands and fingernails clean, and wear clean, professional attire. Shoes shall be worn at all times.

(2) ~~Special attention needs to be given to washing after visiting the toilet and before and after touching any patron~~
Any person providing client services must thoroughly wash their hands prior to starting work and shall wash their hands during work hours as often as may be necessary to remove soil and contamination and immediately after using the restroom.

(3) It is prohibited to place tools, instruments and implements used in connection with cosmetology, esthetic, manicuring or electrology onto garments or in pockets.

Auth: Sec. 37-1-131, 37-31-203, 37-31-204, MCA
IMP: Sec. 37-31-204, ~~37-31-311~~, 37-31-331, MCA

REASON: The rationale is the same as for ARM 8.14.1201.

4. The proposed new rule provides as follows:

NEW RULE I AIDING AND ABETTING UNLICENSED PRACTICE

(1) Aiding and abetting unlicensed practice occurs when an individual or a licensee of this board either intentionally or unintentionally renders assistance to another by encouraging or assisting in the commission of unlicensed practice or by failing to prevent it although under a duty to do so.

Auth: Sec. 37-1-131, 37-31-203, MCA
IMP: Sec. 37-1-316, MCA

REASON: The Board is proposing this rule to further clarify the department statute regarding unprofessional conduct with regard to aiding and abetting unlicensed practice. In the past four years the Board has encountered circumstances which indicate that licensees are not sure what aiding and abetting unlicensed practice means. The Board proposes to adopt this rule to clarify this issue.

5. ARM 8.14.403 RENEWAL, a rule proposed to be repealed is on ARM page 8-404.

AUTH: Sec. 37-31-203, MCA
IMP: Sec. 37-31-101, 37-31-302, 37-31-304, 37-31-305, 37-31-311, MCA

ARM 8.14.818 BOOTH RENTAL LICENSE APPLICATION, a rule proposed to be repealed, is on ARM page 8-438.

AUTH: Sec. 37-1-131, 37-31-203, MCA
IMP: Sec. 37-31-203, 37-31-302, MCA

ARM 8.14.1202 WALLS AND CEILINGS, a rule proposed to be repealed is on ARM page 8-465.

AUTH: Sec. 37-1-131, 37-31-203, 37-31-203, MCA
IMP: Sec. 37-31-204, 37-31-331, MCA

ARM 8.14.1203 DOORS AND WINDOWS, a rule proposed to be repealed is on ARM page 8-465.

AUTH: Sec. 37-31-203, MCA
IMP: Sec. 37-31-204, 37-31-331, MCA

ARM 8.14.1205 VENTILATION, a rule proposed to be repealed is on ARM page 8-466.

AUTH: Sec. 37-31-203, MCA
IMP: Sec. 37-31-204, 37-31-331, MCA

REASON: The Board is proposing that the above stated rules be repealed because the provisions contained in the rules are stated elsewhere in the Board's statutes or rules.

6. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Cosmetologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to compolcos@state.mt.us and must be received no later than the close of the hearing on January 23, 2001. The Board requests that persons submitting written comments submit nine copies of their comments.

7. Bruce R. Spencer, attorney, has been designated to preside over and conduct this hearing.

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

BOARD OF COSMETOLOGISTS
WENDELL PETERSON, CHAIRMAN

By:

By:

/s/ Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

/s/ Annie M. Bartos
ANNIE M. BARTOS,
RULE REVIEWER

Certified to the Secretary of State, December 11, 2000.

BEFORE THE BOARD OF COSMETOLOGISTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

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

TO: All Concerned Persons

1. On January 23, 2001, at 1:30 p.m., a public hearing will be held in the Division of Professional and Occupational Licensing conference room, 4th Floor, Federal Building, 301 South Park Avenue, Helena, Montana to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of 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 Cosmetologists no later than 5:00 p.m., on January 12, 2001, to advise us of the nature of the accommodation that you need. Please contact Jeannie Worsech, Board of Cosmetologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2335; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail compolcos@state.mt.us.

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

8.14.401 GENERAL REQUIREMENTS (1) and (2) will remain the same.

(3) Each licensee practicing mechanical exfoliation must display the original certificate of completion of training provided by the manufacturer with the name of the licensee in public view in the establishment. Prior to licensees practicing microdermabrasion, each manufacturer of any microdermabrasion machine used by the licensee must receive board approval for the microdermabrasion machine and manufacturer's training.

(4) A person licensed to practice cosmetology, manicuring, electrology or esthetics must keep the board advised at all times of his or her correct name and mailing address. The notification to the board must be provided in writing within 30 days, and shall include the licensee's

license certificate number, profession, new address, former name and/or new name.

(5) Licenses may not be defaced, altered or duplicated for posting requirements.

(6) Licensees shall immediately notify the board of lost, damaged or destroyed licenses and obtain a duplicate license by submitting a written request and appropriate fees to the board.

(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) All establishments shall carry liability and/or malpractice insurance.

Auth: Sec. 37-31-203, MCA

IMP: Sec. 37-31-101, 37-31-301, 37-31-302, MCA

REASON: The Board has proposed subsection (3) to regulate an area of practice by estheticians and cosmetologists which would otherwise not be regulated and which affects public health and safety. The use of microdermabrasion machines can adversely affect humans when improperly operated resulting in damage to the skin and tissues, can cause infection and may violate the prohibition on the practice of medicine. The Board has proposed subsections (4) through (8) to clarify licensing requirements and procedures.

8.14.602 INSPECTION - SCHOOL LAYOUT (1) Proposed schools shall be inspected by a designated inspector or a board designee before being issued a license.

(2) All schools must maintain the following square footage:

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

(4) Each school must maintain the latest inspection report and must make it available upon request by the inspector or designee of the board.

(5) Inspection report violations must be addressed and a written response stating in detail the corrective action taken provided to the board office by the school owner, or person in charge, within 30 days of the date of the inspection.

(6) For all schools or courses licensed after March 1, 2001, A a separate classroom, other than the clinic floor, must be provided for a theory/basic class for each course licensed. The Each classroom must be equipped with course appropriate charts or posters, a blackboards 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, manicure or esthetics 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.

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

(8) The school must provide audio/visual equipment working and in good repair for the purpose of teaching aids, such as a VCR or DVD player, television, tape recorder, slide projector, computer, printer, overhead projector, and projector screen.

(6) will remain the same but be renumbered (9).

(a) one styling chair and work station with mirror per student on the clinic floor; and

(b) one serviceable school first aid kit;

(c) a fire extinguisher which is readily accessible to the clinic floor, classroom, storage room and other locations where flammable liquids may be kept. Fire extinguishers must be inspected at least once a year or more often as required by the manufacturer or local authority; and

~~(b)~~ (d) ~~T~~the following equipment must be provided for schools enrolling one to 15 students. The equipment shall be doubled for 16 to 30 students and tripled for 31 to 45 students:

(i) will remain the same.

(ii) two stationary hair dryers; and

~~(c)~~ (iii) four two manicure tables; and

~~(d)~~ (iv) four two wet sterilizers sanitizers consisting of ~~one covered cleanser and one a~~ covered disinfectant. ~~Non-covered cleansers and disinfectants may be used, provided that the cleansing and disinfecting solution is changed after each use; and~~

(e) one closed cabinet for clean linens; and

(f) one facial chair; and

(g) one covered soiled linen container; and

(h) two covered garbage containers (for each course offered); and

(i) one locker for each student; and

(j) will remain the same.

(k) one current state of Montana board of cosmetologists law and rule book for each student; and

~~(k)~~ (l) one cosmetology kit for each student, which must be issued and personally given to each individual student upon enrollment in the school for use by the student during their 2,000 hours of cosmetology training. The cosmetology kit shall consisting of the following:

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

(iv) assorted single and double prong clips;

(v) one blow dryer;

(vi) one marcel curling iron;

(vii) through (x) will remain the same.

(xi) one water bottle;

(xii) one pair of shears;

(xiii) one razor;

(xiv) one cuticle pusher;

(xv) one cuticle nipper;

(xvi) two orange wood sticks;

(xvii) one tweezer;

(xviii) one file or assorted emery boards;

- (xix) one manicure bowl and brush;
- (xx) one acrylic nail brush;
- (xxi) one tint bottle;
- (xxii) one color bowl and brush;
- (xxiii) 10 assorted duck bills;
- (xxiv) one mannequin and holder;
- (xxv) one pair of rubber gloves;
- (xxvi) one color drape for student;
- (xxvii) 30 dozen permanent rods of assorted sizes-; and
- (xxviii) one suitable blood spill kit.
- (7) will remain the same but be renumbered (10).
- (a) one locker for each student; and
- (b) one manicure table with chairs for each student on the clinic floor; and
- (c) one current state of Montana board of cosmetologists law and rule book for each student; and
- (d) one serviceable school first aid kit; and
- (e) a fire extinguisher which must be readily accessible to the clinic floor, classroom, storage room and other locations where flammable liquids may be kept. Fire extinguishers must be inspected at least once a year or more often as required by the manufacturer or local authority; and
- (f) The following equipment must be provided for schools enrolling one to 15 students. The equipment shall be doubled for 16 to 30 students and tripled for 31 to 45 students:
- (i) two wet sanitizers consisting of a covered disinfectant; and
- (ii) one sink for hand washing, not used for restroom facilities; and
- ~~(c)~~ (g) one closed cabinet for clean linens; and
- (d) will remain the same but be renumbered (h).
- ~~(e)~~ (i) two covered waste containers-; and
- ~~(8)~~ (j) In addition to the equipment specified in (6), (7), (8), (10), (12), (13), and (14) of this rule above, each manicuring student shall receive a manicuring kit, which must be issued and personally given to each individual student upon enrollment in the school for use by the student during their 350 hours of manicure training. The manicuring kit shall consist of the following consisting of the following equipment:
- (a) through (i) will remain the same but be renumbered (i) through (ix).
- ~~(j)~~ (x) acrylic nail brushes;
- (k) through (m) will remain the same but be renumbered (xi) through (xiii).
- ~~(n)~~ (xiv) orange wood sticks;
- (o) through (q) will remain the same but be renumbered (xv) through (xvii).
- ~~(r)~~ (xviii) sterilizer sanitizing container;
- ~~(s)~~ (xix) dappen dishes- ; and
- (xx) one suitable blood spill kit.
- (9) will remain the same but be renumbered (11).
- (a) one locker for each student; and

(b) one sink for handwashing, not used for restroom facilities;

(c) one facial bed or chair; and

(d) will remain the same.

(e) one magnifying lamp for enrollment numbers between one and five students; and

(f) one facial unit consisting of a vaporizer, high frequency unit, massage brush, vacuum spray, galvanic unit, magnifying lamp and woods lamp; and

(g) one current state of Montana board of cosmetologists law and rule book for each student;

(h) one serviceable school first aid kit; and

(i) one fire extinguisher which must be readily accessible to the clinic floor, classroom, storage room and other locations where flammable liquids may be kept. Fire extinguishers must be inspected at least once a year or more often as required by the manufacturer or local authority;

~~(f)~~ (j) The number of sinks, facial beds or chairs, stools and lamps must be increased by one for each additional five students (e.g. six 6 to ten 10, 11- to 15, etc.);

~~(10)~~ (k) In addition to the requirements specified in ~~(8)~~ (6), (7), (8), (11), (12), (13), and (14) of this rule, above, the school must also provide: the following equipment must be provided by the school for one to 15 students. The equipment shall be doubled for 16 to 30 students and tripled for 31 to 45 students:

~~(a)~~ one autoclave;

~~(b)~~ (i) one liquid sterilizer two wet sanitizers consisting of one covered disinfectant; and

~~(c)~~ (ii) one dry storage container or cabinet for sterilized instruments for each student; and

~~(d)~~ (iii) one covered soiled linen container; and

~~(e)~~ (iv) one covered garbage container; and

~~(f)~~ one basic esthetician kit for each student; and

~~(g)~~ one facial unit consisting of a vaporizer, high frequency unit, massage brush, vacuum spray, galvanic unit, magnifying lamp and woods lamp.

~~(11)~~ The basic esthetician kit must include the following:

(l) Each esthetic student shall receive a basic esthetics kit, which must be issued and personally given to each individual student upon enrollment in the school for use by the student during their 650 hours of esthetic training. The esthetic kit shall consist of the following:

~~(a)~~ (i) esthetician's textbook covering basic esthetics, health and nutrition and aromatherapy including manual, chemical and mechanical exfoliation;

~~(b)~~ (ii) esthetician's workbook;

(c) through (m) will remain the same but be renumbered (iii) through (xiii).

~~(n)~~ (xiv) basic skin care and make-up kit;

~~(o)~~ (xv) sterilizer. sanitizing container; and

~~(p)~~ (xvi) one suitable blood spill kit.

(12) Separate restrooms with sinks for male and female persons must be provided for the school and shall include hot and cold running water connected to a sewer system.

(13) will remain the same.

(14) Displayed At the entrances of each school, a large legible sign with letters not less than two inches in size with the words "School of Cosmetology" or "School of Manicuring" or "School of Esthetics" shall must be permanently affixed to the facility as to not be easily altered or removed by weather or individuals displayed. Within the school Each classroom and clinic floor shall have similar signs with the words "Student Work Only" posted.

Auth: Sec. 37-31-203, 37-31-311, MCA

IMP: Sec. 37-31-311, 37-31-312, MCA

REASON: The Board is proposing the amendments to this rule to provide regulation regarding the school inspection process by requiring schools to address and correct inspection violations; to provide clarification as well as updating equipment, tools, implements and facility requirements for schools; to provide for proper educational and practice needs within the school environment; to further clarify that the kits required for students must be provided and used by the students during the course of instruction; to add clarification for appropriate school signage and to provide for public health and safety issues.

8.14.605 CURRICULUM - COSMETOLOGY, MANICURING AND ESTHETICS STUDENTS (1) The hours for training courses for cosmetologists shall be distributed as follows:

(a) Manicuring ~~(including artificial nails, pedicures)~~ 200 ~~175~~ hours

(i) manicures (including water, oil, hand and arm massage, paraffin wax treatments and polish);

(ii) pedicures (including foot and ankle massage, paraffin wax treatments and polish);

(iii) application of artificial nails (including sculptured, nail tips, nail wraps, fills, repairs, tip overlays, fiberglass, gel and acrylic);

(iv) chemistry, anatomy, physiology, bacteriology, safety, sanitation, blood spill procedure, diseases and disorders of the nail;

(v) the use of manicuring implements (including the nail drill);

(b) Esthetics 200 hours

(i) skin care (including facials, cosmetics, make-up, massage, essential oils);

(ii) skin exfoliation (including manual, chemical and mechanical exfoliation);

(iii) waxing and tweezing;

(iv) chemistry, electricity, light therapy, anatomy, physiology, bacteriology safety, sanitation, blood spill procedure,

- diseases and disorders of the skin;
- (b) (c) Shampoo (including scalp treatment) 75 hours
- (c) will remain the same but be renumbered (d).
- (d) (e) Chemical relaxing (ammonium thioglycolate, sodium hydroxide methods) 50 hours
- (e) (f) Hair styling (pin curls, finger waving, thermal (curling, blow dry styling, braiding, back combing, wet setting)) 275 hours
- (f) ~~Facials, cosmetic chemistry, electricity, including waxing~~ 125 hours
- (g) will remain the same.
- (h) Hair cutting (including the proper uses of implements, i.e. shears, razor, clippers, thinning shears) 275 hours
- (i) Salon management, business methods, ~~state law and rules~~ customer service, appointment book and professional ethics 200 150 hours
- (j) ~~Instructor's discretion~~ Current state board laws and rules 150 50 hours
- (k) Bacteriology, sanitation and sterilization, safety, anatomy, physiology, blood spill procedure, disease and disorders of hair and scalp 100 hours

(1) Not less than 200 hours of the above designated curriculum must be taught in theory.

(2) When a student has completed 2,000 hours of training and graduated, the school must send the student's final hour records to the department within five days. All cosmetology students must have completed the specified minimum required hours and operations upon completion of the 2,000 hour course training pursuant to ARM 8.14.605(1).

(a) will remain the same.

(3) The hours for training courses for manicurists shall be 350 hours and distributed as follows:

<u>Subject</u>	<u>Minimum Hours of Technical Instruction</u>	<u>Minimum Practical Operations</u>
Shop management, business methods, laws, rules and shop etiquette.	5	
Cosmetology chemistry related to manicuring practices. (Shall include the chemical composition and purpose of nail care preparations.)	20	
Bacteriology, sanitation and sterilization, safety precautions, anatomy and physiology.	20	

~~Water and oil manicures, including hand and arm massage. 20 40~~

~~Complete pedicure, including foot and ankle massage. 15 5~~

~~Application of artificial nails, liquid and powder brush-ons. 15 40 nails~~

~~Nail tips. 15 20 nails~~

~~Nail wraps and repairs 10 15 nails~~

~~Additional training Maximum Hours
(May include professional of Additional
ethics, personal hygiene, Training
good grooming, salesman-
ship, normal cleanup
duties, required keeping
of student daily records,
modeling, desk and
reception.) May also
include not more than
8 hours credit for
field trips. 25 hours~~

~~(a) Salon management, business methods, customer service, appointment book, professional ethics 25 hours~~

~~(b) Bacteriology, sanitation and sterilization, safety, anatomy and physiology, diseases and disorders 50 hours~~

~~(c) Manicures (including water, oil, hand and arm massage, polish, paraffin wax treatments) 25 hours~~

~~(d) Pedicures (including foot and ankle massage, polish, paraffin wax treatments) 20 hours~~

~~(e) Application of artificial nails, sculptured nails, nail tips, nail wraps, tip overlays, fills and repairs (including fiberglass, gel and acrylic) 150 hours~~

~~(f) The proper use of manicuring implements (including the nail drill) 10 hours~~

~~(g) Manicure chemistry and nail care 20 hours~~

~~(h) Current state board laws and rules 50 hours~~

~~(i) Not less than 35 hours of the above designated curriculum must be taught in theory.~~

~~(4) When a student has completed 350 hours of training and graduated, the school must send the student's final hour records to the department within five days. All manicuring students shall have completed the specified minimum required hours and operations upon completion of the 350-hour course training pursuant to ARM 8.14.605(3).~~

(5) Any applicant who has completed 350 hours of training or more ~~for~~ and possesses a current manicurist license, and ~~transfers to enrolls in a school course~~ of cosmetology, will be granted ~~200~~ 175 hours of credit towards the required 2000-hour course for a cosmetologist license.

(6) The hours for instruction in esthetics shall be distributed as follows:

(a) bacteriology, sanitation and sterilization, safety, anatomy, physiology, blood spill procedure, disease and disorders of the skin 25 75 hours

(b) electricity, chemistry, light therapy (including the use of vaporizer, high frequency, massage brush, vacuum spray, galvanic unit and lamps 175 hours

(c) massage, skin care and makeup, cosmetics, facials, essential oils 250 225 hours

(d) skin peels exfoliation (including manual, chemical and mechanical exfoliation) 10 65 hours

~~(e) health, nutrition, aromatherapy and anatomy~~ 35 hours

~~(f) (e) Montana current state board laws and rules, management~~ 65 50 hours

~~(g) (f) waxing (face, neck and hands, including tweezing)~~ 50 20 hours

(g) salon management, business methods appointment book, customer service, professional ethics 40 hours

~~(h) instructor's discretion~~ 40 hours
not less than 65 hours of the above designated curriculum must be taught in theory.

(7) When a student has completed 650 hours of training and graduated, the school must send the student's final hour records to the department within five days. All esthetic students shall have completed the specified minimum required hours and ~~operations upon completion of the 650-hour course~~ training pursuant to ARM 8.14.605(6).

(8) Any applicant who has completed 650 hours of training or more ~~for~~ and possesses an current esthetics license, and ~~transfers to enrolls in a school course~~ of cosmetology, will be granted ~~125~~ 200 hours of esthetic credit towards the required 2000-hour course for a cosmetologist license.

(9) Although it may be a required ~~as~~ a condition of enrollment, no hours shall be given for time spent in school for general maintenance of the school including, but not limited to, washing or scrubbing floors, walls, woodwork, ~~rest rooms or windows or shoveling sidewalks and mowing school grounds~~. Hours may be awarded for routine, daily cleaning.

(10) Students seeking licensure in a state other than Montana which requires additional hours of training, who do not possess a Montana license, may remain enrolled in the school and be permitted to work on members of the public.

(11) will remain the same.

Auth: Sec. 37-31-203, MCA

IMP: Sec. 37-31-304, 37-31-311, 37-31-312, MCA

REASON: The Board is proposing this amendment to update cosmetology, manicuring and esthetic curriculums in accordance with currently accepted practices and standards for sanitation and safety and to include in the curriculum current practice areas such as manual, chemical and mechanical exfoliation practices, all areas of artificial nail products and procedures, paraffin procedures, facial procedures and Board laws and rules. The Board further defined curriculum and deleted the instructor's discretion from all curriculum areas. The Board is proposing that at least 10% of the required curriculum be taught in theory instruction rather than practical instruction.

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

(1) (2) All multi-use utensils machines, devices, implements, tools and equipment, shelves, tables, sinks and other equipment used in connection with the operation of the beauty school or salon an establishment or practice, shall be constructed to be easily cleaned and must be kept in good repair clean, sanitary and in a safe condition at all times.

(a) will remain the same.

(b) (3) All electrical equipment and instruments shall be safely installed and grounded in accordance with the National Electrical Code of the national board of fire underwriters and underwriters laboratory (UL) approved.

(c) Single service paper cups are to be used for all patrons.

(4) Only electric file machines specifically manufactured for use in the nail industry are permitted to be used in nail services. Modified craft or hobby tools are prohibited.

(5) Only bits specifically manufactured for use on the nail plate are permitted to be used on the natural nail.

(6) Metal bits and disposable sanding bands are permitted to be used only on the acrylic surface covering the nail. The use of metal bits and sanding bands on the natural nail is prohibited.

(7) Only microdermabrasion machines specifically manufactured for use in esthetic services and approved by the Montana board of cosmetologists are permitted. Modified or medical machines are prohibited for use by individuals licensed by the board of cosmetologists.

(a) Microdermabrasion machine models for use in esthetic services must be closed systems only.

(b) Microdermabrasion machines must be kept in a clean, sanitary and safe manner at all times.

(c) Microdermabrasion machines must be used only in accordance with specific manufacturer directions.

Auth: Sec. 37-1-131, 37-31-203, 37-31-204, MCA
IMP: Sec. 37-31-204, 37-31-331, MCA

REASON: The Board is proposing the amendments to this rule to provide updated and current practices and standards with regards to the cosmetology, manicuring, esthetic and electrology professions. The Board has proposed these amendments to provide for updated and appropriate sanitation procedures, current public protection procedures, current health and safety standards and for the prevention of spreading communicable diseases to the public. The Board is also proposing to provide regulation in the areas of practice with regard to electric nail files used in the cosmetology and manicuring professions, microdermabrasion machines and chemical exfoliation used in the cosmetology and esthetic professions. Microdermabrasion procedures and chemical exfoliation are not currently regulated in the cosmetology and esthetic professions and affect the public health, safety and welfare. The use of microdermabrasion machines, chemicals for exfoliation and electric nail files can adversely affect the clients when improperly operated or used resulting in damage or harm to the public and may violate the prohibition on the practice of medicine if not properly regulated. The Board has prohibited a number of tools and chemicals within the safety and sanitation rules. The purpose is to provide public protection when a tool, applicator or implement cannot be properly sanitized for public safety. The prohibiting of specific chemicals for exfoliation purposes is to provide public protection when the chemicals researched were found to have negative results or potential for harm to the public due to toxicity or possible allergic reactions.

8.14.1210 CLEANING AND SANITIZING TOOLS AND EQUIPMENT

(1) All tools, equipment and electrical instruments, shall be thoroughly cleaned and subjected to an approved sanitizing process before being used again. Cloth towels and other linens shall be laundered before use. Single service items shall be used only once and properly disposed of after use.

(2) A sink or ~~pan~~ container shall be of adequate appropriate size to hold all ~~the articles~~ tools to be cleaned plus a cleaning detergent solution.

(a) After removing all hair from tools, the tools are to be thoroughly washed in warm water and detergent solution in a clean sink or container.

(b) After thoroughly washing, rinse tools thoroughly in clean warm water.

~~(a) (3) The sanitizing container shall must be large enough to completely cover all articles tools with a board approved sanitizing solution agent. A cylinder container may not be adequate to sanitize brushes.~~

~~(3) Washing and sanitizing all tools, combs, brushes, instruments, etc. shall be in the following manner:~~

~~(a) Clean hair from all tools, in a clean sink or pan, wash tools thoroughly in warm water and detergent solution.~~

~~(b) After washing, rinse tools thoroughly in clean warm water.~~

~~(c) (4) Finally, a~~All articles tools and implements must be completely immersed in an board approved sanitizer sanitizing agent of proper strength and for a the necessary time period according to manufacturer instructions.

(5) Contact points of all non-immersible equipment and metal implements must be cleaned with a detergent solution and wiped or sprayed with a board approved sanitizing agent.

(6) Board approved sanitizing agents shall be available for immediate use at all times an establishment is in operation.

(7) Sanitized implements and tools must be stored in a disinfected, dry, covered container and segregated from used or soiled implements and tools.

(8) Sanding bands used on electric file mandrels are for single use purposes and must be discarded after each use.

(9) Metal bits for electric files must be properly sanitized after each client.

(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.

(11) Aluminum oxide crystals or approved corundum must not have a granule size of less than 120.

(12) Only plastic tips may be used in microdermabrasion machines. Plastic tips are for single use purposes and must be disposed of after each client.

(13) Microdermabrasion machines must be maintained and filters changed in accordance with OSHA and manufacturer requirements.

(14) The use of roller or roll-on waxing systems is prohibited.

(15) If a blood spill should occur, the licensee, student or cadet instructor must follow the procedure adopted by the national interstate council state boards of cosmetology (NIC). The board adopts and incorporates by reference the blood spill procedure as adopted by the NIC, August, 1998. A copy of the blood spill procedure may be obtained by contacting the Board of Cosmetologists, 301 South Park Avenue, P.O. Box 200513, Helena, MT 59620-0513 and must be posted in public view in the establishment.

Auth: Sec. 37-1-131, 37-31-203, 37-31-204, MCA

IMP: Sec. 37-31-204, 37-31-331, MCA

REASON: The rationale is the same as for ARM 8.14.1210.

8.14.1213 STORAGE, AND HANDLING OF APPLICATION OF BEAUTY SALON PREPARATIONS (1) All beauty salon preparations shall be stored above the floor and kept covered to protect from dust, droplets and infection. They shall be stored, handled and applied in such a manner to protect against contamination.

~~(a) Use of glasses or cups for dipping combs or other instruments is prohibited.~~

~~(b) Liquid preparations shall be dispensed from shaker or spray bottles and talc must be kept in shakers.~~

~~(c) Cream and other unguents must be removed from containers with spatulas or similar utensils.~~

(2) All substances used in the practice of cosmetology, esthetics, manicuring or electrology must be dispensed from containers in a manner to prevent contamination of the unused portion, either by use of pump, spray, or single-service spatulas. The use of fingers to remove substances from containers is prohibited.

(3) The use of pumice stones and natural sponges is prohibited.

~~(d) (4) Styptic pencils and lump alum are prohibited.~~

~~(e) (5) Liquid or powder astringent must be stored and applied with a separate clean sterilized gauze or cotton pad.~~

(6) All substances shall be properly covered at all times to prevent contamination.

(7) The use of the following products for chemical exfoliation is prohibited:

(a) methyl methacrylate monomers;

(b) phenol;

(c) resorcinol;

(d) salicylic ;

(e) trichloroacetic acid (TCA);

(f) jessner's solution; and

(g) lactic acid.

(8) 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 a duration of not longer than two minutes is permitted.

(9) Only commercially available products may be used for chemical exfoliation purposes. The mixing or combining of skin exfoliation products or services is strictly prohibited.

(10) All salon preparations must have the manufacturer's label of ingredients with warnings on all products used on clients.

(11) When using bulk products poured into another or smaller storage container, the new storage container must be labeled with the same product name, ingredients and warnings as the original container.

(12) Dermaplane procedures, dermabrasion procedures, blades, knives, lancets and any tools that invade the skin or living cells are prohibited.

(13) The use of laser energy, as prescribed in ARM 8.28.402(7) which reads "'Surgery' means any procedure in which human tissue is cut or altered by mechanical or energy forms, including electrical or laser energy or ionizing

radiation", constitutes the practice of medicine and is prohibited for all individuals licensed under this chapter.

Auth: Sec. 37-1-131, 37-31-203, MCA
IMP: Sec. 37-31-204, 37-31-331, MCA

REASON: The rationale is the same as for ARM 8.14.1210.

8.14.1214 DISPOSAL OF WASTE - SEWAGE (1) All refuse waste shall be stored ~~disposed of~~ in easily cleanable, leakproof, plastic lined, fly-tight non-absorbent containers that are supplied in sufficient numbers to accommodate all refuse.

(a) Refuse Waste containers shall be kept ~~in good repair and thoroughly cleaned after being emptied~~ clean and sanitary and plastic lined at all times.

(b) There shall be frequent removal of refuse waste to prevent overflow, which could be a menace to health.

(2) will remain the same.

(3) ~~Plumbing must be in compliance with the Montana plumbing code.~~ All chemical waste material must be disposed of in accordance with manufacturer's directions and/or federal, state and local regulations.

(4) Hair clippings shall be swept after each client and disposed of in a waste container.

(5) Any materials, chemicals, implements or tools must be disposed of in accordance with OSHA hazard communication standards.

(6) Plastic liners must be tightly secured and double bagged if necessary upon removal from the premises to prevent spillage of waste contents.

(7) Disposal of aluminum oxide crystals or approved corundum crystals must be in accordance with federal, state and local regulations.

Auth: Sec. 37-1-131, 37-31-203, 37-31-204, MCA
IMP: Sec. 37-31-204, 37-31-331, MCA

REASON: The rationale is the same as for ARM 8.14.1210.

8.14.1216 PREMISES AND GENERAL REQUIREMENTS (1) The premises of all ~~salons and schools~~ establishments shall be kept neat and clean, sanitary and in a safe condition at all times.

(2) No operation connected with a ~~salon or school~~ an establishment shall be conducted in any room used as living or sleeping quarters.

(3) No other business shall be conducted in an establishment, except those regulated by this board or related to the cosmetology industry, unless separated by a full length partition.

~~(a)~~ (4) There shall be a self-closing door between establishments ~~and these private quarters.~~

~~(3)~~ (5) Proper storage space shall be provided for the licensee's and employees' street clothing.

~~(4)~~ Soiled linens, towels and aprons shall be kept in a suitable hamper type container provided for that purpose.

(6) An establishment licensed by the board must provide direct entry into the establishment from a public access area.

~~(5)~~ (7) Furniture shall be covered with easily cleanable covering such as leather, plastic or washable cloth and shall be kept clean, sanitary and in a safe condition at all times.

~~(6)~~ (8) Animals, birds and reptiles are prohibited in all salons and schools establishments, with the exception of guide and hearing dogs an assist animal for persons with disabilities.

(9) Food is not to be prepared, kept or sold in a salon or booth. Beverages that are prepared, beyond the addition of water, are prohibited. Exceptions would be food and non-alcoholic beverages that the licensee has for the licensee's own consumption or items that may be dispensed from vending machines if said machines comply with federal, state and local laws.

(10) Alcoholic beverages are prohibited in an establishment except when permitted in accordance with the state regulations of the department of revenue.

(11) In accordance with the Food and Drug Act a patch test or predisposition test must be given on clients before performing services as required by each manufacturer.

(12) The licensee is required to advise the client of the necessity for protection of the skin prior to and following an exfoliation procedure.

(13) Licensees practicing in the area of mechanical exfoliation 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) The licensee practicing mechanical exfoliation must display, in public view in the licensed establishment, the original certificate of completion of training from the manufacturer, which must be approved by the board.

(15) Licensees who have not completed the manufacturer's training, received a certificate of completion and provided a copy of the certificate to the board office are prohibited from using or practicing mechanical exfoliation procedures.

(16) If a blood spill should occur, the licensee, student or cadet instructor must follow the blood spill procedure adopted by the national interstate council state boards of cosmetology (NIC). The board adopts and incorporates by reference the blood spill procedure as adopted by the NIC, August, 1998. A copy of the blood spill procedure

is available at the Board of Cosmetologists, 301 South Park Avenue, P.O. Box 200513, Helena, MT 59620-0513.

(17) The NIC blood spill procedure must be posted in all establishments for public view.

Auth: Sec. 37-1-131, 37-31-203, 37-31-204, MCA

IMP: Sec. 37-31-203, 37-31-331, MCA

REASON: The rationale is the same as for ARM 8.14.1210.

4. The proposed new rule provides as follows:

NEW RULE I DEFINITIONS For the purpose of the rules set forth in this chapter, the following definitions shall apply:

(1) "Beautification and embellishment" means the improvement of an individual's appearance to meet the individual's need or desire through non-invasive procedures and practices.

(2) "Blood spill kit" means a kit that contains the equipment necessary to follow all of the blood spill procedures as required by ARM 8.14.1216(16).

(3) "Booth rental" means an establishment or business attached to or within a licensed salon that is operated independently thereof by a licensed booth renter.

(4) "Booth renter" means an independent contractor who operates in a licensed salon and is not an employee or owner of the salon and abides by the requirements of 39-51-204, MCA.

(5) "Cadet" or "student" instructor means a licensee who is enrolled in a school for the teacher training program.

(6) "Clean" means the absence of soil, dirt, dust, hair or foreign material or the removal of soil, dirt, dust, hair or foreign material by washing, sweeping, clearing away, or any other appropriate method rendering a sanitary condition.

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

(8) "Dermabrasion or 'open' dermabrasion" means the surgical application of a wire or diamond frieze by a physician to abrade the skin, vaporizing the epidermis and possibly down to the papillary dermis.

(9) "Dermaplane" means the use of a scalpel or sharp, bladed instrument by a physician to "shave" the upper layers of the stratum corneum.

(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 communication, direction, observation and evaluation on a consistent basis.

(11) "Employee" means a person employed by an establishment that is paid wages or commissions in accordance with federal, state and local regulations.

(12) "Establishment" means any premises, such as salons, schools or booths where any activity licensed under this chapter is practiced.

(13) "Exfoliation" means the sloughing off of non-living (dead) skin cells by very superficial and non-invasive means.

(14) "Member of the public" means any person that is not enrolled as a student or employed as an instructor of the school in which the student is attending. Payment or compensation for services is not a consideration.

(15) "Micodermabrasion" means a gentle, progressive, very superficial mechanical exfoliation of the uppermost layers of the stratum corneum using a closed-loop vacuum system that utilizes aluminum oxide or corundum crystals as the abrasive material.

(16) "Non-invasive" means confined to the nonliving cells of the epidermis specifically the stratum corneum layer. Living cells must never be altered, cut or damaged. During services performed by individuals licensed in this chapter at no time should the germinative or basal layers be compromised.

(17) "Patch test" or "predisposition test" means a test required by federal law under the Food and Drug Act, by applying a small amount of the chemical preparation to the skin of the arm or behind the ear to determine possible allergies (hypersensitivity) of the client to the chemical.

(18) "Sanitized", "sanitary" or "sanitation" means free from agents of infection, disease, or infestation by insects and vermin and free of soil, dust, dirt, hair or foreign material or the process by which items, implements, tools and surfaces are caused to be free from agents of infection, disease, or infestation by insects and vermin and free of soil, dust, dirt, hair or foreign material.

(19) "Sterilization" means to completely destroy all living organisms on a surface.

(20) "Very superficial" means confined to the uppermost stratum corneum layer of the epidermis.

Auth: Sec. 37-1-131, 37-31-203, MCA
IMP: Sec. 37-31-203

REASON: The Board is proposing this new rule to provide definitions for several terms used in the Board rules to further clarify the Board's intent with regard to these terms.

5. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Cosmetologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to compolcos@state.mt.us and must be received no later than the close of the hearing on January 23, 2001.

6. Bruce R. Spencer, attorney, has been designated to preside over and conduct this hearing.

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

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

BOARD OF COSMETOLOGISTS
WENDELL PETERSEN, CHAIRMAN

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, December 11, 2000.

BEFORE THE BOARD OF HEARING AID DISPENSERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to fees, record retention, minimum testing and recording procedures and transactional document requirements - form and content) NOTICE OF THE PROPOSED) AMENDMENT OF ARM 8.20.402) FEES, 8.20.407 RECORD) RETENTION, 8.20.412 MINIMUM) TESTING AND RECORDING) PROCEDURES, AND 8.20.418) TRANSACTIONAL DOCUMENT) REQUIREMENTS - FORM AND) CONTENT
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NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On January 20, 2001, the Board of Hearing Aid Dispensers proposes to amend the above-stated rules.
2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Hearing Aid Dispensers no later than 5:00 p.m., on January 15, 2001, to advise us of the nature of the accommodation that you need. Please contact Linda Grief, Board of Hearing Aid Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2395; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail compolhad@state.mt.us.
3. The proposed amendments will read as follows: (new matter underlined, deleted matter interlined)

8.20.402 FEES (1) through (1)(h) will remain the same.
(i) Penalty for late renewal (active or inactive) 100
 (2) will remain the same.

Auth: Sec. 37-1-134, 37-16-202, MCA
 IMP: 37-1-134, 37-16-202, 37-16-402, 37-16-405, 37-16-407, MCA

8.20.407 RECORD RETENTION (1) through (1)(d) will remain the same.
 (e) a copy of the sale contract, purchase agreement or bill of sale, including a three-day cancellation notice, signed and dated by ~~both~~ the parties, the original delivered to the patient;
 (f) through (3) will remain the same.

Auth: Sec. 37-16-202, MCA
 IMP: Sec. 37-16-301, 37-16-303, 37-16-304, 37-16-411, MCA

8.20.412 MINIMUM TESTING AND RECORDING PROCEDURES

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

(3) All audiometers shall be calibrated to ANSI standards once a year. A copy of an electronic audiometer calibration made within the past 12 months shall be ~~submitted to the board by the licensee on June 30 annually~~ made available by the licensee upon the board's request.

Auth: Sec. 37-16-202, MCA

IMP: Sec. 37-16-202, 37-16-411, MCA

8.20.418 TRANSACTIONAL DOCUMENT REQUIREMENTS - FORM AND CONTENT

(1) In addition to the requirements of 37-16-303, MCA, all bills of sale, including a three-day cancellation notice, contracts and purchase agreements, or other written memorialization of the sale, shall be on a form no smaller than 8 1/2 x 11 inches and conform to the terms set forth in this rule.

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

Auth: Sec. 37-16-202, MCA

IMP: Sec. 37-16-303, MCA

REASON: The Board is proposing the amendments to these rules to better protect the public and to clarify the necessity of including a three-day cancellation notice for the benefit of the public. It is also necessary to implement a penalty fee for filing late renewals to alleviate disciplinary procedures that are not cost efficient. This fee will correct that problem and better allow the Board to administer and regulate the profession. The Board anticipates that 10 licensees will be affected by this fee, and that the Board will receive \$1,000 in additional revenue per year.

4. Concerned persons may submit their data, views or arguments concerning the proposed actions in writing to the Board of Hearing Aid Dispensers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to compolhad@state.mt.us to be received no later than 5:00 p.m., January 18, 2001.

5. If persons who are directly affected by the proposed actions wish to express their data, views or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit the request along with any comments they have to the Board of Hearing Aid Dispensers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to compolhad@state.mt.us to be received no later than 5:00 p.m., January 18, 2001.

6. If the Board receives requests for a public hearing on the proposed actions from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed actions, from the appropriate administrative rule review committee of the legislature, from a governmental

agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be nine based on the 86 licensed hearing aid dispensers in Montana.

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

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

BOARD OF HEARING AID DISPENSERS
DAVID KING, CHAIRMAN

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, December 11, 2000.

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

In the matter of the proposed amendment of rules pertaining to examinations, licensure of out-of-state applicants, foreign-trained physical therapist applicants and continuing education) NOTICE OF THE PROPOSED) AMENDMENT OF ARM 8.42.402) EXAMINATIONS, 8.42.406) LICENSURE OF OUT-OF-STATE) APPLICANTS, 8.42.410) FOREIGN-TRAINED PHYSICAL) THERAPIST APPLICANTS, AND) 8.42.416 CONTINUING) EDUCATION

NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On January 20, 2001, the Board of Physical Therapy Examiners proposes to amend the above-stated rules.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Physical Therapy Examiners no later than 5:00 p.m., on January 15, 2001, to advise us of the nature of the accommodation that you need. Please contact Vanessa Olson, Board of Physical Therapy Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2387; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail compolptp@state.mt.us.

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

8.42.402 EXAMINATIONS (1) through (4)(b) will remain the same.

(c) three statements of good moral character, one of which is a professional reference from a ~~person~~ licensed ~~in the field of physical therapy~~ therapist, and two others from persons with knowledge of the applicant within the past five years. All reference letters must be sent directly to the board office from the reference source;

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

Auth: Sec. 37-1-131, 37-11-201, MCA

IMP: Sec. 37-1-304, 37-11-303, 37-11-304, MCA

REASON: This amendment will require that the professional reference come from a licensed physical therapist. The Board believes that physical therapy assistants should not provide a professional reference for a physical therapist since their licensure requires supervision from a physical therapist.

8.42.406 LICENSURE OF OUT-OF-STATE APPLICANTS

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

(d) submit three statements of good moral character, one of which is a professional reference from a ~~person~~ licensed ~~in the field of physical therapy~~ therapist, and two others from persons with knowledge of the applicant within the past five years. All reference letters must be sent directly to the board office from the reference source;

~~(e) copy of all other physical therapy or physical therapist assistant licenses;~~

(f) through (h) will remain the same but be renumbered (e) through (g).

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

Auth: Sec. 37-1-319, 37-11-201, MCA

IMP: Sec. 37-1-304, MCA

REASON: This amendment will require that the professional reference come from a licensed physical therapist. The Board believes that physical therapy assistants should not provide a professional reference for a physical therapist since their licensure requires supervision from a physical therapist. The Board proposes to delete subsection (e) because it is duplicative of the requirement set forth in subsection (f).

8.42.410 FOREIGN-TRAINED PHYSICAL THERAPIST APPLICANTS

(1) will remain the same.

(a) compliance with educational standards equivalent to the national standards of the commission on accreditation of physical therapy education of the American physical therapy association by using an evaluation of educational background performed by any of the following evaluation services:

International Education Research Foundation, Inc.
Credentials Evaluation Services
P.O. Box 24679
Los Angeles, CA 90024

~~International Consultants, Inc.
ICI of Delaware
109 Barksdale Professional Center
Newark, DE 19711~~

~~International Credentials Associates, Inc.
SouthTrust Bank Bldg., Suite 1600
150 Second Avenue North
St. Petersburg, FL 33701~~

Foreign Credentialing Commission on Physical Therapy,
Inc. (FCCPT)
P.O. Box 25827
Alexandria, VA 22313-9998

Educational Credential Evaluators (ECE)
P.O. Box 514070
Milwaukee, WI 53203-3470

University of Texas
Graduate & International Admission Center
2608 Whites
Austin, TX 78713

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

Auth: Sec. 37-1-131, 37-11-201, MCA
IMP: Sec. 37-11-310, MCA

REASON: The Foreign Credentialing Commission on Physical Therapy, Inc. (FCCPT) has advised that the FCCPT Board of Directors has adopted a new policy concerning contracting with credentialing review agencies. The FCCPT will use outside credentialing agencies on an as needed basis as long as the credentialing agency agrees to use the approved FCCPT course work evaluation tool and methodology. Agencies that have agreed to use the FCCPT course work evaluation tool and methodology are: Educational Credential Evaluators (ECE; International Education Research Foundation (IERF); and the University of Texas. These agencies will only be used on an as needed basis or at the specific request of member jurisdictions. The FCCPT is no longer under contract with ICD as a credentialing agency.

8.42.416 CONTINUING EDUCATION (1) through (2) will remain the same.

(3) The continuing education program must meet the following criteria:

(a) the activity must have significant intellectual or practical content. The activity must deal primarily with substantive physical therapy issues as contained in the physical therapy definition in Montana. In addition, the board may accept continuing education activities from other professional groups or academic disciplines if the licensee demonstrates that the activity is substantially related to his or her role as a physical therapist or physical therapist assistant. A continuing education program is defined as a class, institute, lecture, conference, workshop, cassette or videotape, correspondence course or peer reviewed publication of journal article(s), ~~or~~ textbook(s), or online;

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

(4) Implementation for continuing education shall be as follows:

(a) one continuing education credit shall be granted for each hour of participation in the continuing education activity excluding breaks and meals. Continuing education activities and courses taken after October 1, 1995, will be accepted by the board for the initial reporting period. A maximum of two credits by cassette or videotape and a maximum

of four credits from online continuing education will be allowed;

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

Auth: Sec. 37-1-319, 37-11-201, MCA
IMP: Sec. 37-11-201, 37-11-306, MCA

REASON: The amendments will allow licensees to obtain continuing education (CE) online, but will limit that CE to a maximum of six hours per CE reporting period. The Board believes that there are many valuable online courses now being offered and this will accommodate many licensees. However, the Board also believes that CE must be diversified and thus has limited online courses to a maximum of four credit hours.

4. Concerned persons may submit their data, views or arguments concerning the proposed actions in writing to the Board of Physical Therapy Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to compolptp@state.mt.us to be received no later than 5:00 p.m., January 18, 2001.

5. If persons who are directly affected by the proposed actions wish to express their data, views or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit the request along with any comments they have to the Board of Physical Therapy Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to compolptp@state.mt.us to be received no later than 5:00 p.m., January 18, 2001.

6. If the Board receives requests for a public hearing on the proposed actions from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed actions, from the appropriate administrative rule review committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 91 based on the 913 licensed physical therapists in Montana.

7. The Board of Physical Therapy Examiners maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Physical Therapy Examiners administrative rule making proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Physical Therapy Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to

compolptp@state.mt.us or may be made by completing a request form at any rules hearing held by the agency.

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

BOARD OF PHYSICAL THERAPY
EXAMINERS
JEFFREY SWIFT, PT, CHAIRMAN

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, December 11, 2000.

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

In the matter of the proposed) NOTICE OF PUBLIC HEARING ON
adoption of a rule pertaining to) THE PROPOSED ADOPTION OF A
the administration of the 2001) RULE PERTAINING TO THE
Federal Community Development) ADMINISTRATION OF THE 2001
Block Grant Program) FEDERAL COMMUNITY DEVELOP-
) MENT BLOCK GRANT PROGRAM

TO: All Concerned Persons

1. On January 11, 2001, at 1:30 p.m., a public hearing will be held in the downstairs conference room at the Department of Commerce, 1424 Ninth Avenue, Helena, Montana, to consider the proposed adoption of a rule pertaining to the administration of the 2001 Federal Community Development Block Grant Program.

2. The Local Government Assistance Division will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Local Government Assistance Division no later than 5:00 p.m., January 5, 2001 to advise us of the nature of the accommodation that you need. Please contact Richard M. Weddle, Local Government Assistance Division, 1424 Ninth Avenue, Helena, Montana 59620; telephone (406)444-2781; Montana Relay 1-800-253-4091; TDD (406)444-2978; facsimile (406)444-4482.

3. The proposed new rule will read as follows:

I INCORPORATION BY REFERENCE OF RULES FOR ADMINISTERING THE 2001 CDBG PROGRAM (1) The department of commerce herein adopts and incorporates by this reference the Montana Community Development Block Grant Program 2001 Application Guidelines for Housing and Public Facilities Projects, the Montana Community Development Block Grant Program 2001 Application Guidelines for Economic Development Projects, and the Montana Community Development Block Grant Program 2001 Grant Administration Manual published by it as rules for the administration of the 2001 CDBG program.

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

- (a) policies governing the program;
- (b) requirements for applicants;
- (c) procedures for evaluating applications;
- (d) procedures for local project start up;
- (e) environmental review of project activities;
- (f) procurement of goods and services;
- (g) financial management;
- (h) protection of civil rights;

- (i) fair labor standards;
- (j) acquisition of property and relocation of persons displaced thereby;
- (k) administrative considerations specific to public facilities, housing rehabilitation and community revitalization and economic development projects;
- (l) project audits;
- (m) public relations;
- (n) project monitoring; and
- (o) planning assistance.

(3) Copies of the regulations adopted by reference in (1) of this rule may be obtained from the Department of Commerce, Local Government Assistance Division, 1424 Ninth Avenue, Helena, Montana 59620.

Auth: Sec. 90-1-103, MCA; IMP, Sec. 90-1-103, MCA

REASON: It is reasonably necessary to adopt this rule because the federal regulations governing the state's administration of the 2001 CDBG program and section 90-1-103, MCA, require the Department to adopt rules to implement the program. Local government entities must have these application guidelines before the entities may apply to the Department for financial assistance under the CDBG program. The Application Guidelines describe the federal and state requirements with which local governments must comply in order to apply for CDBG funds. The Grant Administration Manual is primarily a restatement and explanation of existing federal and state statutory and regulatory requirements, as well as additional departmental requirements, with which local CDBG recipients must comply in administering their CDBG projects. The Manual includes sample forms and letters, checklists, and explanatory text to help local government officials comply with the variety of requirements that apply to economic development, housing and public facility projects.

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 Local Government Assistance Division, 1424 Ninth Avenue, Helena, Montana, 59620, or by facsimile number to (406) 444-4482, to be received no later than 5:00 p.m., January 18, 2001.

5. Richard M. Weddle has been designated to preside over and conduct this hearing.

6. The Local Government Assistance Division maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Division. 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 Local Government Assistance Division administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Local Government Assistance Division, 1424 Ninth Avenue, Helena, MT 59620 or by phone at (406) 444-2781,

or may be made by completing a request form at any rules hearing held by the agency.

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

LOCAL GOVERNMENT ASSISTANCE DIVISION

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, December 11, 2000.

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

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

TO: All Concerned Persons

1. On December 7, 2000, the Montana Transportation Commission and the Montana Department of Transportation published notice at page 3330 of the 2000 Montana Administrative Register, Issue No. 23, of the proposed amendment of the above-captioned rules. The notice of proposed agency action is amended as follows because the Montana Contractors' Association has requested a change of the scheduled public hearing. The date of the hearing has been changed to January 16, 2001, at 9 a.m., in the auditorium of the Department of Transportation building, 2701 Prospect, Helena, Montana.

2. The Commission and Department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department no later than 5 p.m. on January 8, 2001, to advise us of the nature of the accommodation you need. Please contact Steve Garrison, Legal Services, Department of Transportation, P.O. Box 201001, Helena, MT 59620-1001, call (406) 444-6093. TTY users can call (406) 444-7696, fax (406) 444-7206, or e-mail sgarrison@state.mt.us.

3. Concerned persons may submit their data, views or arguments concerning the proposed amendments in writing, at the hearing. Written data, views or arguments may also be submitted to Steve Garrison, Legal Services, Department of Transportation, P.O. Box 201001, Helena, MT 59620-1001, and must be received no later than 5:00 p.m. on January 5, 2001.

4. Jodi Harrison has been designated to preside over and conduct the hearing.

5. The Department of Transportation maintains a list of interested persons who wish to receive notices of the rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies the subject area or areas of interest of the person requesting notice, including, but not limited to,

rules proposed by the Administration Division, Aeronautics Division, Highways and Engineering Division, Maintenance Division, Motor Carrier Services Division, and Rail, Transit and Planning Division. Such written request may be mailed or delivered to the Montana Department of Transportation, Legal Services, P.O. Box 201001, Helena, MT 59620-1001, faxed to the office at (406) 444-7206, e-mailed to lmanley@state.mt.us, or may be made by completing a request form at any rules hearing held by the Department.

MONTANA DEPARTMENT OF TRANSPORTATION

By: /s/ James D. Currie
JAMES D. CURRIE, Deputy Director
MONTANA TRANSPORTATION COMMISSION

By: /s/ Thom R. Forseth
THORM FORSETH, Chairman

/s/ Lyle Manley
LYLE MANLEY, Rule Reviewer

Certified to the Secretary of State December 8, 2000.

BEFORE THE DEPARTMENT OF CORRECTIONS
OF THE STATE OF MONTANA

In the matter of the repeal of) NOTICE OF PUBLIC HEARING
ARM 20.7.101 through 20.7.106) ON THE PROPOSED REPEAL AND
and 20.7.108, and adoption of) ADOPTION OF NEW RULES
New Rules I through IV relating)
to the supervised release)
program and the admission,)
program review, termination)
from, and certification of)
completion of offenders in the)
boot camp incarceration program)

TO: All Concerned Persons

1. On January 10, 2001, at 10:00 a.m., a public hearing will be held in the first floor conference room of the Department of Corrections, 1539 11th Ave., at Helena, Montana, to consider the proposed repeal and adoption of the above stated rules.

2. The Department of Corrections will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternate accessible format of this notice. If you require an accommodation, contact the Department of Corrections no later than 3:00 p.m., on January 5, 2001, to advise us of the nature of the accommodation that you need. Please contact Cj Johnson, Department of Corrections, 1539 11th Ave., Helena, Montana 59620; telephone 406-444-7917; fax 406-444-1976; e-mail address cjohnson@state.mt.us.

3. The rules proposed to be repealed are:

20.7.101 SUPERVISED RELEASE PROGRAM on page 20-93 of the Administrative Rules of Montana.

AUTH: 46-23-405, MCA
IMP: 46-23-401 and 46-23-405, MCA

20.7.102 PRISONER APPLICATION PROCEDURE, GENERAL STATUTE REQUIREMENTS on page 20-93 of the Administrative Rules of Montana.

AUTH: 46-23-405, MCA
IMP: 46-23-405 and 46-23-411, MCA

20.7.103 CONTRACT - ESTABLISHMENT OF A PLAN REQUIREMENTS on page 20-95 of the Administrative Rules of Montana.

AUTH: 46-23-405, MCA
IMP: 46-23-405, MCA

20.7.104 REVOCATION OR CHANGE OF CONTRACT on page 20-96 and 20-97 of the Administrative Rules of Montana.

AUTH: 46-23-405, MCA
IMP: 46-23-421 and 46-23-422, MCA

20.7.105 SPONSOR - REQUIREMENTS on page 20-97 of the Administrative Rules of Montana.

AUTH: 46-23-405, MCA
IMP: 46-23-405, MCA

20.7.106 DEPARTMENT DUTIES on page 20-97 and 20-98 of the Administrative Rules of Montana.

AUTH: 46-23-405, MCA
IMP: 46-23-411 and 46-23-421, MCA

20.7.108 BOARD OF PARDONS - DUTIES on page 20-98 and 20-99 of the Administrative Rules of Montana.

AUTH: 46-23-405, MCA
IMP: 46-23-412, MCA

Reason: The repeal of the above listed rules is necessary because the 1997 Legislature repealed the supervised release program contained in 46-23-401 through 46-23-426 in chapter 322, section 15 of the laws of 1997.

4. The proposed new rules provide as follows:

RULE I SCREENING COMMITTEE (1) There is a screening committee which shall decide which candidates it will allow to enroll in the boot camp incarceration program.

(2) The screening committee will consist of the following members:

(a) the sheriff of the county in which the boot camp is located, or an individual chosen by the sheriff to serve in his place;

(b) a member of the community whom the boot camp superintendent chooses;

(c) a probation and parole officer employed by the department; and

(d) the boot camp correctional manager or an individual chosen by the correctional manager to serve in his place.

(3) In the superintendent's sole discretion, the superintendent may appoint up to four additional committee members. Those members may include the following individuals:

(a) a representative from the board of pardons and parole;

(b) an additional member of the community whom the superintendent designates;

(c) an additional probation and parole officer; and

(d) the boot camp drill sergeant or an individual chosen

by the drill sergeant to serve in his place.

(4) The screening committee shall have the final determination regarding the admission of any candidate to the boot camp program.

(5) Each committee member shall have one vote. In the case of a tie vote, the superintendent will cast a vote to break the tie.

(6) If the committee rejects an offender, the committee must state its reasons for the rejection. Reasons may include the following:

- (a) the offender presents an unacceptable level of risk to the community;
 - (b) the offender presents an unacceptable level of risk to the safety of other offenders or center staff;
 - (c) the offender presents an unacceptable level of risk to himself or herself because of the physical and/or emotional demands of the program;
 - (d) the offender presents an unacceptable escape risk;
- and
- (e) the offender has needs beyond services the boot camp can provide.

(7) The committee may re-screen an offender if additional relevant information is presented.

AUTH: 53-30-403, MCA
IMP: 53-30-403, MCA

Reason: 53-30-403, MCA provides that admission into the Boot Camp Program is within the department's discretion and in accordance with the broad general admission requirements set forth in that statute. The screening committee is the entity which the department believes is the most appropriate to exercise that discretion. Having made that decision, the department, with the rule, establishes the committee's membership, operating rules, and guidelines under which the committee evaluates an applicant. The rule takes into consideration the facts that:

- (a) the boot camp is not a secure facility;
 - (b) the program is an intense confrontational program;
- and
- (c) the offenders, therefore, present a possible threat to the safety of the community, the boot camp staff, and the other offenders in the program.

RULE II PROGRAM REQUIREMENTS AND REVIEW (1) There shall be a program review committee. The program review committee will meet to evaluate the offender's progress in the program and make recommendations for the offender's program.

(2) The program review committee is composed of the following:

- (a) not less than three members of the program staff;
- (b) the drill sergeant or sergeant's designee and the program correctional manager or the manager's designee are permanent members of the review committee; and

(c) at least one other staff member designated by the superintendent or correctional program manager will be on the review committee.

(3) The program review committee shall meet at a minimum, every four weeks relative to each offender or upon written request of a staff member.

(4) The critical component for evaluating an offender's progress in the program is whether the offender admits his/her illegal behavior and takes full responsibility for the illegal conduct for which the offender was convicted. While primary importance is placed upon this criterion, the program review committee shall also evaluate the offender's performance in the following areas:

(a) the offender shall meet the physical demands and drill requirements;

(b) the offender shall acquire and demonstrate the use of the requisite rote knowledge;

(c) the offender shall demonstrate teamwork and empathy for others;

(d) the offender shall demonstrate discipline in the offender's work, study, and drill assignments; and

(e) the offender shall demonstrate the ability to set positive examples to others.

(5) The program review committee shall base its recommendation of an offender's program level on the evaluation prescribed above.

AUTH: 53-30-403, MCA

IMP: 53-30-403, MCA

Reason: This rule is reasonably necessary to implement 53-30-403, MCA, which sets forth the broad guidelines for the Boot Camp Program content. Since the statute provides that a program participant may be revoked for failure to participate in the program, it is implicit that the department evaluate each participant's performance. The department believes a Program Review Committee is the best method by which to assess each participant's performance in the program. This rule establishes the guidelines by which the committee must operate and more precisely describes the program requirements and also describes how the program implements and evaluates whether the offenders in the program meet the requirements.

RULE III TERMINATION FROM THE PROGRAM (1) If, at any time, the program review committee decides an offender is not satisfactorily meeting program requirements, the program review committee may recommend termination. If the program review committee recommends termination, the correctional manager will convene a re-classification committee. The re-classification committee shall consist of the following:

(a) a representative of the drill program staff;

(b) a representative of the treatment staff; and

(c) an additional boot camp staff member.

(2) The re-classification committee may recommend the

boot camp terminate the offender's enrollment in the program. If the superintendent agrees, the program shall revoke the offender's enrollment.

(3) The factors the program review and re-classification committees may consider as a failure to comply with program requirements besides the requirements listed in [Rule II] are:

- (a) the offender jeopardizes the safety of the offender or others;
- (b) the offender presents medical or mental health issues that preclude the offender from successfully completing the program;
- (c) the offender presents an escape risk;
- (d) a detainer has been placed on the offender;
- (e) law enforcement is investigating the offender for a pending criminal matter;
- (f) the offender demonstrates adjustment problems or does not or cannot comply with program requirements;
- (g) the offender has needs beyond those the program can provide;
- (h) the offender will not be able to complete the program in 120 days; or
- (i) the department or screening committee made classification or screening errors and the offender is not appropriate for the program.

(4) The superintendent has complete discretion to terminate an offender from the program. There is no appeal from the superintendent's decision.

(5) The superintendent may terminate an offender from the program if the offender is found guilty of a disciplinary violation.

AUTH: 53-30-403, MCA

IMP: 53-30-403, MCA

Reason: This rule is necessary to implement 53-30-403, MCA which states the department may revoke an offender's enrollment in Boot Camp if an offender in the program refuses or fails to comply with program requirements. This rule describes what constitutes failure or refusal to comply with program requirements and how the department determines if an offender has failed or refused to comply with program requirements.

RULE IV CERTIFICATION BY THE DEPARTMENT THAT THE OFFENDER HAS SUCCESSFULLY COMPLETED THE PROGRAM (1) The department will certify to the sentencing court that an offender has successfully completed the boot camp program when:

- (a) the offender has graduated from the boot camp program;
- (b) the offender has met all obligations of an aftercare program or the center superintendent has waived the aftercare requirement; and
- (c) the superintendent certifies the offender has

successfully completed the boot camp incarceration program because the offender's behavior since leaving the camp has been appropriate and the superintendent believes the offender has been sufficiently rehabilitated that the sentencing court should consider the offender for a sentence reduction.

AUTH: 53-30-403, MCA
IMP: 53-30-402, MCA

Reason: This rule is reasonably necessary to define when the department will certify an offender has successfully completed the Boot Camp Incarceration Program. 53-30-402, MCA allows the sentencing court to reduce an offender's sentence when the department certifies the offender has successfully completed the boot camp incarceration program. This rule describes what an offender must do to gain the department's certification.

5. Concerned persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the address listed in paragraph 7, and must be received no later than January 18, 2001.

6. Colleen A. White, Rule Reviewer, will preside over and conduct the hearing.

7. The Department of Corrections maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices, and specifies that the person wishes to receive notices regarding community corrections, juvenile corrections, management services, board of pardons and parole, youth placement committees or general departmental rulemakings. Such written request may be mailed or delivered to Cj Johnson, Department of Corrections, 1539 11th Ave., Helena, Montana 59620, faxed to 406-444-1976, e-mailed to cjjohnson@state.mt.us, or by completing a request form at any rules hearing held by the Department of Corrections.

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

DEPARTMENT OF CORRECTIONS

/s/ Rick Day
Rick Day, Director

/s/ Colleen A. White
Colleen A. White, Rule Reviewer

Certified to the Secretary of State December 11, 2000

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

In the matter of the proposed)
amendments of rules)
pertaining to fees and tests)
for yield and drawdown)
)
)
)
)
)
)
)

NOTICE OF PUBLIC
HEARING ON THE PROPOSED
AMENDMENT OF ARM
36.21.415 FEE SCHEDULE,
AND 36.21.664 TESTS FOR
YIELD AND DRAWDOWN

TO: All Concerned Persons

1. On February 9, 2001 at 1:00 p.m., a public hearing will be held in the Bannack Conference Room of the Department of Natural Resources and Conservation at 1625 11th Avenue, Helena, Montana, to consider the amendment of ARM 36.21.415 and ARM 36.21.664.

2. The Department of Natural Resources and Conservation will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the agency no later than 5:00 p.m. on February 1, 2001, to advise us of the nature of the accommodation that you need. Please contact Pat Boggess, Department of Natural Resources and Conservation, 48 North Last Chance Gulch, P.O. Box 201601, Helena, MT 59620-1601; telephone (406) 444-0862; FAX (406) 444-0533.

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

<u>36.21.415 FEE SCHEDULE</u>		
(1) Application and examination		
(a) Contractors	\$275.00	<u>300.00</u>
(b) Drillers	165.00	<u>250.00</u>
(c) Monitoring well constructor	165.00	<u>300.00</u>
(2) Re-examination		
(a) Water well contractor	125.00	<u>150.00</u>
(b) Water well driller	75.00	<u>125.00</u>
(c) Monitoring well constructor	75.00	<u>150.00</u>
(3) Renewal		
(a) Contractor	140.00	<u>250.00</u>
(b) Driller	90.00	<u>150.00</u>
(c) Monitoring well constructor	140.00	<u>250.00</u>
<u>(d) Contractor/monitoring well</u>		
<u>constructor</u>		<u>300.00</u>
<u>(e) Monitoring well constructor/</u>		
<u>water well driller</u>		<u>300.00</u>
<u>(f) Renewal - inactive (all licenses)</u>		<u>250.00</u>
(4) Late renewal		
(in addition to renewal fee)	55.00	<u>75.00</u>

will be charged for any license not renewed prior to July 10		
(5) Duplicate certificate and/or license	40.00	<u>50.00</u>
(6) Change in contractor name and/or address	40.00	
(7) Change in responsible contractor (new driller license fee)	40.00	
(8)(6) Copies of law and rules--per page book (drillers and contractors are exempt from fee)	-20	<u>5.00</u>
(9)(7) Exemption permits -a fee may be charged for travel expenses incurred in reviewing an application for an exemption permit. The fee shall be estimated and based on current state travel and per diem reimbursement schedules.		<u>100.00</u>
(8) Construction standard variance - inspection/follow-up		<u>100.00</u>

AUTH: Sec. 37-42-202, MCA

IMP: Sec. 37-43-302, 37-43-303, 37-43-305, and 37-43-307, MCA

REASON: ARM 36.21.415 is proposed to be amended because of the current and projected expenses of the Board. The Board's state special revenue cash balance is decreasing and will be exhausted within a year. In order for the Board to cover its legislatively approved appropriations, fees need to be increased to increase revenue. It is expected that the increased fees will generate additional revenue of \$40,000.

Costs which have increased include the salary for the Board's inspector, expenses for travel that include gasoline, hotel, vehicle costs and other general operational costs. The fee schedule was last revised in 1985.

The rule change will affect approximately 287 well drilling and well monitoring individuals and companies.

36.21.664 TESTS FOR YIELD AND DRAWDOWN (1) through (e) remain the same.

(2) In the event that pump test data is required for 100 gpm or more or as required by the board, Ppump test data to be recorded on the well log report form shall be:

- (a) through (d) remain the same.
- (e) the duration of the test, including both:
 - (i) the pumping time; and
 - (ii) through (4) remain the same.

AUTH: Sec. 37-43-202(3), MCA

IMP: Sec. 37-43-202(3), MCA

REASON: The additional language is to clarify that pump test data is not required on all wells, but is required on wells over

100 gpm or as directed by the Board.

4. Concerned persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Laurence Siroky, Department of Natural Resources and Conservation, P.O. Box 201601, Helena, MT 59620-1601, faxed to 406-444-0533 or e-mailed to lsiroky@state.mt.us and must be received no later than January 29, 2001.

5. Pat Byrne, Chairman, Board of Water Well Contractors has been designated to preside over and conduct the hearing.

6. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources or combination thereof. Such written request may be mailed or delivered to Pat Boggess, Department of Natural Resources and Conservation, 48 North Last Chance Gulch, P.O. Box 201601, Helena, MT 59620-1601, faxed to the office at (406) 444-0533, 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.

DEPARTMENT OF NATURAL
RESOURCES AND CONSERVATION

BOARD OF WATER WELL CONTRACTORS

By: /s/ Donald D. MacIntyre
Donald D. MacIntyre
Rule Reviewer

By: /s/ Pat Byrne
Pat Byrne, Chairman
Board of Water Well
Contractors

Certified to the Secretary of State on December 11, 2000.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of ARM 42.11.301,)
42.11.401, 42.11.402,)
42.11.405, 42.11.406,)
42.11.407, 42.11.409,)
42.11.421, 42.11.422,)
42.11.423, 42.11.424,)
42.11.425, and 42.11.426)
relating to liquor)
distribution) NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On February 23, 2001, the Department proposes to amend ARM 42.11.301, 42.11.401, 42.11.402, 42.11.405, 42.11.406, 42.11.407, 42.11.409, 42.11.421, 42.11.422, 42.11.423, 42.11.424, 42.11.425, and 42.11.426 relating to liquor distribution.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue not later than 5:00 p.m., January 30, 2001, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 5805, Helena, Montana 59604-5805; telephone (406) 444-2855; fax (406) 444-3696; or e-mail canderson@state.mt.us.

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

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

- (1) through (3) remain the same.
- ~~(4) "Calendar year" means January 1 through December 31.~~
- ~~(5)~~(4) "Community boundary" means:

- (a) in the case of an incorporated city or town, the city or town limits; and
- (b) in other communities, the generally recognized and commonly accepted outer edge of the community.

(6) through (9) remain the same but are renumbered (5) through (8).

~~(10) Other words and phrases used in these rules shall have the meaning ascribed to them in the Montana Alcoholic Beverage Code, as amended, and if not defined therein have their usual and customary meaning.~~

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

42.11.401 DEFINITIONS ~~(1)~~ As used in this sub-chapter, the following definitions apply:

- ~~(a)~~ (1) "Annual net profit" means a product's net profit

per unit multiplied by the product's units of sale for a 12-month period. The net profit per unit is calculated by subtracting from the most recent retail selling price of a product as determined in ARM 42.11.104, the cost of goods (vendor's product price and freight), ~~liquor division department~~ expenses, and taxes. ~~Liquor division expenses~~ Expenses are allocated to each product on a fixed amount per liter plus a percentage overhead on the cost of goods.

(b) (2) "Bailment" means a vendor's delivery of a product to a designated area in the ~~liquor division's~~ department's Helena warehouse while retaining ownership of the product delivered and entrusting the safekeeping of the product to the ~~liquor division department~~ until such time as the ~~liquor division department~~ may purchase the product or redeliver the product to the vendor.

(c) (3) "Bailment warehouse" means the designated area in the ~~liquor division's~~ department's Helena warehouse used for storing products delivered through bailment procedures.

(d) through (f) remain the same but are renumbered (4) through (6).

~~(2) Other words and phrases used in these rules shall have the meaning ascribed to them in the Administrative Rules of Montana, Title 42, Chapter 11, as amended, or the Montana Alcoholic Beverage Code, as amended, and if not defined therein have their usual and customary meaning.~~

AUTH: 16-1-303, MCA

IMP: 16-1-103, 16-1-104, and 16-1-302, MCA

42.11.402 POLICY (1) Any liquor ~~or table wine~~ product that the department can obtain without prohibitive inventory investment or freight charges will be made available for sale through state agency liquor stores in a manner consistent with the demand for and profitability of each product and consistent with distribution limitations established in the alcoholic beverage code.

(2) and (3) remain the same.

AUTH: 16-1-303, MCA

IMP: 16-1-103, 16-1-104, and 16-1-302, MCA

42.11.405 PRODUCT AVAILABILITY (1) Liquor and table wine products will be made available for sale in the following classifications:

(a) A "regular" product or a "test market" product will be so designated in the ~~liquor division's~~ department's quarterly price list, and have sufficient supply maintained in the bailment warehouse in accordance with ARM 42.11.421, ~~and be eligible for at least one facing on state liquor store shelves depending on demand for the product in a store and alcoholic beverage code distribution limitations for table wine.~~

(b) A "variable supply" product will be so designated in the ~~liquor division's~~ department's quarterly price list, and will have supply maintained in the warehouse on a limited basis with no commitment to a minimum service level, ~~and will be eligible for no more than one facing on selected state liquor~~

~~shelves depending on demand for the product in a selected store and alcoholic beverage code distribution limitations for table wine.~~

(c) A "special order" product will not be published in the ~~liquor division's~~ department's quarterly price list, and will not have supply maintained in the warehouse, but will only be available on an order-by-order basis, ~~and will not be placed on any state liquor store shelves but will only be sold by the case as arranged in the special order.~~

(d) A "warehouse supply" product will be so designated in the ~~liquor division's~~ department's quarterly price list, and will have supply maintained in the warehouse to satisfy approximately 12 single bottle requests per month with no commitment to a minimum service level, ~~and will not be placed on any state liquor store shelves but will only be sold through the state liquor store as specified on the store order form.~~

(e) A "seasonal" product will not be published in the ~~liquor division's~~ department's quarterly price list but will be noticed in a supplemental requisition for merchandise, will have supply maintained in the bailment warehouse in advance of the sales season, and will have orders distributed to state agency liquor stores to meet the estimated seasonal demand, ~~and will be eligible for shelf and/or floor display in state liquor stores depending on expected demand for the product in a store.~~

(f) A "promotional" product will not be published in the ~~liquor division's~~ department's quarterly price list but will be noticed in a supplemental requisition for merchandise, will have supply maintained in the bailment warehouse in advance of the sales promotion, and will be shipped to stores in the quantity approved for the promotion, ~~and will be eligible for shelf and/or floor display in state liquor stores in the quantity and for the period approved for the promotion.~~

(g) A "collectible" product will be so designated in the ~~liquor division's~~ department's quarterly price list, and will be purchased for limited distribution in less-than-full-case quantities to provide access to collectors based upon past sales histories to similarly designed collectibles with no commitment to a minimum service level, ~~and will be eligible for shelf display in state liquor stores depending on expected demand for the product in a store.~~

AUTH: 16-1-303, MCA

IMP: 16-1-103, 16-1-104, and 16-1-302, MCA

42.11.406 PRODUCT LISTING (1) A product will be listed as a "regular" product if it meets the minimum sales standards in ARM 42.11.407 unless it only meets those standards temporarily as a result of closeout or overstock sales in accordance with ARM 42.11.409 and if the product is maintained in the bailment warehouse in accordance with ARM 42.11.421. A product will retain this classification if a vendor maintains it in the bailment warehouse and the conditions in ARM 42.11.424(5) and (6) do not occur.

(2) A product will be listed as a "test market" product if the ~~liquor division~~ department receives a written proposal that:

(a) through (3) remain the same.

(4) A product will be listed as a "special order" product if the product is not listed in another classification other than as a "warehouse supply" product, and a state agency liquor store ~~manager or agent~~ has submitted a special order ~~retail price request or special order~~ form with an agreement signed by a ~~customer~~ the agent to pay for the entire quantity ordered on delivery.

(5) remains the same.

(6) A product will be listed as a "seasonal" product if the ~~liquor division~~ department receives a proposal that:

(a) through (e) remain the same.

(7) A liquor product will be listed as a "promotional" product if the ~~liquor division~~ department receives a written proposal that:

(a) through (f)(iii) remain the same.

(8) A liquor product that is designed as a collector's item will be listed as a "collectible" product if:

(a) it can be convincingly demonstrated that the product can be reasonably expected to achieve one turn of inventory in a year, there are no major obstacles to merchandising the product, the product is approved according to procedures in ARM 42.11.408~~7i~~; and

~~(a)~~(b) the vendor has provided a picture or brochure which contains a complete and authentic description of the container and a standard quotation and specification form signed by the vendor or an officer of the vendor, which is completed for the proposed product, references the national alcoholic beverage control association control state code, makes the price firm for the first 3 three months following the effective date of the listing~~7i~~; or

~~(b)~~(c) a state agency liquor store ~~manager or agent~~ has submitted a special order ~~retail price request and special order~~ form with an agreement signed by a ~~customer~~ the agent to purchase one of the "collectibles" on delivery.

AUTH: 16-1-303, MCA

IMP: 16-1-103, 16-1-104, and 16-1-302, MCA

42.11.407 MINIMUM SALES STANDARDS (1) To be listed as a "regular" product, a liquor ~~or table wine~~ product must achieve 100 cases of sales or \$1,000 annual net profit in the 12-month period prior to preparation to publish the ~~liquor division's~~ department's quarterly price list.

(2) To be listed as a "seasonal" product, a liquor or table wine product must have achieved 25 cases of sales or \$250 annual net profit in the 3 three-month sales season prior to preparation for publication of the ~~liquor division's~~ department's quarterly price list applicable to the coming sales season or be projected to achieve these amounts in the coming season.

AUTH: 16-1-303, MCA

IMP: 16-1-103, 16-1-104, and 16-1-302, MCA

42.11.409 DELISTING, REVISED LISTING, CLOSEOUT AND

OVERSTOCK (1) A listed product that no longer meets the minimum sales standard in ARM 42.11.407, and the conditions in ARM 42.11.424(5) and (6) occur, will be listed in a classification commensurate with its sales volume unless the sales volume is projected to be less than that for a "warehouse supply" product, in which case the product will be delisted and closed out in accordance with ARM 42.11.104(6).

(2) A product that a vendor discontinues and is not marketed by another vendor will be delisted and closed out in accordance with ARM 42.11.104(6).

(3) Inventory in excess of the projected 12 months of sales for a product will be treated as overstock in accordance with ARM 42.11.104(6).

(4) The effective date of a delisting, revised listing, closeout sale or overstock sale is as soon as written notice can be disseminated to state agency liquor stores.

AUTH: 16-1-303, MCA

IMP: 16-1-103, 16-1-104, and 16-1-302, MCA

42.11.421 BAILMENT LIMITS (1) remains the same.

(2) The minimum bailment level for "regular" products is a three-week supply based on the seasonally adjusted historical average. The minimum level for "test market," "seasonal," and "promotional" products is a three-week supply based on a vendor's estimate of demand that the liquor division department concurs in.

(3) Vendors will be charged a space reservation fee of \$1-00 per case per day for each case below minimum for any product for which the liquor division department is unable to fill store orders. A space reservation fee will not be charged if the unavailability of supply is due to an incident beyond the vendor's control for which it has no recourse against any other party.

(4) The maximum bailment level for "regular" products is an eight-week supply based on the seasonally adjusted historical average or one and a half pallets, whichever is greater. The maximum level for "test market," "seasonal," and "promotional" products is an eight-week supply based on the vendor's estimate of demand that the liquor division department concurs in or one and a half pallets, whichever is greater. The maximum bailment level may be exceeded from time to time if a vendor demonstrates that a larger amount is needed to obtain an economical shipment and the liquor division department agrees.

(5) Vendors will be charged the direct and indirect costs the liquor division department incurs for warehousing any cases that have been in excess of the maximum level for more than five consecutive days.

(6) Each quarter the liquor division department will notify vendors what of the seasonally adjusted historical weekly average or the concurred in estimate of demand is for their products. Quarters are those used for the liquor division department quarterly price list.

(7) Fees and charges will be offset on liquor division department payments for products.

AUTH: 16-1-303, MCA

IMP: 16-1-103, 16-1-104, and 16-1-302, MCA

42.11.422 BAILMENT RECEIVINGS (1) remains the same.

(2) Vendors must send the liquor division department a bill of lading for each shipment to the bailment warehouse ~~10~~ ten days in advance of the expected date of arrival or send a telefacsimile copy of the bill of lading on the day of shipment. The bill of lading must include the quantity, the national alcoholic beverage control association control state code, and description of each item shipped.

(3) The liquor division department will send vendors an acknowledgement of receipt within 24 hours of receipt, ~~upon which will be noted any~~ Any variance with the bill of lading, ~~and the number of undamaged cases received, and number of damaged cases received will be noted on the acknowledgement receipt.~~

(4) and (5) remain the same.

AUTH: 16-1-303, MCA

IMP: 16-1-103, 16-1-104, and 16-1-302, MCA

42.11.423 BAILMENT DEPLETIONS (1) The liquor division department may deplete products from the bailment warehouse if the liquor division department is purchasing a product from a vendor and the vendor has affirmed an offer to sell prior to the week in which the department will deplete the products.

(2) Payment for a purchase will be made within 30 days of the date that the liquor division department depletes the product from the bailment warehouse.

(3) Payment amount for a purchase will be a vendor's price per case F.O.B. Helena, Montana, that was quoted to the liquor division department not less than 60 days prior to the liquor division's department's price list publication date.

(4) The number of cases depleted per product will be debited to the bailment warehouse control account.

(5) The liquor division department will notify vendors once a week of the amount and date their products were depleted from the bailment warehouse during the week.

AUTH: 16-1-303, MCA

IMP: 16-1-103, 16-1-104, and 16-1-302, MCA

42.11.424 BAILMENT ADJUSTMENTS (1) remains the same.

(2) Vendors may withdraw some or all of any of their products from the bailment warehouse by sending a written request to the liquor division department to carry out their instructions.

(3) Vendors will be charged the direct and indirect costs the liquor division department incurs for carrying out vendor withdrawal instructions.

(4) Withdrawals below the minimum supply will precipitate liquor division department action to delist a product or change its listing classification in accordance with ARM 42.11.409, and will result in a vendor being charged the fee in ARM

42.11.421(3) unless the withdrawal is the result of the ~~liquor division's~~ department's approval of a vendor's request to delist a product.

(5) and (6) remain the same.

(7) The ~~liquor division~~ department will notify vendors once a week of the number of cases credited to the bailment warehouse control account that were found to be deficient (i.e., hidden breakage, packed short or have bottles with no fill or low fill) during the week. Vendors will be given the opportunity to have the deficient cases redelivered at their cost or destroyed.

(8) The ~~liquor division~~ department will notify vendors once a week of the number of cases credited or debited to the bailment warehouse control account in error during the week and an explanation of the errors that were found.

AUTH: 16-1-303, MCA

IMP: 16-1-103, 16-1-104, and 16-1-302, MCA

42.11.425 BAILMENT WAREHOUSE MANAGEMENT (1) Only ~~liquor division~~ department personnel are authorized to move or handle products in the bailment warehouse.

(2) Vendors may arrange with the ~~liquor division~~ department for the temporary transfer of selected cases of product to a work area separate from the bailment warehouse. Vendors or vendors' representatives may inspect or modify cases of their product in the work area. The ~~liquor division~~ department must approve any modifications that may affect documentation of balances in the bailment warehouse control account. Vendors will be charged the direct and indirect costs the ~~liquor division~~ department incurs for transferring cases to and from the work area.

(3) Vendors and vendors' representatives may observe the operation of the bailment warehouse at any time during regular working hours by requesting the ~~liquor division~~ department for an appointment.

(4) remains the same.

(5) The ~~liquor division~~ department will take physical inventory in the bailment warehouse four times a year and reconcile the count with the bailment warehouse control account. Inventory is taken during the last week in March, June, September and December.

AUTH: 16-1-303, MCA

IMP: 16-1-103, 16-1-104, and 16-1-302, MCA

42.11.426 BAILMENT DISPUTES (1) If a vendor disputes any ~~liquor division~~ department decision under ARM 42.11.421 through 42.11.425, the vendor and the ~~liquor division~~ department will attempt to resolve the dispute informally.

(2) remains the same.

AUTH: 16-1-303, MCA

IMP: 16-1-103, 16-1-104, and 16-1-302, MCA

4. The Department is proposing the amendments as general housekeeping changes and in compliance with the biennial review

of all Department rules according to 2-4-314, MCA. No substantive changes have been made to these rules.

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

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

and these comments must be received no later than February 7, 2001.

6. If persons who are directly affected by the proposed action wish to express their data, views and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Cleo Anderson at the above address no later than February 7, 2001.

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

8. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Such written request may be mailed or delivered to the person in paragraph 5 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Jeff Miller for
MARY BRYSON
Director of Revenue

Certified to Secretary of State December 11, 2000

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF ADOPTION AND
adoption of rules	)	REPEAL
pertaining to)	
Nondiscrimination-Equal)	
Employment Opportunity,)	
the repeal ARM 2.21.1301)	
through 2.21.1307 and)	
2.21.1311 in the Sexual)	
Harassment Prevention)	
policy, and the repeal of)	
ARM 2.21.8106 through)	
2.21.8109 in the Equal)	
Employment Opportunity)	
policy)	

TO: All Concerned Persons

1. On October 26, 2000, the Department of Administration published notice of public hearing on the proposed adoption of new rules related to Nondiscrimination-Equal Employment Opportunity, the repeal of ARM 2.21.1301 through 2.21.1307 and 2.21.1311 in the Sexual Harassment Prevention policy, and the repeal of ARM 2.21.8106 through 2.21.8109 in the Equal Employment Opportunity policy at page 2732 of the Montana Administrative Register, issue number 20.

2. The department has adopted the following new rules as proposed: RULE I (2.21.4001) SHORT TITLE, RULE II (2.21.4002) POLICY AND OBJECTIVES, RULE III (2.21.4003) DEPARTMENT OF ADMINISTRATION ROLE, RULE IV (2.21.4004) DEPARTMENT OR AGENCY ROLE, RULE VI (2.21.4006) PRE-EMPLOYMENT INQUIRIES, RULE VII (2.21.4007) PRE-EMPLOYMENT MEDICAL EXAMINATIONS, RULE XII, (2.21.4012) SEXUAL HARASSMENT, RULE XIII (2.21.4013) OTHER HARASSMENT, RULE XIV (2.21.4014) RETALIATION.

The department has not adopted RULE VIII EQUAL PAY, RULE IX DISABILITY, RULE X MATERNITY, and RULE XI RELIGION as published in the notice of public hearing. The department has determined portions of those rules may unnecessarily repeat statutory language and other administrative rules.

The department has repealed ARM 2.21.1301 through 2.21.1307 and 2.21.1311 related to the Sexual Harassment policy and ARM 2.21.8106 through 2.21.8109 related to the Equal Employment Opportunity policy as proposed. In addition, the department has repealed rule 2.21.8106, SHORT TITLE, in the Equal Employment Opportunity (EEO) policy. The repeal of this rule was unintentionally not included in the October 26, 2000 notice of public hearing. The department believes a new notice to repeal

this rule is not necessary because the rule is not substantial and has little meaning without the remainder of the repealed EEO rules.

The department has adopted RULE V (2.21.4005) EQUAL EMPLOYMENT OPPORTUNITY with the following changes:

2.21.4005 EQUAL EMPLOYMENT OPPORTUNITY (1) same as proposed.

(2) Any employee or applicant for employment with the state of Montana who believes he or she has been subjected to discrimination based upon any of these factors may contact the department EEO officer and also may contact the Montana human rights bureau and/or the federal equal employment opportunity commission (EEOC). Jurisdiction to address any one of the above types of discrimination complaints varies. For example, neither the EEOC nor the Montana human rights bureau does not considers discrimination complaints based on sexual orientation.

AUTH: 2-18-102, MCA
IMP: 2-18-102, MCA

3. At the public hearing held on November 17, 2000, the department received eight comments in support of adopting the new rules as proposed. In addition, the department received one written comment in support of adopting the new rules as proposed. The department also received the following comments:

COMMENT #1: A comment was received requesting that the department refrain from adopting the term sexual orientation into RULE II, et al., as proposed. The comment suggested the department develop a separate policy statement concerning sexual orientation. The comment stated that claims of discrimination based on sexual orientation do not have standing with the Human Rights Bureau or the Equal Employment Opportunity Commission (EEOC) and, therefore, the proposed rules would be confusing to employees and difficult for agencies to administer.

RESPONSE: The department believes it is more difficult to raise awareness about discrimination when the protected categories are located in separate rules or policy statements. The department's intent is to combine current policies related to discrimination into one policy that covers all forms of discrimination, for example, combining the Sexual Harassment and Equal Employment Opportunity policies.

The department believes it has clarified the jurisdictional issue concerning sexual orientation in RULE V(2), EQUAL EMPLOYMENT OPPORTUNITY. The Montana Human Rights Commission and EEOC have very definitive intake processes that leave no confusion regarding jurisdiction. Furthermore, many claims that specific agencies or courts have jurisdiction over are dismissed early in the process if the facts do not support the claim.

COMMENT #2: A comment was received asking the department to

avoid mixing Americans with Disabilities Act (ADA) policy with other Equal Employment Opportunity policies. The comment suggested that ADA policy remain a separate and distinct policy.

RESPONSE: In part, the department agrees. Therefore, RULE IX, DISABILITY, has not been adopted. At a later date, the department may include language from this rule in other interpretive materials.

COMMENT #3: A comment was received asking that the department eliminate RULE XI, RELIGION, because court decisions differ so significantly that a well-defined policy would be difficult to develop.

RESPONSE: In part, the department agrees. Therefore, RULE XI, RELIGION, has not been adopted. However, the department believes the rule as proposed represents the recognized standard the state of Montana must meet when it receives requests to accommodate religious beliefs and practices. Therefore, the department will adapt language from this rule into other interpretive materials.

COMMENT #4: A comment was received asking that the department eliminate RULE X, MATERNITY, and develop a separate policy regarding childbirth, adoption, and parental leave.

RESPONSE: In part, the department agrees. Therefore, RULE X, MATERNITY has not been adopted. Some of the provisions in this rule are currently stated in the department's Disability-Maternity and Parental Leave policies found at ARM 2.21.902, et seq. Other provisions are provided for in ARM 24.9.1201, et seq. Therefore, the department will publish other interpretive materials that explain prohibited discriminatory practices toward persons included in this protected class.

COMMENT #5: One comment was received asking that the department include a complaint resolution process in RULE VIII, EQUAL PAY, or eliminate this rule from the Nondiscrimination-EEO policy.

RESPONSE: In part, the department agrees. Therefore, RULE VIII, EQUAL PAY, has not been adopted. However, the department has developed a model complaint resolution procedure that will be made available to agencies upon request. Agencies may choose to adopt the model procedure or another complaint resolution procedure. This approach will enable agencies to develop procedures that address unique circumstances in each agency.

BY: /s/ Dal Smilie
Dal Smilie
Rule Reviewer

/s/ Dave Ashley
Dave Ashley, Acting Director
Department of Administration

Certified to the Secretary of State December 11, 2000.

BEFORE THE STATE AUDITOR AND COMMISSIONER OF INSURANCE
OF THE STATE OF MONTANA

In the matter of the) NOTICE OF AMENDMENT
amendment of ARM 6.6.507,)
6.6.508 and 6.6.509)
pertaining to minimum benefit)
standards)

TO: All Concerned Persons

1. On November 9, 2000, the state auditor and commissioner of insurance published a notice of proposed amendment of rules 6.6.507, 6.6.508 and 6.6.509 pertaining to foreign minimum benefit standards at page 3055, 2000 Montana Administrative Register, issue number 21. No hearing was held.
2. The department has amended ARM 6.6.507, 6.6.508 and 6.6.509 as proposed.
3. No comments or testimony were received.

MARK O'KEEFE, State Auditor
and Commissioner of Securities

By: /s/ Peter Funk
Peter Funk
Deputy Insurance Commissioner

By: /s/ Janice VanRiper
Janice VanRiper
Rules Reviewer

Certified to the Secretary of State December 11, 2000.

BEFORE THE STATE AUDITOR AND COMMISSIONER OF INSURANCE
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 6.6.4001 pertaining to)
valuation of securities)

TO: All Concerned Persons

1. On November 9, 2000, the State Auditor and Commissioner of Insurance published notice of the proposed adoption of new rules pertaining to valuation of securities at page 3059 of the 2000 Montana Administrative Register, issue number 21.

2. The State Auditor has amended ARM 6.6.4001 exactly as proposed.

3. No comments or testimony were received.

MARK O'KEEFE, State Auditor
and Commissioner of Insurance

By: /s/ Peter Funk
Peter Funk
Deputy Insurance Commissioner

By: /s/ Janice VanRiper
Janice VanRiper
Rules Reviewer

Certified to the Secretary of State December 11, 2000.

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

In the matter of the amendment) NOTICE OF AMENDMENT
of rules pertaining to) AND TRANSFER
definitions and the transfer of)
rules pertaining to medical)
student's permitted activities,)
intern's scope of practice,)
resident's scope of practice and)
approved residency)

TO: All Concerned Persons

1. On November 9, 2000, the Board of Medical Examiners published a notice of the proposed amendment and transfer of the above-stated rules at page 3062, 2000 Montana Administrative Register, issue number 21.

2. The Board has amended ARM 8.28.402 and 8.28.1501 exactly as proposed.

3. The Board has transferred ARM 8.28.1524 MEDICAL STUDENT'S PERMITTED ACTIVITIES to sub-chapter 4 and renumbered it 8.28.403B. The Board has transferred ARM 8.28.1525 INTERN'S SCOPE OF PRACTICE to sub-chapter 4 and renumbered it 8.28.404A. The Board has transferred ARM 8.28.1526 REISIDENT'S SCOPE OF PRACTICE to sub-chapter 4 and renumbered it 8.28.405A. The Board has transferred ARM 8.28.1527 APPROVED RESIDENCY to sub-chapter 4 and renumbered it 8.28.405B.

4. The Board received no comments.

BOARD OF MEDICAL EXAMINERS
LAWRENCE R. McEVOY, M.D.
PRESIDENT

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, December 11, 2000.

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

In the matter of the amendment) NOTICE OF AMENDMENT
of rules pertaining to)
examinations, experience,)
qualifying education)
requirements, continuing)
education, fees, adoption of)
USPAP by reference, ad valorem)
tax appraisal experience,)
qualifying experience, inactive)
license certification,)
reactivation of license,)
regulatory reviews and)
appraisal review)

TO: All Concerned Persons

1. On October 5, 2000, the Board of Real Estate Appraisers published a notice of the proposed amendment of the above-stated rules at page 2560, 2000 Montana Administrative Register, issue number 19. The hearing was held October 25, 2000.

2. The Board has amended ARM 8.57.403, 8.57.405, 8.57.406, 8.57.407, 8.57.408, 8.57.409, 8.57.411, 8.57.412, 8.57.413, 8.57.417, 8.57.418, 8.57.419, 8.57.420, 8.57.421, and 8.57.422 exactly as proposed.

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

COMMENT NO. 1: The Appraisal Subcommittee submitted a written comment advising that they did not have a problem with the proposed changes.

RESPONSE: The Board thanks the Appraisal Subcommittee for its comment and voted to adopt the amendments as proposed.

BOARD OF REAL ESTATE APPRAISERS
TIMOTHY MOORE, CHAIRMAN

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, December 11, 2000.

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

In the matter of the) NOTICE OF THE AMENDMENT,
 amendment of ARM 24.11.101,) ADOPTION, AND REPEAL OF RULES
 24.11.201, 24.11.442,)
 24.11.443, 24.11.457,)
 24.11.458, 24.11.463,)
 24.11.464, 24.11.466,)
 24.11.467, and 24.11.616,)
 the adoption of new rules)
 and the repeal of)
 ARM 24.11.102, 24.11.202,)
 24.11.450, 24.11.452,)
 24.11.453, 24.11.454 and)
 24.11.465, all relating to)
 unemployment insurance matters)

TO: All Concerned Persons

1. On July 27, 2000, the Department published notice of the proposed amendment, adoption and repeal of the above-captioned rules at page 1934 of the 2000 Montana Administrative Register, Issue No. 14. On September 21, 2000, the Department published notice that the comment period was being extended to September 29, 2000 at page 2454 of the 2000 Montana Administrative Register, Issue No. 18.

2. On August 22, 2000, a public hearing was held to consider the proposed amendment of 12 existing rules, the adoption of nine new rules and the repeal of seven rules, all related to unemployment insurance matters. One member of the public attended, but did not offer any oral or written comments at that time. One set of written comments was received by the Department by the close of the extended comment period.

3. After consideration of the comments received on the proposed amendments, the Department of Labor and Industry amends the following rules exactly as proposed:

24.11.101 DIVISION ORGANIZATION--~~BUREAU ADDRESSES~~ LOCATION

24.11.201 ADOPTION OF MODEL RULES

24.11.442 INITIAL MONETARY DETERMINATION--WAGES--REVISIONS

24.11.443 ~~CONTINUED~~ BIWEEKLY CLAIMS

24.11.458 SELF-EMPLOYMENT

24.11.463 LIE DETECTOR TESTS--~~BLOOD AND URINE~~ DRUG AND ALCOHOL TESTING

24.11.466 BENEFIT OVERPAYMENTS--NOTICES AND APPEAL RIGHTS

24.11.467 WAIVER OF RECOVERY OF BENEFIT OVERPAYMENTS

24.11.616 BENEFIT OVERPAYMENTS--CREDITING EMPLOYER ACCOUNTS

4. After consideration of the comments received on the proposed amendments, the Department of Labor and Industry amends the rules as proposed, with changes as noted: (deleted material stricken, added material underlined, and new material in ALL CAPS).

24.11.457 LEAVING WORK WITH OR WITHOUT GOOD CAUSE ATTRIBUTABLE TO THE EMPLOYMENT (1) Same as proposed.

(2) The term "compelling reasons" as used in this rule includes but is not limited to:

(a) Same as proposed.

(b) ~~unreasonable actions long-term, adverse changes implemented~~ UNREASONABLE ACTIONS by the employer concerning hours, wages, terms of employment or working conditions, including, but not limited to, unilaterally imposed reductions of 20% or more in the claimant's customary wages or hours;

(c) ~~an illness or injury caused by the work environment or working conditions which would jeopardize the claimant's health if the claimant were to remain employed, if such illness or injury, its cause, and the effect of the claimant remaining employed are verified by a statement from a licensed and practicing physician, chiropractor or osteopath~~ a condition underlying a workers' compensation or occupational disease claim for which liability has been accepted by a workers' compensation insurer. IF THE CONDITION IS ONE FOR WHICH LIABILITY HAS NOT BEEN ACCEPTED BY THE WORKERS' COMPENSATION INSURER, THE DEPARTMENT WILL INDEPENDENTLY EVALUATE THE CONDITION TO DETERMINE WHETHER THE CONDITION APPEARS TO RESULT FROM THE CLAIMANT'S EMPLOYMENT. IF THE CONDITION APPEARS TO THE SATISFACTION OF THE UNEMPLOYMENT INSURANCE DIVISION TO BE WORK RELATED, THE CONDITION WILL BE CONSIDERED TO PROVIDE A COMPELLING REASON FOR THE PURPOSE OF THIS RULE. However, upon recovery from that condition, as certified by a licensed and practicing physician or chiropractor, the claimant must offer to return to work or be disqualified for leaving work without good cause attributable to the employment, unless there is substantial evidence concerning the nature, severity, duration, and prognosis of the illness or injury, verified by a licensed and practicing physician or chiropractor, to establish that the claimant's health would be substantially jeopardized by returning to the claimant's regular or comparable suitable work;
or

(d) Same as proposed.

AUTH: 39-51-301 and 39-51-302, MCA

IMP: 39-51-2302, ~~39-51-2307~~, MCA

24.11.464 BENEFITS BASED ON SERVICES IN EDUCATIONAL INSTITUTIONS AND EDUCATIONAL SERVICE AGENCIES (1) For the purpose of this rule, the following definitions apply, unless the context clearly indicates otherwise:

(a) and (b) Same as proposed.

(c) "Reasonable assurance" means:

(i) as it relates to the probability of performing services in the next academic year or term, that there is a written, oral or implied agreement that the employee worker will perform services in the same or similar capacity in the next academic year or term. However, reasonable assurance does not exist if the economic terms and conditions are substantially less than the economic terms and conditions of the job in the previous academic year or term. For the purposes of this rule, "substantially less" means a difference of 20% or more.

(A) and (B) Same as proposed.

(ii) Same as proposed.

(d) Same as proposed.

(2) and (3) Same as proposed.

~~(4)(5) If the claimant's benefits are based on services in a professional capacity and the claimant was previously determined to have reasonable assurance, but continues to be unemployed when school commences, the claimant may be allowed benefits from the date the offer of employment was withdrawn or from the date the claimant was given reasonable assurance if it is determined that the original offer of employment was not a bona fide offer. IF THE CLAIMANT'S BENEFITS ARE BASED ON SERVICES IN A PROFESSIONAL CAPACITY AND THE CLAIMANT WAS PREVIOUSLY DETERMINED TO HAVE REASONABLE ASSURANCE, BUT CONTINUES TO BE UNEMPLOYED WHEN SCHOOL COMMENCES, THE CLAIMANT MAY BE ALLOWED BENEFITS FROM THE DATE THE OFFER OF EMPLOYMENT WAS WITHDRAWN OR FROM THE DATE THE CLAIMANT WAS GIVEN REASONABLE ASSURANCE IF IT IS DETERMINED THAT THE ORIGINAL OFFER OF EMPLOYMENT WAS NOT A BONA FIDE OFFER.~~

AUTH: 39-51-301 and 39-51-302, MCA

IMP: 39-51-2108, MCA

5. After consideration of the comments received on the proposed amendments, the Department will not amend ARM 24.11.475, entitled "APPROVAL OF TRAINING BY THE DEPARTMENT."

6. After consideration of the comments received on the proposed new rules, the Department adopts the following new rules exactly as proposed:

NEW RULE I (24.11.204) DEFINITIONS

NEW RULE II (24.11.206) TIME ALLOWED AND PROCEDURE FOR FILINGS AND SUBMISSIONS

NEW RULE III (24.11.207) DETERMINING WHO IS AN INTERESTED PARTY

NEW RULE V (24.11.452A) ELIGIBILITY FOR BENEFITS

NEW RULE VI (24.11.454A) LEAVING OR DISCHARGE FROM WORK--
SUSPENSIONS

NEW RULE VII (24.11.455) REFUSAL OF WORK

NEW RULE VIII (24.11.465A) DISQUALIFICATION WHEN
UNEMPLOYMENT DUE TO STRIKE

NEW RULE IX (24.11.459) ADMINISTRATIVE PENALTY

7. After consideration of the comments received on the proposed new rules, the Department of Labor and Industry adopts NEW RULE IV as proposed, with changes as noted: (deleted material stricken, new material underlined)

NEW RULE IV (24.11.450A) NON-MONETARY DETERMINATIONS AND
REDETERMINATIONS--NOTICE (1) through (3) Same as proposed.

(4) When the department obtains credible information that raises a non-monetary issue relative to a claim, but there is insufficient evidence upon which to base a determination or if the claimant has not had an opportunity to respond to the information, the department notifies the claimant of the existence of the issue and of the fact that payment of benefits otherwise due will be suspended pending an initial determination relative to the issue. The claimant has 10 days in which to provide information concerning the issue. If the claimant does not provide the requested information within the time allowed, the claimant is determined to be unavailable for work for failure to provide requested information, as provided in ARM 24.11.452(1)(b). The ineligibility is effective on the Sunday of the week during which the act or circumstance that forms the basis of the issue occurred or came into existence.

(a) and (b) Same as proposed.

(5) Same as proposed.

AUTH: 39-51-301 and 39-51-302, MCA

IMP: 39-51-2202, 39-51-2203, 39-51-2205, 39-51-2301 through 39-51-2304, 39-51-2402, 39-51-2507, 39-51-2508, 39-51-2511, 39-51-2602, 39-51-3201, 39-51-3202 and 39-51-3206, MCA

8. After consideration of the comments received on the proposed repeals, the Department repeals the following rules exactly as proposed:

24.11.102 GENERAL DUTIES AND RESPONSIBILITIES OF THE
DIVISION

24.11.202 DEFINITIONS

24.11.450 NON-MONETARY DETERMINATIONS AND
REDETERMINATIONS--NOTICE

24.11.452 ABLE, AVAILABLE, AND ACTIVELY SEEKING WORK

24.11.453 VOLUNTARY AND INVOLUNTARY SEPARATIONS FROM EMPLOYMENT

24.11.454 LEAVES OF ABSENCE--DISCIPLINARY SUSPENSIONS

24.11.465 DISQUALIFICATION WHEN UNEMPLOYMENT DUE TO STRIKE

9. The Department has thoroughly considered the comments and testimony received on the proposed amendments, new rules and repeals. The following is a summary of the comments received, along with the Department's response to those comments:

Comment 1: The sole commenter, the Montana AFL-CIO, opposed the elimination of local Job Service offices as the place for filing unemployment claims. The commenter also criticized the lack of a toll-free number or 24 hour, seven day a week service with the telephonic, interactive voice response system the Department is using for the unemployment insurance claims process. The commenter also made reference to complaints it had received about the telephone claims system, but did not provide any further information about the nature or extent of those complaints.

Response 1: The Department has been using its telephone claims system since July 1997 and has not offered in-person claims taking at local Job Service offices since then. The Department notes that the interactive voice response system used for filing continuing bi-weekly claims uses a toll-free telephone number and is available on a 23 hour a day, seven days a week basis. The Department further notes that when the local Job Service offices offered in-person claims taking, those services were only available during normal business hours, Monday through Friday. The Department will provide a toll-free number for taking initial unemployment insurance claims when there is adequate funding to offer such a service while continuing to maintain the Department's other functions and level of customer service.

The Department is unable, without further details from the commenter, to address the various complaints that the commenter alludes to. The Department notes that since establishing the two telephone claims centers, eliminating the involvement of local Job Service offices in claims taking, and developing new processes for more efficiency in issuing determinations, the Department has shortened the time between a claim being taken and the time when a determination is made about the claimant's eligibility for benefits. Prior to the telephone claims system, over 30% of claims required more than 28 days to make a determination involving a separation issue, while with the telephone claims system, less than 10% of claims take over 28 days for a separation determination to be issued. The average time for making the initial determination regarding a separation is now 12 days. The Department acknowledges that there are some

telephone access problems, but the Department is diligently working to continually improve its services.

The Department also notes that in the event of a significant, large scale layoff or plant closure, the Department often sends staff to the community where the layoff or closure occurred in order to assist groups of workers in filing their claims for unemployment insurance benefits.

Comment 2: The commenter objected to the requirement that claimants must call the Department during the Department's regular business hours in order to establish or re-open a claim.

Response 2: The Department believes that it is reasonable for claimants to contact Department staff during regular business hours. The Department notes that most governmental services (other than law enforcement, fire protection and emergency medical services) are not generally available outside the normal Monday through Friday business day. The Department, given its current workload, level of staff and available resources, has concluded that it is not practical to offer significantly extended service hours for the intake of initial and re-opened claims.

Comment 3: The commenter found the amendments to ARM 24.11.442(6)(g) confusing and in conflict with the amendments to ARM 24.11.443(4)(e), (f) and (g).

Response 3: The provisions in ARM 24.11.442 direct how an employer is to report the timing of certain payments. The provisions in ARM 24.11.443 direct how and when a worker is to report certain payments made by the employer to the worker. While in most cases those payments will be reported by the employer and the worker in the same time period, there are certain instances when that is not the case. Those instances are spelled out in the rules.

Comment 4: The commenter opposed the proposed wording in ARM 24.11.443(1) regarding the use of the interactive voice response system, and stated that the elimination of local Job Service offices complicates the process of filing timely claims and does not take into account "the increasing number of 'functionally illiterate' displaced workers."

Response 4: The Department disagrees with the commenter's suggestion that the use of the interactive voice response system is less "user-friendly" for functionally illiterate workers than the old paper-based system. The Department notes that with the interactive voice response system, a claimant does not have to know how to read or write, merely to identify the numbers on a telephone. With the old paper-based system, the claimant needed to read and understand the bi-weekly claim card, fill in the appropriate information, and then mail the card to the Department. The Department concludes that the interactive voice

response system is actually easier to use than the former system for persons who are functionally illiterate.

The Department also notes that in the event an individual needs an accommodation to access the unemployment insurance benefit system, the Department will continue to provide reasonable accommodations as appropriate. Such accommodations have included the use of paper claim cards for certain individuals, based on the special needs or circumstances of those persons.

Comment 5: The commenter stated that it felt that requiring claimants to provide information regarding "hours" as well as "wages" was burdensome and not necessary.

Response 5: The Department believes that requiring a claimant to track the number of hours worked by the claimant in a given week is not burdensome. The information is necessary because of issues related to the claimant's benefit eligibility and availability for suitable work. The Department also notes that it has historically required information about the hours worked and wages received by a claimant, and that those questions were on the old paper bi-weekly claim card that a claimant was required to mail to the Department every two weeks.

Comment 6: The commenter opposed the proposed new language in ARM 24.11.457(2)(a) on the basis that it requires "a worker return to a place where risk of injury or death is clear" or face a loss of unemployment insurance benefits. The commenter further suggested that the Department could be liable for a subsequent workplace injury suffered by a person who returned to a risky occupation.

Response 6: The Department's intent with the proposed amendment is to acknowledge that some occupations are riskier than others. For example, public safety workers (firefighters and law enforcement officers) tend to have inherently riskier jobs than most office workers. The fact that a fire fighter's job is inherently risky (as compared to other occupations) does not necessarily mean that such a worker would have such a compelling reason so as to leave the worker's existing employment and still receive unemployment insurance benefits, simply because the fire fighter decided that the occupation was "too risky". A timber faller or ironworker may daily face a risk of injury that might be considered an "undue risk" for a retail clerk, even though there is nothing more hazardous at the workplace for those occupations than there is at other workplaces in the same industry or occupation.

Nothing in the existing or proposed rules require any worker to accept or continue any employment whatsoever. Each claimant, however, in order to be or remain eligible for unemployment insurance benefits, must be able to engage in employment, available to engage in employment and actively seeking work. The selection of occupation is not forced by the Department, nor

does the Department have control over how risky a worker's chosen occupation is, compared to any other occupation.

Comment 7: The commenter objected to the proposed amendments to ARM 24.11.457(2)(b), specifically the proposed inclusion of the qualifying phrase "long term".

Response 7: In light of the comment, the Department will not adopt the proposed amendments to ARM 24.11.457(2)(b).

Comment 8: In ARM 24.11.457(2)(c), the commenter objected to what it perceived as an improper delegation to a workers' compensation insurer the determination that a particular medical condition is "work-related" before that fact would be accepted by the Department in unemployment insurance matters.

Response 8: The Department will clarify the language in the rule to make it clear that if a medical condition is accepted by the workers' compensation insurer as being work-related, the Department will accept that as sufficient evidence of the condition being work-related. However, if the workers' compensation insurer has not accepted the condition as being work-related, the Department will continue to make its own independent fact-finding and determination as to whether the medical condition is work-related for purposes of the unemployment insurance claim.

Comment 9: The commenter objected to the proposed deletion of ARM 24.11.457(3) on the basis that the change appears to impose an additional barrier to persons trying to improve themselves through additional education.

Response 9: The Department believes that the statutory language in § 39-51-2302(3), MCA, is clear and does not have to be repeated in rule. Section 2-4-305(2), MCA, provides that language in a rule should not unnecessarily repeat statutory language.

Comment 10: The commenter questioned whether the amendments to ARM 24.11.458(1) were an effort by the Department to "thwart new business startups, entrepreneurial activities or other forms of economic activity".

Response 10: No. The Department is merely clarifying that while self-employment is not an absolute barrier to receipt of unemployment insurance benefits, a claimant must still be able to work, available to work, and actively seeking work. The Department's proposed NEW RULE V, which was not objected to by the commenter, makes it clear that "availability" to work means availability to work a full-time job. NEW RULE V does allow less than full-time work to be sought under certain conditions.

Comment 11: The commenter claimed that the proposed amendments to ARM 24.11.464(1)(b) exceed the scope of the underlying

statute, § 39-51-2108, MCA, and serve to deny benefits to more individuals than the statutory language requires.

Response 11: The amendments do not exceed the scope of the statute. The terms "instructional, research, or principal administrative capacity" are used in § 39-51-2108(1), MCA, but are not further defined. The definitions contained in the proposed amendments to ARM 24.11.464(1)(b) are the exact definitions used in the corresponding federal unemployment insurance law, and thus insure that state law is administered in conformance with federal law. The proposed amendments merely codify the standards that the Department has been applying for quite a number of years.

Comment 12: The commenter objected to the "substantially less" definition in ARM 24.11.464(1)(c), and claimed that the 20% or more difference was tantamount to requiring workers to accept a significant rollback in wages and benefits.

Response 12: The Department will delete the definition of "substantially less".

Comment 13: The commenter objected to the "regardless of whether the worker is required to reapply for a position" language in ARM 24.11.464(1)(c)(i)(A), arguing that if a worker is required to reapply for a position, and the worker has not received notice of hiring, the worker is unemployed.

Response 13: The Department believes that the language in ARM 24.11.464(1)(c), when read as a whole, allows the Department to look at the course of dealing between the educational institution and its professional staff. The Department is aware that some educational employers have established a course of dealing that despite an announcement that every professional employee will have to reapply for a job in the next school year, the employer almost invariably rehires the employee. The Department also notes that because the Department will be looking at the totality of the circumstances surrounding the question of "reasonable assurances", the Department will not be deferring the decision about whether reasonable assurances exist to parties other than the Department. See comment 8, above.

Comment 14: The commenter objected to the deletion of current subsections (5) and (6) in ARM 24.11.464 if the deletion of either subsection complicates or restricts the rights of workers to retroactive benefits.

Response 14: The Department inadvertently proposed the deletion of current subsection (5). Subsection (5) will be kept in the rule, but will be re-numbered as (4).

Comment 15: The commenter questioned whether the proposed amendments of ARM 24.11.466(2)(a) and (b) would eliminate the Department's need to provide information on how to appeal an

adverse decision.

Response 15: The proposed amendments will not change the Department's current practice of including appeal rights information in each written determination, re-determination, or benefits decision.

Comment 16: The commenter also objected to the proposed amendments of ARM 24.11.466(2)(a) and (b) because of the "removal of local job service offices" for appeal purposes.

Response 16: The Department, as noted above, has shifted from a system of benefits claims taking at local Job Service offices to the two telephone claim centers. The Department concludes that recent changes to the unemployment insurance benefit claims system has resulted in a significant improvement in the speed and quality of service available to all claimants. The Unemployment Insurance Division and the Job Service Division continue to be strong partners in working to serve their joint customers. See also responses 1, 2 and 4, above.

Comment 17: The commenter stated that the proposed language in ARM 24.11.467 regarding obtaining a waiver of repayment was very complex and too burdensome.

Response 17: The Department concludes that the proposed language provides for objective criteria to determine whether repayment constitutes a "long-term financial hardship" as the term is used in § 39-51-3206, MCA. While there is a certain amount of complexity to the rule and the rule places some burden on the claimant, the Department believes that the rule fairly puts claimants on notice of the criteria for obtaining a waiver and the evidence that the claimant will have to demonstrate in order to obtain a waiver. The only reason that an overpayment exists is that the claimant received benefits that were not due to the claimant. The Department notes that the repayment of improperly paid benefits merely returns the overpaid amount to the unemployment insurance trust fund from which the benefits were originally paid.

Comment 18: The commenter objected to the proposal that requires a claimant to wait 24 months before requesting a waiver of repayment of benefits overpaid or improperly paid, and questioned whether the Department will defer collection for the 24 month period.

Response 18: Section 39-51-3206, MCA, provides that the Department may waive overpayments under certain circumstances, provided that the Department finds that repayment would constitute a "long-term financial hardship on the claimant." The Department recognizes that most, if not virtually all, claimants are unable to repay those improperly paid benefits in a single lump sum repayment. The Department attempts to work with every claimant that has to repay benefits, including

offering to accept small monthly or weekly payments. The Department has concluded that whether a repayment plan would cause a "long-term financial hardship" can best be judged by looking at the financial condition of the claimant back over a two year period from the time the overpayment was discovered. The Department believes that it has a duty to the unemployment insurance trust fund to make a substantial effort to return to the trust fund benefits that were improperly paid out and to which the claimant was not entitled to in the first place. The Department, as a part of its obligation to the trust fund, will attempt to arrange a repayment plan as soon as the overpayment is discovered. If, after 24 months, repayment is still not feasible, claimants will have the opportunity to request a waiver of the repayment obligation.

Comment 19: The commenter questioned whether, during the 24 month waiting period for requesting a waiver of repayment, there would be "any actions, retaliations or restrictions imposed" against the claimant, and stated that if so, there should not be a waiting period before "initiating an appeal."

Response 19: First, the Department notes there is no collection action taken on an overpayment until such time as the time for appealing any issues related to the overpayment have passed and the determination of fact and amount of the overpayment is final and not subject to further appeal. The Department does not "retaliate" against any party in the unemployment insurance system for exercising the party's rights, including rights to due process and judicial review. Section 39-51-3206, MCA, provides that the Department may take an offset against future benefits that may come due to the claimant. The Department does not believe that the application of the statutorily-provided offset is in any way a form of "retaliation" against the claimant.

Comment 20: The commenter objected to the proposed changes to ARM 24.11.467, commenting that the rule appears to be in conflict with the Workforce Investment Act.

Response 20: Although the Department disagrees that the rule creates any conflicts with the Workforce Investment Act, the Department will not adopt the proposed amendments, pending further refinement of appropriate language to clarify the intent of the rule and re-noticing of amendments at a future date.

Comment 21: The commenter objected to the definitions contained in NEW RULE I(12) and (14) on the grounds that the terms do not exclude private sector educational institutions.

Response 21: The existing version of the rule describing educational institutions, ARM 24.11.464(1)(a) [which is proposed for repeal], specifically provides that private sector educational institutions are subject to the rule. The Department notes a distinction, based on the wording in

§ 39-51-2108(4), MCA, between an "educational service agency" and an educational institution. Section 39-51-2108(4), MCA, provides for the denial of benefits of an employee of an "educational service agency" under certain conditions. While it is clear that public sector educational institutions are subject to the provisions of § 39-51-2108, MCA, as "employment defined in 39-51-203(5)", the Department notes that § 39-51-2108, MCA, also includes employment as defined in § 39-51-203(6), MCA. The provisions of § 39-51-203(6), MCA, include service by an "educational organization", without limiting the service to that performed in the public sector. See also response 11, above.

Comment 22: The commenter objected to the proposed definition of "file" contained in NEW RULE I(15) on the basis that the definition did not specify when and where items were to be filed, but instead only references that items were to be filed according to Department rules.

Response 22: The Department's proposed definition does not provide for a specific time for "filing" because the timing is often dependent upon the context in which the item is to be filed. In the substantive rules of the Department, the timing and process for filing an item are specified under various circumstances and contexts. Here, however, the definition would be unduly complex if the definition attempted to identify each and every circumstance under which a "filing" might occur, together with the timing and other requirements specific to that filing. The proposed definition merely recognizes that the time and manner of "filing" will vary depending on the circumstances.

Comment 23: The commenter objected to the proposed definition in NEW RULE I(23) of "long-term" on the grounds that the selection of more than six consecutive weeks was arbitrary and too long a period.

Response 23: "Long-term" is defined in the Montana Code Annotated in several different contexts, but not in the context of the unemployment insurance laws. "Long-term" means "a continuous period of more than 120 days" for determining whether a person is a long-term resident at a state institution (§ 53-1-401(9), MCA), and appears to be the only Montana statutory definition that quantifies how long a period of time is considered "long-term". The phrase is also used in statute in the context of long-term debt for state building projects, long-term health care facilities, and the like, but no definite period is specified. The term "long-term benefit to the Montana economy" is defined in § 17-6-302(9), MCA, as "an activity that strengthens the Montana economy and that has the potential to maintain and create jobs, increase per capita income, or increase Montana tax revenue in the future to the people of Montana, either directly or indirectly."

Given that there is no general statutory definition of "long-term" that identifies a specific period, and given the only

specific statutory reference to "long-term" as being a period of more than 120 days, the Department concludes that its selection of six weeks is reasonable. Six weeks is 42 days, which is significantly less than the statutory reference to 120 days. The commenter did not provide an alternative time period that was preferred, other than to say six weeks was too long. In the judgment of the Department, six weeks provides a reasonable balance between the two or four weeks implied by the commenter and the 120 days expressly referred to in statute. The Department also notes that in ARM 24.11.467(4), the concept of "long-term financial hardship" involves looking prospectively at a 12 month period in comparison to the previous 24 month period. The Department recognizes that the concept of "long-term" is situational, but concludes that six weeks is not too long a period within the meaning of the rule.

Comment 24: The commenter questioned whether it is reasonable that a "temporary layoff" be of an indeterminate time.

Response 24: The Department believes that given the broad spectrum of covered employers in the Montana economy, it is not feasible to use a fixed number of days to determine whether a layoff is "temporary". The Department notes that workers may be eligible for unemployment insurance benefits even during a "temporary layoff", and that benefit eligibility is not changed simply because a layoff is characterized by the employer as "temporary". The fact that a layoff is characterized by the employer as being "temporary" may serve to qualify the laid-off employees as being job attached.

Comment 25: The commenter again objected to the Department's requirement in NEW RULE II(2) that claimants use the telephone claims system.

Response 25: Please see responses 1, 2 and 4, above, regarding the Department's operation of the telephone claims system.

Comment 26: The commenter suggested that the language in NEW RULE IV(4) could result with a claimant's benefits being delayed or interrupted on the basis of unsubstantiated gossip or rumor.

Response 26: The Department will modify the rule to clarify that it will take action only in response to credible information that is material to claim eligibility.

Comment 27: The commenter questioned whether the provisions of NEW RULE VI(1)(a) would lead to employees not providing any advance notice before quitting work, lest they place in jeopardy unemployment insurance benefits for the time they are fired until the planned termination date.

Response 27: No. The rule provides that a worker in such a situation may well be eligible for benefits during the period from the date discharged from work until the date the worker

planned to leave.

Comment 28: The commenter suggested that NEW RULE VI(1)(b) should allow a worker that is ready, willing and able to continue working for the employer (despite the worker's notice of leaving) to be eligible for benefits if the employer has a job but does not retain the worker.

Response 28: The Department concludes that if the worker in fact gave valid notice of leaving work, the worker has announced the intention to quit, and the employer is entitled to rely upon that notice. If the reason for quitting is not for good cause attributable to the employment, then the worker is not eligible for benefits because of the quit. The fact that the worker is willing to re-start an employment relationship with a particular employer does not change the fact that the worker has voluntarily quit the employment relationship.

Comment 29: The commenter expressed opposition to the provisions of NEW RULE VII(1)(c) on the premise that the Department is not in the position to determine the economic viability of a given self-employment scheme.

Response 29: The Department notes that the provisions of NEW RULE VII(1)(c) are mandated by § 39-51-2304(1), MCA, and that the new rule merely clarifies (a) or (b) or (c) can form the basis of benefit disqualification. The Department notes that it has proposed the deletion of the (c) option in its "housekeeping" bill (LC# 345) for the 2001 legislative session.

Comment 30: The commenter objected to NEW RULE VIII and the repeal of ARM 24.11.465 on the grounds that the rule is too complex and too limiting.

Response 30: The Department is bound by the ruling in Decker Coal v. Hartman, 706 F. Supp. 745 (D. Mont. 1988) which establishes that federal labor law preemption bars the state from independently determining whether a violation of federal labor law (an unfair labor practice) existed. The Department harmonizes its statutory obligation under § 39-51-2305(3), MCA, and the Decker Coal decision by having the Department's investigation consist of looking at how the particular issues were decided by the National Labor Relations Board or the courts, on appeal.

Comment 31: The commenter stated that the proposed rule changes were "more complex" and appeared to be intended more to meet legal scrutiny than to be understood by ordinary citizens.

Response 31: The Department agrees that the proposed rule changes are designed to withstand scrutiny by judicial and quasi-judicial bodies. Because a properly adopted substantive rule carries the weight of law, the Department believes that such a level of care is appropriate. As to the concern that the

rules are not designed to be understood by an ordinary citizen, the Department concludes that these rules are required to fit within the existing legal context of the statutes that the rules implement. Some of the rules may be complicated or technical, but the Department believes that such is the case because the underlying statutes or legal principles are complicated or require technical analysis. In other cases, the rules appear complex because the Department is providing objective criteria upon which the merits of a claim can be decided. However, the Department concludes that it is more important that the rules correctly and accurately reflect the underlying law than it is for the rules to be simple but misleading. The Department remains willing to help explain the rules when a customer has a question about them.

Comment 32: The commenter generally stated that some of the proposed rule changes "exceed legislative authority" granted to the Department.

Response 32: With a few exceptions (specifically noted and addressed above), the commenter did not identify what portion of the proposed rule changes exceeded the legislative authority. Accordingly, the Department is unable to respond to the comment except to state that the Department believes that the proposed rule changes do not exceed the rule-making authority granted to it by the Legislature.

Comment 33: The commenter indicated that it did not have adequate time to respond to and comment upon the proposed rule changes.

Response 33: Upon the request of the commenter, the Department extended the public comment period. The Department specifically asked the commenter whether an additional 4 weeks of time would be sufficient, and was told by the commenter that an additional 4 weeks was sufficient. Accordingly, the Department extended the comment period by 4 weeks. The commenter did not request further additional time for making its comments.

Comment 34: The commenter stated that it had limited its comments to those changes which it questioned or disagreed with. The commenter noted that it did not comment on rules that it viewed to be an improvement on existing rule language.

Response 34: The Department appreciates comments on its proposed rule changes that were made by members of the public and entities representing various interests, regardless of whether the comments are favorable or unfavorable.

10. The amendments, new rules and repeals are effective December 31, 2000.

/s/ KEVIN BRAUN
Kevin Braun
Rule Reviewer

/s/ PATRICIA HAFHEY
Patricia Haffey, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: December 11, 2000.

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

In the matter of the	)	NOTICE OF THE AMENDMENT,
amendment of ARM 24.11.441,	)	ADOPTION, AND REPEAL OF RULES
24.11.445, 24.11.451,)	
and 24.11.468,)	
the adoption of new rules,)	
and the repeal of)	
ARM 24.11.444, 24.11.446,)	
24.11.480, 24.11.501,)	
24.11.502, 24.11.503,)	
24.11.504, 24.11.505,)	
and 24.11.506,)	
all relating to unemployment)	
insurance matters)	

TO: All Concerned Persons

1. On September 21, 2000, the Department published notice of the proposed amendment, adoption and repeal of the above-captioned rules at page 2456 of the 2000 Montana Administrative Register, Issue No. 18.

2. On October 18, 2000, a public hearing was held to consider the proposed amendment of four existing rules, the proposed adoption of 17 new rules and the proposed repeal of nine rules, all related to unemployment insurance matters. No members of the public appeared at the public hearing. Likewise, no persons commented on the proposed amendments, new rules or repeals by the close of the comment period on October 25, 2000.

3. The Department of Labor and Industry amends 24.11.441, 24.11.445, 24.11.451, and 24.11.468 exactly as proposed.

4. The Department adopts the new rules exactly as proposed:

NEW RULE I (24.11.481) DEFINITION OF SUITABLE WORK FOR EXTENDED BENEFITS PURPOSES--CLASSIFICATION AND DETERMINATION OF JOB PROSPECTS

NEW RULE II (24.11.511) SCOPE AND PURPOSE--MODEL LANGUAGE

NEW RULE III (24.11.513) DEFINITIONS

NEW RULE IV (24.11.515) NOTIFICATION OF INTERSTATE CLAIM

NEW RULE V (24.11.516) REGISTRATION FOR WORK

NEW RULE VI (24.11.517) BENEFIT RIGHTS OF INTERSTATE CLAIMANT

NEW RULE VII (24.11.518) CLAIMS FOR BENEFITS

NEW RULE VIII (24.11.521) PROVIDING ASSISTANCE TO INTERSTATE CLAIMANTS

NEW RULE IX (24.11.523) ELIGIBILITY REVIEW PROGRAM

NEW RULE X (24.11.525) DETERMINATION OF CLAIMS

NEW RULE XI (24.11.531) APPELLATE PROCEDURE

NEW RULE XII (24.11.534) EXTENSION OF INTERSTATE BENEFIT PAYMENT PLAN TO INCLUDE CLAIMS TAKEN IN AND FOR CANADA

NEW RULE XIII (24.11.1221) SCOPE AND PURPOSE--MODEL LANGUAGE

NEW RULE XIV (24.11.1223) DEFINITIONS

NEW RULE XV (24.11.1225) RECOVERY OF STATE OR FEDERAL BENEFIT OVERPAYMENTS

NEW RULE XVI (24.11.1228) COMBINED WAGE CLAIMS

NEW RULE XVII (24.11.1229) CROSS-PROGRAM OFFSET

5. The Department repeals ARM 24.11.444, 24.11.446, 24.11.480, 24.11.501, 24.11.502, 24.11.503, 24.11.504, 24.11.505, and 24.11.506 exactly as proposed.

6. The amendments, new rules and repeals are effective December 31, 2000.

/s/ KEVIN BRAUN
Kevin Braun
Rule Reviewer

/s/ PATRICIA HAFFEY
Patricia Haffey, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: December 11, 2000.

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

In the matter of the) NOTICE OF TRANSFER OF RULES
transfer of ARM 24.11.466,)
24.11.467, and 24.11.468,)
all relating to unemployment)
insurance benefit overpayments)

TO: All Concerned Persons

1. Effective December 31, 2000, the Department will transfer the following rules:

OLD NUMBER	NEW NUMBER
24.11.466	24.11.1205
24.11.467	24.11.1207
24.11.468	24.11.1209

The purpose of the transfer of the three rules is to place these rules concerning benefit overpayments together with other rules regarding benefit overpayments.

2. The Department advises concerned persons to be aware that in another rule notice contained in this issue of the Montana Administrative Register the Department has amended the text of ARM 24.11.466 and 24.11.467. That rule notice begins at page 3523.

/s/ KEVIN BRAUN
Kevin Braun
Rule Reviewer

/s/ PATRICIA HAFHEY
Patricia Haffey, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: December 11, 2000.

BEFORE THE BOARD OF OIL AND GAS CONSERVATION
DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF AMENDMENT AND
amendment of ARM 36.22.302	)	REPEAL
DEFINITIONS, 36.22.307)	
ADOPTION OF FORMS, 36.22.607)	
DRILLING PERMITS PENDING)	
SPECIAL FIELD RULES,)	
36.22.1243 REPORTS FROM)	
TRANSPORTERS, REFINERS, AND)	
GASOLINE OR EXTRACTION)	
PLANTS, 36.22.1306 APPROVAL)	
FOR PULLING CASING AND RE-)	
ENTERING WELLS, 36.22.1307)	
RESTORATION OF SURFACE,)	
36.22.1308 PLUGGING AND)	
RESTORATION BOND, 36.22.1401)	
DEFINITIONS, 36.22.1403)	
APPLICATION CONTENTS AND)	
REQUIREMENTS, 36.22.1408)	
FINANCIAL RESPONSIBILITY,)	
36.22.1410 NOTICE OF)	
APPLICATION, 36.22.1418)	
EXEMPT AQUIFERS, 36.22.1423)	
INJECTION FEE - WELL)	
CLASSIFICATION, 36.22.1425)	
AREA OF REVIEW, 36.22.1702)	
CERTIFICATION OF ENHANCED)	
RECOVERY PROJECTS, 36.22.1703)	
APPLICATION - CONTENTS AND)	
REQUIREMENTS and the repeal)	
of ARM 36.22.1706 DEFINITIONS)	

TO: All Concerned Persons

1. On September 7, 2000, the Board of Oil and Gas Conservation and the Department of Natural Resources and Conservation published notice of the proposed amendment of ARM 36.22.302, 36.22.307, 36.22.607, 36.22.1243, 36.22.1306, 36.22.1307, 36.22.1308, 36.22.1401, 36.22.1403, 36.22.1408, 36.22.1410, 36.22.1418, 36.22.1423, 36.22.1425, 36.22.1702, 36.22.1703 and the repeal of ARM 36.22.1706 concerning definitions, adoption of forms, drilling permits pending special field rules, reports from transporters, refiners, and gasoline or extraction plants, approval for pulling casing and re-entering wells, restoration of surface, plugging and restoration bond, definitions, application contents and requirements, financial responsibility, notice of application, exempt aquifers, injection fee - well classification, area of review,

certification of enhanced recovery projects, application - contents and requirements and the repeal of definitions at page 2379 of the 2000 Montana Administrative Register, Issue Number 17.

2. The agency has amended ARM 36.22.307, 36.22.607, 36.22.1243, 36.22.1306, 36.22.1307, 36.22.1308, 36.22.1401, 36.22.1403, 36.22.1408, 36.22.1410, 36.22.1418, 36.22.1423, 36.22.1425, 36.22.1702, 36.22.1703 as proposed; and repealed ARM 36.22.1706 as proposed.

3. The agency has amended ARM 36.22.302 with the following changes, stricken matter interlined, new matter underlined.

36.22.302 DEFINITIONS Unless the context otherwise requires, the words defined shall have the following meaning when found in these rules:

(1) through (21) same as proposed.

(22) "Degrade" means lowering the quality of high-quality waters for a parameter (as defined in 75-5-103(22), MCA). The term does not include those changes in water quality determined to be nonsignificant pursuant to 75-5-301(5)(c), MCA. that as a result of any source discharging pollutants to groundwater or surface water, the concentration of a pollutant has become worse, and will adversely affect existing beneficial uses or beneficial uses reasonably expected to occur in the future.

(23) through (81)(c) same as proposed.

AUTH: 82-11-111, MCA

IMP: 82-11-111, MCA

4. The following comment was received and appears with the agency's response:

COMMENT 1: During the comment period on the proposed changes, a representative of the Montana Department of Environmental Quality (MDEQ) submitted the following: "The definition of "degrade" at ARM 36.22.302(22) conflicts with the statutory definition of "degradation" given in 75-5-103(5) MCA. Under the Water Quality Act, any positive difference between the present quality of a state water and the quality required by standards is to be protected. In other words, high quality waters are protected unless other wise exempted by MDEQ. The definition of degrade in ARM 36.22.302 implies that high quality waters can be degraded as long as uses are not compromised. A discharger guided by the definition in ARM 36.22.302(22) could violate the requirements of the Montana Water Quality Act (75-5-101 et seq.) by degrading 'high quality waters' that are of better quality than what is specified by standards."

RESPONSE 1: The department agreed that the proposed definition of "degrade" conflicted with the statutory definition of degradation and amended the definition accordingly after consultation with the MDEQ.

By: /s/ Donald D. MacIntyre
DONALD D. MACINTYRE
Rule Reviewer

By: /s/ Terri H. Perrigo
TERRI H. PERRIGO
Executive Secretary

Certified to the Secretary of State December 11, 2000.

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

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 37.49.413 and 37.49.501)
pertaining to IV-E foster care)
eligibility)

TO: All Interested Persons

1. On October 5, 2000, the Department of Public Health and Human Services published notice of the proposed amendment of the above-stated rules at page 2600 of the 2000 Montana Administrative Register, issue number 19.

2. The Department has amended rule 37.49.413 as proposed.

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

37.49.501 IV-E FOSTER CARE ELIGIBILITY: RESOURCE LIMITATION (1) remains as proposed.

(2) After the initial determination of eligibility, the child is not eligible for IV-E benefits as specified in ARM 37.49.102(4)(a) and (b) if the equity value of the child's countable resources exceeds \$10,000 ~~the resource limit for medicaid.~~

(3) remains as proposed.

AUTH: Sec. 52-2-111, 53-2-201 and 53-6-113, MCA

IMP: Sec. 52-2-115, 53-2-201 and 53-6-131, MCA

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

COMMENT #1: Subsections (1) and (2) of ARM 37.49.501 are inconsistent under the proposed amendment because eligibility for IV-E benefits can be established if resources are less than \$10,000, but cannot be maintained because of (2) if resources exceed \$1,000.

RESPONSE: The Department agrees and has amended (2) to be consistent with the \$10,000 resource limit.

/s/ Dawn Sliva
Rule Reviewer

/s/ Laurie Ekanger
Director, Public Health and
Human Services

Certified to the Secretary of State December 11, 2000.

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

In the matter of the adoption)
of rules I through XXXV and)
the repeal of rules from ARM)
Title 46, chapter 30,)
subchapters 5 and 6)
pertaining to the conduct of)
contested hearings in child)
support establishment and)
enforcement cases)

NOTICE OF ADOPTION AND
REPEAL

TO: All Interested Persons

1. On September 21, 2000, the Department of Public Health and Human Services published notice of the proposed adoption and repeal of the above-stated rules at page 2471 of the 2000 Montana Administrative Register, issue number 18.

2. The Department has adopted the rules I [37.62.301], II [37.62.303], III [37.62.901], IV [37.62.903], VI [37.62.907], VIII [37.62.911], IX [37.62.913], X [37.62.915], XI [37.62.917], XII [37.62.919], XIV [37.62.923], XV [37.62.925], XVI [37.62.927], XVIII [37.62.931], XX [37.62.935], XXI [37.62.937], XXII [37.62.939], XXIII [37.62.941], XXIV [37.62.943], XXV [37.62.945], XXVI [37.62.947], XXVII [37.62.949], XXVIII [37.62.951], XXIX [37.62.953], XXX [37.62.955], XXXI [37.62.957], XXXII [37.62.959], XXXIII [37.62.961], XXXIV [37.62.963] and XXXV [37.62.965] as proposed.

3. The Department has repealed rules 46.30.501, 46.30.503, 46.30.505, 46.30.509, 46.30.601, 46.30.603, 46.30.605, 46.30.607, 46.30.609, 46.30.611, 46.30.613, 46.30.615, 46.30.617, 46.30.619, 46.30.621, 46.30.623, 46.30.625, 46.30.627, 46.30.629, 46.30.631, 46.30.633, 46.30.635, 46.30.637, 46.30.639, 46.30.641 and 46.30.643 as proposed.

4. The Department has adopted the following rules as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

RULE V [37.62.905] UNIFORMITY, CONSISTENCY AND INDEPENDENCE (1) through (1)(e) remain as proposed.

(2) When there is no statute, case law or administrative rule directly pertinent to a particular contested issue, or when the law is unsettled, and to the extent the following are of general applicability and do not conflict with the rules for ex parte communication, the ALJ's discretion shall be guided by:

- (a) written CSED policy directives; and
- (b) through (3) remain as proposed.

(4) An ALJ presiding over a contested case does not have general powers of equity similar to those of the district courts. Consequently, except in those specific circumstances requiring allowing such equitable relief as is defined by statute or case law, an ALJ may not depart from applicable law and rule to grant equitable relief to a party even when such relief may appear proper under the circumstances.

(5) remains as proposed.

AUTH: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA

IMP: Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA

RULE VII [37.62.909] CONTESTED CASE PROCEEDINGS, ANSWER OR RESPONSE AND REQUEST FOR HEARING (1) through (6) remain as proposed.

(7) The CSED will make hearing request forms consistent with this rule available for use by persons requesting a hearing. Except for a request for hearing that omits a mistake of fact required by (3), a timely request for hearing that is generally in compliance with this rule shall not be dismissed solely for failure to strictly satisfy the requirements of this rule.

(8) A request for hearing is not deemed as made until a written request is actually received by the OALJ. The OALJ shall deny untimely requests for hearing.

(9) and (10) remain as proposed.

AUTH: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA

IMP: Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA

RULE XIII [37.62.921] MOTIONS (1) through (5) remain as proposed.

(6) The failure of a party to file a brief or memorandum of law may subject the motion to summary ruling, and failure of a moving party to file a brief in support of the motion may be treated as an admission the motion is without merit. The failure to file an answer brief may be treated as an admission the motion is well taken and should be granted. The filing of a reply brief by a the moving party who is not the moving party is optional.

(7) through (10) remain as proposed.

AUTH: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA

IMP: Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431,

40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA

RULE XVII [37.62.929] OFFICIAL NOTICE (1) Official notice may be taken of:

- (a) through (g) remain as proposed.
- (h) written CSED policy directives;
- (i) through (2) remain as proposed.

AUTH: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA

IMP: Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA

RULE XIX [37.62.933] INVESTIGATIVE SUBPOENA (1) The CSED may issue an investigative subpoena whenever the CSED has a right or duty to investigate any matter relating to the location of an obligor, the establishment of paternity and support orders, and the enforcement or modification of a support order. A contested case as defined in [Rule II] need not be initiated before an investigative subpoena is issued.

- (2) through (8) remain as proposed.

AUTH: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA

IMP: Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA

5. In ARM 37.62.905 the Department added the reference to the "CSED" in (2)(a) to clarify whose written policy directives may be considered in the absence of a statute, case law or administrative rule directly pertinent to a particular contested case. The Department substituted the word "allowing" for the word "requiring" in (4) of ARM 37.62.905 as a more accurate statement of the application of equitable relief.

In ARM 37.62.909 the Department added the word "for" in the second sentence of (7) and deleted the word "as" in (8). Both were corrections of clerical errors.

In ARM 37.62.921 the Department corrected a clerical error regarding the filing of a reply brief.

In ARM 37.62.929 the Department added the reference to the "CSED" in (1)(h) to clarify whose written policy directives may be subject to official notice.

In ARM 37.62.933 the Department amended the language in (1) to clarify that it may issue an investigative subpoena when the CSED has either a right or duty to investigate and take

particular actions in a case. Some CSED case actions are discretionary by statute, rules and policy.

6. No comments or testimony were received.

/s/ Dawn Sliva
Rule Reviewer

/s/ Laurie Ekanger
Director, Public Health and
Human Services

Certified to the Secretary of State December 11, 2000.

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 46.30.507, 46.30.701,)	
46.30.703, 46.30.801,)	
46.30.803, 46.30.805,)	
46.30.807, 46.30.1001,)	
46.30.1003, 46.30.1005,)	
46.30.1007, 46.30.1101,)	
46.30.1103, 46.30.1105,)	
46.30.1107, 46.30.1109,)	
46.30.1111, 46.30.1113,)	
46.30.1115, 46.30.1117,)	
46.30.1119, 46.30.1121,)	
46.30.1201, 46.30.1203,)	
46.30.1205, 46.30.1207,)	
46.30.1209, 46.30.1211,)	
46.30.1213, 46.30.1215,)	
46.30.1217, 46.30.1219,)	
46.30.1301, 46.30.1303,)	
46.30.1305, 46.30.1401,)	
46.30.1605, 46.30.1607,)	
46.30.1701, 46.30.1702,)	
46.30.1703, 46.30.1705,)	
46.30.1708, 46.30.1711,)	
46.30.1712, 46.30.1715,)	
46.30.1718 and 46.30.1722)	
pertaining to child support)	
enforcement)	

TO: All Interested Persons

1. Pursuant to Chapter 546, Laws of Montana 1995, effective July 1, 1995, the child support enforcement program is transferred from the Department of Social and Rehabilitation Services to the Department of Public Health and Human Services. In order to implement that legislation, the above rules are transferred to the Department of Public Health and Human Services ARM Title 37, Chapter 62.

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>	
46.30.507	37.62.307	Distribution of Collections
46.30.701	37.62.501	Terms and Conditions
46.30.703	37.62.305	Telephone Communications

<u>OLD</u>	<u>NEW</u>	
46.30.801	37.62.1901	Providing Information
46.30.803	37.62.1903	Notice to Obligor
46.30.805	37.62.1905	Request for Hearing
46.30.807	37.62.1907	Amount of Monetary Sanction
46.30.1001	37.62.1701	Notice on Intent to Report
46.30.1003	37.62.1703	Electronic Reports
46.30.1005	37.62.1705	Amounts to Be Reported
46.30.1007	37.62.1707	Contesting Accuracy of Reported Information
46.30.1101	37.62.2101	Modification of Support Orders
46.30.1103	37.62.2103	Availability of Review
46.30.1105	37.62.2105	Right to Hearing on Denial
46.30.1107	37.62.2107	Procedure for Terminating Review After Closure of IV-D Case
46.30.1109	37.62.2109	Choice of Law
46.30.1111	37.62.2111	Time Frame Determinations
46.30.1113	37.62.2113	Requests for Discovery
46.30.1115	37.62.2115	Settlement Conference
46.30.1117	37.62.2117	Negligible Change
46.30.1119	37.62.2119	Modification Hearing
46.30.1121	37.62.2121	Additional Hearing Procedures
46.30.1201	37.62.1101	Definitions
46.30.1203	37.62.1103	Withholding Entity
46.30.1205	37.62.1105	Voluntary Withholding
46.30.1207	37.62.1107	Effect of Delay or Continuance
46.30.1209	37.62.1109	Issues Determinable at Hearing
46.30.1211	37.62.1111	Prompt Delivery of Withheld Amount

<u>OLD</u>	<u>NEW</u>	
46.30.1213	37.62.1113	Availability of Hardship Adjustments
46.30.1215	37.62.1115	Effect of Hardship Determination
46.30.1217	37.62.1117	Procedures for Determining Hardship Adjustments
46.30.1219	37.62.1119	Unclaimed Collections
46.30.1301	37.62.1501	Offset of State Tax Refunds for Child Support
46.30.1303	37.62.1503	Notice of State Tax Refunds for Child Support Debts
46.30.1305	37.62.1505	Child Support Offset of Joint Return
46.30.1401	37.62.309	Independent Support Enforcement Contractor
46.30.1605	37.62.705	Fee Schedule
46.30.1607	37.62.707	Waiver or Deference of Fees
46.30.1701	37.62.1301	Purpose Statement
46.30.1702	37.62.1303	Definitions
46.30.1705	37.62.1305	Criteria for Standard Payment Plan
46.30.1708	37.62.1307	Financial Hardship Payment Plan
46.30.1711	37.62.1309	Effect of Financial Hardship Payment Plan
46.30.1712	37.62.1311	Procedures for Determining Financial Hardship Payment Plan Terms
46.30.1715	37.62.1313	Procedures and Criteria for Resultant Hardship
46.30.1718	37.62.1315	Stay of License Suspension
46.30.1722	37.62.1317	Contested Case Hearing Procedures

3. The transfer of rules is necessary because this program was transferred from the Department of Social and Rehabilitation Services 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/ Laurie Ekanger
Director, Public Health and
Human Services

Certified to the Secretary of State December 11, 2000.

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 Title 46, Chapter 11)
pertaining to food and)
nutrition services)

TO: All Interested Persons

1. Pursuant to Chapter 546, Laws of Montana 1995, effective July 1, 1995, food and nutrition services is transferred from the Department of Social and Rehabilitation Services to the Department of Public Health and Human Services. In order to implement that legislation, the above-stated rules are transferred to the Department of Public Health and Human Services ARM Title 37, Chapter 76.

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>	
46.11.101	37.76.101	Food Stamp Program
46.11.105	37.76.105	Federally-Donated Foods
46.11.112	37.76.102	Food Stamps, Definitions
46.11.116	37.76.110	Food Stamps, Determining Eligibility for the Food Stamp Program
46.11.117	37.76.112	Food Stamps, Determining When Eligibility Begins
46.11.125	37.76.111	Food Stamps, Determining Eligibility and Benefits
46.11.127	37.76.120	Food Stamps, Certification Periods
46.11.131	37.76.121	Food Stamp Employment and Training Program
46.11.133	37.76.122	Food Stamps, Transfer of Resources
46.11.201	37.76.201	Operation
46.11.202	37.76.202	Food Distribution Household Certification and Review
46.11.203	37.76.203	Forms Used for Food Distribution
46.11.204	37.76.204	Income Limitation
46.11.205	37.76.205	Resource Limitation
46.11.206	37.76.206	

3. The transfer of rules is necessary because this program was transferred from the Department of Social and Rehabilitation Services 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/ Laurie Ekanger
Director, Public Health and
Human Services

Certified to the Secretary of State December 11, 2000.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF ADOPTION,
adoption of new rules I	)	AMENDMENT AND REPEAL
(42.2.304), II (42.2.305), and)	
III (42.2.306); amendment of)	
ARM 42.2.302, 42.2.303,)	
42.2.311, 42.2.312, 42.2.313,)	
42.2.321, 42.2.322, 42.2.323,)	
42.2.324, 42.2.325, 42.2.401,)	
42.2.501, and 42.2.613; and)	
repeal of ARM 42.2.701)	
relating to public)	
participation and general)	
application of tax payments)	

TO: All Concerned Persons

1. On October 5, 2000, the Department published notice of the proposed adoption of new rules I (42.2.304), II (42.2.305) and III (42.2.306); amendment of ARM 42.2.302, 42.2.303, 42.2.311, 42.2.312, 42.2.313, 42.2.321, 42.2.322, 42.2.323, 42.2.324, 42.2.325, 42.2.401, 42.2.501, and 42.2.613; and repeal of ARM 42.2.701 relating to public participation and general application of tax payments at page 2603 of the 2000 Montana Administrative Register, issue no. 19.

2. A public hearing was held on October 25, 2000, where no one appeared. Subsequent written comments were received and appear with the Department's responses:

COMMENT 1: Walter J. Kero, Certified Public Accountant, submitted written comments concerning new rule I (42.2.304). Mr. Kero indicated a concern with the definition of "business income" since there isn't a federal definition for "trade or business income." Mr. Kero stated the proposed definition is "ambiguous" since it talks about income arising from transactions in the regular course of the taxpayer's trade or business, but does not define "trade or business." He further stated that the proposed rule ignores the federal tax law and the multi-state compact. He suggested that the Department should follow federal law definitions and rules on these matters to simplify the administration of tax law and to improve the understanding by the taxpayers. He suggested the Department's goal and tax policy should be to keep the differences between federal and Montana tax laws to a minimum.

RESPONSE: The Department's proposal notice justification explained that these definitions were not new but were being moved to this general definition rule because these terms applied to various areas of taxation or processes within the Department. This particular definition was moved from ARM 42.26.206 where it has been since 1977. The definition is

derived from 15-1-601 (multi-state tax compact) and 15-31-302, MCA, where "business income" is defined in Montana law. This definition may not conform to federal tax law but it does reflect Montana tax law.

COMMENT 2: Mr. Kero provided a comment concerning the definition of "internal revenue code," and that this definition gives the appearance that the internal revenue service regulations are higher in legal authority or priority than the law itself. The internal revenue service regulations are lower on the totem pole than the Internal Revenue Code.

RESPONSE: The Department acknowledges the difference in the level of authority of these two publications and will amend the rule to reflect that the Internal Revenue Code is the federal code relating to the internal revenue service.

COMMENT 3: Mary Whittinghill, representing the Montana Taxpayers Association, commented that they believe there could be some confusion for some taxpayers with the new definition rule. For example, allocation and apportionment are defined in ARM Title 42, chapter 2, as they relate to assignment of nonbusiness and business income. These same terms are also found in ARM Title 42, chapter 22. She suggested that both definitions be moved to chapter 2. Each term would have a definition pertaining to the tax type (i.e., income tax; corporation license tax; or property tax). Alternatively, she suggested that we leave the definitions in ARM Title 42, chapter 26, which pertains to corporation license taxes only.

RESPONSE: The Department has determined that it would create less confusion to remove these definitions from this rule and retain them in chapter 26. The rule is amended accordingly.

COMMENT 4: Ms. Whittinghill further suggested amending the rule to insert clarifying language at the beginning of this chapter and in each definition rule in ARM Title 42. This clarifying language would assist the reader in locating general definitions that might be found elsewhere in ARM Title 42.

RESPONSE: The Department agrees with Ms. Whittinghill's comments to provide this direction could be helpful when attempting to locate other general definitions in ARM Title 42. However, there are a multitude of definition rules contained in ARM Title 42, and each of these rules would require notice to the public of the change. The Department is concluding its biennial review of all its rules for this period at this time. Therefore, amending all of those rules at this time would not be efficient. However, at the conclusion of the 2001 legislative session there may be need to amend rules, and if any definition rule requires amending we will address this suggestion at that time. Otherwise, the Department will revisit this suggestion during its next biennial review process in 2002 when each chapter in ARM Title 42 will be reviewed for necessary

amendments.

3. As a result of the comments received, the Department has adopted new rule I (42.2.304) with the following changes:

NEW RULE I (42.2.304) DEFINITIONS The terms used by the department are in great part, defined in Titles 15, 16, 39, and 72, MCA. In addition to these statutory definitions, the following definitions apply to ARM Title 42, unless context of a particular chapter or rule provides otherwise:

~~(1) "Allocation" refers to the assignment of nonbusiness income in a particular state.~~

~~(2) "Apportionment" refers to the division of business income between states by the use of a formula containing apportionment factors.~~

(3) through (23) same as proposed but are renumbered (1) through (21).

~~(24)~~(22) "Internal revenue code" (IRC) is the federal code relating to the internal revenue service regulations.

(25) through (46) same as proposed but are renumbered (23) through (44).

AUTH: 15-1-201, 15-30-305, 16-1-303, 16-10-104, and 16-11-103, MCA

IMP: 15-1-102, 15-1-601, 15-30-101, 15-30-131, and Title 15, chapter 31, part 3, MCA

4. The Department has adopted new rule II (42.2.305) and III (42.2.306); amended ARM 42.2.302, 42.2.303, 42.2.311, 42.2.312, 42.2.313, 42.2.321, 42.2.322, 42.2.323, 42.2.324, 42.2.325, 42.2.401, 42.2.501, and 42.2.613; and repealed ARM 42.2.701 as proposed.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Jeff Miller for
MARY BRYSON
Director of Revenue

Certified to Secretary of State December 11, 2000.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 42.4.103, 42.4.104,) AND REPEAL
42.4.105, and 42.4.106; and)
repeal of ARM 42.4.101 and)
42.4.102 relating to tax)
incentives and credits for)
alternative energy systems)

TO: All Concerned Persons

1. On November 9, 2000, the Department published notice of the proposed amendment of ARM 42.4.103, 42.4.104, 42.4.105, and 42.4.106; and repeal of ARM 42.4.101 and 42.4.102 relating to tax incentives and credits for alternative energy systems at page 3151 of the 2000 Montana Administrative Register, issue no. 21.

2. A public hearing was held on November 30, 2000, where no one appeared. No written comments were received.

3. The Department has amended ARM 42.4.103, 42.4.104, 42.4.105, and 42.4.106 and repealed ARM 42.4.101 and 42.4.102 as proposed.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Jeff Miller for
MARY BRYSON
Director of Revenue

Certified to Secretary of State December 11, 2000.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 42.14.101 and 42.14.103)
relating to lodging facility)
use taxes)

TO: All Concerned Persons

1. On October 5, 2000, the Department published notice of the proposed amendment of ARM 42.14.101 and 42.14.103 relating to lodging facility use taxes at page 2640 of the 2000 Montana Administrative Register, issue no. 19.

2. A public hearing was held on October 25, 2000, where no one appeared. No written comments were received.

3. The Department has amended ARM 42.14.101 and 42.14.103 as proposed.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Jeff Miller for
MARY BRYSON
Director of Revenue

Certified to Secretary of State December 11, 2000.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT AND
of ARM 42.18.106, 42.18.107,) REPEAL
42.18.109, 42.18.110, 42.18.112,))
42.18.113, 42.18.115, 42.18.116,))
42.18.118, 42.18.119, 42.18.120,))
42.18.121, 42.18.122, 42.18.124;))
and repeal of ARM 42.18.126,))
42.18.201, 42.18.202, 42.18.203,))
42.18.204, and 42.18.211))
relating to the appraisal of))
agricultural and forest land,))
commercial, industrial, and))
residential property))

TO: All Concerned Persons

1. On October 5, 2000, the Department published notice of the proposed amendment of ARM 42.18.106, 42.18.107, 42.18.109, 42.18.110, 42.18.112, 42.18.113, 42.18.115, 42.18.116, 42.18.118, 42.18.119, 42.18.120, 42.18.121, 42.18.122, 42.18.124; and repeal of ARM 42.18.126, 42.18.201, 42.18.202, 42.18.203, 42.18.204, and 42.18.211 relating to the appraisal of agricultural and forest land, commercial, industrial, and residential property at page 2642 of the 2000 Montana Administrative Register, issue no. 19.

2. A public hearing was held on October 27, 2000, where no one appeared. No written or oral comments were received.

3. The Department has amended ARM 42.18.106, 42.18.107, 42.18.109, 42.18.110, 42.18.112, 42.18.113, 42.18.115, 42.18.116, 42.18.118, 42.18.119, 42.18.120, 42.18.121, 42.18.122, 42.18.124 and repealed ARM 42.18.126, 42.18.201, 42.18.202, 42.18.203, 42.18.204, and 42.18.211 as proposed.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Jeff Miller for
MARY BRYSON
Director of Revenue

Certified to Secretary of State December 11, 2000.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 42.21.113, 42.21.123,)
42.21.131, 42.21.132, 42.21.137,))
42.21.138, 42.21.139, 42.21.140,))
42.21.151, 42.21.153, 42.21.155,))
42.21.156, 42.21.158, 42.21.159,))
42.21.161, and 42.21.162)
relating to property taxes)

TO: All Concerned Persons

1. On November 9, 2000, the Department published notice of the proposed amendment of ARM 42.21.113, 42.21.123, 42.21.131, 42.21.132, 42.21.137, 42.21.138, 42.21.139, 42.21.140, 42.21.151, 42.21.153, 42.21.155, 42.21.156, 42.21.158, 42.21.159, 42.21.161, and 42.21.162 relating to property taxes at page 3131 of the 2000 Montana Administrative Register, issue no. 21.

2. No comments were received regarding these rules. However, the Department is amending ARM 42.21.137 to correct two typographical errors in the table in (4) as follows:

42.21.137 SEISMOGRAPH UNITS AND ALLIED EQUIPMENT

(1) through (3) same as proposed.

(4) The trended depreciation schedules referred to in (1) through (3) above are listed below and shall be used for tax year 2001.

SEISMOGRAPH UNIT

<u>TRENDED</u> <u>YEAR/NEW</u> <u>ACQUIRED</u>	<u>% GOOD</u>	<u>TREND</u> <u>FACTOR</u>	<u>TRENDED</u> <u>% GOOD</u>	<u>WHOLESALE</u> <u>FACTOR</u>	<u>WHOLESALE</u> <u>% GOOD</u>
2001	100%	1.000	100%	80%	80%
2000	85%	1.000	85%	80%	68%
1999	69%	0.013 <u>1.013</u>	70%	80%	56%
1998	52%	1.018	53%	80%	42%
1997	34%	1.029	35%	80%	28%
1996	20%	1.042	21%	80%	17%
1995 & older	5%	1.062	5%	80%	4%

SEISMOGRAPH ALLIED EQUIPMENT

<u>YEAR/NEW</u> <u>ACQUIRED</u>	<u>% GOOD</u>	<u>TREND</u> <u>FACTOR</u>	<u>TRENDED</u> <u>% GOOD</u>
2001	100%	1.000	100%
2000	85%	1.000	85%

1999	69%	0.013 <u>1.013</u>	70%
1998	52%	1.018	53%
1997	34%	1.029	35%
1996	20%	1.042	21%
1995 & older	5%	1.062	5%

(5) same as proposed.

AUTH: 15-1-201, MCA

IMP: 15-6-135, 15-6-136, 15-6-138, 15-6-207, 15-24-921, 15-24-922, and 15-24-925, MCA

3. The Department has amended ARM 42.21.113, 42.21.123, 42.21.131, 42.21.132, 42.21.138, 42.21.139, 42.21.140, 42.21.151, 42.21.153, 42.21.155, 42.21.156, 42.21.158, 42.21.159, 42.21.161, and 42.21.162 as proposed.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Jeff Miller for
MARY BRYSON
Director of Revenue

Certified to Secretary of State December 11, 2000.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 42.22.1311, 42.22.1313,))
and 42.22.1401 relating to))
centrally assessed property))

TO: All Concerned Persons

1. On November 9, 2000, the Department published notice of the proposed amendment of ARM 42.22.1311, 42.22.1313, and 42.22.1401 relating to centrally assessed property at page 3121 of the 2000 Montana Administrative Register, issue no. 21.

2. Comments were received regarding these rules and are summarized as follows along with the response of the Department:

COMMENT NO. 1: Mary Whittinghill, Montana Taxpayers Association, and Roger Kirk, Hydrodynamics, Inc., submitted comments regarding table 11 in ARM 42.22.1311. The new table reflects a 40-year life versus 20 years shown in the other tables. Both parties indicated that they felt this would have a significant impact on taxpayers and recommended not using the 40-year life for this category. They suggested the department study this issue further to determine the appropriateness of this change.

RESPONSE NO. 1: The department recognizes the concerns presented in the comments and has decided to continue to use the 20-year life table for this industry at this time. As shown below, the amendments to the rule reflect this change.

3. As a result of the comments received the Department has amended ARM 42.22.1311 by earmarking the descriptions. In addition, description and trend table information in (2) remains the same except for hydroelectric generation which is amended as shown.

42.22.1311 INDUSTRIAL MACHINERY AND EQUIPMENT TREND FACTORS (1) remains the same.

(a)(2) Life expectancies for industrial machinery and equipment are shown in the trend table below; ~~and.~~

2001 INDUSTRIAL MACHINERY AND EQUIPMENT TREND FACTORS

	<u>Description</u>	<u>Trend Table</u>	<u>Life</u>
(a)	Aircraft/Airframe Mfg.	(1)	15
(b)	Alcohol Plant	(4)	15
(c)	Baking	(2)	12
(d)	Bentonite	(21)	20
(e)	Bottling	(3)	12
(f)	Brewing & Distilling	(4)	20
(g)	Candy & Confectionery	(5)	20

<u>(h)</u>	Cardboard Container	(25)	20
<u>(i)</u>	Cement Manufacturing	(6)	20
<u>(j)</u>	Cereal Products	(14)	16
<u>(k)</u>	Chemical Manufacturing	(7)	12
<u>(l)</u>	Clay Products	(8)	15
<u>(m)</u>	Coal Crushing & Handling	(21)	20
<u>(n)</u>	Coal Fired Power Gener.	(28)	16
<u>(o)</u>	Concrete Products	(6)	18
<u>(p)</u>	Concrete Ready Mix	(6)	18
<u>(q)</u>	Contractor Equipment	(9)	10
<u>(r)</u>	Creamery & Dairy	(10)	12
<u>(s)</u>	Egg Packing	(16)	20
<u>(t)</u>	Electric Power Equipment	(11)	16
<u>(u)</u>	Electrical Equipment Mfg.	(12)	10
<u>(v)</u>	Electronic Component Mfg.	(12)	10
<u>(w)</u>	Feed Milling	(14)	16
<u>(x)</u>	Fertilizer Distribution	(30)	10
<u>(y)</u>	Fertilizer Manufacturing	(7)	12
<u>(z)</u>	Fish Cannery	(13)	12
<u>(aa)</u>	Flour, Cereal & Feed	(14)	16
<u>(ab)</u>	Flour Milling	(14)	16
<u>(ac)</u>	Foundry	(20)	15
<u>(ad)</u>	Fruit Cannery	(15)	12
<u>(ae)</u>	Fruit Packing	(16)	12
<u>(af)</u>	Furniture Manufacturing	(31)	10
<u>(ag)</u>	Gasohol Plant	(4)	15
<u>(ah)</u>	Glass Manufacturing	(32)	15
<u>(ai)</u>	Grain Handling Facilities	(14)	16
<u>(aj)</u>	Graphite Products	(21)	20
<u>(ak)</u>	Gypsum	(21)	20
<u>(al)</u>	Heap Leach Mechanical	(21)	20
<u>(am)</u>	Heap Leach Pads	(21)	5
<u>(an)</u>	Honey Processing	(15)	12
<u>(ao)</u>	Hydroelectric Generation	(11)	40 <u>20</u>
<u>(ap)</u>	Industrial Shop Equipment	(9)	10
<u>(aq)</u>	Laundry & Drycleaning	(17)	10
<u>(ar)</u>	Leather Fabrication	(29)	20
<u>(as)</u>	Lime/Calcium Benefication	(21)	20
<u>(at)</u>	Logging Equipment	(18)	10
<u>(au)</u>	Meat Packing	(19)	12
<u>(av)</u>	Metal Fabrication	(20)	20
<u>(aw)</u>	Metal Machining & Milling	(20)	15
<u>(ax)</u>	Metal Working	(20)	20
<u>(ay)</u>	Mining & Milling	(21)	15
<u>(az)</u>	Natural Gas Processing	(23)	16
<u>(ba)</u>	Nonferrous Smelting	(21)	15
<u>(bb)</u>	Oil Refining	(23)	16
<u>(bc)</u>	Open Pit Mining/Quarrying	(21)	15
<u>(bd)</u>	Ore Milling/Concentrating	(21)	15

<u>(be)</u>	Oxygen Generation	(7)	20
<u>(bf)</u>	Paint Manufacturing	(22)	12
<u>(bg)</u>	Peat Moss/Compost Plant	(30)	20
<u>(bh)</u>	Petroleum	(23)	16
<u>(bi)</u>	Phosphate Benefication	(21)	20
<u>(bj)</u>	Plastic Products Mfg.	(32)	20
<u>(bk)</u>	Pole Treating Equipment	(18)	10
<u>(bl)</u>	Polystyrene	(32)	20
<u>(bm)</u>	Printing	(24)	12
<u>(bn)</u>	Pulp & Paper Mfg.	(25)	13
<u>(bo)</u>	Refrigeration	(26)	12
<u>(bp)</u>	Rifle Manufacturing	(20)	15
<u>(bq)</u>	Rubber & Vulcanizing	(27)	15
<u>(br)</u>	Sawmill Equipment	(18)	10
<u>(bs)</u>	Seed Treating & Cleaning	(14)	16
<u>(bt)</u>	Stationary Asphalt Plant	(6)	15
<u>(bu)</u>	Steam Power Generation	(28)	16
<u>(bv)</u>	Stone Products	(21)	15
<u>(bw)</u>	Sugar Refinery	(23)	18
<u>(bx)</u>	Sulphur Manufacturing	(23)	12
<u>(by)</u>	Talc Benefication	(21)	20
<u>(bz)</u>	Textile Fabrication	(29)	10
<u>(ca)</u>	Underground Mining	(21)	10
<u>(cb)</u>	Vegetable Oil Extraction	(14)	20
<u>(cc)</u>	Vermiculite Processing	(21)	20
<u>(cd)</u>	Warehousing	(30)	10
<u>(ce)</u>	Wood Pellet Plant	(14)	16
<u>(cf)</u>	Wood Products, Reconstituted	(31)	10
<u>(cg)</u>	Woodworking	(31)	20

Note: 1. Lab equipment is included in its related industry's table at 10-year life expectancy.

~~(b)(3)~~ Tables 1 through 32 represent the yearly trend factors for each of the categories.

Tables 1 through 10 remain the same.

<u>YEAR</u>	<u>TABLE 11</u> <u>Elec Pwr</u> <u>Eq.</u>
2000	1.000
1999	1.017
1998	1.013
1997	1.014
1996	1.020
1995	1.028
1994	1.083
1993	1.105
1992	1.112
1991	1.108
1990	1.115
1989	1.134
1988	1.203

1987	1.281
1986	1.290
1985	1.297
1984	1.310
1983	1.344
1982	1.359
1981	1.405
1980	1.536
1979	1.724
1978	1.897
1977	2.010
1976	2.108
1975	2.236
1974	2.503
1973	2.997
1972	3.099
1971	3.189
1970	3.378
1969	3.568
1968	3.702
1967	3.811
1966	3.976
1965	4.096
1964	4.141
1963	4.178
1962	4.162
1961	4.150

Tables 12 through 32 remain the same.

AUTH: 15-1-201, MCA

IMP: 15-6-138 and 15-8-111, MCA

4. The Department has amended ARM 42.22.1313 and 42.22.1401 as proposed.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Jeff Miller for
MARY BRYSON
Director of Revenue

Certified to Secretary of State December 11, 2000.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed) NOTICE OF ADOPTION,
adoption of New Rule I (42.31.2104);) AMENDMENT, AND REPEAL
amendment of ARM 42.31.102,)
42.31.103, 42.31.105, 42.31.107,)
42.31.109, 42.31.111, 42.31.131,)
42.31.201, 42.31.202, 42.31.203,)
42.31.204, 42.31.205, 42.31.213,)
42.31.221, 42.31.302, 42.31.303,)
42.31.304, 42.31.305, 42.31.306,)
42.31.308, 42.31.309, 42.31.310,)
42.31.311, 42.31.312, 42.31.313,)
42.31.315, 42.31.316, 42.31.317,)
42.31.325, 42.31.340, 42.31.345,)
42.31.350, 42.31.401, 42.31.405,)
42.31.501, 42.31.502, 42.31.504,)
42.31.510, 42.31.601, 42.31.2101,)
42.31.2121, 42.31.2122, 42.31.2131,)
42.31.2132, 42.31.2133, 42.31.2134,)
42.31.2141, 42.31.2142, 42.31.2143;)
and repeal of ARM 42.31.211,)
42.31.214, 42.31.320, 42.31.403,)
42.31.404, 42.31.515, and 42.31.603)
relating to tobacco and contractor's)
license taxes)

TO: All Concerned Persons

1. On October 5, 2000, the Department published notice of the proposed adoption of New Rule I (42.31.2104); amendment of 42.31.102, 42.31.103, 42.31.105, 42.31.107, 42.31.109, 42.31.111, 42.31.131, 42.31.201, 42.31.202, 42.31.203, 42.31.204, 42.31.205, 42.31.213, 42.31.221, 42.31.302, 42.31.303, 42.31.304, 42.31.305, 42.31.306, 42.31.308, 42.31.309, 42.31.310, 42.31.311, 42.31.312, 42.31.313, 42.31.315, 42.31.316, 42.31.317, 42.31.325, 42.31.340, 42.31.345, 42.31.350, 42.31.401, 42.31.405, 42.31.501, 42.31.502, 42.31.504, 42.31.510, 42.31.601, 42.31.2101, 42.31.2121, 42.31.2122, 42.31.2131, 42.31.2132, 42.31.2133, 42.31.2134, 42.31.2141, 42.31.2142, 42.31.2143; and repeal of ARM 42.31.211, 42.31.214, 42.31.320, 42.31.403, 42.31.404, 42.31.515, and 42.31.603 relating to tobacco and contractor's license tax rules at page 2657 of the 2000 Montana Administrative Register, issue no. 19.

2. A public hearing was held on October 27, 2000, where no written or oral comments were received. The Department discovered that ARM 42.31.502 and 42.31.603 were both shown as being amended and repealed. ARM 42.31.502 is being amended as shown and ARM 42.31.603 is being repealed. Additionally, the Department further amends ARM 42.31.107 and 42.31.202 because they reference duplicate forms. Forms CT-205 and CT-206 are

referenced in ARM 42.31.107 and the only difference in these forms is that CT-205 refers to in-state wholesalers and CT-206 refers to out-of-state wholesalers. Language in ARM 42.31.107 is redundant in this regard and will be stricken. The same situation was discovered in ARM 42.31.202 where TP-101, TP-101A, and TP-101B are combined. These forms will be combined into TP-101 to streamline the process for the customers and the Department. Therefore, the Department has further amended ARM 42.31.107 and 42.31.202 as follows:

42.31.107 ACCOUNTING CONTROL OF CIGARETTE DISTRIBUTION

(1) Each ~~in-state~~ wholesaler shall prepare form CT-205 and Schedule A or a computerized version of Schedule A approved by the department. When appropriate, form CT-206 and Schedule C are to be filed with the form CT-205. These forms are to be filed with the department by a wholesaler on or before the 15th day of each month for the preceding month's activities. Form CT-205 is a reconciliation of the purchase and distribution of cigarettes and the consumption of cigarette tax indicia. The back of form CT-205 reflects exempt military reservation, out-of-state, and wholesaler-to-wholesaler purchases for the month. Form CT-205 and supporting forms are hereby incorporated by reference and may be obtained by contacting the Department of Revenue at P.O. Box 5835, Helena, Montana 59604-5835.

(2) Each out-of-state wholesaler shall prepare form CT-205 and submit a listing of all sales into Montana. The listing must include the quantity sold, the business name of the purchaser, and the invoice number and date. ~~When appropriate, form CT-206 and Schedule C are to be filed with form CT-205. These forms are to be filed with the department by a wholesaler on or before the 15th day of each month for the preceding month's activities. Form CT-205 is a reconciliation of the purchase and distribution of cigarettes and the consumption of cigarette tax indicia. The back of the form CT-205 reflects exempt military reservation, and wholesaler-to-wholesaler purchases for the month.~~

(3) through (5) same as proposed.

AUTH: 16-11-103, MCA

IMP: 16-11-104, 16-11-111, and 16-11-156, MCA

42.31.202 PAYMENT OF TAX -- BOND (1) same as proposed.

(2) All ~~in-state~~ wholesalers shall remit the tax on form TP-101, tobacco products tax reporting form, together with copies of the itemized invoices procured from the manufacturer of all tobacco products or a computerized print-out approved by the department.

~~(3) All out-of-state wholesalers shall remit the tax on form TP-101A together with form TP-101B or a computerized print-out approved by the department.~~

~~(4) All such remittance shall be made to the department by the 10th of each month covering purchases of tobacco products made during the previous month. Forms will be supplied by the department upon request~~ FORM TP-101 IS HEREBY INCORPORATED BY REFERENCE AND MAY BE OBTAINED BY CONTACTING THE DEPARTMENT OF

REVENUE AT P.O. BOX 5835, HELENA, MONTANA 59604-5835.

(5) same as proposed.

AUTH: 16-11-103, MCA

IMP: 16-11-203, MCA

3. The Department has adopted New Rule I (42.31.2104); amended 42.31.102, 42.31.103, 42.31.105, 42.31.109, 42.31.111, 42.31.131, 42.31.201, 42.31.203, 42.31.204, 42.31.205, 42.31.213, 42.31.221, 42.31.302, 42.31.303, 42.31.304, 42.31.305, 42.31.306, 42.31.308, 42.31.309, 42.31.310, 42.31.311, 42.31.312, 42.31.313, 42.31.315, 42.31.316, 42.31.317, 42.31.325, 42.31.340, 42.31.345, 42.31.350, 42.31.401, 42.31.405, 42.31.501, 42.31.502, 42.31.504, 42.31.510, 42.31.601, 42.31.2101, 42.31.2121, 42.31.2122, 42.31.2131, 42.31.2132, 42.31.2133, 42.31.2134, 42.31.2141, 42.31.2142, 42.31.2143; and repealed ARM 42.31.211, 42.31.214, 42.31.320, 42.31.403, 42.31.404, 42.31.502, 42.31.515, and 42.31.603 as proposed.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Jeff Miller for
MARY BRYSON
Director of Revenue

Certified to Secretary of State December 11, 2000.

BEFORE THE BOARD OF NURSING
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the petition)
for declaratory ruling on the)
issue of whether the scope of) DECLARATORY RULING
the Nurse Practice Act allows)
all levels of nursing to)
conduct un-waived CLIA tests)

TO: All Concerned Persons

1. On September 7, 2000, the Board of Nursing published a Petition for Declaratory Ruling in the above entitled matter at page 2437, 2000 Montana Administrative Register, issue number 17.

2. Hearing on the matter was held October 5, 2000 before Peter Ohman, Hearing Examiner. The time for allowing additional comments was extended until November 2, 2000 by Notice published at page 2782, 2000 Montana Administrative Register, issue No. 20.

3. On November 15, 2000 the Board considered all submitted and written comments as well as formal testimony, then issued its Declaratory Ruling.

ISSUE

4. Is it within the scope of practice of a registered nurse to perform un-waived CLIA tests?

SUMMARY OF COMMENTS

5. Written and oral comments were received from 43 persons.

COMMENTS NO. 1-11: Eleven comments were received stating that the individuals believed that performing un-waived CLIA tests was in the scope of practice of nursing and imploring the Board of Nursing not to restrict the scope of practice accordingly. The commentors also stated that if performing un-waived CLIA tests is beyond the scope of practice for nurses, why haven't there been problems documented with laboratories that use RNs.

COMMENTS NO. 12-24: Thirteen comments were received stating that Advanced Practice Registered Nurses are already qualified to perform un-waived CLIA tests and asking that the Board of Nursing not restrict their scope of practice.

COMMENTS NO. 25-41: Seventeen comments were received from doctors and clinical laboratory personnel and organizations seeking a Board of Nursing determination that performing un-waived CLIA tests, without proper licensure, is beyond the

scope of practice of nurses and their scope of practice should be restricted accordingly. The commentors further stated that if nurses are trained and competent to do un-waived CLIA tests, they should be able to pass the National Laboratory Exam which would then give them licensure by the Board of Clinical Laboratory Science Practitioners.

COMMENTS NO. 42 & 43: Two comments were received that were neutral in tone which merely asked that the Board of Nursing carefully consider this request for Declaratory Ruling because of the shortage of qualified personnel and the possible hardship it could cause in remote areas of the State of Montana.

ANALYSIS

6. Pursuant to Section 2-4-501, MCA, the Board is authorized to issue Declaratory Rulings "as to the applicability of any statutory provision."

7. The Petition for Declaratory Ruling was filed in accordance with Section 2-4-501, MCA, and appeared at page 2437, 2000 Montana Administrative Register, Issue No. 17.

8. The Board considered the fact that nurses are already performing these tasks in many areas of Montana. There have been no documented incidents of problems as a result of nurses performing these tests. One Board member felt that care in rural areas would be significantly affected if the registered nurses were not allowed to perform these tests. Board members also discussed the fact that a nurse is required to be competent in whatever tasks the nurse completes and that performing un-waived CLIA tests is no different. The responsibility for attaining and maintaining competency lies with the individual nurse. After consideration of the comments and upon review of the applicable statutes and rules, the Board of Nursing makes the following declaratory ruling.

DECLARATORY RULING

9. It is within the scope of practice of the registered nurse to perform un-waived CLIA tests.

BOARD OF NURSING
RITA HARDING, RN, MN, PRESIDENT

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, December 11, 2000.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE
Interim Committees and the Environmental Quality Council

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

Business and Labor Interim Committee:

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

Education Interim Committee:

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

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

- ▶ Department of Public Health and Human Services.

Law, Justice, and Indian Affairs Interim Committee:

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

Revenue and Taxation Interim Committee:

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

State Administration, Public Retirement Systems, and Veterans' Affairs Interim Committee:

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

Environmental Quality Council:

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

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 2000. This table includes those rules adopted during the period October 1, 2000 through December 31, 2000 and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through September 30, 2000, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1999 and 2000 Montana Administrative Registers.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number. These will fall alphabetically after department rulemaking actions.

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BOARD APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the *Montana Administrative Register* a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments effective in November 2000, appear. Vacancies scheduled to appear from January 1, 2001, through March 31, 2001, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of December 5, 2000.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

BOARD AND COUNCIL APPOINTEES FROM NOVEMBER, 2000

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Governor's Advisory Council on Disability (Administration)			
Ms. Ladonna Fowler Polson	Governor	not listed	11/14/2000 11/14/2002
Qualifications (if required):	public member		
Mr. Gene Haire Helena	Governor	not listed	11/14/2000 11/14/2002
Qualifications (if required):	public member		
Ms. Kathy Helland Helena	Governor	not listed	11/14/2000 11/14/2002
Qualifications (if required):	ex-officio member		
Ms. June Hermanson Billings	Governor	not listed	11/14/2000 11/14/2002
Qualifications (if required):	public member		
Ms. Shelley Laing Kalispell	Governor	not listed	11/14/2000 11/14/2002
Qualifications (if required):	public member		
Ms. Mary Morrison Missoula	Governor	not listed	11/14/2000 11/14/2002
Qualifications (if required):	public member		
Mr. Michael Regnier Missoula	Governor	not listed	11/14/2000 11/14/2002
Qualifications (if required):	public member		

BOARD AND COUNCIL APPOINTEES FROM NOVEMBER, 2000

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Governor's Advisory Council on Disability (Administration) cont. Ms. Tammy Shearer Missoula Qualifications (if required): public member	Governor	not listed	11/14/2000 11/14/2002
Governor's HIV/AIDS Advisory Council (Public Health and Human Services) Ms. Kim Ackerman Helena Qualifications (if required): public member	Governor	not listed	11/15/2000 11/15/2002
Sen. John Bohlinger Billings Qualifications (if required): legislator	Governor	not listed	11/15/2000 11/15/2002
Ms. Terri Dunn Whitefish Qualifications (if required): public member	Governor	not listed	11/15/2000 11/15/2002
Mr. Ryan Ficek Helena Qualifications (if required): student representative	Governor	not listed	11/15/2000 11/15/2002
Mr. Frank Gary Butte Qualifications (if required): public member	Governor	not listed	11/15/2000 11/15/2002
Mr. David Herrera Billings Qualifications (if required): public member	Governor	not listed	11/15/2000 11/15/2002

BOARD AND COUNCIL APPOINTEES FROM NOVEMBER, 2000

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Governor's HIV/AIDS Advisory Council (Public Health and Human Services) cont.			
Mr. Jeff Lovely	Governor	not listed	11/15/2000
Helena			11/15/2002
Qualifications (if required):	public member		
Sister Mary Vincentia Maronick	Governor	not listed	11/15/2000
Billings			11/15/2002
Qualifications (if required):	public member		
Ms. Rita Munzenrider	Governor	not listed	11/15/2000
Missoula			11/15/2002
Qualifications (if required):	public member		
Mr. Kevin Peterson	Governor	not listed	11/15/2000
Clancy			11/15/2002
Qualifications (if required):	public member		
Mr. Jack Preston	Governor	not listed	11/15/2000
Lincoln			11/15/2002
Qualifications (if required):	public member		
Ms. Verbena Savior	Governor	not listed	11/15/2000
Poplar			11/15/2002
Qualifications (if required):	Native American		
Ms. Annie Tavary	Governor	not listed	11/15/2000
Helena			11/15/2002
Qualifications (if required):	public member		

BOARD AND COUNCIL APPOINTEES FROM NOVEMBER, 2000

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Governor's HIV/AIDS Advisory Council (Public Health and Human Services) cont.			
Mr. Steven C. Yeakel	Governor	not listed	11/15/2000
Helena			11/15/2002
Qualifications (if required):	public member		
Mr. Fred Zaino	Governor	not listed	11/15/2000
Conrad			11/15/2002
Qualifications (if required):	public member		
Lewis and Clark Bicentennial Commission (Historical Society)			
Ms. Kathy Doeden	Governor	McCleary	11/1/2000
Miles City			10/1/2003
Qualifications (if required):	public member		
Mr. John G. Lepley	Governor	reappointed	11/1/2000
Fort Benton			10/1/2003
Qualifications (if required):	public member		
Mr. Darrell Martin	Governor	Eder	11/1/2000
Hays			10/1/2003
Qualifications (if required):	representative of a Montana Indian Tribe		

VACANCIES ON BOARDS AND COUNCILS -- January 1, 2001 through March 31, 2001

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Alternative Livestock Advisory Council (Fish, Wildlife, and Parks) Mr. Stanley F. Meyer, Great Falls Qualifications (if required): representative of the Fish, Wildlife, and Parks Commission	Governor	1/1/2001
Mr. Jeremy Kinross-Wright, Big Timber Qualifications (if required): representative of the Board of Livestock	Governor	1/1/2001
Appellate Defender Commission (Administration) Ms. Beverly Kolar, Geyser Qualifications (if required): public member	Governor	1/1/2001
Board of Aeronautics (Transportation) Mr. Douglas Freeman, Hardin Qualifications (if required): member of the Montana League of Cities and Towns and an attorney	Governor	1/1/2001
Mr. Byron Bayers, Twin Bridges Qualifications (if required): member of the Montana Chamber of Commerce	Governor	1/1/2001
Mr. Fred Booth, Fort Benton Qualifications (if required): member of the Montana Pilots' Association	Governor	1/1/2001
Mr. Ronald S. Mercer, Helena Qualifications (if required): representative of the Montana Airport Management Association	Governor	1/1/2001
Mr. William Metz, Laurel Qualifications (if required): member of the Montana Aerial Applicators Association	Governor	1/1/2001
Board of Architects (Commerce) Ms. Pamela J. Hill, Bozeman Qualifications (if required): registered architect on staff at MSU-Bozeman	Governor	3/27/2001

VACANCIES ON BOARDS AND COUNCILS -- January 1, 2001 through March 31, 2001

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Architects (Commerce) cont. Mr. Thomas Geelan, Havre Qualifications (if required): public member	Governor	3/27/2001
Board of Chiropractors (Commerce) Dr. Gregory Hoell, Bozeman Qualifications (if required): licensed and practicing chiropractor	Governor	1/1/2001
Board of Crime Control (Justice) Mr. Don Bjertness, Billings Qualifications (if required): public member	Governor	1/1/2001
Mr. John Flynn, Townsend Qualifications (if required): county attorney	Governor	1/1/2001
Attorney General Joseph P. Mazurek, Helena Qualifications (if required): Montana's Attorney General	Governor	1/1/2001
Ms. Janet Stevens, Missoula Qualifications (if required): public member	Governor	1/1/2001
Chief Justice Jean A. Turnage, Helena Qualifications (if required): Chief Justice of the Supreme Court	Governor	1/1/2001
Mr. Rick Day, Helena Qualifications (if required): Director of the Department of Corrections	Governor	1/1/2001
Judge Dorothy B. McCarter, Helena Qualifications (if required): judge	Governor	1/1/2001
Ms. Elaine Allestad, Big Timber Qualifications (if required): county commissioner	Governor	1/1/2001

VACANCIES ON BOARDS AND COUNCILS -- January 1, 2001 through March 31, 2001

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Crime Control (Justice) cont. Chief Robert Jones, Great Falls Qualifications (if required): representing police chiefs	Governor	1/1/2001
Sheriff Bill Slaughter, Bozeman Qualifications (if required): sheriff	Governor	1/1/2001
Mr. Ken Stuker, Helena Qualifications (if required): educator	Governor	1/1/2001
Board of Dentistry (Commerce) Dr. Wayne Hansen, Billings Qualifications (if required): dentist	Governor	3/29/2001
Board of Horse Racing (Commerce) Ms. Lou Wojciechowski, Billings Qualifications (if required): representing District 2	Governor	1/20/2001
Mr. Joe Erickson, Cascade Qualifications (if required): representing the horseracing industry	Governor	1/20/2001
Mr. Bill Brown, Butte Qualifications (if required): representing the horseracing industry	Governor	1/20/2001
Ms. Susan Austin, Kalispell Qualifications (if required): representing District 5	Governor	1/20/2001
Board of Housing (Commerce) Mr. William H. Oser, Billings Qualifications (if required): public member	Governor	1/1/2001
Mr. Robert J. Savage, Sidney Qualifications (if required): public member	Governor	1/1/2001

VACANCIES ON BOARDS AND COUNCILS -- January 1, 2001 through March 31, 2001

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Housing (Commerce) cont. Mr. Tom Welch, Dillon Qualifications (if required): public member	Governor	1/1/2001
Ms. Ronda Carpenter, Great Falls Qualifications (if required): public member	Governor	1/1/2001
Board of Investments (Commerce) Mr. Dick Anderson, Helena Qualifications (if required): public member	Governor	1/1/2001
Mr. Troy W. McGee, Helena Qualifications (if required): representative of the Public Employees' Retirement Board	Governor	1/1/2001
Mr. Bill Price, Lewistown Qualifications (if required): public member	Governor	1/1/2001
Mr. Tim Ryan, Great Falls Qualifications (if required): representative of the Teachers' Retirement Board	Governor	1/1/2001
Ms. Joy N. Ott, Billings Qualifications (if required): representative of the financial community	Governor	1/1/2001
Board of Labor Appeals (Labor and Industry) Mr. Joseph E. Thares, Helena Qualifications (if required): public member	Governor	1/1/2001
Ms. Carol Vega, Butte Qualifications (if required): public member	Governor	1/1/2001
Board of Livestock (Livestock) Mr. John C. Paugh, Bozeman Qualifications (if required): cattle producer	Governor	3/1/2001

VACANCIES ON BOARDS AND COUNCILS -- January 1, 2001 through March 31, 2001

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Livestock (Livestock) cont. Mr. Lee Cornwell, Glasgow Qualifications (if required): cattle producer	Governor	3/1/2001
Board of Oil and Gas Conservation (Natural Resources and Conservation) Mr. Allen C. Kolstad, Chester Qualifications (if required): public member	Governor	1/1/2001
Mr. Stanley Lund, Reserve Qualifications (if required): public member	Governor	1/1/2001
Mr. George Galuska, Billings Qualifications (if required): represents oil and gas industry	Governor	1/1/2001
Mr. David Ballard, Billings Qualifications (if required): represents oil and gas industry	Governor	1/1/2001
Board of Pardons (Corrections and Human Services) Mr. Gary Weer, Deer Lodge Qualifications (if required): public member	Governor	1/1/2001
Ms. Roxanna Wilson, Busby Qualifications (if required): auxiliary member and a Native American	Governor	1/1/2001
Board of Personnel Appeals (Labor and Industry) Mr. Leo Perkins, Deer Lodge Qualifications (if required): representing labor unions	Governor	1/1/2001
Mr. Thomas Schneider, Helena Qualifications (if required): representing labor unions	Governor	1/1/2001

VACANCIES ON BOARDS AND COUNCILS -- January 1, 2001 through March 31, 2001

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Personnel Appeals (Labor and Industry) cont. Mr. Bradley B. Talcott, Great Falls Qualifications (if required): representing management	Governor	1/1/2001
Board of Public Assistance (Public Health and Human Services) Ms. Gloria Paladichuk, Sidney Qualifications (if required): public member	Governor	1/1/2001
Mr. Dick Heineman, Wibaux Qualifications (if required): attorney	Governor	1/1/2001
Board of Public Education (Education) Ms. Joyce A. Silverthorne, Dixon Qualifications (if required): represents northwest quadrant of the state	Governor	2/1/2001
Board of Regents of Higher Education (Education) Ms. Deborah Wetsit, Billings Qualifications (if required): representative of District 4 and a Democrat	Governor	2/1/2001
Board of Respiratory Care Practitioners (Commerce) Ms. Iris L. Bungay, Cut Bank Qualifications (if required): certified respiratory therapist technician	Governor	1/1/2001
Ms. Linda Davis, Townsend Qualifications (if required): public member	Governor	1/1/2001
Board of Social Work Examiners and Professional Counselors (Commerce) Ms. Mary Meis, Conrad Qualifications (if required): social worker	Governor	1/1/2001
Mr. Ervin Booth, Roundup Qualifications (if required): professional counselor	Governor	1/1/2001

VACANCIES ON BOARDS AND COUNCILS -- January 1, 2001 through March 31, 2001

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Social Work Examiners and Professional Counselors (Commerce) cont. Mr. Patrick Wolberd, Billings Qualifications (if required): social worker	Governor	1/1/2001
Mr. James Armstrong, Fort Harrison Qualifications (if required): social worker	Governor	1/1/2001
Children's Trust Fund Board (Public Health and Human Services) Mr. Chuck Hunter, Helena Qualifications (if required): Department of Public Health and Human Services representative	Governor	1/1/2001
Coal Board (Commerce) Mr. Alan Evans, Roundup Qualifications (if required): residing in an impact area and District 4	Governor	1/1/2001
Mr. Gerald Feda, Glasgow Qualifications (if required): public member residing in District 3	Governor	1/1/2001
Mr. Roger Knapp, Hysham Qualifications (if required): residing in an impact area and District 4	Governor	1/1/2001
Mr. James W. Royan, Missoula Qualifications (if required): public member residing in District 1	Governor	1/1/2001
Committee for the Humanities (Governor) Mr. Robert Poore, Butte Qualifications (if required): public member	Governor	1/2/2001
Ms. Jamie Doggett, White Sulphur Springs Qualifications (if required): public member	Governor	1/2/2001

VACANCIES ON BOARDS AND COUNCILS -- January 1, 2001 through March 31, 2001

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Committee for the Humanities (Governor) cont. Rep. Arla Jeanne Murray, Miles City Qualifications (if required): public member	Governor	1/2/2001
Dr. William Bevis, Missoula Qualifications (if required): public member	Governor	1/2/2001
Developmental Disabilities Planning and Advisory Council (Public Health and Human Services) Mr. Dan McCarthy, Helena Qualifications (if required): representing the Office of Public Instruction	Governor	1/1/2001
Mr. Jon Hesse, Livingston Qualifications (if required): attorney	Governor	1/1/2001
Ms. Marlene Disburg, Helena Qualifications (if required): representing vocational rehabilitation	Governor	1/1/2001
Ms. Vonnie Koenig, Kalispell Qualifications (if required): representing consumers	Governor	1/1/2001
Sen. Bea McCarthy, Anaconda Qualifications (if required): State Senator	Governor	1/1/2001
Mr. Robert J. Tallon, Bozeman Qualifications (if required): representing service provider organizations	Governor	1/1/2001
Mr. Thomas Price, Eureka Qualifications (if required): representative of Region V	Governor	1/1/2001

VACANCIES ON BOARDS AND COUNCILS -- January 1, 2001 through March 31, 2001

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Developmental Disabilities Planning and Advisory Council (Public Health and Human Services) cont. Mrs. Othelia Schulz, Anaconda Qualifications (if required): representative of Region IV	Governor	1/1/2001
Dr. Timm Vogelsberg, Missoula Qualifications (if required): representing a university program	Governor	1/1/2001
Mr. Charlie Rehbein, Helena Qualifications (if required): representative of program services of the Older Americans Act	Governor	1/1/2001
Rep. Bob Lawson, Whitefish Qualifications (if required): State Representative	Governor	1/1/2001
Mr. Bernadette Franks-Ongoy, Helena Qualifications (if required): representing the Montana Advocacy Program	Governor	1/1/2001
Ms. June Powell, Browning Qualifications (if required): Native American and has a family member with a developmental disability	Governor	1/1/2001
Electric Utility Industry Restructuring Advisory Committee (Legislative Services) Mr. Donald Quander, Billings Qualifications (if required): representing the industrial community	Governor	1/1/2001
Ms. Roma Taylor, Big Fork Qualifications (if required): representing the nonindustrial retail electric consumer section	Governor	1/1/2001
Mr. Gene Leuwer, Helena Qualifications (if required): representing a low-income program provider	Governor	1/1/2001

VACANCIES ON BOARDS AND COUNCILS -- January 1, 2001 through March 31, 2001

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Electric Utility Industry Restructuring Advisory Committee (Legislative Services) cont. Mr. Stephen E. Bradley, Crow Agency Qualifications (if required): representing Montana's Indian tribes	Governor	1/1/2001
Mr. Stan Dupree, Butte Qualifications (if required): representing organized labor	Governor	1/1/2001
Ms. Kathy Hadley, Butte Qualifications (if required): represents community comprising environmental and conservation issues	Governor	1/1/2001
Mr. Neil Colwell, Boise Qualifications (if required): representing the electric power market industry	Governor	1/1/2001
Fish, Wildlife, and Parks Commission (Fish, Wildlife, and Parks) Mr. David Simpson, Hardin Qualifications (if required): resident of District V	Governor	1/1/2001
Mr. Charles R. Decker, Libby Qualifications (if required): resident of District I	Governor	1/1/2001
Mr. Stanley F. Meyer, Great Falls Qualifications (if required): resident of District III	Governor	1/1/2001
Hail Insurance Board (Agriculture) Auditor Mark O'Keefe, Helena Qualifications (if required): State Auditor	Governor	1/1/2001
Mr. W. Ralph Peck, Helena Qualifications (if required): Director of the Department of Agriculture	Governor	1/1/2001

VACANCIES ON BOARDS AND COUNCILS -- January 1, 2001 through March 31, 2001

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Hard Rock Mining Impact Board (Commerce) Mr. Roger W. Kornder, Lincoln Qualifications (if required): represents major financial institution and resides in an impact area	Governor	1/1/2001
Ms. Carol Kienenberger, Dodson Qualifications (if required): County Commissioner residing in an impact area and representing District 3	Governor	1/1/2001
Ms. Tammy Johnson, Whitehall Qualifications (if required): hard rock mining industry representative residing in District 2	Governor	1/1/2001
Human Rights Commission (Labor) Ms. S. Jane Lopp, Kalispell Qualifications (if required): public member	Governor	1/1/2001
Ms. Gloria "Patt" Etchart, Glasgow Qualifications (if required): public member	Governor	1/1/2001
Ms. Evelyn Stevenson, Pablo Qualifications (if required): attorney	Governor	1/1/2001
Independent Living Advisory Council (Public Health and Human Services) Ms. Shelley Laing, Kalispell Qualifications (if required): none specified	Director	1/1/2001
Ms. Flo Kiewel, Columbia Falls Qualifications (if required): none specified	Director	1/1/2001
Ms. Wilfred "Max" Bear, Poplar Qualifications (if required): none specified	Director	1/1/2001

VACANCIES ON BOARDS AND COUNCILS -- January 1, 2001 through March 31, 2001

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Judicial Nomination Commission (Justice) Mr. David Bliss, Conrad Qualifications (if required): public member	Governor	1/1/2001
Milk Control Board (Livestock) Ms. Dixie S. Hertel, Moore Qualifications (if required): republican	Governor	1/1/2001
Mr. Milton "Swede" Olson, Whitewater Qualifications (if required): republican	Governor	1/1/2001
Mr. Jesse Russell Gleason, Fairfield Qualifications (if required): republican	Governor	1/1/2001
Missouri River Basin Advisory Council (Natural Resources and Conservation) Ms. Diane Brandt, Glasgow Qualifications (if required): public member	Governor	2/24/2001
Mr. Don Pfau, Lewistown Qualifications (if required): public member	Governor	2/24/2001
Mr. Bud Clinch, Helena Qualifications (if required): Director of the Department of Natural Resources and Conservation	Governor	2/24/2001
Mr. Jim Rector, Glasgow Qualifications (if required): public member	Governor	2/24/2001
Mr. Ron Miller, Glasgow Qualifications (if required): public member	Governor	2/24/2001
Mr. Steve Page, Glasgow Qualifications (if required): public member	Governor	2/24/2001

VACANCIES ON BOARDS AND COUNCILS -- January 1, 2001 through March 31, 2001

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Missouri River Basin Advisory Council (Natural Resources and Conservation) cont. Mr. Tom Huntley, Sidney Qualifications (if required): public member	Governor	2/24/2001
Mr. John Foster, Lewistown Qualifications (if required): public member	Governor	2/24/2001
Mr. Boone A. Whitmer, Wolf Point Qualifications (if required): public member	Governor	2/24/2001
Mr. Buzz Mattelin, Brockton Qualifications (if required): public member	Governor	2/24/2001
Montana Children's Trust Fund Board (Public Health and Human Services) Ms. Judy Birch, Helena Qualifications (if required): public member	Governor	1/1/2001
Ms. Barbara Campbell, Deer Lodge Qualifications (if required): public member	Governor	1/1/2001
Mr. Kirk Astroth, Belgrade Qualifications (if required): public member	Governor	1/1/2001
Mr. Mark A. Bryan, Bozeman Qualifications (if required): public member	Governor	1/1/2001
Montana Grass Conservation Commission (Natural Resources and Conservation) Mr. Dewayne Ozard, Glasgow Qualifications (if required): grazing district preference holder	Governor	1/1/2001
Montana Health Facility Authority Board (Commerce) Dr. Amos R. Little, Jr., Helena Qualifications (if required): public member	Governor	1/1/2001

VACANCIES ON BOARDS AND COUNCILS -- January 1, 2001 through March 31, 2001

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Health Facility Authority Board (Commerce) cont. Ms. Gayle Carpenter, Helena Qualifications (if required): public member	Governor	1/1/2001
Ms. Joyce Asay, Forsyth Qualifications (if required): public member	Governor	1/1/2001
Mr. Michael P. Varone, Helena Qualifications (if required): public member	Governor	1/1/2001
Montana Higher Education Student Assistance Corporation (Education) Mr. Richard Bartos, Helena Qualifications (if required): public member	Governor	1/1/2001
Montana State Lottery Commission (Commerce) Ms. Becky Erickson, Glasgow Qualifications (if required): public member	Governor	1/1/2001
Sheriff Clifford Brophy, Columbus Qualifications (if required): law enforcement officer	Governor	1/1/2001
Northwest Power Planning Council (Governor) Mr. Stan Grace, Helena Qualifications (if required): none specified	Governor	1/1/2001
Mr. John N. Etchart, Fort Worth, TX Qualifications (if required): none specified	Governor	1/1/2001
State Employee Group Benefits Advisory Council (Administration) Mr. William Salisbury, Helena Qualifications (if required): none specified	Director	1/1/2001

VACANCIES ON BOARDS AND COUNCILS -- January 1, 2001 through March 31, 2001

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
State Employee Group Benefits Advisory Council (Administration) cont. Mr. Thomas Schneider, Helena Qualifications (if required): none specified	Director	1/1/2001
Mr. Dale Taliaferro, Helena Qualifications (if required): none specified	Director	1/1/2001
Ms. Nancy Ellery, Helena Qualifications (if required): none specified	Director	1/1/2001
Mr. Curt Nichols, Helena Qualifications (if required): none specified	Director	1/1/2001
Mr. Jim Penner, Helena Qualifications (if required): none specified	Director	1/1/2001
Mr. Mark Cress, Helena Qualifications (if required): none specified	Director	1/1/2001
Ms. Cathy Kendall, Helena Qualifications (if required): none specified	Director	1/1/2001
Mr. John W. Northey, Helena Qualifications (if required): none specified	Director	1/1/2001
Ms. Angela McDannel, Helena Qualifications (if required): none specified	Director	1/1/2001
State Tax Appeal Board (Administration) Rep. Jan Brown, Helena Qualifications (if required): public member	Governor	1/1/2001

VACANCIES ON BOARDS AND COUNCILS -- January 1, 2001 through March 31, 2001

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Transportation Commission (Transportation) Ms. Patricia Abelin, Bozeman Qualifications (if required): Republican from District 2	Governor	1/1/2001
Mr. Thorm R. Forseth, Billings Qualifications (if required): Independent from District 5	Governor	1/1/2001
Mr. Robert C. McKenna, Helena Qualifications (if required): Democrat from District 3	Governor	1/1/2001
Vocational Rehabilitation Advisory Council (Public Health and Human Services) Ms. Kris Kleinschmidt, Great Falls Qualifications (if required): none specified	Director	2/5/2001
Mr. Chris Clasby, Missoula Qualifications (if required): represents people with disabilities and advocates	Director	3/15/2001